U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

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The Honorable Bernie Sanders
Chair
Committee on Health, Education,
Labor and Pensions
United States Senate
Washington, DC 20510

The Honorable Bill Cassidy, M.D.
Ranking Member
Committee on Health, Education,
Labor and Pensions
United States Senate
Washington, DC 20510

Dear Chairman Sanders and Ranking Member Cassidy:

The U.S. Chamber of Commerce ("the Chamber") appreciates the opportunity to comment for the record regarding the four pieces of legislation to be considered in today's Executive Session: S. 1067, the "Ensuring Timely Access to Generics Act of 2023," S. 1114, the "Expanding Access to Low-Cost Generics Act of 2023," S. 1214, the "RARE Act," and S. 1339, the "Pharmacy Benefit Manager Reform Act." Specifically, the Chamber is concerned with the consideration of S. 1339 which prohibits contractual terms that mitigate risk. These risk mitigation provisions are widely used and enjoyed by health plan sponsors, health insurance plans and ultimately benefit consumers.

The Chamber supports efforts to ensure every American has equitable access to health care treatments and cures. The Chamber is concerned about the approach contemplated by the recently enacted Inflation Reduction Act (IRA) and by S. 1339, which would in fact subvert the intended goal of reducing costs.

The Inflation Reduction Act: Government Price Controls Will Impede Access

Last month the Chamber released its *2023 Patient Access Report (Phase One)* ("the report"). As GIPC President and CEO David Hirschmann explained in a letter to HHS Secretary Becerra, the report confirms what in truth policymakers already know: marketplace competition and effective intellectual property protections enhance patient access to the latest medicines.[1] In contrast, the Chamber's research shows that market-restrictive policies like price controls can deter future innovation, inhibit patient access, and limit patient choice.

We know that the cost of prescription medicines is a top priority for this Administration. As indicated above, we also support efforts to help ensure every American has equitable access to life-saving medicines, including COVID-19 vaccines and life-saving therapeutics.

Unfortunately, this Administration has accepted the false, failed premise that government intervention and price setting is the most effective way to provide patients with access to life-saving innovations. This approach is embodied in the drug pricing provisions of the IRA and in the President's

[1] Ltr from David Hirschmann, President and CEO, Global Innovation Policy Center, to Secretary Xavier Becerra, March 22, 2023.

Budget Proposal. While the Administration claims to promote access by controlling prices through so-called "negotiation," the reality is that innovators are forced to comply with the government's arbitrary price controls or face crippling penalties.

To describe the IRA as disastrous for American innovation would be an understatement. First, these proposals send a signal to America's life-science companies that there is no support for the development of further innovations and cures. According to Nick Shipley, Chief Advocacy Officer for the Biotechnology Innovation Organization, the price controls would "further destabilize Medicare, slow critical investment in future research and development, stall drug innovation, and ultimately harm patients." Anecdotally, the IRA's anticipated harms have already been revealed through the numerous life-science innovators who have officially ended product development programs, citing new price controls. For example, Eli Lilly CEO Officer Dave Ricks said the company had already dropped a blood cancer drug from its pipeline because they "couldn't make the math work . . . [i]n light of the Inflation Reduction Act, this program no longer met our threshold for continued investment."[2] Similarly, Novartis warned that the new law could discourage research in its most promising areas of research: RNA and radioligands.[3] Finally, Alnylam has stopped the development of a treatment for a rare eye disease due to the need "to evaluate impact of the Inflation Reduction Act." [4]

These are but a few examples of the type of innovative, life-saving products whose realization is threatened by the IRA's price controls. In addition, our report cautions that the IRA's drug pricing penalties will cause additional harm to patients by forcing them to forfeit early and extensive access to the best life-saving medications. The report's methodology demonstrates that in other OECD countries which have implemented price controls, patients see fewer overall biopharmaceutical product launches, including biologics and oncology products, and have delayed access to medicine.[5] For example, prior to the enactment of the IRA's price controls, out of 104 new oncology products released globally, 80% were launched in the U.S., while only 58% were launched in Europe. Similarly, in several benchmark countries, patients can wait up to several hundred days to receive access to life-saving treatments, with patients waiting an average of 133 days in Germany and up to 500 days in Spain.

Surely this outcome—less innovative medicines and longer wait times—isn't what any policymaker or advocate wants. Government intervention in price setting undermines the innovation ecosystem that has empowered the U.S. to become one of the most innovative countries in the world. Decision makers must consider the implications of price controls on patients before proceeding with implementation of the IRA's disastrous pricing framework.

Banning Risk-Mitigation Pricing: Reduces Choice in Plan Design and Eliminates Cost Predictability

Risk-mitigation pricing (also referred to as spread-pricing) provides employers a definitive price for prescription drug benefit payments to pharmacies, and transfers the risks associated with daily fluctuations in drug prices onto the Pharmacy Benefit Manager (PBM). This ability to include

[2] Joe Grogan, *The Inflation Reduction Act Is Already Killing Potential Cures*, The Wall Street Journal, November 3, 2022.
[3] Ludwig Burger, *Novartis warns U.S. plan to curb drug prices could hit key research*, Reuters, January 20, 2023.
[4] Grogan, *supra* note 1.
[5] The report found that fewer overall biopharmaceutical product launched in Canada, Japan, South Korea, Australia, and European Union member states than in the United States over the past 20 years.

spread pricing as part of a contractual agreement is highly valued by many employers and plan sponsors and incentivizes these PBMs to push pharmacies to reduce their acquisition costs. This is a contracting term that employers demand, bringing much needed pricing predictability. The Chamber opposes proposals that would eliminate and prohibit the ability of entities to include such a provision in private contracts.

Conclusion

The Chamber believes that the Inflation Reduction Act is the most recent legislative example of the harm that can be enacted when Congress disrupts the ability of private parties to enter into free market contractual arrangements by imposing additional government control into health care. Prohibiting private contractual terms widely used and preferred will not advance the goal of greater access.

Sincerely,

Patrick Kilbride
Senior Vice President
Global Innovation Policy Center
U.S. Chamber of Commerce

Katie Mahoney
Vice President
Health Policy
U.S. Chamber of Commerce

cc: Members of the U.S. Senate Committee on Health, Education, Labor and Pensions