July 5, 2023

The Honorable Bob Good
Chair, Subcommittee on Health, Employment, Labor, and Pensions
461 Cannon House Office Building
Washington, DC 20515

The Honorable Mark DeSaulnier
Ranking Member, Subcommittee on Health, Employment, Labor, and Pensions
503 Cannon House Office Building
Washington, DC 20510

Dear Chair Good and Ranking Member DeSaulnier:

Thank you for recently hosting a hearing on Competition and Transparency: The Pathway Forward for a Stronger Health Care Market. This important conversation demonstrated your committee's strong and bipartisan support for price transparency as a solution to lower costs for employers and protect them and their employees from overcharges. The committee's position reflects the will of the American people, nearly 90% of whom support systemwide healthcare price transparency.

The need is urgent for all prices in healthcare to be readily available. One hundred million Americans are in medical debt. Many face bad credit ratings, garnished wages, liens on personal property, and personal bankruptcy, after being overcharged with no access or proof of the true, actual prices or competitive comparison. Employers and their employees face dramatic increases in their healthcare costs and premiums each year.

Actual, upfront prices for care and coverage will protect all American consumers – patients, employers, and unions, -- from overcharges, errors, and fraud, and provide remedy and recourse from discriminatory and predatory billing practices. Systemwide price transparency will unleash a competitive healthcare marketplace that will greatly lower the costs of healthcare and coverage that currently plague families, employers, and our country.

The Transparency in Coverage (TiC) rule requires many important disclosures, but plans and issuers should provide more useful information in more accessible forms to ensure that their members and their members' employers have access to the critical information they need to drive down the cost of their care and coverage. New legislation is needed to enhance disclosure requirements and to hold plans and issuers accountable to comply with the long delayed prescription drug price transparency provision in the TiC rule.

The need for legislation in this space is underscored by recent litigation brought by employers and unions against their insurers and third-party administrators (TPAs). For example, in the recent case Kraft Heinz Co. filed against its TPA, Aetna, the employer alleged that its TPA breached its fiduciary duties by refusing to hand over medical claims data. In a similar case, the Connecticut Bricklayers and Sheet Metal Workers Unions sued its plan administrators and consultants to gain access to similar claims and payment data. In contrast, the Osceola School District was able to save $21 million on healthcare over two years by moving to a price transparent healthcare model for its 6,500 employees.

Employers and their workers need clear laws enforced by federal agencies to ensure that they have access to their claims and payment data and similar information.

Key pillars of meaningful legislation to enable true, systemwide price transparency include:

1. Codification of the TiC rule to be applicable to all commercial coverage, especially the requirement for plans and issuers to post machine-readable files containing negotiated in-network prices, drug prices, and out-of-network prices;

2. Enhancements to drug price machine-readable files to ensure that the real prices of drugs are disclosed;

3. The following revisions to the "gag clause" prohibition of the Consolidated Appropriations Act, 2021:

a. Ensure that it applies to the appropriate parties, including TPAs serving group health plans;

b. Expand the prohibition to contract clauses that would prohibit or restrict the ability of a group health plans to audit their TPAs or insurers;

c. Broaden the data and information employers have access to about their own plans to include prices as well as reimbursement formulae; and

d. Express protections to allow employers and individuals to negotiate more favorable prices and to reap the financial benefits of such negotiations;

4. Accountability provisions that would preclude charging members amounts in excess of their expectations and require plans and issuers to attest to the accuracy of their disclosures;

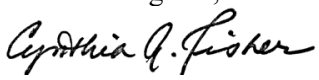
5. Expanded applicability to Accountable Care Organizations that serve Medicare beneficiaries in the role of a payer and receive favorable reimbursement from the government; and

6. Specific penalties for plans, issuers, and TPAs that violate the gag clause prohibition by placing anti-competitive provisions in their contracts.

Legislation adhering to these critical pillars will enable the meaningful healthcare price transparency that Americans demand and the system needs to reverse the runaway medical costs burdening so many Americans.

Thank you for considering such legislation. We would be happy to meet with you to discuss and provide more details on these suggestions when appropriate.

Warmest Regards,



Cynthia A. Fisher
Founder and Chairman
PatientRightsAdvocate.org