

Statement of the Purchaser Business Group on Health
for the
House Committee on the Judiciary
Subcommittee on Antitrust, Commercial and Administrative Law

“Treating the Problem: Addressing Anticompetitive Conduct
and Consolidation in Health Care Markets”

Statement for the Record

April 29, 2021

The Purchaser Business Group on Health (PBGH) appreciates the opportunity to submit for the record our comments on the problem of anticompetitive conduct and consolidation in health care markets. PBGH is a nonprofit coalition representing nearly 40 private employers and public entities across the U.S. that collectively spend \$100 billion annually purchasing health care services for more than 15 million Americans and their families. Our members work with us to identify needed system reforms to achieve and pay for optimal quality and outcomes and affordable care. We applaud the Subcommittee for its attention to the problem of anticompetitive conduct and consolidation, which was extensively documented in the [Subcommittee’s hearing on March 7, 2019](#).

Employers and employees have continued to suffer under the burden of [high and ever-increasing health insurance premiums](#), which crowd out business investment, job growth and wages. Many experts have pointed to [anticompetitive conduct and industry consolidation as a driver of high health care costs](#). Over the past 10 years, PBGH and its members have directly observed the impact of anti-competitive practices, increased market power and high prices in California, as evidenced by the recent [settlement with the Sutter Health System](#). Many PBGH members based in California are members of the class action lawsuit against Sutter.

PBGH strongly believes that healthy competition among hospitals and integrated health systems is essential to providing lower costs, improved quality and better value. Unfortunately, there is inadequate competition in many markets, and government must step in to ensure that health care markets function appropriately in the public interest. Furthermore, employer

purchasers and consumers seldom have the information they need to make informed choices, which is essential for a functioning market. Specifically, we support:

- **Prohibitions on anti-competitive contracting practices**, such as anti-tiering and all-or-nothing clauses, and egregious use of out-of-network pricing to create greater leverage in price negotiations. Many of these were included in the Lower Health Care Costs Act passed by the Senate Health, Education, Labor and Pensions (HELP) Committee on a bipartisan vote in 2019.
- **Stronger antitrust enforcement and increased oversight of mergers and acquisitions**, including increased resources for federal agencies and a change in the “burden of proof” for demonstrating public benefit. In addition, the scope of antitrust oversight should be expanded to include acquisitions of health providers by health insurance plans and private equity firms, as well as cross-market mergers.
- **Full transparency on prices and quality**, including standardized measures of quality (especially patient-reported outcomes), patient experience, appropriateness, total cost of care and equity for all providers.

Drug costs are another significant contributor to high health care costs for employers and employees. The COVID-19 pandemic and ensuing public health and economic crisis also underscore the need to make prescription drugs more affordable and to spend resources more wisely. Built on the tenets of **transparency, competition, and value**, PBGH supports public policies that drive down the cost of drugs while preserving *true innovation* as part of a value-based health care system.

Transparency

Many drug manufacturers invest a great deal of money in research and development. But those costs and other factors that form the basis for establishing prices are extremely opaque. Increasing transparency at every level of the supply chain will provide consumers, purchasers and other stakeholders the information needed to ensure that effective treatments are obtained at a fair and reasonable cost.

Competition

The drug marketplace is characterized by counterproductive incentives, inefficiencies and anti-competitive practices that obstruct healthy price competition. Many newer drugs benefit from government-sanctioned monopolies through patent and market-exclusivity laws. Leveling the playing field by requiring fair business practices would encourage competition and drive down the cost of prescription drugs.

Value

Employers and employees pay more than ever for prescription drugs. But often the price is not aligned with the value of the product. The business models of some prescribing physicians and intermediaries, such as pharmacy benefit managers (PBMs), often are misaligned with the interests of employers and patients, resulting in higher costs. We must stop rewarding payment structures and incentives that result in higher costs, and we must ensure that drugs are priced according to their value as a therapeutic agent.

Specifically, PBGH supports policies to **strengthen competition and enhance transparency**. Policymakers can take steps to indirectly reduce the cost of drugs by banning anticompetitive practices by drug makers and other actors, and enhancing price transparency. To that end, we urge policymakers to:

- **Eliminate “patent evergreening” and other “patent thickets”** to ensure that branded products will face competition from generic drugs and biosimilars in line with the intent of current laws.
- **Prevent first-to-file generic drug applicants from blocking**, beyond a 180-day exclusivity period, the entrance of subsequent generic drugs to the market.
- **Reduce citizens petition abuse** by giving the FDA additional guidance on denying petitions submitted for the purpose of delaying generic approval.
- Require drug manufacturers to **publicly report and explain price increases that exceed certain thresholds**.
- Require branded biologic companies to **publicly list drug patents** they can reasonably defend.
- Require health care providers and pharmacies to **include National Drug Codes (NDC) in claims** for commercial health plans. NDC codes are currently required for claims to public payers (Medicare and Medicaid) and provide greater transparency on prices to purchasers.
- Require complete transparency by pharmacy benefit managers and the **pass through of all rebates and related fees and payments to plan sponsors**.
- **Address spread pricing** by pharmacy benefit managers, health plans, providers, and other intermediaries. Purchasers should be given the option to accept or reject spread pricing. This policy should apply to drugs administered directly by providers and sold in the pharmacy setting.

In addition, PBGH supports policies that **maintain employers’ ability to manage drug costs**. Other stakeholders have proposed policies that would limit the ability of employers and purchasers to manage their drug costs, including

banning step therapy and generic substitution. These policies would further drive up health costs for purchasers and families and have no basis in clinical efficacy. PBGH will strongly oppose policies that strip employers and purchasers of their already-limited ability to manage their drug costs.

In closing, PBGH appreciates the opportunity to offer our perspective on the serious problems of industry consolidation and anti-competitive practices that have driven up prices to unsustainable levels. We would be happy to work with the Subcommittee by providing additional information and insights regarding the depth of the problem and potential solutions.