Employers' Prescription for Affordable Drugs

September 13, 2021

The Honorable Frank Pallone
Chair
Committee on Energy and Commerce
US House of Representatives
Washington, DC 20515

The Honorable Richard Neal
Chair
Committee on Energy and Commerce
US House of Representatives
Washington, DC 20515

The Honorable Bobby Scott
Chair
Committee on Education and Labor
US House of Representatives
Washington, DC 20515

Dear Chairs Pallone, Neal, and Scott:

On behalf of the members of Employers Prescription for Affordable Drug Prices (EmployersRx), we write to offer our **gratitude for improvements you made to H.R. 3, the *Elijah E. Cummings Lower Drug Costs Now Act,* and urge its swift passage by the House.** EmployersRx is a coalition of leading national employer and health care purchaser organizations. EmployersRx supports federal policies to strengthen transparency, competition, and value in the prescription drug marketplace.

EmployersRx Principles

Earlier this year, EmployersRx adopted a set of policy principles for major prescription drug reform legislation. Our principles include urging policymakers to protect the private sector in the case of new cost-saving measures included in the Medicare program. This includes ensuring that, should a direct negotiation process be implemented, that private purchasers (including employer-sponsored plans) be able to access the same rates negotiated by Medicare. Additionally, in the case of inflation limits imposed in Medicare, that those some limits on cost increases for certain branded drugs would apply to all purchasers.

Support for Application of Inflation Caps to Private Purchasers and Consumers

The committee prints now under consideration in the Energy and Commerce and Ways and Means Committees include a significant improvement over previous versions of the legislation. Specifically, the updated bill amends Part 2 of the legislation to apply inflation rebates to all units of drugs sold, not just units sold to Medicare. **We believe this change will protect the roughly 180 million of consumers covered by private plans against price spikes for single source drugs currently on the market. We thank you for this necessary change to your bill.**

While we strongly support the inclusion of drugs sold to private plans in the calculation of inflation rebates, we are disappointed that the bill does not include a mechanism to ensure any rebates paid to the federal government attributable to drugs sold to private plans be returned to plan sponsors. If the inflation rebates prove successful at holding down prices in the commercial market for affected drugs, the volume of rebates paid will be *de minimis* and the issue will be moot. However, we remain concerned that inflation rebate mechanisms may not fully prevent private sector drug prices from rising faster than inflation. If that is the case, private payers will be effectively subsidizing the federal government through higher costs. **We urge you to update your legislation to provide a mechanism for rebates to be paid back to plan sponsors. In absence of such a mechanism, we urge Congress to exercise close oversight to ensure the system is working as designed.**

Support for Application of Negotiated Prices to Private Purchasers and Consumers

Since its initial introduction in 2019, H.R. 3 has allowed private plans to have access to lower prices negotiated by Medicare. **We thank you for your longstanding support on this issue.**

While the House has been steadfast in support, we are concerned that the Senate may be considering legislation that would only allow Medicare beneficiaries access to lower negotiated prices, potentially shifting significant costs to employers and consumers outside of the Medicare program. This would leave behind all Americans younger than 65 and not yet old enough to qualify for Medicare. An internal analysis by the American Health Policy Institute finds that if drug makers seek to make up for lost revenue due to Medicare price caps, employer sponsored insurance premiums would *increase* by up to 3.7% per year above their current cost trends if the price protections are not provided to those with private coverage. In just the first five years after Medicare negotiation is

implemented, employers, employees and their families would face more than $125 billion in increased drug costs.

As you know, the problem of unaffordable drug prices is not limited to just those covered by Medicare. Indeed, a survey by the West Health Policy Institute and Gallup found that "adults under age 65 are twice as likely as those 65 and over to have been unable to pay for medicine or drugs that a doctor had prescribed because they did not have enough money to pay for them." **The highest proportion of people who report difficulty in affording drugs are aged 50-64, and thus not yet eligible for Medicare.**

When working with Senate leaders on this legislation, we urge you to ensure your legislation will help everyone in the United States, not just Medicare beneficiaries. **America's employers and health care purchasers cannot be expected to support prescription drug legislation that increases drug costs for the 180 million people covered by private insurance.**

Concurrent Reform to Pharmacy Supply Chain

While we strongly support efforts to reduce the price of drugs for employers and consumers by providing them with the same protections applied to Medicare beneficiaries, without concurrent reforms to the pharmacy supply chain, we worry that resulting private sector savings may be largely captured by drug supply "middlemen," rather than by purchasers and consumers.

While pharmacy benefit managers (PBMs) play a crucial role in the drug supply chain, the lack of transparency into their practices has contributed to the rising cost of prescription drugs. "Spread pricing" and other opaque practices have the potential to capture significant revenue by selling drugs to purchasers at substantially higher prices than their purchase price. **To ensure savings derived from H.R. 3 are ultimately passed on to purchasers and consumers, PBMs should be required to provide full transparency to purchasers and, at the discretion of plan sponsors, be required to pass on all rebates and savings to purchasers and consumers.**

Development of US Comparative Effectiveness and Value Assessment System

Finally, as our principles state, we believe that prescription drug "prices should align with clinical efficacy, consider the price of the drug in other industrialized countries, and protect true innovation." Section 1194(b)(1) of H.R. 3 directs the Secretary of Health and Human services to engage in negotiation with drug manufacturers to establish a maximum fair price that "achieves the lowest maximum fair price for each selected drug while appropriately rewarding innovation." Section 1194(b)(2) of the legislation further instructs the Secretary to consider all available factors, while

prioritizing research and development costs, production costs, and comparison to existing therapeutic alternatives. However, if negotiations between the Secretary and drug manufacturers do not result in an agreement, the Secretary is enabled to establish the maximum fair price based on the price of drugs in a market basket of other countries. While we recognize that the other comparator countries engage in research on clinical efficacy and value to establish their own prices, we believe it is important that the United States develop its own capacity to effectively evaluate the value of drugs. **We urge Congress to consider future legislation to catalyze the development and use of our own comparative effectiveness and value assessment in establishing fair drug prices when there is no market competition.**

Conclusion

H.R. 3 represents the most significant effort to bring down high and increasing drug prices in the country's history. Critically, it allows all people in the United States, not just Medicare beneficiaries, to have access to lower-priced prescription drugs. **We applaud your leadership in drafting and marking-up this legislation this week and urge swift passage. Further, we urge you to ensure that any final legislation sent to the President's desk include full price protections for the 180 million people covered by commercial insurance.**

Sincerely,

The ERISA Industry Committee
HR Policy Association
National Alliance of Healthcare Purchaser Coalitions
Purchaser Business Group on Health
Silicon Valley Employers Forum

cc: Nancy Pelosi, Speaker of the House of Representatives
Kevin McCarthy, Minority Leader, US House of Representatives
Cathy McMorris Rodgers, Ranking Member, Committee on Energy and Commerce
Kevin Brady, Ranking Member, Committee on Ways and Means
Virginia Foxx, Ranking Member, Committee on Education and Labor