APhA
American Pharmacists Association

February 7, 2024

The Honorable Brett Guthrie
Chair
U.S. House of Representatives
Energy & Commerce
Subcommittee on Health
2434 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
U.S. House of Representatives
Energy & Commerce
Subcommittee on Health
272 Cannon House Office Building
Washington, DC 20515

Dear Chairman Guthrie, Ranking Member Eshoo, and Members of the House Energy & Commerce Committee:

APhA appreciates the opportunity to comment on the Energy and Commerce Subcommittee on Health hearing on "Health Care Spending in the United States: Unsustainable for Patients, Employers, and Taxpayers."

The American Pharmacists Association writes on behalf of the nation's over 330,000 pharmacists across the country to thank you for your continuing leadership in addressing the growing cost of healthcare in the United States. As you know, one of the contributing factors behind these rising healthcare costs includes the rise in prescription drug prices over the past decade. While many factors contribute, one of the primary causes of rising drug prices is the harmful business practices of pharmacy benefit managers (PBMs) that result in increasing drug costs at the expense of patients and creating 'pharmacy deserts' in minority, rural, and underserved communities where the neighborhood pharmacy may be the only health care provider for miles. While studies have shown that many Americans do not have immediate access to a physician, over 90% of Americans are within 5 miles of a pharmacist. The ability for patients to have access to healthcare providers, such as pharmacists is a key component in keeping healthcare costs down in the United States.

APhA has long been a supporter of PBM reform and applauds you and the Subcommittee for your continued efforts to address this very important issue. APhA was very pleased to hear Rep. Buddy Carter's (GA-1) and other members' request for Congress to pass PBM reform legislation, such as the "Lower Costs, More Transparency Act," (H.R. 5378), which has already passed the House. H.R. 5378 represents a major step forwards towards increasing both PBM and drug price transparency and banning the harmful practice of spread pricing.

APhA has long supported the ban of spread pricing, which is a practice where a PBM charges the state or health plan more than they pay the pharmacy for a medication and then keeps the "spread" as a profit, often reimbursing the pharmacy for less than their cost to acquire the drug. In a recent survey of pharmacists conducted by APhA, 82% of respondents agreed that spread pricing impacts their pharmacy and the patient care they provide. This hurts pharmacies' ability to stay in business and provide care to the vulnerable Medicaid beneficiaries whom they serve. Spread pricing is especially harmful to independent pharmacies, which are often the only pharmacies operating in rural areas.

Oversight and transparency are sorely needed to ensure that PBMs are held accountable for their harmful business practices that prioritize profits over patients. Independent oversight is necessary to regularly monitor activities and complete audits as frequently as needed to ensure compliance with federal laws and regulations. Transparency is also needed so that employers and patients have a clear understanding of pricing, rebates, fees, and discounts to make informed decisions with their health care providers concerning their prescription drugs. Ultimately, the passage of H.R. 5378 would save taxpayers billions by providing oversight and accountability for PBMs' business practices.

APhA also urges the Subcommittee to pass additional legislation that would keep our nation's pharmacy doors open including:

- Addressing the Direct and Indirect Remuneration or "DIR" cliff by offering payment plans or alternate payment arrangements to pharmacies **following the onset of the January 1, 2024, effective date.** As you know, under the Centers for Medicare and Medicaid Services' (CMS) final rule (CMS-4192-F), which took effect January 1, 2024, "changes in cash flow may cause some already struggling pharmacies to decrease services or medication availability, and/or be unable to remain in business, which may impact pharmacy networks." CMS restated in a November 6 memorandum to all Part D plan sponsors that "[w]e are continuing to strongly encourage Part D plan sponsors to provide payment plans or alternate payment arrangements to pharmacies in advance of the January 1, 2024, effective date. If such an arrangement is offered, Part D sponsors and their PBMs should provide pharmacies with a straightforward means of requesting it…and CMS will closely monitor plan compliance with pharmacy access standards at § 423.120 to ensure that all Medicare Part D beneficiaries continue to have access to pharmacies and medications." Yet, no current legislative solution to this "DIR" cliff has been offered.
- Moving up the implementation date for Section 201, Assuring Pharmacy Access and Choice for Medicare Beneficiaries, in the "Better Mental Health Care, Lower-Cost Drugs, and Extenders Act," (S.3430), **from 2028 to a minimum of 2025.** CMS can request information now, even without a change to the statute, utilizing authority under §423.120 and §423.505(b)(18). Rural pharmacies will not likely be open in 2028 when these changes are currently set to be proposed to be implemented. A similar mechanism CMS used during the pandemic was interim final rules with comment periods.

- Adding a professional dispensing fee in addition to the National Average Drug Acquisition Cost (NADAC).
- Making pharmacies whole for ("discount-eligible drugs") on any net prices.

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Thank you for the opportunity to comment on this hearing and express our concerns to the Subcommittee. We would once again like to commend you for your leadership on these issues and would be happy to assist in any manner we can. Please contact Doug Huynh, JD, APhA Director of Congressional Affairs, at dhuynh@aphanet.org if you have any additional questions.

Sincerely,

Michael Baxter

Michael Baxter
Vice President, Federal Government Affairs