March 15, 2022

The Honorable Ron Wyden
Chair, Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Mike Crapo
Ranking Member, Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chair Wyden, Ranking Member Crapo, and Members of the Committee:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I write in regard to your March 16 hearing, "Prescription Drug Price Inflation: An Urgent Need to Lower Drug Prices in Medicare."[1]

NTU has conducted research and advocacy on prescription drug pricing policy, which significantly impacts American taxpayers, in Congress and the states for decades. We have long believed that prescription drug policy should focus on increasing market competition and providing targeted, fiscally responsible relief for patients facing high costs, rather than artificially setting prices or forcing private manufacturers into deeply imbalanced negotiations with the federal government. Unfortunately, several recent proposals in the House and Senate have leaned heavily into these price controls and faux 'negotiations.'[2]

We write once again to urge lawmakers to pursue narrow, targeted solutions for Americans facing high drug costs, rather than sweeping tax-and-mandate schemes that will ultimately push the cost bubble for researching, developing, manufacturing, and delivering prescription drugs on to other parts of the private health sector.

Below, we briefly review some of NTU's recent work on prescription drug policy, and share some recommendations that would offer more tangible and lasting cost relief for patients than federal price controls.

NTU's Recent Work on Prescription Drug Policy

In November 2021, NTU analyzed the broad outlines of a deal negotiated between moderate Democrats and liberals to include prescription drug pricing provisions in the FY 2022 reconciliation bill, formerly known as the Build Back Better Act (BBBA).[3]

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[1] United States Senate Committee on Finance. "Prescription Drug Price Inflation: An Urgent Need to Lower Drug Prices in Medicare." March 2022. Retrieved from: https://www.finance.senate.gov/hearings/prescription-drug-price-inflation-an-urgent-need-to-lower-drug-prices-in-medicare (Accessed March 14, 2022.)

[2] For example, see Subtitle I of Title XIII (page 175) in: House Committee on Rules. "Build Back Better Act — Rules Committee Print 117-18 Section-By-Section." November 2021. Retrieved from: https://rules.house.gov/sites/democrats.rules.house.gov/files/Section_by_Section_BBB_RCP117-18__.pdf#page=175 (Accessed March 14, 2022.)

[3] Lautz, Andrew. "Analyzing the New Prescription Drug Pricing Proposal For Reconciliation." NTU, November 5, 2021. Retrieved from: https://www.ntu.org/publications/detail/analyzing-the-new-prescription-drug-pricing-proposal-for-reconciliation

We noted that the negotiated deal among Democratic lawmakers included three broad planks: 1) a requirement for Medicare to negotiate the prices of prescription drugs on a top-down basis, replacing private-sector negotiations between Part D plans and drug manufacturers, 2) inflation caps in Medicare Parts B and D that would require manufacturers to rebate Medicare when increasing the price of their drugs beyond a broad measure of consumer inflation, and 3) reform and redesign of the Part D prescription drug benefit for seniors.

Of the first plank, requiring Medicare negotiation, we argued that:

> "...requiring Medicare to negotiate drug prices would upend private-sector negotiations happening every year in Part D. And by seeking hundreds of billions of dollars in the form of higher taxes or rebates, policymakers could undermine the resources necessary to develop new and improved prescription drugs for patients in America and around the world."[4]

Of the second plank, inflation caps in Medicare, we noted in July 2021 that:

> "To peg the allowable price Medicare will pay for a prescription drug to a broad measure of price increases like the Consumer Price Index (CPI) is to effectively attempt to set the price of the drug. While there are obvious examples of abusive price increases that are clearly not tied to market conditions, such as Martin Shkreli increasing the price of malaria and HIV medicine from $13.50 to $750, manufacturers can and do weigh more than just CPI in setting the price of drugs. Private payers in Part D should be able to push back on what they deem to be excessive price increases in negotiations with manufacturers, and private payer negotiations also affect the price of drugs in Part B because Part B reimbursement is based on average sales price."[5]

NTU also led a coalition of taxpayer, consumer, and free-market advocates who wrote to Congress in December 2021, warning of the impacts these two planks in BBBA could have on generic drug competition:

> "We are also deeply concerned about the impact these two proposals could have on generic drug and biosimilar development. The top-down negotiation requirement is structured in such a way that it will undermine the carefully balanced policy that provides space for generic drug and biosimilar manufacturers to develop products that offer lower-cost alternatives to popular brand-name drugs.
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> …The inflation caps are also as damaging to generic manufacturers as they are to others, if not more so. Applying a broad-based measure of consumer price growth to the growth of a medical product is clunky at best, and could severely undermine manufacturers' ability to account for the cost growth of developing, manufacturing, and distributing their products at worst."[6]

Generic drugs have helped push down the costs of brand-name products for decades since the passage of the landmark, bipartisan Hatch-Waxman Act in 1984, and even a co-author of that legislation, former Sen. Orrin

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[4] *Ibid*.
[5] Lautz, Andrew. "Senate Finance Drug Pricing Framework Risks Similar Pitfalls of Price-Setting H.R. 3." NTU, July 7, 2021. Retrieved from: https://www.ntu.org/publications/detail/senate-finance-drug-pricing-framework-risks-similar-pitfalls-of-price-setting-hr-3
[6] Lautz, Andrew. "NTU-Led Coalition Warns of BBB's Impact on Drug Competition." NTU, December 9, 2021. Retrieved from: https://www.ntu.org/publications/detail/ntu-led-coalition-warns-of-bbbs-impact-on-drug-competition

Hatch (R-UT), has warned that provisions in BBBA could "undermine generic competition" and "jeopardize … biopharmaceutical innovation."[7]

NTU's Federal Policy Recommendations for Prescription Drug Cost Support

Fortunately, there are bipartisan proposals currently on the table in Congress that could reduce costs for patients who may be struggling in America – all without the harmful price controls or higher taxes that could undermine research and development in America's biopharmaceutical sector.

One major proposal that has long earned NTU's support is the third plank of BBBA's prescription drug section – Medicare Part D reform and redesign. Several versions of this redesign have transferred some of the risk in the Part D benefit from America's taxpayers to the private insurers offering plans in Part D, and have used the cost savings to propose setting the first ever out-of-pocket cap for Part D. This would protect seniors from paying above a certain amount per year in drug costs – anywhere from $2,000 per year to $3,100 per year[8] – and could save some of the seniors with the highest costs in the program thousands of dollars per year.

In February of last year, NTU also proposed several policy reforms that could increase competition in the prescription drug market, lower costs, or accomplish both aims:

- Ensure pharmaceutical manufacturers (and other American industries) can continue to fully and immediately recover their research and development (R&D) costs, rather than amortizing them over five years;
- Reduce, rather than increase, distortionary rebates in the Medicaid program;
- Make the elimination of price controls and the protection of intellectual property two primary goals of U.S. free trade agreements; and
- Reduce regulatory barriers to competition and patient barriers to accessing biosimilars.[9]

We believe all of these reforms would lead to more lasting and effective change for patients and taxpayers than price controls that could destroy parts of the private biopharmaceutical sector and undermine efforts to increase prescription drug competition. Thank you for your consideration of NTU's views as a taxpayer advocate. Should you wish to discuss NTU's reform recommendations at greater length, I am at your service.

Sincerely,

Andrew Lautz, Director of Federal Policy

CC: Members of the Senate Committee on Finance

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[7] See: BioUtah."Hatch Warns of Dangers to Generic Drug Market." November 18, 2021. Retrieved from: https://bioutah.org/hatch-warns-of-dangers-to-the-generic-drug-market/ (Accessed November 30, 2021.)
[8] Lautz, Andrew. "Analyzing the New Prescription Drug Pricing Proposal For Reconciliation." NTU, November 5, 2021. Retrieved from: https://www.ntu.org/publications/detail/analyzing-the-new-prescription-drug-pricing-proposal-for-reconciliation
[9] Lautz, Andrew. "A Taxpayer- and Market-Oriented Path Forward for Federal Prescription Drug Policy." NTU, February 25, 2021. Retrieved from: https://www.ntu.org/publications/detail/a-taxpayer-and-market-oriented-path-forward-for-federal-prescription-drug-policy