



April 26, 2023

The Honorable Brett Guthrie  
Chair, House Energy and Commerce Subcommittee  
on Health  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Anna Eshoo  
Ranking Member, House Energy and Commerce  
Subcommittee on Health  
2322 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chair Guthrie, Ranking Member Eshoo, and Members of the Subcommittee:

On behalf of National Taxpayers Union (NTU), the nation's oldest taxpayer advocacy organization, I write to thank you for holding this hearing, "Lowering Unaffordable Costs: Legislative Solutions to Increase Transparency and Competition in Health Care."<sup>1</sup> Several of the bills under consideration by the Subcommittee today could help government officials, health plan sponsors, consumers, and taxpayers better understand the costs they bear within the complex pharmaceutical supply chain, and could empower public and private actors tasked with managing health coverage obtain a better deal for beneficiaries and American taxpayers on health goods and services.

### *About National Taxpayers Union*

NTU is the nation's oldest taxpayer advocacy organization, founded in 1969 and dedicated to the mission of achieving favorable policy outcomes using the most effective pro-taxpayer team on Capitol Hill and in the states. NTU has been engaged on matters of health policy since our founding, specializing in complex issues like generic drug competition, Centers for Medicare and Medicaid Innovation reform, health savings account (HSA) expansion, and more. Recently, we published two major papers concerning America's pharmaceutical supply chain.

The first, "How Pharmacy Benefit Managers Impact Taxpayers and Government Spending," explores the impact PBMs have on the publicly-funded major health programs, namely Medicare and Medicaid. In the paper, NTU also shares narrowly-tailored policy recommendations intended to help Congress and other stakeholders gain better access to the information and data needed to negotiate the best deals for goods and services possible for the American taxpayers funding these programs – importantly, without upending the ecosystem that has enabled the private health care sector to offer innovative and life-saving interventions.<sup>2</sup>

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<sup>1</sup> House Committee on Energy and Commerce. "Health Subcommittee Legislative Hearing: 'Lowering Unaffordable Costs: Legislative Solutions to Increase Transparency and Competition in Health Care.'" April 26, 2023. Retrieved from: <https://energycommerce.house.gov/events/health-subcommittee-legislative-hearing-1> (Accessed April 20, 2023.)

<sup>2</sup> Lautz, Andrew. "How Pharmacy Benefit Managers Impact Taxpayers and Government Spending." NTU, January 23, 2023. Retrieved from: <https://www.ntu.org/publications/detail/how-pharmacy-benefit-managers-impact-taxpayers-and-government-spending> (Accessed April 20, 2023.)

The second paper, “How Much is Medicine Worth to the American Taxpayer? A Cost-Benefit Analysis,” addresses a key question missing from recent policy debates concerning prescription drug costs and pricing in the U.S. health care system. Policymakers have been laser-focused on costs – often conflating costs with distortive or unrepresentative drug list prices – and have ignored the financial and fiscal benefits medicines provide American consumers and taxpayers. Our paper attempts to introduce a more fulsome cost-benefit analysis, using the recent COVID-19 vaccines as just one example of a medical innovation whose benefits vastly outstrip its costs.<sup>3</sup>

### ***Legislation Considered in Today’s Hearing***

Several bills considered in today’s important hearing appear to align, in some cases partly, with recent policy recommendations shared in NTU’s two papers.

**H.R. 2679** would require insurers and pharmacy benefit managers (PBMs) to submit information to plan sponsors on a plan’s gross spending on prescription drugs, its total amounts received in rebates, fees, and discounts, and its net spending on prescription drugs. Some of the information would also need to be shared with the non-partisan Government Accountability Office (GAO) for further study. NTU has been urging policymakers to ensure that plan sponsors are equipped with more information on their plan’s drug spending, gross and net of rebates, and it appears H.R. 2679 would make progress in providing plan sponsors with useful data to ensure they are getting bang for their buck in their relationships with PBMs. To the extent GAO can aggregate this data and report to policymakers and plan sponsors on data trends, such reporting could guide future policymaking that affects the pharmaceutical supply chain.

**H.R. 1613** would prohibit spread pricing in Medicaid managed care, require a pass-through rebate model in Medicaid managed care plans, require a Department of Health and Human Services (HHS) survey of retail community pharmacy drug prices, and require an HHS report to Congress on specialty drug coverage and reimbursement in Medicaid programs. We would urge lawmakers and the Subcommittee to proceed with caution on a total ban of spread pricing in Medicaid managed care; this would be a significant policy development, and it is difficult to predict how PBMs would seek to make up for lost revenue elsewhere in their Medicaid, other government-funded, or commercial lines of business. A 50-state study of spread pricing trends in Medicaid, conducted by GAO and/or the HHS Office of Inspector General, could arm lawmakers with more data and guide targeted, effective policymaking in this area. To that end, we support the reporting and survey provisions of H.R. 1613, which could help identify important pricing trends at retail community pharmacies and in specialty pharmacies throughout the Medicaid program(s).

The legislation to “**amend title III of the Public Health Service Act to ensure transparency and oversight of the 340B drug discount program**” is a meritorious bill being considered at today’s hearing. NTU has watched trends in the 340B Drug Pricing Program with some alarm. In 2020 we wrote:

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<sup>3</sup> Lautz, Andrew; and Sepp, Pete. “How Much is Medicine Worth to the American Taxpayer? A Cost-Benefit Analysis.” NTU, March 27, 2023. Retrieved from: <https://www.ntu.org/publications/detail/how-much-is-medicine-worth-to-the-american-taxpayer-a-cost-benefit-analysis> (Accessed April 20, 2023.)

“...the 340B program is still operating under unclear and confusing rules, designed for a much smaller program that was first created in 1992. Numerous independent audits and investigations have found that the Health Resources and Services Administration (HRSA), which oversees the 340B program, not only lacks the authority to conduct necessary and proper oversight and enforcement of 340B rules but also falls short on its existing oversight responsibilities.”<sup>4</sup>

To the extent providers participating in the 340B Program are extracting discounts for patients the 340B Program was never intended to serve, or using extra revenue made possible by the discounts in the 340B Program to significantly expand services to communities the 340B Program is not supposed to serve, NTU would advocate for lawmakers to step in and place guardrails on 340B and its future growth. Our 2020 letter above outlines a variety of policy recommendations for 340B Program reform, and we support the legislation considered by the Subcommittee today. The bill would require 340B-eligible providers to submit to HHS audits (at HHS expense) and could help policymakers better determine how revenue derived from the 340B Program is being used by providers.

Though it does not affect the pharmaceutical supply chain NTU wishes to re-express its support for **H.R. 977**, which would undo the Affordable Care Act (ACA) ban on physician-owned hospitals. As we wrote in March 2020, at the start of the COVID-19 pandemic:

“At a time when hospitals are expected to experience significant restraint due to an influx of COVID-19 patients, policymakers should look at loosening up the Affordable Care Act (ACA)’s restrictions on physician-owned hospitals (POHs). The ACA effectively halted the construction of new POHs and ‘generally prohibited [existing POHs] from expanding facility capacity.’ The Trump administration has called for repealing the rules, writing that according to the Physician Hospitals of America ‘37 planned hospitals have not been constructed, and over 30,000 planned healthcare jobs have gone uncreated’ because of these restrictions.”<sup>5</sup>

Finally, we are encouraged to see legislation that makes progress towards site-neutral payments in Medicare which – if implemented properly – could save taxpayers and Medicare beneficiaries tens of billions of dollars in the next decade. A coalition led by Americans for Prosperity and including NTU wrote, in a letter published April 25, 2023, that:

“Promoting billing transparency and site-neutral payments is an important step to lowering the cost of health care. The Congressional Budget Office estimates that ending Medicare’s policy of paying hospital-owned facilities higher rates than independent physician offices will save taxpayers more than \$140 billion over ten years. Doing so would also substantially reduce premiums and cost-sharing for Medicare beneficiaries, cumulatively by \$94 billion over the next ten years according to estimates from the nonpartisan Committee for a Responsible Federal Budget.”<sup>6</sup>

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<sup>4</sup> Lautz, Andrew. “340B Program Must Be Reformed to Achieve Its Intended Purpose.” NTU, October 21, 2020. Retrieved from: <https://www.ntu.org/publications/detail/340b-program-must-be-reformed-to-achieve-its-intended-purpose> (Accessed April 20, 2023.)

<sup>5</sup> Lautz, Andrew. “Health Policy Options Congress and State Lawmakers Should Consider to Combat COVID-19.” NTU, March 18, 2020. Retrieved from: <https://www.ntu.org/publications/detail/health-policy-options-congress-and-state-lawmakers-should-consider-to-combat-covid-19> (Accessed April 20, 2023.)

<sup>6</sup> Americans for Prosperity. “Bipartisan Support for Site Neutral Payment Reform.” April 25, 2023. Retrieved from: <https://americansforprosperity.org/wp-content/uploads/2023/04/Bipartisan-Support-For-Site-Neutral-Payment-Reform.pdf> (Accessed April 26, 2023.)

While we do not support every bill or every provision being considered in the Subcommittee's hearing today, we are encouraged by the directions taken in the legislation mentioned above and the Subcommittee's broad focus on improving transparency in the health sector. We look forward to working with you throughout the 118th Congress to advance bipartisan, pro-taxpayer, and pro-competitive health reforms.

Sincerely,

Andrew Lautz  
Director of Federal Policy, NTU

Nicholas Johns  
Policy and Government Affairs Manager, NTU

CC: The Honorable Cathy McMorris Rodgers, Chair, House Committee on Energy and Commerce  
The Honorable Frank Pallone, Jr., Ranking Member, House Committee on Energy and Commerce  
The Honorable Larry Bucshon, Vice Chair, House Energy and Commerce Subcommittee on Health  
Members of the House Energy and Commerce Subcommittee on Health