

April 3, 2019

The Honorable Frank Pallone
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Chairman Pallone:

On behalf of the American Hospital Association's (AHA) nearly 5,000 member hospitals, health systems and other health care organizations, and our clinical partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, we applaud the Committee for considering legislation to lower prescription drug costs and strengthen the Affordable Care Act (ACA) marketplaces to improve access and lower the cost of coverage for consumers.

Ensuring patient access to comprehensive, affordable coverage and achieving fair and sustainable drug pricing are two of the AHA's top priorities. We are encouraged by a number of the proposed pieces of legislation, many of which could help advance these shared objectives.

FAIR AND SUSTAINABLE DRUG PRICING

Access to medication for patients is critical, and the inability to afford that medication because of high prices charged by drug manufacturers is a significant problem for patients and the providers who care for them. We consistently hear from hospitals and health systems across the country about how sharply rising drug prices threaten patient access to care. We commend the Committee for its action on critical legislation that will help level the playing field for prescription drugs.

Specifically, we support H.R. 965, the Creating and Restoring Equal Access to Equivalent Samples (CREATES) Act and applaud its inclusion in the Committee's markup. Certain brand name drug manufacturers continue to skirt the intent of Congress by using anticompetitive maneuvers to take advantage of sample-sharing and shared safety protocol tools with the sole goal of eliminating generic competition. This is, quite simply, wrong, and the CREATES Act aims to address these specific issues. The CREATES Act is a narrowly targeted, bipartisan, pro-competition, and market-



based solution to these abuses that cost patients, job-creators and taxpayers billions of dollars each year. This legislation is a step toward restoring the balance that Congress attempted to strike in Hatch-Waxman, between providing incentives for innovation through exclusivity while providing for affordability through generic competition.

In addition to our continued support for the CREATES Act, we support the Committee's focus on increasing generic and biosimilar competition in the prescription drug arena. Data clearly indicate that as generic competition for a particular drug increases, the price and cost associated with that drug will decrease. However, manufacturers continue to employ anticompetitive tactics, like pay-for-delay and ever-greening, and raise prices without justification and without divulging relevant research and development or manufacturing information. Addressing these abusive actions head-on is critical, which is why we thank the Committee for its action on the following pieces of legislation:

- **H.R. 1781, the Payment Commission Data Act of 2019**, which will provide the Medicare Payment Advisory Commission and the Medicaid and CHIP Payment and Access Commission with critical drug pricing and rebate information in order to better understand the cost of prescription drugs to consumers and taxpayers.
- **H.R. 938, the BLOCKING Act of 2019**, which will help decrease the time it takes to get additional generic drugs to market by discouraging the 180-day exclusivity currently afforded to first generic applicants.
- **H.R. 1520, the Purple Book Continuity Act of 2019** and **H.R. 1503, the Orange Book Transparency Act of 2019**, both of which would increase transparency for the patent status of both approved biological products and approved drugs.
- **H.R. 1499, the Protecting Consumer Access to Generic Drugs Act of 2019**, which will help end the pay-for-delay tactics used by drug manufacturers by making it illegal for brand-name and generic drug manufacturers to enter into agreements to keep generics off the market.

PROTECTING AND EXPANDING UPON COVERAGE GAINS

Coverage is critical to patients' ability to routinely obtain care, and the AHA is committed to ensuring access to affordable, high-quality health coverage. We have expressed our support for solutions to both lower the cost of coverage and provide greater choice among plans, including by supporting federal and state reinsurance programs and increasing outreach and enrollment assistance. These approaches retain vital consumer protections while supporting greater enrollment and reducing costs by better balancing the marketplace risk pools. In contrast, sub-standard "health plans," like short-term, limited-duration insurance products could harm consumers by providing inadequate

coverage and subjecting them to much higher out-of-pocket spending when illness or injury occurs.

We appreciate the Committee taking action to reinstate critical consumer protections and strengthen the health insurance marketplaces, including through its consideration of the following pieces of legislation:

- **H.R. 1386, the Expand Navigators' Resources for Outreach, Learning, and Longevity (ENROLL) Act of 2019**, which will provide \$100 million annually for federal navigator funding. Navigators are an important source of information for communities that may not otherwise be reached through traditional outreach. They play a key role not only in helping individuals shop for and enroll in a health plan, but also provide education around what insurance is and how to use coverage once enrolled. Fully funding the navigator program will enable them to perform adequately all enrollment and post-enrollment responsibilities, including supporting consumer engagement in the purchase and use of coverage.
- **H.R. 987, the More Health Education Act of 2019**, which would restore outreach and enrollment funding to help consumers sign up for coverage. The vast majority of the uninsured are expected to be eligible for some form of subsidized coverage – either through Medicaid, the marketplaces or their employer. Robust outreach, enrollment support and education can help connect the remaining uninsured to coverage, and, in doing so, support the overall stability of the marketplaces by maintaining a balanced risk pool and keeping premiums affordable for consumers. The restoration of outreach and enrollment funds by H.R. 987 would help consumers better evaluate their coverage options and get and use the right coverage that meets their needs.
- **H.R. 1010, a bill to provide that the rule entitled “Short-Term, Limited Duration Insurance” shall have no force or effect**. While short-term, limited duration plans may be attractive to patients looking for lower premiums, there are serious drawbacks to using these types of plans as a primary source of coverage. These plans do not offer the level of protection that patients need over the long term because it is not possible to fully evaluate what one's health care needs will be in advance. Even well-informed patients who knowingly enroll in these limited plans anticipating very little need for care could find themselves diagnosed with a serious condition or in an accident, with no coverage to help them with their unexpected medical costs. H.R. 1010 would take important steps to protect patients from inadequate coverage while also preventing the individual market from being weakened by short-term, limited duration products.
- **H.R. 986, the Protecting Americans with Preexisting Conditions Act of 2019**, which rescinds the Section 1332 guidance issued by the administration in October 2018. The AHA is committed to state flexibility, but we have expressed our concerns that the administration's changes to Section 1332 waiver rules

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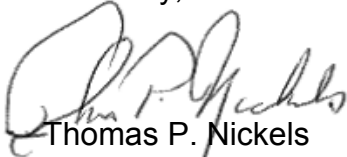
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would permit waivers that depreciate the quality, affordability and availability of coverage. For example, we have urged the administration to revise the 1332 waiver guidance to disallow the use of federal funds on inadequate insurance products. While we generally support flexibility, the changes to the “State Relief and Empowerment Waivers” go too far in allowing states to take actions that could result in weakened consumer protections and the destabilization of the individual health insurance market.

- **H.R. 1425, the State Health Care Premium Reduction Act**, which provides \$10 billion annually for states to establish reinsurance programs or otherwise help reduce consumer out-of-pocket costs. While the AHA has advocated for a national reinsurance program, the state-based program created by H.R. 1425 also would help ensure the stability and affordability of the health insurance marketplaces absent a federal program.

The AHA supports the Committee’s continuing efforts to lower prescription drug costs and protect the ACA’s health insurance marketplaces so consumers have robust and affordable coverage options. We look forward to continuing to work with the Committee to improve coverage options and lower prescription drug costs for patients.

Sincerely,



Thomas P. Nickels
Executive Vice President

Cc: The Honorable Greg Walden
Members of the Committee on Energy & Commerce