February 10, 2021

House Energy and Commerce Committee
2322 Rayburn House Office Building
Washington, D.C.  20515

Dear Representative,

It is our understanding that a Medicaid drug pricing policy will be inserted in the COVID-19 relief package that you are scheduled to mark up in committee tomorrow. This sounds like H.R. 107, the contentious legislation that was introduced in 2019 to amend the Social Security Act and “sunset” the limit on the maximum inflation rebate of 100 percent of the Average Manufacturer Price (AMP) for outpatient Medicaid drugs. The Council for Citizens Against Government Waste opposed H.R. 107 and we continue to oppose any similar legislation.

Rescinding the rebate cap would simply double down on a price control that has already led to a distortion in the pharmaceutical marketplace. According to STAT News, this would allow states to demand steep discounts on Medicaid drugs to the point where manufacturers would end up owing money every time a prescription is filled.

The AMP is the average price paid to the manufacturer by wholesalers for drugs distributed to retail community pharmacies and retail pharmacies that purchase drugs directly from the manufacturer. The Medicaid rebate was created in 1990 and enhanced under the Patient Protection and Affordable Care Act (ACA), or Obamacare. The basic Medicaid rebate was increased for most outpatient drugs from 15.1 to 23.1 percent of the AMP for brand drugs and from 11 to 13 percent for generic drugs. In addition, brand-name pharmaceutical companies and generic companies must pay an inflation rebate if a drug’s price increase is more than the inflation rate. The ACA also capped Medicaid rebates at not more than 100 percent of the drug’s AMP and prevents manufacturers from paying more in rebates than a drug’s AMP.

Rescinding the Medicaid rebate cap will increase government intervention in healthcare. This will also drive up rather than reduce costs, and damage innovation and investment in the pharmaceutical industry.

I urge you to oppose any provision in the COVID-19 relief bill that would rescind the Medicaid rebate cap.

Sincerely,

Thomas A. Schatz
President
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