March 22, 2021

Senate Health, Education, Labor and Pensions
Subcommittee on Primary Health and Retirement Security
430 Dirksen Senate Office Building
Washington, D.C.  20510

Dear Senator,

On behalf of the more than one million members and supporters of the Council for Citizens Against Government Waste, I write to you regarding the hearing your committee will be holding on Tuesday, March 23, 2021 entitled, “Why Does the U.S. Pay the Highest Prices in the World for Prescription Drugs?” The answer is because most countries use price controls to keep costs down as part of their socialized, government-run healthcare systems.

The United States is the world leader in biopharmaceutical research and development, but it was not always that way. In 1986, European pharmaceutical companies led the U.S. in pharmaceutical research by 24 percent, but by 2015, they trailed by 40 percent due in large part to their implementation of price controls.

As part of a longstanding and fortunately to date fruitless effort to impose European-like price controls on pharmaceuticals in the U.S., Tuesday’s hearing seems likely to lay the groundwork for legislation like S. 102, “The Prescription Drug Price Relief Act,” introduced by Sen. Bernie Sanders (I-Vt.) in the 116th Congress. S. 102 would have allowed the secretary of Health and Human Services (HHS) to determine if the average manufacturing price of a brand name drug exceeded the median price for the same drug in five reference countries, Canada, the United Kingdom, Germany, France, and Japan. If the secretary should determine that a pharmaceutical manufacturer’s price is “excessive,” the legislation would have allowed the secretary to “waive or void any government-granted exclusivities” and permit any person to make, use, and sell their product. The legislation required the entity accepting the non-exclusive license to offer a “reasonable” royalty to the former holder of the patent, either based on a percentage of sales or whatever amount the secretary determines to be reasonable. This form of compulsory licensing allows the government to steal the intellectual property (IP) of an inventor and permit it to be manufactured by another entity.

The protection and promotion of IP is the only property right included in the Constitution, found in the General Welfare Clause, Article 1, Section 8. The Founding Fathers understood that the best way to encourage creation and dissemination of new inventions and artistic works to the benefit of both the public good and individual liberty is to protect IP rights. Compulsory licensing undermines this constitutionally protected property right.
Using compulsory licensing would certainly drop pharmaceutical prices in the short run, but long-term such a policy would be extremely harmful to future research and development. Few investors would be willing to risk their capital on biopharmaceutical research knowing that a patent could be voided by the government at any time. There are many other growth industries in which investors would choose to place their dollars and it would not be long before U.S. biopharmaceutical development would face a steep decline.

Other policies that could be advanced in search of lowering U.S. drug prices include S. 3166, the “Prescription Drug Affordability and Access Act,” introduced by Sen. Cory Booker (D-N.J.) during the 116th Congress, and co-sponsored by Sen. Sanders and former Sen. Kamala Harris (D-Calif.), which would create a new federal agency that would determine a drug’s “appropriate” price. The legislation would have required a pharmaceutical manufacturer bringing a new drug to market to provide the drug’s research and development costs and other expenditures, like the development of new dosage forms, to the HHS secretary. If the manufacturer does not agree to the price determined by the HHS secretary, the patent could be turned over to another entity to manufacture the drug. Government-mandated drug pricing would have a devastating impact on biopharmaceutical research, and adversely affect the development of new drugs to combat diseases like Alzheimer’s, cancer, and heart disease.

A February 2020 President’s Council of Economic Advisers (CEA) report, “Funding the Global Benefits to Biopharmaceutical Innovation,” discussed how the “U.S. Government and the biopharmaceutical industry have been critical to improving health worldwide by leading the way in the research and development (R&D) that enables drug discovery.” The report noted that, “In contrast, foreign countries often do not make equal investments in the R&D that is necessary to fuel innovation and ensure the economic viability of biopharmaceutical products” and “that ‘foreign free-riding’ on U.S. investments and innovation in drug development has increased over the past 15 years.”

The 2020 CEA report concluded that if developed nations paid their fair share of medical treatments, the U.S. “would be able to reduce the burden on its population without sacrificing the flow of new treatments.” The report also stated that while economists may be “skeptical that pricing in one country affects pricing in another since manufacturers would seek the highest return in each … they recognize that in the biopharmaceutical sector with reference pricing – where one country sets price ceilings (and sometimes the price) as a function of one or more foreign countries – pricing in one country will affect pricing in another.” In fact, external price referencing for medicines “is the most commonly applied pricing policy in European countries,” according to the European Commission.

According to the CEA report, in 2017, Canada paid 35 percent of U.S. prices for the top-selling drugs available in both countries, even though its GDP per capita was 78 percent of the U.S. If Canada had paid a more equitable price at 78 percent of the U.S. level, total revenues for innovative drugs would have been $27.2 billion instead of $12.2 billion. Using this formula for all developed foreign countries that were examined, the CEA estimated that total innovator revenues would have been $194 billion in 2017, raising global biopharmaceutical revenues by 42
percent. They concluded that the “gap in prices between the United States and foreign countries, which appears to be widening over time, is due primarily to price controls and other nonmarket-based pricing practices in other countries that keep prices for products below the value they generate. The global result of the ‘free-riding’ behavior of such countries is a slower pace of innovation, resulting in fewer potential new life-saving therapies for patients in all countries. If developed countries did not pay below the value of new products, there would be greater potential for better treatments, cures, and healthcare around the world.”

As a result of using a socialized healthcare system and adopting price controls and rationing, citizens in Europe and other countries have less access to innovative drugs. A March 2019 Galen Institute paper by Doug Badger, “Examination of International Drug Pricing Policies in Selected Countries Shows Prevalent Government Control over Pricing and Restrictions on Access,” demonstrated that Americans receive access to 89 percent of innovative drugs, including 96 percent of new cancer drugs. But in France, Germany, and Japan, citizens only have access to 48 percent, 62 percent, and 50 percent of new drugs, and 66 percent, 73 percent, and 54 percent of new cancer drugs respectively.

It is not surprising that Sen. Sanders continues to lead the way in adopting socialist policies for pharmaceuticals, just as he does by advocating for “free healthcare” and “free college.” But nothing is truly free. In all cases, taxpayers pay for government-funded programs and in the end, overutilization leads to rationing to keep costs down.

Instead of adopting foreign price controls as Sen. Sanders supports, the U.S. should be pursuing trade policies that encourage biopharmaceutical innovation in Europe and across the world. Developed countries could and should pay more for pharmaceuticals and doing so would encourage more pharmaceutical research in their countries and more competition.

The U.S. already utilizes pharmaceutical price controls in Medicaid, the VA, the 340B program, and in the Medicare coverage gap. These price controls have distorted domestic pharmaceutical market and driven up costs, not lowered them. Placing even more price controls on U.S. biopharmaceutical research and development would cause a permanent adverse impact on this vibrant industry to the detriment of patients and taxpayers. This should not occur just as the U.S. is leading the world on a new COVID-19 drug development and essential cures and treatments for many other diseases.

Sincerely,

Thomas Schatz