8421 Wayzata Blvd | Suite 110 | Golden Valley, MN 55426

February 20, 2023

Dear Members of the Senate Commerce and Consumer Protection Committee:

My name is Peter Nelson and I am a Senior Policy Fellow at Center of the American Experiment. Thank you for the opportunity to provide comments today on SF168. This bill includes a set of price controls on drugs aimed at making the price of drugs more affordable to the state's health care system and patients. These are laudable goals, but this bill is the wrong way to achieve them. Instead of price controls, this committee should focus on increasing price transparency. This approach would be far more effective at bringing prices down without the negative consequences that always accompany government price controls.

Price controls reduce access to life-saving drugs

SF168 proposes to prohibit excessive price increases on certain drugs and to establish a Prescription Drug Affordability Board with the power to set an upper payment limit on the price of drugs. Both policies operate as price controls. Unfortunately, there are always negative consequences when the government steps in to set prices. Time and again price controls lead to shortages, lower quality, less innovation, and fewer new products. St. Paul's current work to impose rent controls offers the latest local example of these entirely foreseeable negative consequences. In the case of price controls on drugs, there is a clear tradeoff between lower prices and reduced investments in the development of life-enhancing and life-saving new drugs.

This clear tradeoff was a major part of the debate over the adoption of the Inflation Reduction Act (IRA) last summer. The IRA which became law in August allows Medicare to negotiate and effectively set prices for certain high-cost drugs and requires drug manufacturers to pay Medicare rebates when price increases exceed inflation. Everyone agrees these price controls will reduce the number of new drugs; the debate last summer was over how many. The Congressional Budget Office estimated a reduction of 13 new drugs over 30 years.[1] By contrast, University of Chicago economists estimate the IRA will reduce research and development spending by up to 60 percent from 2021 to 2039, resulting in up to 342 fewer new drugs.[2]

This committee should take into consideration that the federal government has already enacted drug price controls that will negatively impact the development of new drugs. It's unclear how much SF168 would impact new drug development, but it can only make matters worse.

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[1] Congressional Budget Office, *Estimated Budgetary Effects of Public Law 117-169, to Provide for Reconciliation Pursuant to Title II of S. Con. Res. 14* (September 7, 2022), available at https://www.cbo.gov/publication/58455.

[2] Tomas Philipson and Troy Durie, "The Evidence Base on the Impact of Price Controls on Medical Innovation," Becker Friedman Institute for Economics at the University of Chicago Working Paper No. 2021-108 (September 14, 2021), available at https://bfi.uchicago.edu/working-paper/the-evidence-base-on-the-impact-of-price-controls-on-medical-innovation/.

Focus on drug pricing is misplaced

The main problem with SF168 is that it fails to address the real pricing problems in the health care system. The fact is drug prices have been declining in recent years. In December, the Centers for Medicare & Medicaid Services published the most recent national health expenditure (NHE) data which shows retail drug prices dropped for the fourth consecutive year in 2021.[3]

The NHE price indexes for health spending categories allows a rough approximation of how much price versus utilization contributes to higher health spending. This analysis shows retail drug price growth contributed just 1.2 percent to the overall growth in NHE between 2011 and 2021. Over the most recent 5-year period, a decline in retail drug prices pulled the overall growth in NHE down by $9 billion. By contrast, higher hospital prices increased NHE by $143 billion.

High hospital prices are a particular problem in Minnesota. The RAND Corporation reviewed medical claims data from every state "to document variation in negotiated prices for the commercially insured population."[4] To make this comparison, it established a standardized price for inpatient and outpatient hospital services based on the allowed amount—i.e., negotiated price—paid by the private health plan per service and standardized for a case mix using Medicare data. The results of this research show Minnesota had the third-highest standardized price for inpatient care in 2020. Only New York and Alabama had higher inpatient prices. Minnesota hospitals charged the sixth highest standardized price for outpatient care.

The slow growth in drug prices in recent years suggests SF168 is a solution in search of a problem. It's entirely possible the pricing impact of SF168 will be limited or even nonexistent because drug price increases are already limited. That's the best-case scenario. If SF168 works as intended, then it will result in fewer new drugs as well as the other negative consequences that usually accompany government price controls.

Price transparency offers a better solution

Minnesota lawmakers don't have to make this tradeoff to bring drug prices down and make the health care system more affordable. Instead of price controls, the Minnesota legislature should focus on policies that increase price transparency across the entire health care sector, including greater transparency in drug pricing.

Hidden health care pricing is a key contributor to the high and rising cost of health care in America. Research shows this hidden pricing leads to wide variations in pricing with little relationship to the cost of care or the value to patients.[5] Upfront pricing information is essential to an efficient and competitive market. Price transparency offers the opportunity to finally take

[3] Centers for Medicare & Medicaid Services website, "National Health Expenditure Data," at https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData.

[4] Christopher M. Whaley, et al., *Prices Paid to Hospitals by Private Health Plans: Findings from Round 4 of an Employer-Led Transparency Initiative* (RAND Corporation, 2022), available at https://www.rand.org/pubs/research_reports/RRA1144-1.html.

[5] See, e.g., Zach Cooper, et al., "The Price Ain't Right? Hospital Prices and Health Spending on the Privately Insured," *The Quarterly Journal of Economics* (February 2019), available at https://academic.oup.com/qje/article-abstract/134/1/51/5090426.

advantage of real competition to deliver lower prices in the health care sector without sacrificing quality or access to care, including access to new drugs.

From late 2017 to early 2021 I worked as a Senior Adviser to the Administrator at the Centers for Medicare & Medicaid services. In that role I helped manage the administration's regulatory agenda related to health insurance. Part of that work involved leading the Transparency in Coverage rulemaking which requires all health plans to publicly post their negotiated rates, including prescription drug pricing. During that time CMS also implemented a hospital price transparency rule which took effect on January 1, 2021.

These federal rules are historic steps that will upend the status quo and finally ensure access to pricing information patients need before they receive care. Any question over the staying power of these rules and the historic changes they put in motion was answered when President Biden issued an executive order on competition in July 2021 directing the Secretary of Health and Human Services to support these initiatives.[6]

Unfortunately, despite the hospital rule being in effect for over two years, many Minnesota hospitals still don't fully comply and those that do take advantage of loopholes to avoid being fully transparent. Drug manufacturers and pharmaceutical benefit managers have also been successful at delaying drug pricing disclosure under the health plan rule. There are several additional steps Minnesota lawmakers can take to strengthen these federal price transparency rules. The first step is to simply empower the state to enforce the federal rules. Last month American Experiment updated a policy brief that outlines several other steps to increase hospital price transparency.[7]

Conclusion

SF168's misplaced focus on drug pricing may very well lead to higher health care prices by drawing attention and energy away from real solutions. Instead of focusing on drug price controls, lawmakers should instead focus on better harnessing competition to control costs. Price transparency offers the most promising and bipartisan opportunity to bring real, value enhancing competition to the health care sector. Good bills have already been moving through committees in the House to increase price transparency for hospitals, prescription drugs, and value-based payment arrangements.[8] These are the bills that the Senate should focus on to address the rising cost of health care in Minnesota.

Sincerely,
Peter Nelson
Senior Policy Fellow
Center of the American Experiment

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[6] The White House, *Executive Order on Promoting Competition in the American Economy* (July 9, 2021), available at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

[7] Peter Nelson, Making health care prices more transparent in Minnesota, American Experiment Policy Briefing No. 10 (January 2023), available at https://www.americanexperiment.org/reports/making-health-care-prices-more-transparent-in-minnesota.

[8] Minn. H.F. 293, 93rd Legislative Session, 2023-2024; Minn. H.F. 294, 93rd Legislative Session, 2023-2024; and Minn. H.F. 926, 93rd Legislative Session, 2023-2024.