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March 25, 2019

The Honorable Frank Pallone Jr.
Chair
Energy and Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
2322 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone and Ranking Member Walden:

It has come to our attention that this week your committee will be marking up H.R. 1781, legislation to permit the Medicaid and CHIP Payment and Access Commission (MACPAC) to access certain data on Medicaid prescription drug rebates that are now statutorily only available to agencies of the U.S. Department of Health and Human Services, the U.S. Department of Veterans Affairs, the U.S. Government Accountability Office, and the Congressional Budget Office. As noted in a letter sent to you last August, MACPAC would welcome the opportunity to use these data as we develop analyses and provide information to Congress on how to improve the operations of the Medicaid drug rebate program and address broader concerns about expenditures for and access to prescription drugs within the Medicaid program.

MACPAC began a focused inquiry on Medicaid prescription drug spending, pricing, and utilization in late 2016. At that time, MACPAC staff inquired about obtaining access to drug rebate data, citing our longstanding formal agreements with the Centers for Medicare & Medicaid Services (CMS) to use a variety of Medicaid and Medicare data sources. CMS informed us that the rebate data had specific statutory protections and thus could not be shared.

Since that time, we have examined Medicaid drug policy using the limited data available to us. While we have been able to receive some specialized summaries of rebate amounts from CMS, access to actual rebate data (e.g., average manufacturer price and best price) for each drug would significantly enhance our ability to analyze the financial impact of various policy options. In particular, such data elements would be useful in considering policies targeted toward certain types or classes of drugs and their effects on certain manufacturers, drugs, or groups of beneficiaries.



For example, there is currently bipartisan interest in looking at ways to address large price increases that occur over time. One option would be to escalate the inflationary penalty so that large price increases over a short period of time would incur additional rebates beyond those currently collected. In examining this option, MACPAC could use the rebate data to estimate how many products had a price increase over a certain threshold (e.g., a 20 percent increase in the past year) and what the rebates are currently for these products. CMS has been able to provide us with some summary-level information that gives us a sense of the magnitude of this approach. However, without information at the drug level, we cannot determine whether this policy would have a broad effect or be concentrated on a selected number of manufacturers, drug classes, or beneficiaries.

MACPAC appreciates the concerns of manufacturers about the sensitivity of raw drug rebate data and why the original legislation creating the rebate program included special protections for its use. MACPAC has been a responsible steward of multiple CMS data sources, however, and has a long track record of protecting sensitive information in its work. As an independent agency of the legislative branch, we look forward to having the opportunity to analyze the rebate data as part of our function of advising Congress and assure you that our data storage and analysis procedures would protect the integrity of this data source.

Thank you for your willingness to consider a statutory change to provide access to these data.

Sincerely,



Penny Thompson
Chair

