

March 16, 2021

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader
United States House of Representatives
Washington, DC 20515

Dear Leader Schumer, Leader McConnell, Speaker Pelosi, and Leader McCarthy:

As organizations that work to protect seniors and maintain affordable access to prescription drugs for Medicare beneficiaries, we respectfully request that Congress swiftly repeal the 2020 U.S. Department of Health and Human Services' (HHS's) rebate rule. Without action, this flawed policy will significantly increase Medicare beneficiary premiums and government costs.¹ It eliminates an essential market-based tool that serves as the only real check on prescription drug costs. We commend the Biden administration's decision to delay implementation of the rule's most flawed provisions until January 1, 2023.² Now, we urge Congress to take prompt action to entirely eliminate this threat to Medicare beneficiaries and Medicare Part D.

After first proposing a rebate rule in January 2019, the previous Administration withdrew that rule six months later—only to reverse course by finalizing it in the Administration's waning days.³ The rushed, haphazardly-finalized rule included virtually no changes from the previously withdrawn proposal. HHS addressed few of the concerns raised by the public, ignored the significant increase in Medicare beneficiary premiums, and offered no actuarial or economic analysis to support its conclusions. Already burdened taxpayers would shoulder hundreds of billions of dollars in new costs.

If implemented, the rebate rule would:

- **Increase Medicare Premiums By 25 Percent on Older Americans and Those With Disabilities:** The Congressional Budget Office (CBO) and Centers for Medicare & Medicaid Services (CMS) agree that under the rule, Medicare Part D premiums will increase by 25 percent.⁴ This would mark the largest average premium increase in the history of the Medicare prescription drug program. Further, because Part D is voluntary, it could destabilize the program (and its availability to millions of Medicare beneficiaries) if higher premiums caused healthier beneficiaries to drop coverage or not to enroll.

¹ 84 Fed. Reg. 2340 (February 6, 2019).

² We also commend the Biden administration for delaying the effective date for other provisions of the final rule until March 22, 2021 pursuant to their February 2, 2021 final rule (86 Fed. Reg. 7815).

³ 85 Fed. Reg. 76666 (November 30, 2020).

⁴ CBO, "Incorporating the Effects of the Proposed Rule on Safe Harbors for Pharmaceutical Rebates in CBO's Budget Projections—Supplemental Materials for *Updated Budget Projections: 2019 to 2029*." (May 2019). <https://www.cbo.gov/system/files/2019-05/55151-SupplementalMaterial.pdf>; CMS OACT. "Subject: Proposed Safe Harbor Regulation." (August 30, 2018). <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/RxSafeHarbor.html>.

- **Cost American Taxpayers Nearly \$200 Billion Dollars:** Analysts at the CBO and CMS agree the rule would come at a tremendous cost to taxpayers, with a price tag nearing \$200 billion over ten years, making it one of the most expensive regulations in U.S. history.⁵
- **Do Nothing to Lower Prescription Drug Costs:** CMS actuaries predict manufacturers would keep at least 15 percent of what they currently offer in prescription drug rebates. They also forecast drug prices *increasing* before finally leveling off, but not decreasing.⁶

The rule's rushed effective date (of January 29, 2021) also circumvented requirements for congressional oversight pursuant to the CRA. The Government Accountability Office issued a December 22, 2020 decision that the rebate rule did not comply with legally required processes for congressional oversight and public input.⁷ We are grateful for the one year delay in implementation by the current Administration as the finalized rule's timeline was completely unworkable. While the move is certainly welcome, more is needed to prevent irreparable harm to the Part D program and the millions of Americans who rely on it for their prescription drug benefits.

The rebate rule was and remains unsound policy. We believe it is imperative to block implementation of this rule to protect Medicare beneficiaries and taxpayers from unsustainable cost increases. Lowering the costs of prescription drugs is a top priority for us all, however, accepting a policy that harms beneficiaries without addressing high drug costs is not the answer.

We thank you for your leadership and hope to serve as a resource to Congress as you continue your work to tackle the high costs of prescription drugs through sound, effective policy.

Sincerely,

Academy of Managed Care Pharmacy
America's Health Insurance Plans
Better Medicare Alliance
Blue Cross Blue Shield Association
Campaign for Sustainable Drug Pricing
Coalition for Affordable Prescription Drugs
Consumer Action
Council for Citizens Against Government Waste
Einstein Healthcare Network
National Adult Day Services Association
National Coalition on Health Care
Ohio School Employees Retirement System
Pharmaceutical Care Management Association
Public Sector HealthCare Roundtable
Teachers' Retirement System of the State of Kentucky
Tufts Health Plan

⁵ *Ibid.*, CMS OACT; *Op. cit.*, CBO (May 2019).

⁶ *Ibid.*

⁷ GAO. "Department of Health and Human Services, Office of Inspector General: Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees," B-332787. (December 22, 2020). <https://www.gao.gov/assets/720/711820.pdf>