United States Senate
SPECIAL COMMITTEE ON AGING
WASHINGTON, DC 20510-6400
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January 9, 2019

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

Making prescription drugs more affordable for all Americans remains one of my top priorities. As Chairman of the Senate Aging Committee and a member of the Senate HELP Committee, I have held hearings and conducted investigations into how to combat dramatic drug price increases. I am pleased that the Administration has also prioritized this important issue with release of its *Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs*. When a doctor determines that a patient needs a particular medication, its cost should not be a barrier to the patient taking it. For more and more Americans, however, rising prices are precluding them from obtaining the prescription drugs they need. Enactment last October of legislation I authored to prohibit pharmacy gag clauses is one concrete step we have taken to help ensure Americans have access to the lowest prescription drug costs possible, but we must continue to look for ways to lower costs. Working together, we can produce real results for Americans struggling to afford ever-increasing drug prices.

I am particularly troubled by a recent *Wall Street Journal* article that reported more than three dozen pharmaceutical companies began 2019 by raising list prices for hundreds of medicines.[1] Outpacing inflation, the average price increase was 6.3 percent, although prices for several products were increased by double-digits and one by 133 percent.[2] These price increases are shocking, but they are unfortunately not unusual, nor are they unexpected; in fact, the article explains that additional increases are expected later this month and in the months to come.[3] While the prices some consumers pay may be reduced by "rebates, discounts and insurance payments,"[4] the opacity of these financial interactions among supply chain participants conceal incentives that distort the pharmaceutical market, encouraging ever-higher drug prices and convoluted cost-shifting for the benefit of the industry players at the expense of average Americans.

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[1] Jared S. Hopkins, *Drugmakers Raise Prices on Hundreds of Medicines*, WALL ST. J., Jan. 1, 2019, https://www.wsj.com/articles/drugmakers-raise-prices-on-hundreds-of-medicines-11546389293?mod=searchresults&page=1&pos=2.
[2] *Id.*
[3] *Id.*
[4] *Id.*

The Administration's *Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs* appropriately identifies the need for rebate reform as an opportunity to incentivize lower list prices.[5] I encourage HHS to take action quickly on this initiative and would like to share with you the results of one of our Aging Committee investigations.

Following reports of skyrocketing insulin price increases and the consequences that a lack of affordable access to insulin has had on too many Americans with diabetes, Senator Shaheen and I, as co-chairs of the Senate Diabetes Caucus, began an examination of insulin pricing practices and the causes of these price increases. Although insulin was first discovered nearly a century ago, over the past decade the price of this vital treatment has increased by more than 240 percent.[6] The price Americans pay for insulin at the pharmacy counter is the product of a complex web of financial and supply chain transactions which involves drug manufacturers, pharmaceutical benefit managers ("PBMs"), insurance companies, pharmacies, public programs, and others.

When asked to explain the causes of increasing insulin prices, manufacturers pointed to increasing demands for rebates and discounts from PBMs. Calculated as a percentage of the drug's list price, manufacturers contend that rebates are paid to insurance companies and other payers, or their PBMs, in return for ensuring their products will be made available to patients. They argued that, in some situations, the increasing demands for rebates even exceeded list price increases, such that the net prices received for their products actually decreased as prices went up. These claims of increasing rebate demands as a factor driving higher prices was supported by a white paper released by a working group of the American Diabetes Association[7] at a Senate Aging Committee hearing I chaired in May 2018.[8]

PBMs confirmed their role in securing rebates from manufacturers, but argued that they are negotiated in order to reduce prescription drug costs for the benefit of their clients, which include insurance companies, employers, government programs, and other healthcare payers. While PBMs may retain a portion of these rebates, they argued that rebates are largely passed through to their clients. Where their clients are sponsors of plans offered under Part D, the PBMs assert that effectively 100 percent of rebates are passed through and often used to reduce premiums for enrollees. PBMs also responded that, in a minority of cases, they are directed by their clients to pass through the rebates they receive to the plan participants at the point of sale. However, while passing rebates through to purchasers at the point of sale reduces the out-of-pocket cost for some Americans, it does nothing to benefit consumers who are uninsured or whose plans do not provide retail prescription drug coverage. There is conflicting evidence on the extent to which the rebates actually reach even those consumers with insurance that includes prescription drug coverage.

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[5] HHS Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs, 83 FR 22692, 22692 (proposed May 16, 2018).

[6] Sarah Jane Tribble, *Several Probes Target Insulin Drug Pricing,* Kaiser Health News, Oct. 28, 2017, https://www.nbcnews.com/health/health-news/several-probes-target-insulin-drug-pricing-n815141.

[7] William T. Cefalu, et al., *Insulin Access and Affordability Working Group: Conclusions and Recommendations*, American Diabetes Association. May 8, 2018, pp. 1309. http://care.diabetesjournals.org/content/diacare/41/6/1299.full.pdf

[8] *Insulin Access and Affordability: The Rising Cost of Treatment: Hearing Before the S. Spec. Comm. on Aging*, 115th Cong. (2018), https://www.aging.senate.gov/hearings/insulin-access-and-affordability-the-rising-cost-of-treatment.

Our inquiry then turned to the use of rebates by insurance companies. The companies we contacted reported that they generally use rebates to lower costs for all plan enrollees, not only those using the rebated products. They contend that this approach enables them to reduce out-of-pocket expenditures by charging lower premiums, placing products on lower, less-expensive formulary tiers, charging lower copays, or imposing reduced coinsurance obligations. They also confirmed that, for some plans, rebates are passed through at the point-of-sale; yet, again, this policy applied to a minority of plans.

Although rebates are certainly not the only cause of rising drug prices, it is clear that they warrant greater attention from both the Administration and Congress. Rebates calculated as a percentage of list price create an especially perverse incentive for supply chain participants to encourage higher list prices, even where they should be negotiating to reduce prices for consumers. Among the consumers most harmed by this negative feedback loop are those without insurance or with high-deductible health plans. Although others may see the benefit of rebates in the form of reduced out-of-pocket costs, the most vulnerable Americans watch as their out-of-pocket costs grow without limitation to a point where life-saving products become completely unaffordable. Too many Americans suffer under the burden of high drug prices, and we must do more to provide relief.

I look forward to working with you on ways to reduce the effect of rebates on prescription drug prices paid by consumers, especially as related to rebates calculated as a percentage of the list price, and to continuing our work to lower drug prices and make healthcare more affordable. Legislation may well be necessary, and I would appreciate the opportunity to work with you and your staff on legislative reforms. Please have your staff contact [redacted] with the Senate Special Committee on Aging at [redacted] or [redacted] as an initial step.

Sincerely,

Susan M. Collins

Susan M. Collins
Chairman
United States Special Committee on Aging