United States Senate

Washington, DC 20510

August 3, 2022

The Honorable Lina Khan
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairwoman Khan,

We applaud the Federal Trade Commission's recent policy statement issued June 16, 2022, titled "Policy Statement of the Federal Trade Commission on Rebates and Fees in Exchange for Excluding Lower-Cost Drug Products."[1] We share your concern that rebates and fees paid by pharmaceutical manufacturers to Pharmacy Benefit Managers (PBMs) "may shift costs and misalign incentives in a way that ultimately increases patients' costs and stifles competition from lower-cost drugs," and we agree with the Commission's assessment that these practices may violate Federal antitrust law. A recent study by the Kaiser Family Foundation found nearly a quarter of adults say they or a household family member have not taken a medication as prescribed due to cost in the last year;[2] as such, we write to encourage the Commission to thoroughly and holistically investigate, without delay, the totality of rebate and fee arrangements between pharmaceutical manufacturers and PBMs.

The case discussed in the Commission's June 16 policy statement—that of insulin—is a well-documented example of rebates and fees contributing to higher drug costs with deadly consequences. In Congressional testimony on April 10, 2019, Eli Lilly's Senior Vice President, Michael B. Mason told the House Subcommittee on Oversight and Investigations that, "Seventy-five percent of our list price is paid in rebates and discounts to secure access."[3] Two rapid acting, analogue, insulins—Eli Lilly's Humalog and Novartus' Novolog—were both brought to market more than 20 years ago at comparable prices; since 2001, prices have increased from $35 per 10mL of insulin in 2001, to the hundreds of dollars patients pay today.

Unfortunately, insulin is far from the only example where drug rebate arrangements appear to be distorting the market and adversely affecting patients.

Some specific examples are:

- The rheumatoid arthritis medications, Humira and Enbrel, manufactured by AbbVie and Amgen respectively. Since 2013, both products increased in price from $13,000 for a year of treatment, to more than $77,000. Price increases have shadowed one another closely; for example: in 2013, a 6.9

[1] Federal Trade Commission. "Policy Statement of the Federal Trade Commission on Rebates and Fees in Exchange for Excluding Lower-Cost Drug Products." FTC.gov, June 16, 2022. Accessed July 11, 2022. https://www.ftc.gov/system/files/ftc_gov/pdf/Policy%20Statement%20of%20the%20Federal%20Trade%20Commission%20on%20Rebates%20and%20Fees%20in%20Exchange%20for%20Excluding%20Lower-Cost%20Drug%20Products.near%20final.pdf

[2] Kearney, Audrey, Alex Montero, Liz Hamel, and Mollyann Brodie. "Americans' Challenges With Health Care Costs." KFF, July 14, 2022. Access July 18, 2022. https://www.kff.org/health-costs/issue-brief/americans-challenges-with-health-care-costs/.

[3] Bluth, Rachel. 2019. "The Blame Game: Everyone and No One Is Raising Insulin Prices." Kaiser Health News. April 11, 2019. Accessed July 11, 2022. https://khn.org/news/the-blame-game-everyone-and-no-one-is-raising-insulin-prices/.

percent hike in Humira's price was matched by an identical 6.9 percent increase for Enbrel within a day.[4]

- The blood thinners Eliquis and Xarelto, manufactured by BMS/Pfizer and Johnson & Johnson respectively. Since 2013, both products have shadowed each other's price increases, and in 2022 are both more than 110 percent above their initial list price.[5]
- The entire class of Disease Modifying Therapies (DMTs) (nine drugs) used to treat Multiple Sclerosis have risen in price together. When a new product comes to market, a peer-reviewed study showed that the existing DMT products increase their price to match that of the new drug.[6] In perhaps the most insulting example to patients, Interferon beta-1b, brand name Betasaron and manufactured by Bayer, was introduced in 1993 at an inflation adjusted price of $19,509; in 2020, the annual price per patient had increased to $103,302.[7]

In each of these cases, Americans are paying many times over that of residents of other nations for the same drugs, with deadly consequences for insured, underinsured, and uninsured patients alike.

We agree with the Commission's assessment that, "Nothing prevents drug manufacturers, PBMs, and health plans from negotiating good-faith rebates and fees for legitimate services that increase value to payers and patients," but that does not appear to be what is happening for the millions of American patients with diabetes, rheumatoid arthritis, multiple sclerosis, or who take blood thinners and rely on the above medications.

We encourage the Commission to investigate the range of these anticompetitive business practices, including for the products discussed above and to seek out other similar occurrences. For far too long, the federal government has failed to arrest the skyrocketing cost of prescription drugs, while pharmaceutical manufacturers, PBMs, and other entities skirt antitrust laws in pursuit of ever higher profits. We welcome the Commission's interest in this issue, and look forward to working with you to address the chronic problem of unreasonable drug costs in the future.

Thank you for your attention to this serious matter.

Sincerely,

Angus S. King, Jr.
United States Senator

Elizabeth Warren
United States Senator

[4] Staff Report, Committee on Oversight and Reform, U.S. House of Representatives. 2021. "Drug Pricing Investigation, AbbVie—Humira and Imbruvica." Oversight.House.gov. May 2021. Accessed July 11, 2022. https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Committee%20on%20Oversight%20and%20Reform%20-%20AbbVie%20Staff%20Report.pdf.

[5] Patients for Affordable Drugs. 2022. "Eliquis and Xarelto: Lockstep Price Hikes and Patent Gaming Exploit Patients and Taxpayers." Accessed July 11, 2022. https://patientsforaffordabledrugs.org/wp-content/uploads/2022/04/Eliquis-and-Xarelto-report.pdf.

[6] Hartung, Daniel M., Dennis N. Bourdette, Sharia M. Ahmed, and Ruth H. Whitham. 2015. "The Cost of Multiple Sclerosis Drugs in the US and the Pharmaceutical Industry: Too Big to Fail?" *Neurology* 84 (21): 2185–92. Accessed July 11, 2022. https://doi.org/10.1212/WNL.0000000000001608

[7] Hartung, Daniel M. 2021. "Health Economics of Disease-Modifying Therapy for Multiple Sclerosis in the United States." *Therapeutic Advances in Neurological Disorders* 14: 1756286420987031. Accessed July 11, 2022. https://doi.org/10.1177/1756286420987031