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Subcommittee on Health, Employment, Labor and Pensions  
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with Employer-Driven Innovation.”  
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Chairman Good, Ranking Member DeSaulnier, Members of the Subcommittee, thank you for the opportunity to testify before you today.

I am currently the Vice President of Health Policy at the Center for American Progress, working to strengthen public health systems and improve health care coverage, access, and affordability. The Center for American Progress is an independent, nonpartisan policy institute that is dedicated to improving the lives of all Americans through bold, progressive ideas, as well as strong leadership and concerted action. Prior to joining American Progress, I was a senior program officer with the Robert Wood Johnson Foundation—the nation’s largest philanthropy dedicated to health care and public health. At the Foundation, I managed a substantial portfolio of investments including many focused on health care payment and delivery system reform, including in the commercial market.

This testimony will focus on the following points:

First: the Affordable Care Act (ACA) improved health care benefits and strengthened consumer protections for the more than 178 million Americans with employer-sponsored insurance (ESI).<sup>2</sup> Congress must take additional action to address the underlying drivers of health care cost growth—consolidation and the high prices for health care services and prescription drugs—to make it easier for employers of all sizes to offer comprehensive, affordable coverage to their employees.

Second: While some employers are exploring ways to bring down their health care costs through local market innovations, understandably, businesses want federal action. It is not sufficient or realistic to expect that employers can sustainably lower health care costs on their own. Congress has the opportunity to deliver the relief employers want by addressing the high prices of health care services through promoting enhanced, system-wide transparency, addressing health care consolidation, and enabling more expansive regulation of anticompetitive health care behavior. Congress can also consider bigger-picture reforms, such as the introduction of a federal employer public option.

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<sup>1</sup> I extend my deep appreciation to Nicole Rapfogel and Natasha Murphy at the Center for American Progress for their partnership in developing this testimony. Thanks also to Sophie Cohen at American Progress for her thorough research assistance.

<sup>2</sup> Katherine Keisler-Starkey and Lisa N. Bunch, “Health Insurance Coverage in the United States: 2021,” (Washington, DC: U.S. Census Bureau, 2022), available at <https://www.census.gov/content/dam/Census/library/publications/2022/demo/p60-278.pdf>.

Third: Congress made important and historic inroads into lowering prescription drug costs for Medicare beneficiaries through the Inflation Reduction Act of 2022. Congress has a critical opportunity to extend these changes to the commercial market for maximum impact, which would benefit all employers and their employees. Congress can also take steps to limit other pharmaceutical industry tactics that lead to unnecessarily high drug prices.

*The ACA strengthened ESI benefits and consumer protections for employees and their families*

Several ACA provisions enhanced the quality of coverage and offered important protections for workers with ESI.<sup>3</sup> Among other changes, eliminating lifetime and annual coverage limits for essential health benefits helped provide greater financial security for workers and their families; the ACA's prohibition on pre-existing condition exclusions meant that employees and others could no longer be denied coverage because of a cancer diagnosis or pregnancy; and ACA requirements to provide employees with standardized summaries of their health insurance benefits help employees make more informed decisions about their coverage.<sup>4</sup> The ACA requirement that ESI plans extend dependent coverage up to the age of 26 also established an improved coverage pathway for millions of young adults.<sup>5</sup>

*Health care costs are squeezing employers, and employers want government relief*

ESI represents the largest source of coverage in the United States for adults under the age of 65. For many employers, health insurance is a critical tool for recruitment and retention.<sup>6</sup> Many workers have also come to expect comprehensive insurance as a condition of continued employment: according to one 2023 Pew Research Center survey, nearly 80 percent of respondents reported that it was "extremely important" or "very important" to them to have a job that offers ESI.<sup>7</sup>

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<sup>3</sup> Congressional Research Service, "Overview of Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (ACA)" (Washington: 2016), available at <https://crsreports.congress.gov/product/pdf/R/R43854/9>.

<sup>4</sup> Centers for Medicare and Medicaid Services, "Understanding the Summary of Benefits and Coverage (SBC)," available at <https://www.cms.gov/marketplace/technical-assistance-resources/summary-of-benefits-fast-facts.pdf> (last accessed January 2024)

<sup>5</sup> The Office of the Assistant Secretary for Planning and Evaluation estimated that 2.3 million young adults gained coverage by 2013 through the dependent coverage provision. Namrata Uberoi, Kenneth Finegold, and Emily Gee, "Health Insurance Coverage and the Affordable Care Act" (Washington: Office of the Assistant Secretary for Planning and Evaluation, 2016), available at <https://aspe.hhs.gov/sites/default/files/private/pdf/187551/ACA2010-2016.pdf>.

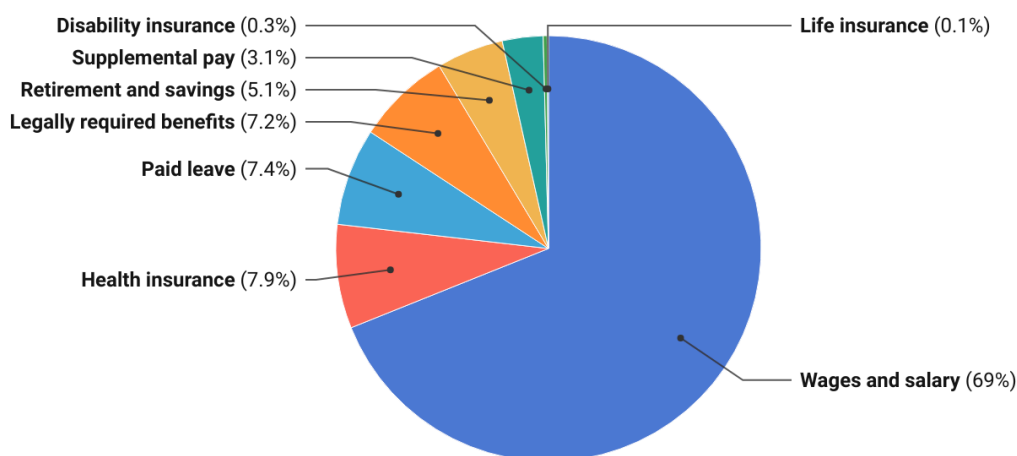
<sup>6</sup> Aditya Gupta and others, "Employers look to expand health benefits while managing medical costs," McKinsey & Co., May 25, 2022, available at <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/employers-look-to-expand-health-benefits-while-managing-medical-costs>.

<sup>7</sup> Juliana Menasce Horowitz and Kim Parker, "How Americans View Their Jobs," Pew Research Center, March 30, 2023, available at <https://www.pewresearch.org/social-trends/2023/03/30/how-americans-view-their-jobs/>.

Providing this coverage, however, is costly for employers. With few exceptions, growth in ESI benefit cost has outpaced wages and inflation for roughly 25 years.<sup>8</sup> As a result, in 2022, after wages and salary, employers spent more on health care than any other employee benefit.<sup>9</sup>

## In 2022, health insurance was second only to wages as part of employee compensation

After wages and salary, employers spend more on health insurance than any other employee benefit



Note: Percentage total does not equal 100 percent due to source rounding.

Chart: Center for American Progress • Source: U.S. Bureau of Labor Statistics, "Table 1: Employer Costs for Employee Compensation by ownership, June 2022," available at <https://www.bls.gov/news.release/ecec.t01.htm> (last accessed November 2022).

While the growth of national health care costs has slowed since the ACA's passage in 2010,<sup>10</sup> rising prices for care and prescription drugs have continued to result in high ESI premiums borne by both employers and employees. In 2023, the average annual ESI premium was \$8,435 for individual coverage and \$23,968 for family coverage.<sup>11</sup> Given how benefits are often

<sup>8</sup> Cassie Lenski, "Health benefit cost growth will accelerate to 5.6% in 2023, Mercer survey finds," Mercer, August 11, 2022, available at

<https://www.mercer.us/newsroom/health-benefit-cost-growth-will-accelerate-in-2023.html>.

<sup>9</sup> Sam Hughes, Emily Gee, and Nicole Rapfogel, "Health Insurance Costs Are Squeezing Workers and Employers" (Washington: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/health-insurance-costs-are-squeezing-workers-and-employers/>.

<sup>10</sup> In decades prior to the passage of the ACA, national health care costs grew at a rate between 6 and 10 percent. That dropped to 3 to 4 percent since the passage of the ACA. Matthew McGough, Aubrey Winger, Shameek Rakshit, and Krutika Amin, "How Has U.S. Spending on Healthcare Changed Over Time?", Peterson-KFF Health System Tracker, December 15, 2023, available at

<https://www.healthsystemtracker.org/chart-collection/u-s-spending-healthcare-changed-time/>; Melinda Beeuwkes Buntin and John A. Graves, "How The ACA Dented The Cost Curve," *Health Affairs* 39 (3) (2020), available at <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2019.01478>.

<sup>11</sup> Gary Claxton and others, "Employer Health Benefits: 2023 Annual Survey" (San Francisco: KFF, 2023), available at <https://files.kff.org/attachment/Employer-Health-Benefits-Survey-2023-Annual-Survey.pdf>.

structured, high premiums are especially problematic for lower-income employees: the lowest quartile of income earners consistently pay the highest premiums.<sup>12</sup>

One strategy that employers have relied on to blunt premium costs increases is offering employees high-deductible health plans (HDHPs). HDHPs, and accompanying Health Savings Accounts (HSAs) were first introduced in the early 2000s, and now make up roughly one in four ESI plans.<sup>13</sup>

While attractive to employers from the perspective of lowering their own premium outlay, HDHPs simply shift costs from employers to their employees through higher deductibles—making employees bear more of the cost of care when they use it.<sup>14</sup> As a result, people enrolled in HDHPs often delay or avoid needed care or are saddled with high health care expenses.<sup>15</sup> Accordingly, in 2022, 29% of nonelderly workers with job-based coverage were underinsured.<sup>16</sup> This is unsurprising, considering that in 2022, the average annual individual ESI deductible was \$1,992. A number that jumped to \$3,811 for a family.<sup>17</sup>

HDHPs do nothing to address the underlying drivers of high health care costs and premiums for employers (high prices and increasing consolidation) and instead effectively function as tax shelters for higher-income employees.<sup>18</sup>

Some especially innovative employers have experimented with tools to tackle high health care spending through tactics like direct contracting, tiered or narrow networks, centers of excellence, and near or on-site clinics. In direct contracting arrangements, self-insured employers negotiate and directly contract with a health care system for a defined set of health care services (agreeing to prices together that might be lower than what they could have

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<sup>12</sup> U.S. Bureau of Labor Statistics, “National Compensation Survey: Employee Benefits in the United States, March 2022, 2010 – 2022 historical Excel dataset,” available at <https://www.bls.gov/ncs/ebs/benefits/2022/home.html> (last accessed November 2022); Hughes, Gee, and Rapfogel, “Health Insurance Costs Are Squeezing Workers and Employers.”

<sup>13</sup> Per the 2023 KFF Employer Health Benefits survey, 24 percent of covered workers were enrolled in HSA-eligible HDHPs, while roughly 30% of all workers were in HDHPs with any savings option. Claxton and others, “Employer Health Benefits: 2023 Annual Survey.”

<sup>14</sup> Claxton and others, “Employer Health Benefits: 2023 Annual Survey,”

<sup>15</sup> Rajender Agarwal, Olena Mazurenko, and Nir Menachemi, “High-Deductible Health Plans Reduce Health Care Cost and Utilization, Including Use of Needed Preventive Services,” *Health Affairs* 36 (10) (2017), available at <https://www.healthaffairs.org/doi/10.1377/hlthaff.2017.0610>.

<sup>16</sup> Sara R. Collins, Lauren A. Haynes, and Relebohile Masitha, “The State of U.S. Health Insurance in 2022” (New York: Commonwealth Fund, 2022), available at <https://www.commonwealthfund.org/publications/issue-briefs/2022/sep/state-us-health-insurance-2022-biennial-survey>.

<sup>17</sup> State Health Access Data Assistance Center, “At What Cost? State Variation in 2022 ESI Premiums and Deductibles” (Minneapolis: 2023), available at <https://www.shadac.org/sites/default/files/2023%20ESI%20infographic%20-%202022%20data.pdf> (last accessed January 2024).

<sup>18</sup> Jean Ross and Andrea Ducas, “Recent Health Savings Account (HSA) Expansion Proposals Are Costly and Misguided,” Center for American Progress, 2023), available at <https://www.americanprogress.org/article/recent-health-savings-account-hsa-expansion-proposals-are-costly-and-misguided/>.

achieved via negotiations through an insurer/third party administrator).<sup>19</sup> Through tiered networks, employers offer their covered workers lower copays or cost-sharing when seeking services from a provider in a designated network “tier,” typically chosen because of a provider’s ability to efficiently deliver quality care.<sup>20</sup> Narrow (sometimes referred to as “high performance”) networks take that one step further, and largely limit employees to only accessing what are deemed as efficient providers.<sup>21</sup> Centers of excellence (COEs), a designation given to a group of particular providers deemed as especially high-quality and high-value and paired with incentives for their use, can succeed in lowering costs by lowering utilization for expensive procedures of often marginal value<sup>22</sup>—such as lower back surgery or hip/knee replacements—or by introducing competition to a given market (an employer or insurer might designate and contract with a COE in a different region and support employees in traveling to that COE to receive care) for especially high-cost services such as some orthopedic surgeries, cancer care, or transplants.<sup>23</sup> Some employers also provide employees convenient access to care through near or on-site clinics, which can sometimes lower costs and help with presenteeism.<sup>24</sup>

These efforts, however, have had limited impact.<sup>25</sup> A 2019 KFF study found that among firms with 50 or more employees offering coverage, only 14 percent of businesses were leveraging tiered networks, 5 percent offered narrow networks, 16 percent used centers of excellence, and 20 percent offered on- or near-site clinics.<sup>26</sup> Among self-funded employers with more than 200 employees, only 8 percent were engaged in direct contracting.<sup>27</sup> These tools can be costly and

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<sup>19</sup> Catalyst for Payment Reform, “Direct Contracting,” available at <https://www.catalyze.org/product/get-started-direct-contracting-2/> (last accessed January 2024).

<sup>20</sup> Suzanne F. Delbanco, Roslyn Murray, Robert A. Berenson, and Divvy K. Upadhyay, “Benefit Designs: How They Work” (Berkeley, CA and Washington: Catalyst for Payment Reform and Urban Institute, 2016), available at

[https://www.catalyze.org/wp-content/uploads/2017/04/2016-Benefit-Designs\\_How-They-Work.pdf](https://www.catalyze.org/wp-content/uploads/2017/04/2016-Benefit-Designs_How-They-Work.pdf).

<sup>21</sup> Employers’ Forum of Indiana, “Tiered and High-Performance Networks,” available at <https://employerftp.org/wp-content/uploads/resources/Tiered-and-High-Performance-Networks.pdf> (last accessed January 2024).

<sup>22</sup> Healthcare Value Hub, “Centers for Excellence,” available at <https://www.healthcarevaluehub.org/improving-value/browse-strategy/centers-excellence> (last accessed January 2024).

<sup>23</sup> Suzanne F. Delbanco, Roslyn Murray, Robert A. Berenson, and Divvy K. Upadhyay, “Centers of Excellence” (Berkeley, CA and Washington: Catalyst for Payment Reform and Urban Institute, 2016), available at [https://www.urban.org/sites/default/files/2016/05/03/06\\_centers\\_of\\_excellence.pdf](https://www.urban.org/sites/default/files/2016/05/03/06_centers_of_excellence.pdf).

<sup>24</sup> John Engbeg, Jon Harris-Shapiro, David Hines, Patti McCarver, and Harry H. Liu, “The Impact of Worksite Clinics on Teacher Healthcare Utilization and Cost, Self-Reported Health Status, and Student Academic Achievement Growth in a Public School District,” *Journal of Occupational and Environmental Medicine* 608 (8) (2018):e397-e405, available at [https://www.rand.org/pubs/external\\_publications/EP67643.html](https://www.rand.org/pubs/external_publications/EP67643.html).

<sup>25</sup> Nicole Rapfogel and Emily Gee, “Employer- and Worker-Led Efforts To Lower Health Insurance Costs” (Washington: Center for American Progress, 2022), available at <https://www.americanprogress.org/article/employer-and-worker-led-efforts-to-lower-health-insurance-cost/>.

<sup>26</sup> Gary Claxton, Daniel McDermott, Cynthia Cox, Julie Hudman, Rabah Kabal, and Matthew Rae, “Employer Strategies To Reduce Health Costs and Improve Quality Through Network Configuration,” Peterson-KFF Health System Tracker, September 25, 2019, available at <https://www.healthsystemtracker.org/brief/employer-strategies-to-reduce-health-costs-and-improve-quality-through-network-configuration/>.

<sup>27</sup> Ibid.

time-intensive to pursue, and are by no means guaranteed to produce savings. It can be challenging for even the largest of employers to use their purchasing power to lower health care costs: employees are often distributed across multiple geographic areas and markets, diluting the potential power an employer has to counteract high prices in any given place.<sup>28</sup>

Employers know their potential for system-wide impact is limited—and as a result, want government action. A 2021 survey by KFF and the Purchaser Business Group on Health (PBGH) found that the vast majority of businesses believe the cost of offering benefits will become untenable within the next decade, and 85 percent of business leaders “believe that there will need to be greater government roles in providing coverage and containing costs.”<sup>29</sup>

Employer support is especially high for government intervention to increase price and total cost of care transparency (90 percent of KFF/PBGH survey respondents), and greater action against anti-competitive behavior by health plans, drug companies, and providers including through stronger antitrust enforcement (92 percent of respondents).<sup>30</sup>

*High prices for health care services and prescription drugs, as well as consolidation, are fueling the growth of ESI costs*

The underlying drivers of high health care costs extend far beyond any one employer or group of employers. In particular, high prices (as opposed to high rates of utilization) for health care services and prescription drugs threaten the affordability of coverage and care for employers and employees. Demonstrating just how significant that difference is, from 2017 to 2021, the prices for health care services grew at almost double the rate of utilization.<sup>31</sup> Notably, according to the Health Care Cost Institute, “The largest growth in prices was for inpatient hospital services, which grew 28 percent even as use declined over the five-year period. Growth in health care prices, and particularly in hospital prices, remains a persistent challenge to access and affordability.”<sup>32</sup>

Driving these high prices for health care services is increasing consolidation—both vertical and horizontal—in the health care market.<sup>33</sup> Between 2018 to 2021, there were 310 consolidation

<sup>28</sup> Ibid.

<sup>29</sup> Notably, large shares of survey respondents agreed “that a greater government role in providing coverage and containing costs would be better for their business (83 percent) and better for their employees (86 percent).” Gary Claxton, Larry Levitt, Shawn Gremminger, Bill Kramer, and Matthew Rae, “How Corporate Executives View Rising Health Care Cost and the Role of Government,” KFF, April 29, 2021, available at <https://www.kff.org/report-section/how-corporate-executives-view-rising-health-care-cost-and-the-role-of-government-findings/>.

<sup>30</sup> Ibid.

<sup>31</sup> Health Care Cost Institute, “2021 Health Care Costs and Utilization Report,” (Washington, DC: 2023), available at [https://healthcostinstitute.org/images/pdfs/HCCI\\_2021\\_Health\\_Care\\_Cost\\_and\\_Utilization\\_Report.pdf](https://healthcostinstitute.org/images/pdfs/HCCI_2021_Health_Care_Cost_and_Utilization_Report.pdf).

<sup>32</sup> Ibid.

<sup>33</sup> Emily Gee and Ethan Gurwitz, “Provider Consolidation Drives Up Health Care Costs” (Washington: Center for American Progress: 2018), available at <https://www.americanprogress.org/article/provider-consolidation-drives-health-care-costs/>



transactions between hospitals and health systems.<sup>34</sup> While some hospital systems argue that increasing concentration helps bring down their costs,<sup>35</sup> horizontal mergers are associated with an increase in the price of hospital stays of as much as 54 percent,<sup>36</sup> and vertical consolidation of physician practices into hospital systems is associated with a 14 percent increase in the price of physician services.<sup>37</sup> There are also high rates of consolidation across the insurance industry.<sup>38</sup> Insurers that dominate local markets often use this increased market power to raise premiums.<sup>39</sup> Ultimately, the combination of high costs and high premiums fall on the employers sponsoring ESI plans, as well as their covered employees through increased cost sharing.<sup>40</sup>

High prescription drug prices are another key driver of ESI costs (and also make it difficult for employees to afford needed medications).<sup>41</sup> Drug prices in the U.S. are more than 2.5 times higher than prices among peer countries.<sup>42</sup> That is because drug companies have been largely free to set prices as high as the market will bear and hike them year after year.<sup>43</sup> Notably, in July

<sup>34</sup> Anu Singh, “2021 M&A in Review: A New Phase in Healthcare Partnerships,” Kaufman Hall, January 10, 2022, available at

<https://www.kaufmanhall.com/insights/2021-ma-review-new-phase-healthcare-partnerships>.

<sup>35</sup> American Hospital Association, “Fact Sheet: Hospital Mergers and Acquisitions Can Expand and Preserve Access to Care,” March 2023, available at

<https://www.aha.org/fact-sheets/2023-03-16-fact-sheet-hospital-mergers-and-acquisitions-can-expand-and-preserve-access-care>

<sup>36</sup> Reed Abelson, “When Hospitals Merge to Save Money, Patients Often Pay More” *New York Times*, November 18, 2018, available at

<https://www.nytimes.com/2018/11/14/health/hospital-mergers-health-care-spending.html>.

<sup>37</sup> Cory Capps, David Dranove, and Christopher Ody, “The Effect of Hospital Acquisition of Physician Practices on Price and Spending,” *Journal of Health Economics* 59 (2018), available at

<https://www.sciencedirect.com/science/article/abs/pii/S016762961730485X?via%3DiHub>.

<sup>38</sup> These mergers and acquisitions include consolidation between health insurance companies, pharmacy benefit managers, and home, primary, and urgent health care organizations. Deana Beasley, “Consolidation in the US health insurance industry,” Reuters, November 30, 2023, available at

<https://www.reuters.com/markets/deals/consolidation-us-health-insurance-industry-2023-11-30/>.

<sup>39</sup> Leemore S. Dafny, “Evaluating the Impact of Health Insurance Industry Consolidation: Learning from Experience” (New York: The Commonwealth Fund, 2015), available at

<https://www.commonwealthfund.org/publications/issue-briefs/2015/nov/evaluating-impact-health-insurance-industry-consolidation>.

<sup>40</sup> Laurel Lucia and Ken Jacobs, “Increases in health care costs are coming out of workers’ pockets one way or another: The tradeoff between employer premium contributions and wages,” University of California, Berkeley Labor Center, January 29, 2020, available at

<https://laborcenter.berkeley.edu/employer-premium-contributions-and-wages/>.

<sup>41</sup> Sara R. Collins, Shreya Roy, and Relebohile Masitha, “Paying for It: How Health Care Costs and Medical Debt Are Making Americans Sicker and Poorer,” The Commonwealth Fund, October 26, 2023, available at

<https://www.commonwealthfund.org/publications/surveys/2023/oct/paying-for-it-costs-debt-americans-sicker-poorer-2023-affordability-survey>.

<sup>42</sup> Andrew W. Mulcahy, Christopher M. Whaley, Mahlet Gizaw, Daniel Schwam, Nathaniel Edenfield, and Alejandro Uriel Becerra-Ornelas, “International Prescription Drug Price Comparisons” (Santa Monica, CA: RAND, 2021), available at [https://www.rand.org/pubs/research\\_reports/RR2956.html](https://www.rand.org/pubs/research_reports/RR2956.html).

<sup>43</sup> Helpfully, the Inflation Reduction Act of 2022 introduced inflation rebates for Medicare Part B and Medicare Part D, limiting price hikes for many prescription drugs within the Medicare program. Centers for Medicare and Medicaid Services, “Fact Sheet: Medicare Prescription Drug Inflation Rebate Program Revised Guidance” (Baltimore: 2023), available at

<https://www.cms.gov/files/document/fact-sheet-medicare-prescription-drug-inflation-rebate-revised-guidance.pdf>.

2023 drug companies raised the prices of [112 drugs](#) above the inflation rate. These high prices contribute greatly to ESI spending: In 2021, average ESI per-enrollee prescription drug spending was nearly \$1,400, a 29 percent increase since 2017, making up almost 22 percent of overall per-person spending.<sup>44</sup> In addition to setting drug prices high, pharmaceutical companies also employ a number of abuses to the patent system—such as through patent thickening, pay-for-delay, and product hopping, in order to retain market exclusivity for as long as they possibly can.<sup>45</sup>

*Congress can bring more transparency to health care costs, enabling employers to make higher-value health care choices*

There are several actions Congress can take to address the high prices of health care services that drive ESI costs. As of 2022, 18 states operated all-payer claims databases (APCDs), and eight more were in the process of developing them.<sup>46</sup> In addition to improving transparency and enabling research and oversight, some evidence suggests that APCDs can help reduce prices.<sup>47</sup> Greater price transparency is critical to enabling employers to better understand what they pay for services and to work together to negotiate better pricing.<sup>48</sup> Congress can pass legislation to create a national APCD, which would fill in the gaps for states without APCDs, consolidate and make claims data available across payers, and collect more comprehensive ESI claims data so that it includes information from both self-insured and fully insured employers.

*Congress can enable more expansive monitoring of consolidation among health care providers and insurers, and enable action on other forms of anticompetitive behavior*

While the Federal Trade Commission (FTC) monitors the largest health care mergers, it lacks the information and resources to monitor all health care mergers—including many smaller transactions and serial acquisitions that can significantly alter the health care industry. The Hart-Scott-Rodino Antitrust Improvement Act (HSR) of 1976 sets a threshold for required pre-transaction reporting to the FTC and Department of Justice;<sup>49</sup> in 2023, FTC reporting

<sup>44</sup> Health Care Cost Institute, "2021 Health Care Costs and Utilization Report."

<sup>45</sup> Sam Hughes and Nicole Rapfogel, "Following the Money: Untangling U.S. Prescription Drug Financing" (Washington: Center for American Progress, 2023), available at <https://www.americanprogress.org/article/following-the-money-untangling-u-s-prescription-drug-financing/>.

<sup>46</sup> Kevin McAvey, "Realizing the Promise of All Payer Claims Databases: A Federal & State Action Plan," (Washington, D.C.: Manatt, 2022), available at <https://www.manatt.com/insights/white-papers/2022/realizing-the-promise-of-all-payer-claims-database>.

<sup>47</sup> Matthew Fiedler and Christen Linke Young, "Federal Policy Options to Realize the Potential of APCDs," (Washington, D.C.: Brookings Institute, 2020), available at <https://www.brookings.edu/wp-content/uploads/2020/10/APCD-Final-1.pdf>; Katherine L. Gudiksen, Samuel M. Chang, and Jaime S. King, "The Secret of Health Care Prices: Why Transparency Is in the Public Interest" (Oakland, CA: California Health Care Foundation, 2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3470844](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3470844).

<sup>48</sup> Rapfogel and Gee, "Employer- and Worker-Led Efforts To Lower Health Insurance Costs." .

<sup>49</sup> Hart-Scott-Rodino Antitrust Improvement Act of 1976, 15 U.S.C. § 18a, 94th Cong., 2nd sess. (September 30, 1976), available at <https://www.ftc.gov/legal-library/browse/statutes/hart-scott-rodino-antitrust-improvements-act-1976>.



applied to transactions generally valued at \$111.4 million or more.<sup>50</sup> The FTC and DOJ have been hampered in their ability to monitor and challenge the effect of smaller transactions, including serial transactions that over time may cumulatively harm competition, such as a health system's acquisition of multiple physician practices.<sup>51</sup> Complementary to the FTC's ongoing efforts to subject cases of serial acquisition to greater scrutiny and challenges,<sup>52</sup> Congress could further amend HSR to mandate pre-merger reporting for transactions that follow on previous transactions within related industries.

Additionally, the FTC lacks statutory authority to monitor and bring enforcement actions over anticompetitive conduct by nonprofit entities.<sup>53</sup> This is notable because nonprofit hospitals accounted for almost half of community hospitals in 2022.<sup>54</sup> Congress could expand the FTC's jurisdiction to nonprofit hospital conduct by amending the FTC Act to close this gap.<sup>55</sup> Congressional action to ban anticompetitive provider-insurer contract terms, such as anti-steering or anti-tiering clauses, would complement antitrust authorities' efforts to crack down on anticompetitive conduct that harms access and affordability.<sup>56</sup>

*Congress should build on the Inflation Reduction Act's historic prescription drug pricing controls and extend them beyond Medicare into the commercial market*

Congress has made substantial strides toward addressing excessive drug prices in recent years. The Inflation Reduction Act (IRA) of 2022 enabled Medicare to negotiate prices for some

<sup>50</sup> Michael Lindsay, Jaime Stilson, Anthony Badaracco, and David Racine, "Increase in HSR Reportability Thresholds and Other HSR Developments," Dorsey & Whitney LLP, January 24, 2023, available at <https://www.dorsey.com/newsresources/publications/client-alerts/2023/1/increase-in-hsr-reportability-thresholds>.

<sup>51</sup> Leemore S. Dafny, "Testimony Before the U.S. House Committee on the Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law, How Health Care Consolidation Is Contributing to Higher Prices and Spending, and Reforms That Could Bolster Antitrust Enforcement and Preserve and Promote Competition in Health Care Markets," April 29, 2021, available at [https://www.hbs.edu/ris/Profile%20Files/4.29.2021%20Dafny%20Oral%20Statement%20and%20Written%20Testimony%20Before%20U.S.%20House\\_47df362c-9f24-4ca3-a9aa-bebf5af8fa7a.pdf](https://www.hbs.edu/ris/Profile%20Files/4.29.2021%20Dafny%20Oral%20Statement%20and%20Written%20Testimony%20Before%20U.S.%20House_47df362c-9f24-4ca3-a9aa-bebf5af8fa7a.pdf).

<sup>52</sup> Federal Trade Commission, "FTC Challenges Private Equity Firm's Scheme to Suppress Competition in Anesthesiology Practices Across Texas," Press release, September 21, 2023, available at <https://www.ftc.gov/news-events/news/press-releases/2023/09/ftc-challenges-private-equity-firms-scheme-suppress-competition-anesthesiology-practices-across>.

<sup>53</sup> Rebecca Slaughter, "Antitrust and Health Care Providers Policies to Promote Competition and Protect Patients: Remarks as Prepared for Delivery at the Center for American Progress," May 14, 2019, available at [https://www.ftc.gov/system/files/documents/public\\_statements/1520570/slaughter\\_-\\_hospital\\_speech\\_5-14-19.pdf](https://www.ftc.gov/system/files/documents/public_statements/1520570/slaughter_-_hospital_speech_5-14-19.pdf).

<sup>54</sup> American Hospital Association, "Fast Facts on U.S. Hospitals, 2023," available at <https://www.aha.org/statistics/fast-facts-us-hospitals> (last accessed January 2024).

<sup>55</sup> Annie Burky, "Bipartisan Bill Revives Efforts to Expand FTC Oversight To Nonprofit Hospitals," Fierce Healthcare, April 28, 2023, available at <https://www.fiercehealthcare.com/hospitals/bipartisan-bill-would-allow-ftc-impede-nonprofit-hospital-ma>.

<sup>56</sup> Katherine Gudiksen, Alexandra Montague, and Jaime King, "Mitigating the Price Impacts of Health Care Provider Consolidation," (New York, NY: Milbank Memorial Fund, 2021), available at [https://www.milbank.org/wp-content/uploads/2021/09/Mitigating-the-Price-Impacts-of-Health-Care-Provider-Consolidation\\_2.pdf](https://www.milbank.org/wp-content/uploads/2021/09/Mitigating-the-Price-Impacts-of-Health-Care-Provider-Consolidation_2.pdf).

drugs directly with pharmaceutical manufacturers for the first time, and also limited Medicare drug price increases to the inflation rate. The Congressional Budget Office estimated that in 2031 drug price negotiation will result in \$14 billion in savings to Medicare Part D, \$9 billion in savings to Medicare Part B, and \$1 billion in other savings to the federal government.<sup>57</sup> The IRA's inflation rebate provision is expected to save the federal government an additional \$8 billion in 2031.<sup>58</sup> Extending these provisions beyond Medicare could provide significant cost savings to employers. The Lowering Drug Costs for American Families Act of 2023 (H.R. 4895) would do just that by expanding the IRA's negotiation and inflation rebate provisions to the commercial market.<sup>59</sup>

*Congress must also curb other pharmaceutical drug pricing abuses*

Beyond the provisions in the IRA, Congress can take comprehensive action to reduce drug prices for ESI by closing loopholes in the drug patent system that are regularly exploited by pharmaceutical companies and by regulating the actions of “middlemen” entities such as pharmacy benefit managers (PBMs). Congress should pass legislation that intervenes throughout the drug supply and financing chains can help drive fairer drug prices for employers.<sup>60</sup> These interventions include:

1. Stopping patent abuse by drug companies by limiting product hopping, patent thickets, pay-for-delay agreements to delay generics and biosimilars from coming to market, and sham citizen petitions. There are several bills, many of which are bipartisan, that would revise the patent and FDA approval process, including:<sup>61</sup>
  - Protecting Consumer Access to Generic Drugs Act of 2023 (H.R. 6275)
  - Ensuring Timely Access to Generics Act of 2023 (S. 1067)
  - Expanding Access to Low-Cost Generics Act of 2023 (S. 1114) / the Federal Food, Drug, and Cosmetic Act to increase transparency in generic drug applications (H.R. 3839)

<sup>57</sup> Congressional Budget Office, “How CBO Estimated the Budgetary Impact of Key Provisions in the 2022 Reconciliation Act (Washington: 2023), available at <https://www.cbo.gov/system/files/2023-02/58850-IRA-Drug-Provs.pdf>.

<sup>58</sup> Ibid.

<sup>59</sup> Lowering Drug Costs for American Families Act of 2023, H.R. 4895, 118<sup>th</sup> Cong., 1<sup>st</sup> sess. (July 26, 2023), available at <https://www.congress.gov/118/bills/hr4895/BILLS-118hr4895ih.pdf>.

<sup>60</sup> Hughes and Rapfogel, “Following the Money: Untangling U.S. Prescription Drug Financing.”

<sup>61</sup> Protecting Consumer Access to Generic Drugs Act of 2023, H.R. 6275, 118<sup>th</sup> Cong., 1<sup>st</sup> sess. (November 7, 2023), available at <https://www.congress.gov/bill/118th-congress/house-bill/6275/text>; Ensuring Timely Access to Generics Act of 2023, S. 1067, 118<sup>th</sup> Cong., 1<sup>st</sup> sess. (March 29, 2023), available at <https://www.congress.gov/bill/118th-congress/senate-bill/1067>; Expanding Access to Low-Cost Generics Act of 2023, S. 1114, 118<sup>th</sup> Cong., 1<sup>st</sup> sess. (March 30, 2023), available at <https://www.congress.gov/bill/118th-congress/senate-bill/1114>; To amend the Federal Food, Drug, and Cosmetic Act to increase transparency in generic drug applications of 2023, H.R. 3839, 118<sup>th</sup> Cong., 1<sup>st</sup> sess. (June 6, 2023), available at <https://www.congress.gov/bill/118th-congress/house-bill/3839>; Increasing Transparency in Generic Drug Applications Act of 2023, S. 775, 118<sup>th</sup> Cong., 1<sup>st</sup> sess. (March 14, 2023), available at <https://www.congress.gov/bill/118th-congress/senate-bill/775>; Affordable Prescriptions for Patients Act of 2023, S. 150, 118<sup>th</sup> Cong., 1<sup>st</sup> sess. (January 30, 2023), available at <https://www.congress.gov/bill/118th-congress/senate-bill/150>.

- Increasing Transparency in Generic Drug Applications Act of 2023 (S. 775)
- Affordable Prescriptions for Patients Act of 2023 (S. 150).

Additionally, bills such as the Preserve Access to Affordable Generics and Biosimilars Act of 2023 (S. 142), and the Stop STALLING Act of 2023 (S. 148) would enable greater antitrust enforcement.<sup>62</sup>

2. Tightening the regulation of PBMs by introducing transparency, through bills such as the bipartisan Pharmacy Benefit Manager Accountability Act of 2023 (H.R. 2679), Transparency in Coverage Act of 2023 (H.R. 4507), Pharmacy Benefit Manager Reform Act of 2023 (S. 1339); and prohibiting spread pricing through bills such as the Modernizing and Ensuring PBM Accountability Act of 2023 (S. 2973).<sup>63</sup>
3. Introducing value-based drug pricing that considers the added benefit of a new drug compared to existing therapies in pricing.<sup>64</sup> For example, the Independent Drug Value Assessment Act of 2022 (H.R. 9321) would require independent, outside entities to conduct value assessments of some approved drugs to inform the Department of Health and Human Services.<sup>65</sup>

### *Congress can consider bolder changes to help employers*

Beyond the proposals described above, Congress can explore and pursue broader system reform to improve ESI affordability via policy mechanisms such as a federal employer public option. This form of government-sponsored health insurance could serve as an alternative to existing private health insurance options that employers could choose to offer to their employees.<sup>66</sup> Implementation of an employer public option would introduce additional competition into the insurance market, which, particularly in less competitive regions, could reduce costs for all consumers.<sup>67</sup> In the coming weeks, Center for American Progress will be

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<sup>62</sup> Preserving Access to Affordable Generics and Biosimilars Act of 2023, S. 142, 118th Cong., 1st sess. (January 30, 2023), available at <https://www.congress.gov/bill/118th-congress/senate-bill/142>; Stop STALLING Act of 2023, S. 148, 118th Cong., 1st sess. (January 30, 2023), available at <https://www.congress.gov/bill/118th-congress/senate-bill/148>.

<sup>63</sup> Pharmacy Benefits Manager Accountability Act of 2023, H.R. 2679, 118th Cong., 1st sess. (April 18, 2023), available at <https://www.congress.gov/bill/118th-congress/house-bill/2679>; Transparency in Coverage Act of 2023, H.R. 4507, 118th Cong., 1st sess. (July 10, 2023), available at <https://www.congress.gov/bill/118th-congress/house-bill/4507>; Pharmacy Benefit Manager Reform Act of 2023, S. 1339, 118th Cong., 1st sess. (April 27, 2023), available at <https://www.congress.gov/bill/118th-congress/senate-bill/1339>; Modernizing and Ensuring PBM Accountability Act of 2023, 118th Cong., 1st sess. (September 28, 2023), available at <https://www.congress.gov/bill/118th-congress/senate-bill/2973>.

<sup>64</sup> Thomas Waldrop, "Value-Based Pricing of Prescription Drugs Benefits Patients and Promotes Innovation" (Washington: Center for American Progress 2021), available at <https://www.americanprogress.org/article/value-based-pricing-prescription-drugs-benefits-patients-promotes-innovation/>.

<sup>65</sup> Independent Drug Value Assessment Act of 2022, H.R. 9321, 117<sup>th</sup> Cong., 2<sup>nd</sup> sess. (November 16, 2022), available at <https://www.congress.gov/bill/117th-congress/house-bill/9321/>.

<sup>66</sup> Tricia Neuman, Karen Pollitz, Jennifer Tolbert, Robin Rudowitz, and Wyatt Koma, "10 Key Questions on Public Option Proposals," Kaiser Family Foundation, December 18, 2019, available at <https://www.kff.org/health-reform/issue-brief/10-key-questions-on-public-option-proposals/>.

<sup>67</sup> Linda Blumberg, "Comparing Public Option and Capped Provider Payment Rate Proposals," (Washington, DC: Urban Institute, 2021), available at

releasing a proposal and design considerations for a federal public option for employer-based coverage. We look forward to sharing it with this Subcommittee.

Thank you again for the opportunity to testify before this Subcommittee today.