

The Honorable Mitch McConnell  
Majority Leader  
S-230, US Capitol  
Washington, D.C. 20510

The Honorable Nancy Pelosi  
Speaker of the House  
H-222, US Capitol  
Washington, D.C. 20515

The Honorable Charles Schumer  
Minority Leader  
S-221, US Capitol  
Washington, D.C. 20510

The Honorable Kevin McCarthy  
Minority Leader  
H-204, US Capitol  
Washington, D.C. 20515

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

The undersigned organizations write in strong opposition to binding arbitration as a means to address rising medical and drug costs because it will unnecessarily increase complexity and spending, while simultaneously delaying payment for drugs that could create access issues.

In lieu of allowing HHS to interfere in private price negotiations, some have suggested third-party binding arbitration as a way to lower drug prices. These proposals would allow a government-appointed third party to dictate what price Medicare will pay for pharmaceuticals. Such authority threatens the right of patients and doctors to choose the right treatment for their health. While the details of a binding arbitration proposal are likely to give rise to additional concerns, overarching problems with this approach include:

#### **Price Controls**

Binding arbitration in the context of drug pricing is a de facto price control because it allows arbitrators to set the price of drugs following a closed-door evaluation wherein the arbitrator holds sole decision-making authority. It is in no way a middle of the road approach, but a way to invest great power to set prices for millions of seniors and the disabled in one or a few people. Ultimately, this could leave patients in dire need of new medications without the drug therapies that could save and improve their lives.

#### **Limited Choice**

Other countries that have adopted binding arbitration for drug prices have seen patient choice decrease as drugs withdraw from the market. This sort of government interference not only breaks with longstanding policy principles in the United States that fiercely champion choice and competition, it also puts a wedge in the provider-patient relationship that complicates care.

#### **Arbitrator Bias**

Arbitrator selection criteria is typically a critical element of the arbitration process. It is designed to provide assurance to the parties that the decisionmaker does not have inherent bias that could jeopardize fairness. Binding arbitration as proposed in the context of drug pricing negotiations, lacks any clarity about:

- How the arbitrator will be selected;
- From what pool arbitrators may be selected;
- The weight of the government versus the private parties' preferences in arbitrator selection; and
- What required qualifications the arbitrator must have (including the arbitrator's level of expertise and familiarity with drug pricing).

These questions reflect a series of concerns that all revolve around the same fundamental issue: the notable absence of any guarantee that the binding arbitration process will be fair to all parties involved.

**Lack of Recourse, Accountability & Transparency**

Arbitrators in binding arbitration have incredible power over the outcome of the negotiations, in this case drug prices, that leaves participating parties without recourse in most, if not all, situations. This structure is vulnerable because it makes ensuring accountability incredibly difficult when the arbitrator, as well as the parties, are aware that there are no other options to pursue in the event the fairness and credibility of the process is undermined. Compounding these issues is the lack of transparency that accompanies binding arbitration – which, out of necessity, must ensure basic privacy protections so that sensitive, privileged, and confidential information is not shared.

Taken as a whole, the lack of transparency in the binding arbitration process, combined with the significant (if not total) lack of recourse for participating parties in the event that the process goes awry, creates a scenario that allows for little accountability and begs for abuse.

For these reasons, the undersigned organizations believe implementing government price controls through binding arbitration is not an effective policy solution. We urge you to reject it and work with us on market-based solutions that lower costs and promote affordability.

Sincerely,

America’s Business Benefit Association  
American Behcets Disease Association  
American Society of Plastic Surgeons  
BIO  
Council for Affordable Health Coverage  
Caregiver Action Network  
Caregiver Voices United  
Communicating for America, Inc.  
Healthcare Leadership Council  
HealthHIV  
International Foundation for Autoimmune and Autoinflammatory Arthritis  
National Hispanic Council on Aging  
National Minority Quality Forum  
National Puerto Rico Chamber of Commerce  
RetireSafe  
The AIDS Institute  
The Latino Coalition  
The National Grange  
ZERO - The End of Prostate Cancer