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The Honorable Thomas E. Perez
Secretary
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Secretary:

The Pacific Business Group on Health (PBGH) appreciates the opportunity to comment on the application of the out-of-pocket limitation to the use of reference pricing. For twenty-five years, PBGH has helped purchasers improve the quality of health care and moderate health care cost increases. PBGH consists of 60 member organizations, which provide health care coverage to 10 million Americans and their dependents. Our members include many large national employers as well as public sector purchasers.

PBGH members experience annual increases in health care costs well above inflation. These increases are eroding their profitability and global competitiveness and undercutting employee wages – and workers and companies do not appear to be receiving any increase in value for these expenditures. Even for our public sector and non-profit membership, health care costs directly impact operational performance and total compensation for workforce attraction and retention. Price is a major driver of high health care costs, with extreme variations driven by provider consolidation and market power. Private purchasers absorb some of the price increases by paying more for health insurance, some increases get passed on to consumers and other times health plan benefits are scaled back to make them more affordable. Price transparency to consumers is one of a limited number of tools purchasers have to combat escalating costs that add no value.

PBGH and its members have been leaders, both in California and nationally, in implementing innovations in transparency, care delivery, benefit design and provider payment. Reference pricing for procedures is a variation on a long-standing practice of providing one level of benefit to

employees who use in-network providers and another level to those using out-of-network providers, such as tiered provider networks. This allows consumers access to more providers than limited provider networks (e.g., HMOs), while creating a sensitivity to the quality and cost of health care. Notably, two of our members have successfully used reference pricing benefit designs to incent selection of high-value providers and identify those providers who are price outliers relative to community averages.

We believe reference pricing is consistent with the intent of the ACA. The U.S. Department of Labor and other federal agencies charged with implementing the Affordable Care Act may wish to consider our collective experience and lessons learned in improving outcomes and affordability of health care. Below we provide some program design elements that work in favor of both the employee and purchaser to help contain costs while preserving access to medically appropriate, quality care.

Appropriate Services

Reference pricing is premised on consumers having information to make informed decisions about where they receive care. Thus, it works best for elective, non-emergency care that can be scheduled in advance and has significant price variation among providers. Examples of reference-priced services include colonoscopy, cataract surgery, hip and knee joint replacement, arthroscopy surgery, advanced imaging, and routine diagnostic laboratory procedures. Reference pricing and network design are also critical factors for managing the cost of preventive services. While preventive care represents a modest portion of total health care spending among commercial purchasers, it is one of the fastest growing components of cost trend. Some services such as colorectal screening are provided at a greater frequency than recommended in clinical guidelines, and reference pricing and network management are important tools for promoting appropriate utilization.

Quality Care

Higher prices do not mean higher quality care and conversely, lower prices do not mean lower quality care. In addition to knowing the price of a procedure, consumers should have access to quality information to help in understanding the value of care provided. Along with meeting a

price threshold, programs could require providers to report quality data, such as complication and infection rates, if they are not already doing so. Many plans make quality information on providers available to members, and some purchasers use vendors to provide this service.

Access

A reference pricing program can be structured to ensure access to a broad provider network. As mentioned above, tiering providers permits consumers' access to more providers than limited provider networks. Having an adequate number of providers and a reasonable geographic distribution are important considerations when evaluating access to in-network providers. More and more, purchasers are also providing a travel benefit for employees that choose providers not close to home.

Engagement and Education

Considerable attention should be given to ensuring consumers understand the reference pricing program and implications for choosing in and out of network providers. There are different approaches to doing this, many of which could be used individually or collectively. First, implementing prior authorization in a reference pricing program, particularly for out-of-network providers, can drive a "trigger" communication to someone right before the procedure that explains the program and financial responsibility. Second, participation in shared decision making could be required prior to making a referral. Third, online decision aids can help consumers weigh options. Fourth, multiple modes of communication methods during and after open enrollment via written materials and verbal discussions will help support consumers.

Maintaining Provider Competition

Provider consolidation has been an important cost driver in many geographic markets and accounts for some of the regional price variation our members experience nationally. Reference pricing is an important lever for purchasers to promote market competition. Early experience in reference-pricing for hip and knee replacement surgeries in California has brought hospital systems back to the negotiating table to *lower* their rates to meet reference pricing thresholds, as well as spurring quality improvement initiatives to meet network selection criteria. Reference pricing is also a critical tool for distinguishing cost outliers where provider organizations may seek

to deliberately skirt the intention of the out-of-pocket maximum rules. Specifically, reference pricing helps expose the pricing abuses of non-contract ambulatory surgery centers that sometimes collect payments in excess of 50 times Medicare allowable rates from employers and consumers (there are well-documented cases, particularly in California and New Jersey).

As purchasers of health care for millions of Americans, we are committed to improving the value of the health care while maintaining or improving quality. PBGH and our members use strategies to identify those providers most likely to achieve good results and use innovative contracting and benefit designs to assist patients in getting care from those providers. We believe a well-designed reference pricing program can work to drive down health care costs without compromising quality or access and is consistent with the intent of the ACA. Feel free to contact me should you have any comments or questions.

Sincerely,

A handwritten signature in blue ink that reads "David J. Lansky". The signature is fluid and cursive, with a large, sweeping flourish at the end of the name.

David J. Lansky, PhD
President & CEO