

August 25, 2023

The Honorable Cathy McMorris Rodgers, Chair
U.S. House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chair McMorris Rodgers:

The American Economic Liberties Project submits this comment on the discussion draft of the Stop Drug Shortages Act. Economic Liberties is a non-profit and non-partisan organization that fights concentrated economic power to ensure free and fair opportunity for all.

We applaud your efforts to investigate and address persistent shortages of essential, low-cost generic drugs. We especially appreciate the Stop Drug Shortages Act's proposals to increase oversight of **group purchasing organizations (GPOs), the driving force behind today's crisis.**

GPOs negotiate procurement contracts with manufacturers on behalf of hospitals. Despite representing the buying hospitals, they are paid by the manufacturer, creating a large conflict of interest, which GPOs use to take kickbacks from larger manufacturers and keep others out of the market. Furthermore, their use of sole-source contracts creates brittle supply chains, and the downward pressure they put on price pushes many manufacturers out of the market. Even legacy generic drug makers struggle to afford production of low-cost medications. This results in shortages, and GPOs are a core driver of the problem.

We respectfully urge consideration of the following solutions to restore market resilience and alleviate the drug shortage crisis:

- 1. Repeal GPO Safe Harbor from Anti-Kickback Statute.** Congress granted GPOs a safe harbor from the Anti-Kickback Statute more than 30 years ago. Removing this safe harbor would prohibit GPOs from taking payments from drug makers, and instead require them to rely on the hospitals they represent for revenue. Under this model, which was standard until 1987, GPOs' interests would be aligned with hospitals', and more manufacturers would have the opportunity to compete and retain the necessary funds to keep production lines running.
- 2. Prohibit Sole-Sourced Contracting by GPOs.** GPOs often negotiate contracts that lock many hospitals into a purchasing contract with a single supplier. Not only does this create a brittle supply chain for generic drugs, but it also pushes other manufacturers out of the market entirely, such that there may not be other suppliers at all if production is interrupted. GPOs should be required to allocate certain percentages of their purchasing volume to a more diverse group of suppliers.
- 3. Direct the Health and Human Services Department to Investigate GPOs.** The Department's Office of Inspector General can initiate an administrative investigation into GPO compliance with the terms of the Anti-Kickback Statute safe harbor.

Thank you for your consideration. Please contact us with any questions about these solutions or to engage in further discussion.

Sincerely,
American Economic Liberties Project