



Conservatives  
for  
Property Rights

July 18, 2023

U.S. Senate Committee on Health, Education, Labor, and Pensions  
428 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senate Health, Education, Labor, and Pensions (HELP) Committee:

Conservatives for Property Rights (CPR) strongly opposes the Sanders amendment, proposing “reasonable pricing” provisions and so-called “most favorable nation” reference pricing. Our understanding is Chairman Sanders will offer this provision at the HELP Committee’s markup later this week of its reauthorization of the Pandemic and All-Hazards Preparedness Act (PAHPA).

CPR, a coalition of conservative and libertarian organizations, emphasizes the central importance of private property in all its forms—physical, personal, and intellectual. Private property rights rank among the unalienable rights the Founders referenced in the Declaration of Independence. Property rights transcend conservative and liberal politics, and government price controls encroach on property rights.

Notably, PAHPA has typically been bipartisan and legislated without much controversy. Unfortunately, the “reasonable pricing” measures offered on the Senate legislation break with that laudable approach. If for no other reason than to ensure that our country adopts timely, important lessons from the COVID-19 pandemic and recent natural disasters, PAHPA should remain clean of controversial, divisive measures—counterproductive government price controls most especially.

Such “reasonable pricing” requirements would apply to marketable drug, biologic, or other medical technology that stems from federal research funding from the Centers for Disease Control (CDC) and BARDA. It is virtually guaranteed that the strictures of the Sanders amendment’s provisions would result in less innovation, cause greater hesitation to commercialize new medical inventions by would-be grantees and contractors, and fail to achieve the stated goal.

Instead, they would repeat the tried-and-failed CRADA experience of the National Institutes of Health (NIH) in the 1990s, only involving different federal agencies. In 1989, NIH started requiring a “reasonable pricing” provision in its Cooperative Research

and Development Agreement federal contracting vehicle as a condition for an exclusive license to NIH-funded technologies. The clause injected uncertainty, diminished intellectual property (IP) value, and undermined property rights over eventual products.

The pricing requirement caused a significant drop in NIH CRADAs, falling from 42 in 1989 to an average of 32 the next six years. This drop-off in CRADAs led NIH to eliminate the provision. CRADAs with NIH immediately rose to about 90 agreements in 1996 and more than 160 in 1997.

When the government price control was removed, NIH Director Harold Varmus said “the pricing clause has driven industry away from potentially beneficial scientific collaborations with [NIH] scientists without providing an offsetting benefit to the public. . . . Eliminating the clause will promote research that can enhance the health of the American people.” Nothing suggests new price controls won’t do the same harm.

Mr. Varmus assessed the “reasonable pricing” clause with clear-eyed criticism: “The [price control] clause attempts to address the rare breakthrough product at the expense of a more open research environment and more vigorous scientific collaborations. One has to have a product to price before one can worry about how to price it, and this clause is a restraint on the new product development that the public identified as an important return on their research investment.”

In 2021, NIH reassessed this episode. NIH affirmed that the 1990s CRADA plunge was due to the addition of the “reasonable pricing” clause, and the uptake occurred because of its removal. This shows price controls don’t work as intended.

Pegging U.S. government-set prices to the artificially low, government-set prices of other countries would be extremely unwise. It is premised on a simplistic comparison of the means of rapidly, broadly bringing most medical innovations to American patients with the means foreign countries’ government-run health systems use. The foreign health systems dictate unreasonably low prices that have little connection to real-world, market-based factors. Those “health systems” keep many new treatments unavailable for much longer—even excluding some new medical products entirely from their health systems. Those systems often ration—even deny access to—newer drugs and medical devices by the most vulnerable patients. Such practices are likely to follow here as the Sanders amendment compounds the adverse consequences from “Inflation Reduction Act” drug price controls. Putting price over patients and access is misplaced priority.

Thus, CPR urges opposition to the Sanders “reasonable pricing” amendment.

Sincerely,

James Edwards, Ph.D.  
Executive Director  
Conservatives for Property Rights

Kevin L. Kearns  
President  
U.S. Business & Industry Council

Saulius "Saul" Anuzis  
President  
60 Plus Association

Ashley Baker  
Director of Public Policy  
The Committee for Justice

Ryan Ellis  
President  
Center for a Free Economy

Bob Carlstrom  
President  
Amac Action

David Williams  
President  
Taxpayers Protection Alliance

Seton Motley  
President  
Less Government

Jeffrey Mazzella  
President  
Center for Individual Freedom

Colin A. Hanna  
President  
Let Freedom Ring

Dick Patten  
President  
American Business Defense Council

Jenny Beth Martin  
Honorary Chairman  
Tea Party Patriots Action

George Landrith  
President  
Frontiers of Freedom