



September 10, 2019

Dear Representatives and Senators:

On behalf of National Taxpayers Union (NTU), I write to express our significant concerns with the draft version of Speaker Nancy Pelosi's prescription drug plan, H.R. 3.¹ As supporters of free markets, who recognize the critical role private-sector innovation plays in the development and delivery of health care, we find provisions of H.R. 3, as reported, extremely troubling.

We understand and appreciate lawmakers' desire to mitigate the impact drug prices have on patients with high health care costs. As policymakers develop proposals to provide relief for these patients, we encourage solutions that concentrate on the small slice of patients using a small slice of high-priced drugs.

When private and public plan sponsors do spend significant sums on prescription drugs, it is often on a relatively small number of high-cost products. Large employer plans spent 39 percent of their total drug spending on the top 50 drug products in 2017, even though those products made up just eight percent of prescriptions.² In Medicare Part D, the top 50 products accounted for 43 percent of drug spending but just 15 percent of prescriptions, while in Medicaid the top 50 products made up 41 percent of drug spending and just eight percent of prescriptions.³ Relief should target the small slice of patients struggling with high costs, rather than making aggressive changes to a system that most Americans can afford.

Unfortunately, H.R. 3 makes aggressive changes to the system that could end up leading to higher costs for all patients and taxpayers, and less innovation in the U.S. pharmaceutical industry. The proposal would have the Department of Health and Human Services (HHS) negotiate prices for up to 250 drugs a year. Though the draft frames this provision as a "voluntary, bi-lateral negotiation process," the negotiations in H.R. 3 are anything but voluntary. H.R. 3 would subject manufacturers that either 1) do not negotiate or 2) do not come to an agreement with HHS to a 75 percent tax on the prior year's gross sales of the drug in question. This is not a "voluntary" negotiation. It is more akin to government extortion of private companies.

To make matters worse, H.R. 3 would peg drug prices to those set by foreign government price controls, through an international pricing index (IPI) that sets an upper limit on the price HHS could accept for a particular drug. NTU noted in an Issue Brief last year that price controls "come with consequences," including reduced life expectancy and less innovation in U.S. drug products.⁴

¹ Sullivan, Peter. "HR 3 Drug Pricing Proposal Sep 9, 2019." September 9, 2019. Retrieved from:

<https://www.scribd.com/document/425155740/HR-3-Drug-Pricing-Proposal-Sep-9-2019> (Accessed September 10, 2019.)

² Cubanski, Juliette; Rae, Matthew; Young, Katherine; Damico, Anthony. "How Does Prescription Drug Spending and Use Compare Across Large Employer Plans, Medicare Part D, and Medicaid?" Kaiser Family Foundation, May 20, 2019. Retrieved from:

<https://www.kff.org/medicare/issue-brief/how-does-prescription-drug-spending-and-use-compare-across-large-employer-plans-medicare-part-d-and-medicaid/> (Accessed September 10, 2019.)

³ Ibid.

⁴ Sepp, Pete. "Prescription Drug Costs: Better Ways to Help Patients and Taxpayers." NTU, December 6, 2018. Retrieved from: <https://www.ntu.org/publications/detail/prescription-drug-costs-better-ways-to-help-patients-and-taxpayers> (Accessed September 10, 2019.)

In one particularly far-reaching aspect of this proposal, H.R. 3 would force drugmakers to offer the price they negotiate with HHS to all other payers public and private, including group health plans and group/individual health insurance plans. While the proposal is unclear on how HHS would enforce mandating a price normally negotiated between private parties, the penalties H.R. 3 assesses for noncompliance are exorbitant. If a manufacturer charges a private plan sponsor above the HHS-negotiated price, the manufacturer can be charged a civil penalty of up to ten times the difference between that higher price and the HHS-negotiated price.

While H.R. 3 calls for HHS to consider research and development costs, sales information, and more when negotiating the price of a drug, it seems manufacturers would have little to no recourse if they disagree with the price HHS demands. If they do not come to an agreement with HHS, they would be charged the aforementioned 75 percent “Non-Compliance Fee.” If they charge a private or public plan sponsor more than the negotiated price, they would be assessed a civil penalty worth up to ten times the price difference.

Under H.R. 3, manufacturers would also be prohibited from increasing their prices for drugs in Medicare Parts B or D faster than inflation. When the Senate Finance Committee proposed similar inflation caps, NTU noted that the larger the difference between this government-imposed cap (on programs with tens of millions of enrollees) and the market price for a drug, the more plan sponsors and drugmakers will seek to recoup those costs elsewhere.⁵ All told, inflation caps could work against lawmakers’ mission to lower health care costs for Americans. Unfortunately, H.R. 3 would take these inflation caps a significant step further than the Senate Finance proposal, by setting the base inflation year as 2016. The draft proposal notes their inflation cap “would wipe out the last three years of price hikes in Medicare Part B & D, lowering prices further and for more drugs than the Senate Finance inflation rebate.”⁶

Fortunately, there is a better path forward for lawmakers than H.R. 3. The first step is to remove some of the regulatory barriers that prevent generic and biosimilar products from coming to market in a timely manner. For example, S. 2161, the Reciprocity Ensures Streamlined Use of Lifesaving Treatments (RESULT) Act of 2019, would be a strong start to reforming the FDA’s outdated approach to approvals, by providing an expedited, reciprocal approval process for drugs, biologics, or medical devices that have been authorized to be lawfully marketed in a limited set of other countries.⁷

A second step would be to remove some of the backwards incentives currently in place across a variety of federal health programs. Both the American Action Forum (AAF) and the Medicare Payment Advisory Commission (MedPAC) have identified market-oriented fixes to the Medicare Part D catastrophic phase, where taxpayers are currently on the hook for 80 percent of drug plan costs beyond a certain threshold. Their proposals would lower or eliminate Medicare’s reinsurance subsidies in the catastrophic phase, make plan sponsors liable for a majority of costs, and move manufacturer rebates from the “donut hole” phase to the catastrophic phase.⁸ Such changes would protect both taxpayers and those patients with high prescription drug costs.

⁵ Lautz, Andrew. “Senate Finance Committee Should Remove Part D Inflation Caps From PDPRA.” NTU, July 24, 2019. Retrieved from: <https://www.ntu.org/publications/detail/senate-finance-committee-should-remove-part-d-inflation-caps-from-pdpra> (Accessed September 10, 2019.)

⁶ Ibid., 1.

⁷ Lautz, Andrew. “NTU Thanks Senator Cruz for Introducing the RESULT Act.” NTU, July 26, 2019. Retrieved from: <https://www.ntu.org/publications/detail/ntu-thanks-senator-cruz-for-introducing-the-result-act> (Accessed September 10, 2019.)

⁸ Lautz, Andrew. “Why NTU Opposes an Inflation Cap for Medicare Part D.” NTU, July 16, 2019. Retrieved from: <https://www.ntu.org/publications/detail/why-ntu-opposes-an-inflation-cap-for-medicare-part-d> (Accessed September 10, 2019.)

Beyond these two steps policymakers should, as NTU wrote earlier this month:

“...pursue reforms such as better trade agreements that require burden-sharing of drug development costs, improvements to approval and dispensing rules for biosimilars, better oversight of government programs offering drugs to needy patients, and the use of real-time benefits tools in Medicare Part D.”⁹

Lawmakers should reject the draft proposal, H.R. 3, and consider the above alternatives instead. These market-oriented fixes could make a meaningful difference to the portion of Americans who struggle with high drug costs, while maintaining the core elements of a system that has brought affordable, life-saving treatments and cures to the vast majority of American patients and their families. Thank you for your consideration, and should you have any questions, I am at your service.

Sincerely,

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