



December 9, 2019

Dear Representatives:

On behalf of National Taxpayers Union (NTU), I write to express our strong opposition to H.R. 3, Speaker Nancy Pelosi's prescription drug bill. We believe H.R. 3 contains a misguided, damaging set of tax-hiking policies that will hurt vulnerable patients by severely curbing the research and development of new treatments and cures.

We are encouraging Members of Congress to introduce amendments that, while not making Speaker Pelosi's bill a good piece of legislation, would substantially improve the final product if it passes the House. A more prudent path forward would be for Representatives to reject H.R. 3 and pursue legislation that reduces drug costs by lowering regulatory barriers rather than installing price controls.

Fortunately, some Representatives have already introduced encouraging reforms through the Committee process. Many of the recommendations that follow come from amendments introduced in the markups of H.R. 3 held by the Committees on Ways and Means, Education and Labor, and Energy and Commerce. They target some of the most egregious, government-heavy aspects of Speaker Pelosi's legislation, and encourage careful study before enacting provisions of H.R. 3 that could have enormous consequences for taxpayers, health consumers, patients, and innovators.

Our recommendations for amendments fall into a few categories: 1) striking harmful provisions of H.R. 3, 2) mandating that the government study the potential impact of provisions of H.R. 3 before they go into effect, 3) modernizing and updating federal health programs, and 4) repealing onerous taxes.

Strike Provisions of H.R. 3

- **Strike all of Title I, which mandates the Secretary of Health and Human Services (HHS) negotiate the price of certain prescription drugs each year and penalizes manufacturers with a tax if they cannot come to an agreement with the government:** This amendment, introduced by Rep. Devin Nunes (R-CA) in the House Committee on Ways and Means markup of H.R. 3, would remove two of the most harmful provisions of H.R. 3: government negotiation of drug prices and a punitive tax on manufacturers for not coming to an agreement with the government.¹ After a draft version of Speaker Pelosi's plan became public in September we noted that though the draft frames Title I 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

¹ U.S. House Committee on Ways and Means. (2019). Amendment to H.R. 3 Offered by Mr. Nunes. Retrieved from: https://gop-waysandmeans.house.gov/wp-content/uploads/2019/10/V16-A9.-Nunes-Strike-Title-I-fcramd-wm-striket1_xml.pdf (Accessed November 4, 2019.)

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.²

- **Strike the portions of Section 101 that tie the maximum negotiated price for a drug to prices in foreign countries:** The minority in the House Committee on Energy and Commerce introduced an amendment to strike various portions of Section 101 ("Providing for lower prices for certain high-priced single source drugs").³ An identical amendment was introduced by Rep. George Holding (R-NC) in the Committee on Ways and Means.⁴ We have warned before that history has shown price controls on any commodity or service produce unintended but consistently detrimental effects.⁵
- **Strike Section 102, which levies a tax of up to 95 percent on a drug manufacturer's sales if they cannot come to an agreement with the government:** This amendment, introduced and withdrawn by Rep. Jackie Walorski (R-IN) in the Committee on Ways and Means, is similar to the Rep. Nunes amendment but only focuses on the punitive taxes in Title I.⁶ The amendment also repeals the medical device tax and sets a permanent, lower threshold for the medical expense deduction (more on that below).
- **Strike Sections 201 and 202, which establish inflation caps on drugs in Medicare Parts B and D:** The minority in the Committee on Energy and Commerce introduced amendments to strike both Section 201 ("Medicare part B rebate by manufacturers") and Section 202 ("Medicare part D rebate by manufacturers").⁷ Inflation caps would effectively put the federal government in charge of drug prices, rather than a competitive free market.⁸ We believe that a more effective way to control Part D drug costs would be to restructure the catastrophic phase of Medicare Part D (see more below).
- **Protect fiduciaries for group health plans who opt out of the government-set price:** This amendment, from the minority in the Committee on Energy and Commerce and from Rep. Dusty Johnson (R-SD) in the Committee on Education and Labor, adds that the right of a group health plan to participate or not participate in government-set prices would not "alter any of the responsibilities, obligations, or duties imposed upon any person who is a fiduciary" of such a plan.⁹

² Lautz, Andrew. "Open Letter to Lawmakers Urging Rejection of Draft Pelosi Prescription Drug Plan." National Taxpayers Union, September 10, 2019. Retrieved from: <http://bit.ly/2pEgrcd> (Accessed November 4, 2019.)

³ U.S. House of Representatives Committee Repository. (2019). Amendment #78. Retrieved from: <https://docs.house.gov/meetings/IF/IF00/20191017/110114/BILLS-116-3-W000791-Amdt-78.pdf> (Accessed November 4, 2019.)

⁴ U.S. House Committee on Ways and Means. (2019). Amendment to H.R. 3 Offered by Mr. Holding. Retrieved from: <https://gop-waysandmeans.house.gov/wp-content/uploads/2019/10/V17-A10.-Holding-Strike-IPI-BILLS-116-3-W000791-Amdt-78.pdf> (Accessed November 4, 2019.)

⁵ Letter to: Secretary Alex Azar (Department of Health and Human Services). National Taxpayers Union, December 6, 2018. Retrieved from: <https://www.ntu.org/library/doclib/2018/12/Economists-Letter-to-HHS-1.pdf> (Accessed November 4, 2019.)

⁶ U.S. House of Representatives Committee Repository. (2019). Amendment #11. Retrieved from: <https://docs.house.gov/meetings/WM/WM00/20191022/110137/BILLS-116-HR3-W000813-Amdt-11.pdf> (Accessed November 4, 2019.)

⁷ U.S. House of Representatives Committee Repository. (2019). Amendment #18. Retrieved from: <https://docs.house.gov/meetings/IF/IF00/20191017/110114/BILLS-116-3-T000480-Amdt-18.pdf> (Accessed October 31, 2019.); U.S. House of Representatives Committee Repository. (2019). Amendment #75. Retrieved from: <https://docs.house.gov/meetings/IF/IF00/20191017/110114/BILLS-116-3-W000791-Amdt-75.pdf> (Accessed October 31, 2019.); U.S. House of Representatives Committee Repository. (2019). Amendment #77. Retrieved from: <https://docs.house.gov/meetings/IF/IF00/20191017/110114/BILLS-116-3-W000791-Amdt-77.pdf> (Accessed October 31, 2019.)

⁸ Lautz, Andrew. "Why NTU Opposes an Inflation Cap for Medicare Part D." National Taxpayers Union, July 16, 2019. Retrieved from: <http://bit.ly/2NHkEng> (Accessed November 4, 2019.)

⁹ U.S. House of Representatives Committee Repository. (2019). Amendment #8. Retrieved from: <https://docs.house.gov/meetings/IF/IF00/20191017/110114/BILLS-116-3-W000791-Amdt-8.pdf> (Accessed November 4, 2019.); U.S. House of Representatives Committee Repository. (2019). Amendment #6. Retrieved from: <https://docs.house.gov/meetings/ED/ED00/20191017/110107/BILLS-116-HR3-J000301-Amdt-6.pdf> (Accessed November 4, 2019.)

Mandate the Government First Study the Impacts of H.R. 3

- **Require provisions of H.R. 3 to be held up until the Government Accountability Office (GAO) certifies the legislation will lead to fewer than 50,000 lost jobs:** This amendment, submitted by the minority in the Committee on Energy and Commerce and by Ranking Member Virginia Foxx (R-NC) in the House Committee on Education and Labor, would hold up any provisions of or amendments to H.R. 3 until the Comptroller General of the U.S. certifies, by January 2021, “that fewer than 50,000 manufacturing, construction, research and development, and scientist jobs would be lost if such provisions would go into effect.”¹⁰
- **Require provisions of H.R. 3 to be held up until the GAO certifies the legislation will lead to less than \$10 billion in lost research and development investment:** This amendment, submitted by the minority in the Committee on Energy and Commerce and by Rep. Mark Walker (R-NC) in the Committee on Education and Labor, would hold up any provisions of or amendments to H.R. 3 until the Comptroller General of the U.S. certifies, by January 2021, “that research and development investment would not decrease by \$10 billion per year or more if such provisions were to go into effect.”¹¹
- **Require provisions of H.R. 3 to be held up until the Secretary of Health and Human Services (HHS) certifies the legislation will not shift pharmaceutical jobs and innovation to foreign countries:** This amendment, submitted by Rep. Darin LaHood (R-IL) in the Committee on Ways and Means, would hold up any provisions of H.R. 3 until the Secretary of Health and Human Services certifies “that the implementation of such provisions are not projected to result in a shift in investment in pharmaceutical biotechnology in the United States, or drug manufacturing jobs in the United States, moving to foreign countries, including China.”¹²
- **Require provisions of H.R. 3 to be held up until the Secretary of HHS certifies the legislation will not result in fewer new drug applications:** This amendment, submitted by Rep. Mike Kelly (R-PA) in the Committee on Ways and Means, would hold up any provisions of H.R. 3 until HHS certifies “that the implementation of such provisions are not projected to result in fewer new drug applications with respect to drugs for use in the treatment of unmet medical needs of Medicare beneficiaries.”¹³
- **Require provisions of H.R. 3 to be held up until the Secretary of HHS certifies the legislation will not reduce access to drugs in rural areas:** This amendment, submitted by Rep. Jason Smith (R-MO) in the Committee on Ways and Means, would hold up any provisions of or amendments to H.R. 3 until the Secretary of Health and Human Services certifies “there would be no reduction in access to life-saving medications by individuals in rural areas in the United States.”¹⁴

¹⁰ U.S. House of Representatives Committee Repository. (2019). Amendment #81. Retrieved from: <https://docs.house.gov/meetings/IF/IF00/20191017/110114/BILLS-116-3-W000791-Amdt-81.pdf> (Accessed November 4, 2019.); U.S. House of Representatives Committee Repository. (2019). Amendment #10. Retrieved from: <https://docs.house.gov/meetings/ED/ED00/20191017/110107/BILLS-116-HR3-F000450-Amdt-10.pdf> (Accessed November 4, 2019.)

¹¹ U.S. House of Representatives Committee Repository. (2019). Amendment #82. Retrieved from: <https://docs.house.gov/meetings/IF/IF00/20191017/110114/BILLS-116-3-W000791-Amdt-82.pdf> (Accessed November 4, 2019.); U.S. House of Representatives Committee Repository. (2019). Amendment #11. Retrieved from: <https://docs.house.gov/meetings/ED/ED00/20191017/110107/BILLS-116-HR3-W000819-Amdt-11.pdf> (Accessed November 4, 2019.)

¹² U.S. House Committee on Ways and Means. (2019). Amendment to H.R. 3 Offered by Mr. LaHood. Retrieved from: https://gop-waysandmeans.house.gov/wp-content/uploads/2019/10/V22-A15.-LaHood-China-FCRamd-invest-certif_01_xml.pdf (Accessed November 4, 2019.)

¹³ U.S. House Committee on Ways and Means. (2019). Amendment to H.R. 3 Offered by Mr. Kelly. Retrieved from: https://gop-waysandmeans.house.gov/wp-content/uploads/2019/10/V21-A14.-Kelly-NDA-fcramd-wm_NDA_01_xml.pdf (Accessed November 4, 2019.)

¹⁴ U.S. House Committee on Ways and Means. (2019). Amendment to H.R. 3 Offered by Mr. Smith. Retrieved from: https://gop-waysandmeans.house.gov/wp-content/uploads/2019/10/V23-A16.-J.-Smith-Meds-Rural-fcramd-wm-medrural_01_xml.pdf (Accessed November 4, 2019.)

- **Require provisions of H.R. 3 to be held up until the Secretary of HHS certifies the legislation will not reduce access to physicians in rural areas:** This amendment, submitted by Rep. Drew Ferguson (R-GA) in the Committee on Ways and Means, would hold up any provisions of or amendments to H.R. 3 until the Secretary of Health and Human Services certifies “there would be no reduction in access to physicians, including oncologists, by individuals in rural areas in the United States.”¹⁵

Modernize and Update Federal Health Programs

- **Improve transparency and neutrality in cost-sharing requirements for certain services administered to Part B beneficiaries:** This amendment, from Rep. Brad Wenstrup (R-OH) in the Committee on Ways and Means, would add to H.R. 3 two provisions from Senate Finance Committee Chair Chuck Grassley’s Prescription Drug Pricing Reduction Act. The former provision would require HHS “to add [to Medicare’s price transparency tool] the estimated payment to a physician under the Medicare physician fee schedule (PFS) and the associated estimated beneficiary cost-sharing liability.” in 2021.¹⁶ This builds on an existing provision in the 21st Century Cures Act that required similar information for services administered at a hospital outpatient department (HOPD) or an ambulatory surgical center (ASC). The latter provision removes a “grandfathered” exception for certain off-campus HOPDs that are currently being paid higher rates than other HOPDs “for the same or similar service[s].”¹⁷ This also builds on a provision from the 21st Century Cures Act, which took the first step toward neutralizing payments for the same or similar services at HOPDs. This amendment from Rep. Wenstrup was also the only Republican amendment in the Ways and Means Committee markup of H.R. 3 to receive bipartisan support.¹⁸
- **Allow prescription drug plan (PDP) sponsors to offer more than three plans per region:** Amendments from Rep. Tom Reed (R-NY) in the Committee on Ways and Means and the minority in the Committee on Energy and Commerce would rescind current guidance that prevents prescription drug plan sponsors in Medicare Part D from offering more than three plans per region.¹⁹ Each amendment would allow PDP sponsors to offer four plans per region, or six starting in 2022 if they pass on drug rebates to consumers at the point of sale. This provision would promote more competition in Part D, which has the potential to further drive down already-low premium prices for beneficiaries.
- **Require HHS to seek Congressional approval to run more expansive models under the Center for Medicare and Medicaid Innovation (CMMI):** This amendment, submitted by the minority in the Committee on Energy and Commerce, would require the Secretary of HHS to seek approval from several Congressional Committees (House Ways and Means, House Energy and Commerce, Senate Finance, Senate Health, Education, Labor and Pensions) and the full Congress before expanding CMMI

¹⁵ U.S. House Committee on Ways and Means. (2019). Amendment to H.R. 3 Offered by Mr. Ferguson. Retrieved from: https://gop-waysandmeans.house.gov/wp-content/uploads/2019/10/V24-A17.-Ferguson-Docs-Rural-fcramd-wm-docsrural_01_xml.pdf (Accessed November 4, 2019.)

¹⁶ “Description of the Chairman’s Mark: The Prescription Drug Pricing Reduction Act (PDPRA) of 2019.” Senate Committee on Finance, July 25, 2019. Retrieved from: <https://www.finance.senate.gov/imo/media/doc/FINAL%20Description%20of%20the%20Chairman's%20Mark%20for%20the%20Prescription%20Drug%20Pricing%20Reduction%20Act%20of%202019.pdf> (Accessed November 4, 2019.)

¹⁷ Ibid., 15.

¹⁸ U.S. House of Representatives Committee Repository. (2019). “Votes of the Committee.” Retrieved from: <https://docs.house.gov/meetings/WM/WM00/20191022/110137/CRPT-116-WM00-Vote005-20191022.pdf> (Accessed November 4, 2019.)

¹⁹ U.S. House of Representatives Committee Repository. (2019). Amendment #7. Retrieved from: <https://docs.house.gov/meetings/WM/WM00/20191022/110137/BILLS-116-HR3-R000585-Amdt-7.pdf> (Accessed November 4, 2019.); U.S. House of Representatives Committee Repository. (2019). Amendment #7. Retrieved from: <https://docs.house.gov/meetings/IF/IF00/20191017/110114/BILLS-116-3-W000791-Amdt-7.pdf> (Accessed November 4, 2019.)

models to Phase II.²⁰ It would also limit Phase I models to no more than five years and 500,000 beneficiaries. We have written before that Congress “should reconsider CMMI in its entirety,” and believe this amendment is a step in the direction of positive reform.²¹

Repeal Onerous Taxes

- **Repeal the medical device tax, and maintain the 7.5-percent threshold on the medical expense deduction (as opposed to 10 percent):** These proposals, from an amendment introduced and withdrawn by Rep. Jackie Walorski (R-IN) in the House Committee on Ways and Means, would lower costs for patients in two important ways.²² In September, NTU Foundation wrote that the medical device tax “was only in effect in 2013 and 2014 but resulted in less research and development spending.”²³ And in 2016, NTU wrote that the average family claiming the medical expense deduction made \$53,000 per year.²⁴ Raising the threshold would hit these families first and foremost, and a permanent return to the 7.5-percent threshold would serve as major relief for households who take advantage of the deduction.
- **Repeal the Affordable Care Act’s tax on branded prescription drugs:** An amendment from Rep. Tom Rice (R-SC) in the Committee on Ways and Means would simply repeal the Affordable Care Act’s tax on branded prescription drugs.²⁵ This tax takes billions of dollars from pharmaceutical manufacturers each year,²⁶ harming the pursuit of new treatments and cures much like the other punitive taxes in H.R. 3 would do.

As some Members of Congress demand H.R. 3 become a more progressive and more punitive bill, we are urging the adoption of these pro-taxpayer, pro-patient, and pro-market amendments. We applaud the Members who introduced them during the Committee stage of H.R. 3, and urge their adoption on the full floor of the House. Further, we stand ready to work with Congress on reforming and improving H.R. 3, which as it currently stands is an incredibly damaging piece of legislation.

Should you have any further questions, I am at your service.

Sincerely,

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²⁰ U.S. House of Representatives Committee Repository. (2019). Amendment #80. Retrieved from: <https://docs.house.gov/meetings/IF/IF00/20191017/110114/BILLS-116-3-W000791-Amdt-80.pdf> (Accessed November 4, 2019.)

²¹ Sepp, Pete. “NTU’s Comments on Centers for Medicare & Medicaid Services.” National Taxpayers Union, November 22, 2017. Retrieved from: <https://www.ntu.org/publications/detail/ntus-comments-on-centers-for-medicare-medicaid-services> (Accessed November 4, 2019.)

²² Ibid., 6.

²³ Kaeding, Nicole. “Not All Extenders Are Created Equal.” National Taxpayers Union Foundation, September 25, 2019. Retrieved from: <http://bit.ly/36t6ZJb> (Accessed November 4, 2019.)

²⁴ Swift, Nan. “House Vote Could Stop Medical Expense Tax Hike.” National Taxpayers Union, September 12, 2016. Retrieved from: <https://www.ntu.org/publications/detail/house-vote-could-stop-medical-expense-tax-hike> (Accessed November 4, 2019.)

²⁵ U.S. House Committee on Ways and Means. (2019). Amendment to H.R. 3 Offered by Mr. Rice. Retrieved from: <https://gop-waysandmeans.house.gov/wp-content/uploads/2019/10/V27-A20-Rice-Tax-Relief.pdf> (Accessed November 4, 2019.)

²⁶ Lowry, Sean. “Taxes and Fees Enacted as Part of the Affordable Care Act.” Congressional Research Service, Updated January 26, 2018. Retrieved from: <https://crsreports.congress.gov/product/pdf/IF/IF10591> (Accessed November 4, 2019.)