

House Ways & Means Committee

*Investing in the U.S. Health System by Lowering Drug Prices, Reducing Out-of-Pocket Costs,
and Improving Medicare Benefits*

October 17th, 2019

10:00 am, 1100 Longworth House Office Building

Purpose

The purpose of this hearing is to consider H.R. 3 the “Lower Drug Costs Now Act of 2019”

Members Present

Chairman Neal, Ranking member Brady, Representative Lewis, Buchanan, Doggett, Smith, Thompson, Marchant, Larson, Reed, Blumenauer, Kelly, Kind, Holding, Davis, Smith, Sanchez, Higgins, Rice, Sewell, Delbene, Schweikert, Chu, Kildee, Walorski, Boyle, Beyer, Wenstrup, Evans, Arrington, Pascrell, Panetta, Estes, Horsford, Suozzi, Ferguson, Murphy, Gomez

Witnesses

Samantha Reid., Patient, Crohn’s Disease

Catherine Alicia Georges Edd, RN, FAAN., National Volunteer President, AARP

Mark E. Miller, PhD., Executive Vice President of Health Care, Arnold Ventures

Judy Feder, PhD., Professor, Georgetown University McCourt School of Public Policy

Benedic N. Ippolito, PhD., Research Fellow, American Enterprise Institute

Opening Statements

Chairman Neal said that today this committee continues its work to lower the cost of health care. Last election, American voters made it clear that it was time to lower the cost of prescription drugs. However, since that election, drug prices have continued to rise. American consumers carry this burden and often have to forego lifesaving medicine. It remains true that consumers in other countries pay significantly less for prescription drugs than consumers in the United States. H.R. 3 is a necessary step forward. Among other measures, it authorizes the secretary to negotiate drug prices and caps out-of-pocket costs for Medicare beneficiaries. CBO has scored this bill and reports it would result in massive savings for American consumers and the federal government.

Ranking member Brady said that Democrats voted against the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Democrats have promised transparency and accountability but that is a promise that has not been kept. H.R. 3 was crafted behind closed doors in a highly partisan manner. This bill discourages research and development and will slow drug innovation. Americans who pray for a cure for their rare disease will never get the treatment they need because it will never be invented. Democrats have placed the burden of this bill on American consumers. CBO has overestimated the cost savings in this bill and underestimated the effect it will have on people’s lives. There are ways to move forward, but it has to be bipartisan. The only bill that will ever make the President’s desk is a bipartisan one.

Testimony

Dr. Miller said that there are reasons for Congress to act to restrain drug spending. Affordability is a major issue. Nearly 1 in 3 Americans report not filling a prescription because they cannot pay the cost. Furthermore, Americans pay 2 to 3 times more for drugs than consumers around the world. The problem is that the federal government grants monopolies to large drug manufacturers but then does a terrible job regulating these monopolies. The government should reform patent laws, end supply chain distortions, prevent price increases beyond the rise of inflation. There is evidence that the negotiation structure proposed in H.R. 3 will reduce the cost of drugs and overall spending. Moreover, it is incorrect to believe that drug manufacturers will reduce their spending on research and development. Arnold Ventures supports H.R. 3.

Ms. Reid said that on her 18th birthday she experienced a significant medical trauma. A few days later she was diagnosed with Crohn's disease. The primary drug used to treat Crohn's disease costs six thousand a month and has only gotten more expensive. The secondary drug to treat Crohn's disease has risen in price every single year for the last 16 years despite there being no change in their manufacturing technique. As a patient she has been forced to buy cheaper medications that are less effective and come with more negative side effects. Every month she lives with the fear of becoming economically unstable. Every decision she makes in her life revolves around the price of her drugs. Drug companies attempt to scare patients by threatening to reduce innovation. This is simply not true and a predatory tactic. HR 3 would save patients money and improve quality of life.

Dr. Georges said that AARP supports HR 3 because it will lower drug prices and reduce the money spent by older Americans. The average Medicare part D enrollee takes 4 prescription drugs a month. Meanwhile this population is living on very low income and often times have to ration their drug or go without filling a prescription. The problem is simple, it is the high prices set by drug companies. The retail prices of widely used brand name drugs increased 8.4 percent last year. This is significantly more than the rise of inflation. Congress should reign in drug prices and expand Medicare benefits to vision, hearing and dental.

Dr. Feder said that Medicare lacks the cap on out-of-pocket costs that the ACA now requires. It is past time to legislate a cap on Medicare beneficiaries' out-of-pocket costs. Additionally, Medicare does not cover eye glasses, hearing aids and dental care. This must change as it leads to impoverishment and poor health outcomes. Administrative barriers in the Medicare program prevent beneficiaries from getting the long term health services needed to maintain a high quality of life and reduce costs overtime. Finally, there needs to be new investment to ensure the long term viability of the Medicare program. Assurance of appropriate prices for drugs and other services will help the Medicare program remain solvent.

Dr. Ippolito said that everyone can agree that the drug market is not working appropriately. Currently Medicare Part D encourages high drug costs and fails to insulate seniors to the high costs of these drugs. However, there is a concern about the ability of the

secretary of HHS to set drug prices. This practice is called negotiation in name only. This is due to the fact that the penalties for not complying are so high that manufacturers will have no leverage in the negotiation. Furthermore, drug manufacturers will get punished for playing by the rules Congress set in the Hatch-Waxman act. Monopolies are granted on purpose to manufacturers to encourage innovation and it is unfair to punish them for playing by the rules. Price setting is dangerous and should be avoided.

Questions and Answers

Chairman Neal asked why Americans are paying so much for drugs. **Dr. Miller** said that primarily market exclusivity allows drug companies to set whatever price they want and control the market. Spread pricing between net and list price also contribute to high prices. **Chairman Neal** asked what the most needed improvements to the Medicare program are. **Dr. Georges** said that prices need to be lower and benefits like dental and vision need to be expanded. **Chairman Neal** asked how Congress can best lower costs for Medicare beneficiaries. **Dr. Feder** said to impose an out-of-pocket cost and also expand subsidies to those with a modest income.

Ranking member Brady asked if the magnitude of lost cures may be larger than CBO is estimating. **Dr. Ippolito** said yes because it is an incomplete score. CBO only scored Part D of the bill. **Ranking member Brady** asked if drugs with the highest value, such as ones to treat diabetes, will be targeted by this bill. **Dr. Ippolito** said yes.

Rep. Lewis asked if people should be worried that this bill goes too far. **Ms. Reid** said that it is important to note that the 8 to 15 drugs that CBO says may not come to market are probably not cures, they are more likely treatments. This bill does not go too far, especially from a patient perspective. **Rep. Lewis** asked if it would be harmful to miss this opportunity to invest in Medicare. **Dr. Feder** said yes, Medicare is one of the most valuable social programs.

Rep. Buchanan asked if Congress should work in a bipartisan fashion. **Dr. Ippolito** said that was not his job but that there appears to be an opportunity to work together. **Rep. Buchanan** asked how Congress can afford to expand benefits in Medicare. **Dr. Ippolito** said to start by reforming Medicare Part D. Afterwards there should be regulations to reduce patent thickets and other anti-competitive behaviors. **Rep. Buchanan** asked if generics bring down the price of brand name drugs. **Dr. Ippolito** said yes.

Rep. Doggett asked if AARP supports the ban on the Federal government negotiating drug prices. **Dr. Georges** said that AARP believes that the secretary of HHS should be able to negotiate drug prices.

Rep. Smith asked if anyone on the panel supported Medicare for All. **All witnesses** said no. **Rep. Smith** asked why the negotiation proposed in the bill is problematic. **Dr. Ippolito** said it is key to understand that there are severe penalties for not complying with negotiations. Thus there is no true negotiation. Instead a manufacturer will have to accept the price set by the secretary of HHS.

Rep. Thompson asked how to verify that a \$2 million dollar drug is priced fairly. **Dr. Miller** said there is currently no mechanism. But Congress could use cost-effective analysis,

international comparison or tie the prices to the cost of bringing the drug to market. **Rep. Thompson** asked if H.R. 3 would disrupt innovation. **Dr. Miller** said that the most important part of the bill is clarity. The industry needs to understand how to play the game and know what to expect moving forward. It is important to minimize risk.

Rep. Marchant asked what the relationship is between public research and drugs coming to market. **Dr. Ippolito** said that the NIH solves a public goods problem. They do vital research that is non patentable and allows commercial drug makers to build off of their discoveries. **Rep. Marchant** asked why price setting is harmful. **Dr. Ippolito** said that uncertainty is very costly. Since administrations change, there is a large amount of uncertainty surrounding how different administrations would set prices. H.R. 3 needs to build in certainty. **Rep. Marchant** asked if the rest of the panel supports the language in H.R. 3 that set prices. **Dr. Miller** said yes, but it does need to be specific and predictable.

Rep. Larson asked if the VA has been successful negotiating drug prices. **Dr. Ippolito** said yes. **Rep. Larson** asked why Medicare Part D cannot replicate this success. **Dr. Miller** said that it is because Medicare does not use a formulary like the VA does.

Rep. Reed asked how many witnesses support an out-of-pocket cap for Medicare beneficiaries. **All witness** indicated support. **Rep. Reed** asked how many witnesses support a ban on pay for delay. **All witness** indicated support. **Rep. Reed** asked how many witnesses support increased price transparency. **All witness** indicated support.

Rep. Blumenauer asked what the top priority is that Congress should be dealing with. **Dr. Miller** said changes to patent protections and reducing anti-competitive practices.

Rep. Kelly asked how HR 3 could stifle innovation. **Dr. Ippolito** said that while it might result in short term savings it's going to affect drugs coming to market in future years. The tradeoff is access today versus access tomorrow. Furthermore, the government will have too much leverage in the negotiation process.

Rep. Kind asked what else Congress should consider to provide clarity to drug manufacturers when entering into negotiations with HHS. **Dr. Miller** said there needs to be more clarity surrounding which drugs will enter negotiations. It is true that the structure of the market will change, but that is okay because with clarity the market will adapt appropriately.

Rep. Holding asked what the impact of restructuring Part D would be on product innovation. **Dr. Ippolito** said that by making manufacturers cover all of the cost of drugs in the catastrophic phase Manufacturers who produce high cost drugs like HIV medication may be unfairly burdened.

Rep. Davis asked how the high cost of drugs negatively impact hospitals and other health care providers. **Dr. Georges** said that because older Americans often times cannot afford their medication, they have to return to the hospital and typically have worse conditions. Thus presenting a greater burden on the health care system as a whole. **Dr. Miller** said it drives up the cost for the entire hospital and the entire health care system.

Rep. Sanchez asked how Congress should balance scientific discovery and affordability. **Dr. Miller** said that even with this bill, drug prices will probably still be the highest in the world. This is not a market will innovation will dry up. **Rep. Sanchez** asked how it feels to know that large drug manufactures received a tax cut in 2017. **Ms. Reid** said she knows that a majority of that tax cut went to stock buy backs. As a patient it hurts to be treated this way.

Rep. Higgins asked if it is true that H.R. 3 would reduce innovation. **Dr. Miller** said no. The American market is still so large that it is advantageous for a manufacturer to stay.

Rep. Rice asked if the United States is a leader in drug innovation. **Dr. Ippolito** said yes. **Rep. Rice** asked if this is because the United States encourages innovation. **Dr. Miller** said yes, but it is also true that the United States needs to get a fair price for drugs. **Rep. Rice** asked what intellectual property protection is. **Dr. Ippolito** said it tells a company that their intellectual innovations and discoveries will not be stolen by a competitor.

Rep. Sewell asked what financial barriers seniors face affording their out-of-pocket costs. **Dr. Feder** said that most seniors are not wealthy and a large proportion live solely on social security. Thus their health care spending eats up all of their income and savings. **Rep. Sewell** asked what happens when seniors skip medications. **Dr. Feder** said that seniors have worse health outcomes when they do not take their medication appropriately.

Rep. Delbene asked how an out-of-pocket cap would help seniors. **Dr. Miller** said that an out-of-pocket cap will insulate seniors from high drug costs. It will also provide predictable expenses. **Rep. Delbene** asked how H.R. 3 would prevent price spikes. **Dr. Miller** said that the inflation index would keep prices in check. **Rep. Delbene** asked how H.R. 3 impacts drug prices in private health insurance. **Dr. Miller** said that it would put downward pressure on prices in the commercial sector. Negotiated drug prices would also be available on the commercial market.

Rep. Chu asked what the impact would be if newly launched drugs were immediately sent into negotiation with the Secretary of HHS. **Ms. Reid** said it would provide greater access and improve patient's quality of life. **Rep. Chu** asked how using an international reference price would impact consumers. **Dr. Miller** said it will reduce costs for consumers and result in a lower list price of drugs overall.

Rep. Kildee asked how much it costs to produce a vial of insulin. **Dr. Miller** said it is not expensive but did not have a specific number. **Rep. Kildee** asked what the list price of Insulin is. **Dr. Miller** said it is around \$300-\$400. **Rep. Kildee** asked

Rep. Walorski asked what Congress can do to lower out-of-pocket costs for seniors. **Dr. Ippolito** said to stop open ended incentives that encourage high costs. Out-of-pocket costs should also be capped. **Rep. Walorski** asked how the increase in generics reduces the price of brand name drugs. **Dr. Ippolito** said that robust generic competition influences the price of brand name drugs.

Rep. Boyle asked how the LIS program provides relief to beneficiaries. **Dr. Feder** said that LIS subsidies work by limiting or off setting cost sharing. Increasing the income eligibility for LIS subsidies is vitally important.

Rep. Beyer asked why the US should be funding the rest of the world's research and development. **Dr. Feder** said the US should not pay that much and the drug prices should be lower. **Rep. Beyer** asked if there was any correlation between profits and investment in R&D. **Dr. Miller** said no, and that he was not aware of a direct relationship. **Rep. Beyer** asked if drug prices could be set at the register. **Dr. Ippolito** said yes.

Rep. Evans asked how high drug prices have affected Ms. Reid's health and wellbeing. **Ms. Reid** said that the uncertainty of being able to afford lifesaving drugs has filled her life with anxiety. She said she will never be able to own her own home or be financially stable enough to have kids. **Rep. Evans** asked how the high cost of drugs have affected her career. **Ms. Reid** said she has to make career decisions based on her employer sponsored insurance. **Rep. Evans** asked how H.R. 3 would make insulin more affordable. **Dr. Miller** said that the out of pocket cap would help individuals save money. Insulin would also be negotiated which would reduce the price.

Rep. Schneider asked how Congress should improve Medigap. **Dr. Feder** said that a majority of states do not provide protections for individuals with preexisting conditions to get the coverage they need.

Rep. Arrington asked how Congress should look at the core problems surrounding drug pricing. **Dr. Ippolito** said that Congress should focus on making sure that real world markets model what Congress intended the markets to look like.

Rep. Pascrell asked how some of the reforms in H.R. 3 will address the long term sustainability of the Medicare program. **Dr. Feder** said the improvement in benefits improves the value to beneficiaries. It is possible through a number of revenue sources to sustain the program for the foreseeable future.

Rep. Panetta asked how senior's lives would improve if they had full access to vision, hearing and dental benefits. **Dr. Georges** said their quality of life would improve dramatically. It would help reduce injury risk factors and social isolation. **Rep. Panetta** asked how a cap on Medicare out-of-pocket spending on drugs would help Americans. **Dr. Feder** said it would provide economic security and predictability.

Rep. Estes asked what the connection is between investment amount and the rate of success for developing a new drug. **Dr. Ippolito** said that manufacturers respond to returns they think they will get for a successful product. This is why there are so many drugs being innovated for gout but not for malaria.

Mr. Horsford asked if the future of health care delivery will be more reliant on pharmaceuticals. **Dr. Miller** said yes. **Mr. Horsford** asked if most of these new drugs will be high cost specialty

drugs with little competition. **Dr. Miller** said yes and the research indicates there will be little completion for these types of drugs.

Rep. Suozzi asked if it is accurate that most large drug companies spend more money on marketing than R&D. **Dr. Miller** said yes. **Rep. Suozzi** asked if it is true that only two countries in the world allow pharmaceutical companies to advertise directly to consumers. **Dr. Ippolito** said yes. **Rep. Suozzi** asked if pharmaceutical companies are over exaggerating the cuts to research and development that will be made if H.R. 3 is passed into law. **Dr. Miller** said yes because this market is far too big for pharmaceutical companies to walk away.

Rep. Ferguson asked if H.R. 3 will lead to higher or lower revenues for drug manufacturers. **Dr. Ippolito** said lower. **Rep. Ferguson** asked if this could lead to reduced access for pharmaceuticals. **Dr. Ippolito** said immediate access would not be affected but future access could be affected.

Rep. Murphy asked if H.R. 3 would stifle innovation. **Dr. Miller** said that the United States is a huge market and will still provide an area for profit for these drug companies. Thus they will not leave and will not stop innovating.

Rep. Gomez asked if Medicare part A allows hospitals to charge whatever price they want to beneficiaries. **Dr. Miller** said no. **Rep. Gomez** asked if the part B program lets providers charge whatever price they want. **Dr. Miller** said no. **Rep. Gomez** asked if it is true that drug manufacturers can charge Medicare whatever price they want. **Dr. Miller** said yes, but it is a little more nuanced than that due to the presence of PBMs.