



STATEMENT FOR THE RECORD
SUBMITTED TO THE HOUSE
COMMITTEE ON WAYS & MEANS DEMOCRATS

FORUM ON

'TRADING VIEWS' TPP HEARING ON ACCESS TO MEDICINE

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The Alliance for Retired Americans appreciates the opportunity to submit comments to the Committee on Ways and Means Democratic hearing entitled “Trading Views: Real Debates on Key Issues in TPP”, focusing on whether provision in the Trans Pacific Partnership (TPP) trade agreement could affect access to medicines. The Alliance has serious concerns with several provisions that will keep drug prices high for all Americans, including seniors and persons with disabilities, and compromise the government’s ability to hold down costs.

Founded in 2001, the Alliance is a grassroots organization representing more than 4.3 million retirees and seniors nationwide. Headquartered in Washington, D.C., the Alliance and its 35 state chapters work to advance public policy that strengthens the health and economic security of older Americans.

Our first area of concern with the TPP is the level of patent protection found in the Intellectual Property chapter. TPP locks in the market exclusivity period for biologics – specialty drugs used to treat various types of cancer and other chronic conditions like rheumatoid arthritis and multiple sclerosis – providing 8 years of “effective market protection.” This provision will prevent access to clinical data and registration of cheaper versions of medicines for eight years thus ensuring continued high prices for consumers. Biologics are some of the most expensive drugs on the market today. Many advocates have been pushing for 7 years of market exclusivity, which President Obama endorsed and included in his budget. Yet, the lengthy exclusivity period in TPP will make it virtually impossible for Congress to enact patent reforms that reduce market exclusivity helping to reduce the cost of drugs.

Another area of concern is whether TPP will limit the U.S. government’s ability to rein in drug costs in public programs. As large purchasers, the federal and state governments today use various mechanisms to help lower the cost of prescriptions drugs for consumers and the government, such as rebates, discounts and drug formularies. However, the transparency annex of TPP requires the government agency responsible for national coverage determination to make available a review process for health care reimbursement decisions and to follow TPP procedural rules and principles. This procedure provides the drug industry the tools to seek higher reimbursements. Furthermore, the new process is tilted toward corporations, because it does not have to be open to the public or allow an alternate view to be considered. We are concerned that under this provision, drug and medical device manufacturers could pressure the government to provide higher reimbursements under Medicare Part B raising costs to taxpayers.

Further, the transparency annex fails to require that cost effectiveness of a drug be taken into account, but does require that the therapeutic value be recognized. This could jeopardize Medicare’s ability to use cheaper and more cost-effective drugs over higher priced alternatives. Currently, the Medicare Part B program is under tremendous pressure to keep costs down after several extremely expensive blockbuster drugs, including those for cancer, hepatitis C and macular degeneration, are busting its coffers.

Medicare should be provided with tools that will reduce costs. But the transparency annex could impede Medicare from taking the steps to rein in costs.

This transparency annex could also prevent future Congresses from enacting legislation requiring Medicare to negotiate drug prices or instituting a Medicare drug rebate program, as these policies could be challenged by pharmaceutical interests as being discriminatory and hurting their expectations for making a profit. Both of these policies could save Medicare beneficiaries and taxpayers billions of dollars but would be blocked by the TPP transparency annex.

A final area of concern is the investor-state dispute settlement (ISDS) provision. ISDS provides a mechanism for global corporations to sue countries over government measures that, in their view, “unfairly” impact the companies expected future profits. The ISDS process gives corporations a distinctive advantage over taxpayers and consumers. ISDS cases are adjudicated by an international tribunal made up of trade lawyers, many of whom have industry ties. These arbitrators do not have to comply with U.S. laws or take into consideration the impact on American citizens and oftentimes their decisions have come at the expense of the public good.

Under the ISDS provision, drug and medical device manufacturers could bring a lawsuit against the Medicaid program. While existing drug discounts, rebates and formularies are grandfathered-in and protected from a challenge, any future action or inaction by the Centers of Medicaid and Medicaid Services (CMS) related to a new medication or medical device could be contested. For instance, if a cure for Alzheimer’s or any new drug or innovative medical device was developed but the cost was exorbitant and the Medicaid program decided not to include it in its formulary or placed restrictions on who could receive the treatment, the pharmaceutical company could bring a suit against the program.

Last year, drug prices increased 13%, eight times the rate of inflation. Ironically, seniors will not be getting a cost-of-living adjustment (COLA) in 2016. This means that they must continue make do with their modest Social Security benefits. At the same time, many of our public programs are experiencing increased pressure to control costs due to many prohibitively expensive new biologics. At a time when drug prices continue to escalate and 10,000 Baby Boomers retiring every day, we need to be doing everything possible to help lower drug costs under Medicare and not impede Congress from representing the needs of consumers

On behalf of our 4.3 million members, the Alliance for Retired Americans appreciates the opportunity to submit this testimony on this critically important issue.