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Public Citizen Comments on Draft Medicare Part D Legislation

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Public Citizen is a national consumer advocacy organization with more than 500,000 members and supporters. We advocate on an array of issue areas to advance the public interest, including ensuring prescription drugs are made more affordable both in the U.S. and abroad.

We commend the Committee leadership for their "commitment to lowering prescription drug costs for the 46 million patients who have Medicare Part D." We remain concerned, however, by the limited scope of the draft legislation. The proposal aims to lower costs through tweaks to the current system. But it overlooks the far greater structural challenges posed by exorbitant drug prices. For example, putting in place a limit on out-of-pocket costs for beneficiaries may protect patients who face the heaviest financial burden, but without taking action to address the underlying excessively high and inappropriate prices set by prescription drug manufacturers, those costs will be borne through higher insurance premiums and higher government spending. Shifting costs is not enough. We urge all members of Congress to address American's top congressional priority by advancing meaningful legislation to lower prescription drug prices, including the Medicare Negotiation and Competitive Licensing Act of 2019 (H.R. 1046).

I. High Drug Prices are Posing an Unsustainable Burden on Medicare Part D

Medicare Part D spent $94.7 billion dollars in 2018.[1] In the next decade, spending is expected to more than double to nearly $200 billion.[2] High prescription drug prices are fueling this growth, increasing faster than any other area of medical spending.[3]

Pharmaceutical companies are increasing prices across the board. The average cost of branded cancer medicines launched last year exceeded $175,000.[4] For the 45 top-selling drugs, *more than half* of all U.S. sales growth over a period of three years was due to price hikes.[5] In 2017, before rebates, Medicare Part D spent more than $50,000 per beneficiary for 181 drugs.[6]

II. The Proposals to Fix Misaligned Incentives Would Partially Help Reduce Part D Spending

Medicare Part D has a byzantine structure. Some of the draft proposals aim to simplify the structure and better align incentives. These modest but needed steps are analyzed below.

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[1] The figures likely underestimate the total burden of high drug prices, as they exclude out-of-pocket costs incurred by beneficiaries. Medicare Trustees, 2019 Annual Report, 103 available at https://tinyurl.com/y5llkja9

[2] *Id.*

[3] *Id* at 105.

[4] IQVIA, Global Oncology Trends, 41 (2019), available at https://tinyurl.com/y5wy5rw3

[5] Between 2014 and 2017, U.S. sales for 45 top-selling products increased by $23 billion. $14 billion of that increase was due to price hikes. Price increases on top drugs drove majority of recent growth, analysis finds, BioPharma Dive (2018), available at https://tinyurl.com/y2tyos5o

[6] Medicare Part D Spending Dashboard (2019), https://tinyurl.com/y4a7dty9

i. Reducing government reinsurance above the catastrophic threshold from 80 percent to 20 percent would increase incentives for plan sponsors to choose lower-priced prescription drugs. Under the current Medicare program design, plan sponsors are only responsible for 15 percent of the cost in the catastrophic coverage phase. The government is responsible for 80 percent, and the beneficiary 5 percent. After rebates and government reinsurance, plan sponsors may *save* money in some cases if they choose higher priced drugs that push beneficiaries into the catastrophic coverage phase.[7] Increasing the responsibility of the plan sponsor—and reducing government reinsurance—would help remedy this, producing some overall savings. However, such a change would likely result in higher premiums and increased spending for many beneficiaries.

ii. Capping out-of-pocket costs would provide some relief to patients, but increase costs for many and fail to provide relief to taxpayers
High out-of-pocket costs pose barriers to access.[8] Capping out-of-pocket costs would help more beneficiaries afford their medicines. But capping out-of-pocket costs will not reduce the underlying costs themselves. It merely shifts the costs from an individual to a broader population, increasing premiums and taxpayer contributions. A well-functioning insurance system should broadly pool risk and minimize out-of-pocket payments. [9] But a well-functioning system depends on a rational pricing system. Implementing an out-of-pocket cap without lowering prices may simply mask unsustainable medicine pricing by temporarily insulating patients from high costs. Structural reform is needed.

III. Ensuring the Sustainability of the Medicare Part D Program Requires Bolder Action

While the draft proposals are helpful, they are modest steps and do nothing to address the core underlying problem of Medicare Part D: the failure to utilize the bulk negotiating power inherent in the program nor provide the government with powerful backstop authority to leverage in order to obtain the best possible deal. The best evidence of the limited potential impact of these measures is the general private insurance market—which is not shaped by Medicare's unique structure yet still continues to struggle under the weight of pharmaceutical industry prices.[10] Medicare's "problem of high cost drugs", as noted in the comment solicitation, will not be addressed without providing the government with robust negotiating authority and addressing the monopoly pricing power of pharmaceutical companies.

The Medicare Negotiation and Competitive Licensing Act of 2019 (H.R. 1046), introduced by Representative Lloyd Doggett (D-TX) and co-sponsored by 125 other members, provides one promising solution. It would require the Secretary of Health and Human Services to negotiate prices for covered Medicare Part D drugs directly with pharmaceutical manufacturers. Unlike other negotiation bills, the Act would direct the Secretary to authorize generic competition by competitively licensing patents if

[7] MedPAC, Factors Increasing Part D Spending for Catastrophic Benefits (2017), https://tinyurl.com/yyjxbw28
[8] Jalpa Doshi, Addressing Out-Of-Pocket Specialty Drug Costs In Medicare Part D: The Good, The Bad, The Ugly, And The Ignored, Health Affairs Blog (2018) (" [H]igher out-of-pocket costs under current Medicare Part D policies are associated with markedly higher rates of abandonment of new specialty drug prescriptions; reductions and delays in treatment initiation following a new diagnosis or disease progression; delays between refills or treatment interruptions; and earlier discontinuation of treatment"), https://tinyurl.com/y5tgxttt
[9] Public Citizen, The Case for Medicare-for-All, https://www.citizen.org/news/the-case-for-medicare-for-all/
[10] Wineinger et al., Trends in Prices of Popular Brand-Name Prescription Drugs in the US, JAMA Network Open (2019) (analyzing private insurance claims and finding a median price increase of 76% for 49 common brand-name drugs over five years)

negotiations fail to reach a reasonable price.[11] Under a competitive license, the manufacturer would receive reasonable compensation based on a range of factors, including its risk-adjusted investments in research and development (R&D).

An overwhelming majority of Americans demand action to lower drug prices, including more than 9-in-10 that support government negotiation of Part D drug prices. Congress can make medicine affordable and ensure future innovation through the Medicare Negotiation and Competitive Licensing Act.

[11] Competitive licensing of patents is a mechanism that ensures patients will always be able to access the medicines they need. Patents are statutorily-created, narrowly-defined monopolies granted by the government. Since patent laws were created, governments around the world, including the United States, have preserved the right to use the patented technologies they protect. In the 1960s, for example, the U.S. government bought generic versions of patented drugs, and today routinely uses patented inventions in other technological fields. Brennan, H, Kapczynski, A, Monahan, C, and Rizvi, Z. "A Prescription for Excessive Drug Pricing: Leveraging Government Patent Use for Health," Yale J. of Law & Tech.: Vol. 18 : Iss. 1.