

# FOR THE PEOPLE

## H.R. 3, THE LOWER DRUG COSTS NOW ACT

October 2, 2019

### Lower Prescription Drug Costs Now

The status quo on prescription drug prices is broken. Prescription drug companies are charging Americans prices that are three, four, or even ten times higher than what they charge for the same drugs in other countries.<sup>i</sup> They also subject Americans to unjustified annual price hikes far above the rate of inflation.

The list prices for more than 3,400 drugs increased in the first six months of 2019, rising 17 percent from the year before.<sup>ii</sup> From 2011-2016, prescription drug spending in the United States grew by more than 2.5 times inflation.<sup>iii</sup>

#### **Insulin: A Story of Out of Control Prices**

The soaring cost of insulin provides one of the starkest examples of broken drug pricing. More than 100 million Americans are diabetic or pre-diabetic. Diabetes is the disease category with the highest spending – more than \$300 billion per year.

**Even though the drug was invented in 1922, its inflation-adjusted per-unit price has, at least, tripled between the 1990s and 2014. In the United States, insulin costs per patient have nearly doubled from 2012 to 2016 (\$2,864 vs \$5,075).**

Across America, seniors and families are struggling to afford the prescription drugs they need to stay healthy. Three in ten adults reported not taking their medicines as prescribed at some point in the past year because of the cost.<sup>iv</sup>

The soaring price of prescription drugs is crushing Americans at the pharmacy counter, driving up health insurance premiums, and creating unaffordable costs for taxpayers who finance Medicare and Medicaid.

#### **Out-of-Control Rx Prices Are Padding Profits, Not Funding Research & Development**

It's all too clear that big pharmaceutical companies are raising prices on Americans to pad their profits, not to increase funding for the research and development needed to find new cures and treatments:

- Nine out of ten big pharmaceutical companies spend more on marketing, sales, and overhead than on research, according to an analysis by the Washington Post.<sup>v</sup>
- In 2018, drug corporations spent \$6.5 billion in advertising—a 100 percent increase from 2012.<sup>vi</sup>

In fact, much of the research and development driving the search for new breakthroughs isn't paid for by drug companies, it's paid for by American taxpayers through federal funding for the National Institutes of Health (NIH) and other grants. Based on data from a survey of PhRMA's own member companies, one out of every three dollars spent on drug research comes from American taxpayers.<sup>vii viii</sup>

Meanwhile, instead of using their multi-billion dollar windfalls from the GOP tax scam to either lower prices or to invest in research, Big Pharma used the money for stock buybacks<sup>ix</sup> – further evidence that out-of-control drug prices are padding corporate profits instead of fueling the search for new cures.

# H.R. 3 – The Lower Drug Costs Now Act

## **Broad Power to Negotiate Lower Drug Costs Now**

Just like private parties negotiate to get the best possible deal, every year, the Health and Human Services Secretary would be empowered to negotiate up to 250 drugs per year, drawn from a refilling list of the most costly drugs (price times volume) in the U.S. without competition from at least one generic or biosimilar on the market. In the first year alone, drugs representing more than half of all Medicare Part D spending, covering tens of millions of patients, would be subject to the negotiation process – including insulin.

To deliver maximum savings for the greatest number of Americans, the price determined by the negotiation process would be available to the commercial market, not just Medicare beneficiaries.

## **An International Price Index to End Drug Companies Ripping Off Americans**

American seniors and families shouldn't have to pay more than what pharmaceutical companies charge for the same drug in other countries – where the companies admit they still make a profit. To ensure negotiations produce real price reductions, the legislation creates a maximum price for any negotiated drug with an international price index, to be called the Average International Market (AIM) price.

## **Escalating Penalties to Keep Drug Companies at the Table & Prevent Interruption to Access**

If a drug manufacturer refuses to participate in any part of the negotiation process or does not reach agreement with HHS, they will be assessed a Non-Compliance Fee starting at 65 percent of the gross sales of the drug in question and increasing by ten percentage points every quarter the manufacturer is out of compliance, up to a maximum of 95 percent. If a manufacturer agrees to a price and then overcharges Medicare or fails to offer the negotiated price to other payers, the manufacturer will be subject to a civil monetary penalty equal to ten times the difference.

This steep, escalating penalty creates a powerful financial incentive for drug manufacturers to negotiate and abide by the final price, while ensuring that patients maintain uninterrupted access to the medicines they need. The penalty gives the HHS Secretary leverage without resorting to a restrictive formulary and without the interruptions of contracting, building, and approving a whole new production line.

## **Reverse Price Hikes That Are Above Inflation Across Thousands of Drugs in Medicare**

Year after year, drug companies have hiked the costs of drugs well above the rate of inflation, subjecting American seniors and patients to soaring prices even for long-ago discovered drugs that have been on the market for years or decades. To reverse these unjustified price hikes, thousands of drugs in Medicare Part B and D would face a new inflation rebate. If a drug company has raised the price of a drug in Part B or D above the rate of inflation since 2016, they can either lower the price or be required to pay the entire price above inflation in a rebate back to the Treasury.

## **A New, \$2,000 Out-of-Pocket Limit for Drug Costs in Medicare & Historic Improvements to Benefits**

H.R. 3 will reinvest in strengthening and improving Medicare for seniors and people with disabilities for generations to come, including by creating a \$2,000 out-of-pocket limit for prescription drugs. If the savings are great enough, these improvements could include Medicare coverage for vision, hearing, and dental and improvements to benefits for low-income Medicare beneficiaries.

## **Reinvesting in Innovation**

With the savings from negotiating down the unjustified drug prices that are bankrolling Big Pharma's stock-buybacks and record-breaking profits, H.R. 3 will reinvest billions of dollars where they belong: in the search for new breakthrough treatments and cures at NIH.

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<sup>1</sup> <https://www.vox.com/science-and-health/2016/11/30/12945756/prescription-drug-prices-explained>

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<sup>ii</sup> <https://www.cbsnews.com/news/drug-prices-in-2019-are-surgin-with-hikes-at-5-times-inflation/>

<sup>iii</sup> Analysis of Centers for Medicare & Medicaid Services, Office of the Actuary prescription drug spending data, Table 11 and BLS data on CPI-U 2011-2016

<sup>iv</sup> <https://www.kff.org/health-costs/poll-finding/kff-health-tracking-poll-february-2019-prescription-drugs/>

<sup>v</sup> [https://www.washingtonpost.com/news/wonk/wp/2015/02/11/big-pharmaceutical-companies-are-spending-far-more-on-marketing-than-research/?utm\\_term=.dc7e820c4172](https://www.washingtonpost.com/news/wonk/wp/2015/02/11/big-pharmaceutical-companies-are-spending-far-more-on-marketing-than-research/?utm_term=.dc7e820c4172)

<sup>vi</sup> <https://www.fiercepharma.com/marketing/kantar-tallies-6-5-billion-for-pharma-ad-spending-2018-abbvie-humira-ranks-as-top>

<sup>vii</sup> <https://www.sciencemag.org/news/2018/09/nih-gets-2-billion-boost-final-2019-spending-bill>

<sup>viii</sup> <https://www.phrma.org/advocacy/research-development>

<sup>ix</sup> <https://www.axios.com/pharma-share-buyback-tax-reform-40a30b93-6149-4c67-bd65-cd05ee814215.html>