October 16, 2019

Dear Representative,

National Nurses United, the largest union of registered nurses in the United States with over 150,000 members across the country, writes to you to urge that substantial changes be made to H.R. 3, the Lower Drug Costs Now Act, before it is brought to a vote on the floor of the U.S. House of Representatives.

As registered nurses, we see the devastation caused to our patients by price-gouging and massive profit-taking by drug manufacturers. Many of our patients are unable to fill their prescriptions or must resort to taking less than the recommended dosage--resulting in irreparable harm to their health and, in some cases, death. We also know that the crisis of high drug prices cannot be solved without fundamentally addressing the broken patent system that allows pharmaceutical companies to game the system and make a killing off the sickness of our patients.

We urge Congress to make the following changes to H.R. 3:

1. Include competitive licensing of patented drugs in order to allow generic competition when negotiations fail to produce a fair price.

   Currently, H.R. 3 fails to address the core problems in our patent system that have allowed pharmaceutical companies to abuse monopoly power in order to drastically increase their profits from medicines. The bill as written relies on an excise tax penalty for manufacturers who refuse to enter into negotiations, or leave negotiations before a fair price is agreed to. The legislation should also allow the Secretary of Health and Human Services (HHS) to issue competitive licenses for pharmaceutical products if the manufacturer has failed to negotiate a fair price, or if a company has attempted to abuse or avoid the drug pricing system in any other way.

2. Apply negotiated drug prices to uninsured patients, and to patients whose insurance plan does not cover drugs negotiated by the Secretary of HHS.

   H.R. 3 requires negotiated prices to be available for patients in Medicare, and patients enrolled in commercial health plans (which have the option to choose whether or not to accept the negotiated price). However, the legislation does not bring down the costs of medicines for the nearly 30 million patients in the country who are uninsured, or for the many patients whose commercial health insurance may not include coverage of medicines that have negotiated prices in their plans. The definition of “fair price eligible individual” should be expanded to include people who do not have insurance, or whose insurance does not cover a drug that the Secretary of HHS has negotiated.
3. Increase the number of drugs that are negotiated every year, and increase the number of drugs that are eligible for negotiation.

H.R. 3 requires the Secretary of HHS to negotiate the prices of only 25 drugs every year. Congress must act with urgency to bring down the prices of all high-priced medicines and must provide HHS with the authority to do so. Further, many high-priced medications have generic competitors in the market. Yet, H.R. 3 allows for price negotiations only on drugs that have no competitors in the market. As a result, a number of medications that are highly priced will not be included in this drug pricing plan.

Congress should require HHS to increase the minimum and maximum number of drugs that can be negotiated every year, and should require that the Secretary of HHS negotiate the maximum number of drugs after the negotiating system has been fully established. Equally as important, H.R. 3 should also expand the scope of negotiation-eligible drugs to include those drugs that, despite having multiple competitors in the market, remain too costly.

4. Expand protections against price spikes outside of Medicare by expanding inflationary rebates to all drug sales.

H.R. 3 requires pharmaceutical companies to pay Medicare back excess revenues resulting from year-over-year drug price increases that outpace inflation, but fails to protect patients outside of the Medicare program from the price spikes they see every year.

The legislation should extend these protections against price spikes to the private market by requiring drug corporations to pay inflationary rebates to all payers.

5. Include mechanisms, such as an expanded clawback mechanism, to constrain launch price gouging that may occur before a drug becomes eligible for negotiation.

The launch prices of new medications continue to rise, and patients who need new drug therapies are often unable to afford them when they come to market. Drug price negotiation under H.R. 3 would not be available until the product has been on the market for a number of years when international reference prices become available, allowing drug manufacturers to price gouge in the interim. Currently, H.R. 3 includes a clawback mechanism that requires manufacturers to return to the U.S. Treasury revenues in excess of 200% of the first international reference price. This clawback, however, would not restrain high drug launch prices for patients whose lives may depend on these new therapies. Congress should control drug prices right out of the gate and can do so by expanding the clawback mechanism to launch prices and further restricting what prices a manufacturer can charge when a drug first comes to market.

6. Strike the noninterference clause in Medicare Part D that prohibits the federal government from negotiating drug prices with manufacturers.

Rather than creating an exception to the noninterference clause, H.R. 3 should eliminate it outright. This would allow HHS to negotiate prices for all drugs and to
adjust as needed as manufacturers’ maneuver to maintain their excessive profit margins.

It is unacceptable that our patients cannot afford the costs of their medicines. It is far past time that Congress effectively addresses the broken system that has allowed pharmaceutical companies to charge unconscionably high prices for medicines. This is why NNU champions Medicare for All, which would allow Medicare to negotiate the costs of all prescription drugs for all patients in the country, as the comprehensive answer to the drug pricing crisis. Short of enacting Medicare for All, we strongly urge you to expand H.R. 3 so that this legislation will bring down the costs of more prescription drugs for more patients.

Sincerely,

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