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Public Citizen Statement for the Record of the House Committee on Energy & Commerce Hearing on “Negotiating a Better Deal: Legislation to Lower the Cost of Prescription Drugs,” May 4, 2021

Even before the pandemic, patients facing drug corporations’ exploitative prices were rationing treatment while others endured financial hardship, sacrificing other needs to pay for medicines.

Drug corporations believe they have won reprieve from reform through association with COVID-19 vaccines – the development of which was heavily subsidized by the public and U.S. taxpayers¹ – but they are wrong. Until Congress and President Joe Biden respond to Americans’ ongoing hardship through robust drug pricing reform, people’s demand for action will persist.

Today’s hearing on H.R. 3 marks important progress – indeed, the Lower Drug Costs Now Act as it passed out of the House in 2019 was the most meaningful measure to lower drug prices ever to pass out of the chamber in decades, and perhaps ever. We applaud the committee for considering legislation that is of a magnitude with the drug pricing crisis the United States is facing, which taxes our health care resources and hurts families across the nation.

However, all Americans require relief, regardless of medical condition, insurance provider or status, and today’s proposal must be strengthened to ensure it benefits everyone. Public Citizen encourages the committee to include measures to strengthen and improve H.R. 3, as outlined in our memo.²

President Biden, while on the campaign trail, supported building on H.R. 3 in many ways consistent with our proposals. The Biden-Sanders Unity Task Force Recommendations³ included calls for Medicare to be empowered “to negotiate prescription drug prices for all public and private purchasers---for families and businesses, as well as older Americans---no matter where they get their coverage.” Despite advances made with the Affordable Care Act, many Americans continue to go without coverage, and H.R. 3 should be improved to ensure they also benefit from lower negotiated prices and price spike protections.

The Unity Task Force also recommended that price increases of all brand name drugs and abusively priced generics be limited to the level of inflation, and that this should be enforced through a tax penalty. Current price spike protections in H.R. 3 are limited to Medicare Part B and Part D, with an additional regulatory process to establish a rebate system to reach some covered by private health plans. Some small spillover effect from price spike protections is likely under this scenario, but for some products and some payers, the current system of inflation-based rebates would not be likely to provide

¹ In many cases, vaccine development and manufacturing was almost entirely de-risked by taxpayers in the form of R&D support, manufacturing subsidies and advanced purchasing commitments.

² Public Citizen, Social Security Works, Indivisible. “Building on H.R. 3 to Provide More Relief to Patients.” <https://www.citizen.org/wp-content/uploads/Building-on-HR3-October-2020.pdf>

³ Biden-Sanders Unity Task Force Recommendations. <https://joebiden.com/wp-content/uploads/2020/08/UNITY-TASK-FORCE-RECOMMENDATIONS.pdf>

adequate protection from drug corporation price gouging. The Stop Price Gouging Act (H.R. 1093; S. 378, 116th Congress)⁴ provides a model for a better system of price spike protections, through an excise tax, in alignment with the Unity Task Force Plan. We encourage Congress to replace the inflation rebate system in H.R. 3 with a system like that articulated in the Stop Price Gouging Act.

President Biden also unequivocally called for lifting of the ban on drug price negotiations, but under the current construction of H.R. 3, many products would be ineligible for negotiations. The ban would persist. The committee should expand negotiating eligibility to all patented drugs, and at least to all patented drugs above a price threshold, such as \$50,000 per person per year (or course of treatment) or the median household income.

Public Citizen thanks the committee for taking on this vitally important issue, and for its consideration of these remarks and other proposals included in our “Building on H.R. 3” memo. Additionally, as consideration around how best to structure drug price negotiations and price spike protections advance, we encourage the committee and Congress to pursue measures that get to the heart of problem – government-granted monopolies and their abuse by drug corporations to profiteer, often with products undergirded by public, U.S. taxpayer support.⁵ We look forward to working with the committee to advance maximally impactful drug pricing reforms for people in the United States who need access to medicines.

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⁴ <https://www.congress.gov/bill/116th-congress/senate-bill/378>

⁵ Public Citizen. “Pharma 101: A Primer.” <https://citizen.org/wp-content/uploads/Pharma-101-final-August.pdf>