

STATEMENT FOR THE RECORD
SUBMITTED TO THE
HOUSE COMMITTEE ON WAYS AND MEANS

On

“Markup of: H.R. 2113, ‘Prescription Drug Sunshine, Transparency, Accountability and Reporting Act’ (STAR Act)”

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Public Citizen, a national public interest organization with more than 500,000 members and supporters, urges members of Congress to address the top congressional priority of people across the country by advancing meaningful legislation to lower prescription drug prices.¹

We appreciate that the Committee is giving attention to the issue, but disappointed that the legislation being marked up by the Committee falls short of meeting the needs of people whose health and financial wellbeing is currently being damaged by exorbitant medicine prices.

Currently, more than one-in-five Americans report not taking their medication as prescribed because of cost², while many others face financial hardship and are forced to reduce spending on other necessities, like groceries, because of high drug prices.³

As a whole, the measures included in the Prescription Drug Sunshine, Transparency, Accountability and Reporting Act (STAR Act) will not provide any meaningful relief to patients that are leaving prescriptions unfilled, cutting pills in half, and self-rationing treatment and suffering or dying as a result. Further, the bill pursues an inappropriate and ineffective solution to address the prescription drug price spikes that have become the industry norm.

While greater transparency is sorely needed in the prescription drug industry, it is not a suitable means by which to address price spikes, and would not be an effective deterrent to such behavior. Moreover, the proposed remedy put forth in section two of the bill falls short with regard to what information prescription drug companies are required to disclose and the penalties imposed for nondisclosure.

Information and documentation listed under paragraph (c)(3) of that section is only required to be disclosed by drug companies “as applicable to the increase of the drug [price]”, so there is no assurance that even the vast majority of the information referenced in that paragraph would be disclosed. Furthermore, in order to provide the public with enough information to make a reasonable assessment of claimed research and development costs, those costs must be itemized for each drug at least by clinical trial phase, and optimally itemized by trial.

Additionally, under the proposed bill, companies could ignore all of the bill’s transparency measures far too easily and instead accept the \$10,000/day penalty as a cost of doing business. A total annual cost of \$36.5 million for nondisclosure could easily be absorbed without consequence by companies selling blockbuster drugs, for which transparency is most important.

¹ Politico & Harvard T.H. Chan School of Public Health, Americans’ Top Priorities for the New Congress in 2019 (Dec. 2018), <https://cdn1.sph.harvard.edu/wp-content/uploads/sites/94/2019/01/Politico-Harvard-Poll-Jan-2019-Health-and-Education-Priorities-for-New-Congress-in-2019.pdf>.

² Kaiser Family Foundation, Health Tracking Poll – February 2019: Prescription Drugs (March 1, 2019), <https://www.kff.org/health-reform/poll-finding/kff-health-tracking-poll-february-2019-prescription-drugs/>.

³ Lisa Gill, Consumer Reports, *How to Pay Less for Your Meds*. <https://www.consumerreports.org/drug-prices/how-to-pay-less-for-your-meds/>

The committee should reject the approach outlined in section two of the Prescription Drug STAR Act and instead advance a different approach that puts an end to the standard industry practice of price gouging consumers through regular price hikes on existing medicines by providing meaningful penalties that companies would not be able to evade.

The Stop Price Gouging Act (H.R. 1093, S. 378) is an optimal approach to this problem. H.R. 1093 would impose an excise tax on revenues attributable to any unjustified price increase that exceeds the level CPI-U inflation over an annual or multiyear period. The steeper the price spike, the more aggressive the penalty that would be levied against price gouging drug corporations. Moreover, prescription drug corporations would not be able to evade the reporting requirements of the bill due to a penalty based on a percentage of sales revenues rather than a static dollar amount.

This is a vital element to address the problem of high drug prices – unless there is a measure that puts a hard restriction on the ability of drug corporations to spike prices, then spikes will persist and patients will not receive much-needed relief. As Harvard academics Aaron Kesselheim and Thomas Hwang wrote in *Health Affairs*, “[t]he burden of a price spike tax would be borne by those companies that rely disproportionately on price increases, rather than innovation, to drive returns.”⁴

Beyond the remedy to price spikes included in the Stop Price Gouging Act, we encourage the committee to advance the Medicare Negotiation and Competitive Licensing Act (H.R. 1046) to lower prescription drug prices for Medicare Part D beneficiaries and taxpayers by requiring the U.S. government to negotiate directly with pharmaceutical manufacturers. Through competitive licensing, the Act safeguards patients’ access to medicines, even when negotiations fail to reach a reasonable price.

The Competitive DRUGS Act (H.R. 1344) would help end pay-for-delay deals, wherein brand-name companies pay generic firms not to bring low-price generic or biosimilar versions of their brand-name prescription drug product on the market for a certain period of time, by making such deals presumptively anticompetitive, helping to bring price-lowering competition to market sooner. The Preserve Access to Affordable Generics and Biosimilars Act (S.64) would likely fall outside the committee’s jurisdiction, but would also help achieve this goal.

Other legislative solutions Public Citizen supports that fall outside of the jurisdiction of the Committee include:

- The Prescription Drug Price Relief Act (H.R. 465) would help put an end to patients rationing treatment and suffering financial hardship because of exorbitant drug prices. It would ensure that U.S. drug prices are not higher than those paid in other large, wealthy

⁴ Thomas Hwang and Aaron Kesselheim, *Taxing Drug Price Spikes: Assessing the Potential Impact*, *Health Affairs Blog*, May 12, 2017, <https://www.healthaffairs.org/doi/10.1377/hblog20170512.060041/full/>.

economies and enable the government to license competition when pharmaceutical corporations set excessive prices on the medicines that people need.

- The Affordable Drug Manufacturing Act (H.R. 7348, 115th Congress) would establish an Office of Drug Manufacturing within the Department of Health and Human Services to ensure a well-functioning and competitive generic drug marketplace and to provide stability in the supply of important generic medicines.
- The PRICED Act (H.R. 6577, 115th Congress) would reduce the marketing exclusivity period provided for biologics, which include many new treatments for cancer and other serious diseases and conditions, from twelve to seven years, saving consumers and health programs billions of dollars.
- The CREATES Act (H.R. 965) would help put an end of brand-name pharmaceutical companies engaging in anticompetitive tactics to deny manufacturers of generics and biosimilars access to product samples they need to obtain FDA approval and market entry. This practice delays the introduction of price-lowering generic and biosimilar competition, and the brand-name manufacturers inappropriately extend their monopolies.

High prescription drug prices will continue to be an issue of national significance and a priority for all Americans until Congress takes actions whose scope at impact corresponds with the severity of the crisis, and unfortunately, the Prescription Drug STAR Act is not that.