THE MEDICARE DRUG PRICE NEGOTIATION ACT OF 2017

Discussion Draft Summary

BACKGROUND

- ***President Trump supports negotiating lower drug prices.*** After being elected President, Donald Trump pledged in December: "I'm going to bring down drug prices." He also warned that the pharmaceutical industry is "getting away with murder." He said Americans could save hundreds of billions of dollars if Medicare were allowed to negotiate prices directly with drug companies. "We don't do it," he said. "Why? Because of the drug companies." He also said the U.S. must "create new bidding procedures for the drug industry." He added: "Pharma has a lot of lobbies and a lot of lobbyists and a lot of power, and there's very little bidding on drugs."

- ***Prescription drug prices continue to skyrocket.*** Over the past decade, the prices of 90% of brand name drugs have doubled, and prescription drug spending reached $348 billion last year. In 2013, the average annual cost of therapy for widely used specialty drugs was about $53,000. This is more than the median household income in 2013 and twice as much as the median income for people on Medicare. A 2014 Commonwealth Fund survey found that nearly 20% of people reported not filling prescriptions because they could not afford them.

- ***Medicare pays far more for drugs than government programs that negotiate.*** Under current law, the Secretary of the Department of Health and Human Services (HHS) is prohibited from negotiating lower drug prices on behalf of Medicare Part D beneficiaries. In contrast, other government programs, like Medicaid and VA, are allowed to negotiate. As a result, Medicare Part D pays on average 73% more than Medicaid and 80% more than VA for brand name drugs. The federal government could save between $15.2 and $16 billion a year if Medicare Part D paid the same prices as Medicaid or VA.

- ***High drug prices continue to stress the federal budget, particularly within Medicare.*** Since 2006, government programs have paid for approximately 40% of the retail prescription drug expenditure in the United States. In large part as a result of skyrocketing drug prices, total spending on Medicare Part D is projected to increase from $103 billion in 2016 to $216 billion in 2025.

- ***Americans fully support negotiating authority for Medicare***. According to a Kaiser Family Foundation poll, 82% of Americans—including 93% of Democrats and 68% of Republicans—want Medicare to negotiate for lower drug prices. According to the Center for Economic and Policy Research, the U.S. government could save $976 billion over ten years if Medicare negotiated the same prices for drugs as people in Denmark pay.

SUMMARY OF LEGISLATION

Allowing Medicare to Negotiate Lower Drug Prices

- Under current law, the Secretary of HHS is prohibited from negotiating lower drug prices on behalf of Medicare Part D beneficiaries. This is called the "non-interference clause."

- The bill would strike the non-interference clause and direct the Secretary to negotiate lower prices with drug manufacturers that participate in Medicare Part D.

- The bill also would direct the Secretary to establish a formulary to leverage the purchasing power of the government on behalf of Part D plans.

- The Congressional Budget Office (CBO) has found that merely striking the non-interference clause would have only a "negligible" effect on Medicare spending, but that setting a formulary "could give the Secretary the ability to obtain significant discounts in negotiations with drug manufacturers."

- The bill would allow Part D plans to use additional benefit design and formulary tools to secure steeper discounts or rebates for beneficiaries.

- The bill would establish a fallback process if negotiations with drug manufacturers are unsuccessful.

- The bill would preserve critical protections for patient access by including in any formulary certain categories and classes of drugs that are protected under current law.

- The bill would also require the inclusion of at least one drug to treat each clinical condition, as identified by the Secretary, and would preserve patient appeals processes for accessing drugs that are not covered by the formulary.

Restoring Low-Income Beneficiary Rebates

- The bill would restore required drug rebates for low-income beneficiaries that were lost when Medicare Part D was created in 2006.

- CBO projects that restoring these rebates for brand-name drugs would save taxpayers $145 billion over ten years.

- Before Part D came into effect, people who were eligible for both Medicare and Medicaid received their drug benefits through Medicaid. After Part D was created, these people began receiving their drug benefits through Medicare.

- Drug manufacturers that participate in Medicaid are required to provide discounts in the form of rebates back to Medicaid, but there are no similar statutory rebates for Medicare.

- As a result of shifting the drug benefits for these dual-eligible individuals from Medicaid to Medicare, the pharmaceutical industry received a huge windfall of billions of dollars in rebates it was no longer required to pay.