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Congress of the United States

House of Representatives

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MEMORANDUM

May 31, 2012

To: **Committee on Energy and Commerce Democratic Members and Staff**

Fr: **Committee on Energy and Commerce Democratic Staff**

Re: **The Role of PhRMA**

Today, Committee Republicans released a memorandum on the role of the Pharmaceutical Research and Manufacturers of America (PhRMA) in the passage of the Affordable Care Act. The Republican memorandum is one-sided and contains significant inaccuracies. The information received by the Committee shows:

- White House officials contacted PhRMA officials in April 2009 to seek PhRMA's support for health reform.

- White House officials participated in negotiations with PhRMA and the Senate Finance Committee that resulted in an agreement announced at the White House on June 20, 2009. Under the terms of this agreement, PhRMA companies agreed to support the Affordable Care Act and to contribute $80 billion over ten years to pay for its provisions.

- The health reform bill that passed the Senate in December 2009 included the provisions negotiated with PhRMA. House members, however, were not part of the June agreement, and the House-passed bill included provisions that PhRMA opposed.

- In early 2010, as negotiators ironed out differences between the House and Senate legislation, significant changes were made in the pharmaceutical provisions. The excise tax on pharmaceuticals was increased by $10 billion from the Senate-passed bill. Changes to the "donut hole" provisions in the Senate-passed bill increased both the number of seniors to whom PhRMA companies would be required to offer a 50% discount and the number of prescriptions subject to the discount. In interviews with Committee staff, top PhRMA officials indicated that these changes increased the cost of the final legislation to $110 to $125 billion, an increase of 40% to 50%.

This memorandum summarizes some key points that emerge from a review of the documents the Committee has received and the interviews the Committee has conducted relating to PhRMA and its communications with the White House during consideration of the Affordable Care Act.

The PhRMA Agreement Was Important to Passage of Health Reform

Passage of health reform in March 2010 was a historic accomplishment. For 70 years, presidents from Truman to Clinton had tried – and failed – to enact legislation providing universal health coverage to all Americans.

A key reason for the failure of prior presidents was the opposition of health care providers, including drug companies. In 1992 and 1993, for example, President Clinton's effort to enact health reform was defeated because of the opposition of health insurers, drug companies, doctors, and other medical providers. The pharmaceutical industry in particular was "a powerful enemy of Hillary Clinton's … plan to reform health care."[1] When President Clinton proposed a Medicare drug benefit in 1999, the industry opposed the proposal and funded a $30 million ad campaign with the slogan "I don't want big government in my medicine cabinet."[2]

President Obama made a concerted effort to obtain support from key sectors of the health care industry to avoid the opposition that stopped the efforts of President Clinton and prior presidents. The e-mails show these outreach efforts were successful in the case of the drug industry. The PhRMA companies ended up supporting health reform. This helped President Obama gain the votes he needed for passage.

There Is Ample Precedent for the White House's Efforts

President Obama's efforts to enlist the support of private industry in support of one of his top domestic priorities are exactly what presidents have always done to enact major legislation. Presidents have routinely sought the support and lobbying clout of private industry in passing major legislation. President Obama's actions, for example, are no different than those of President Lyndon B. Johnson in enacting Medicare in 1965 or President George W. Bush in expanding Medicare to add a prescription drug benefit in 2003. In fact, a senior PhRMA lobbyist, in an interview with Committee staff, described the PhRMA strategy of reaching an agreement with the Obama Administration and then working to pass the final health care reform legislation as being nearly identical to the strategy PhRMA employed to help enact the 2003 Medicare drug benefit.[3]

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[1] *Why Pharma Wants Obamacare*, Forbes (Aug. 20, 2009). *See also Who killed health care reform? Answer: Everyone,* News and Observer (June 19, 1996).

[2] *Industry Fights to Put Imprint on Drug Bill*, New York Times (Sept. 5, 2003).

[3] House Energy and Commerce Committee, *Interview of Bryant Hall, Vice President, Federal Affairs, Pharmaceutical Research and Manufacturers of America* (May 9, 2012).

To create Medicare in 1965, President Lyndon Johnson and congressional leaders negotiated with multiple interest groups, including "physicians, nurses, hospital administrators, nursing home representatives, State health and welfare officials, labor leaders, insurance industry representatives, … and many others."[4] One key agreement was reached with the American Hospital Association (AHA) to secure its support.[5] The multiple concessions made to the AHA included establishing private fiscal intermediaries to pay hospitals, which allayed concerns about hospitals being paid directly by the government;[6] providing that hospital costs should be paid unless they were "out of line" with similar hospitals;[7] and placing limits on federal oversight of hospital services.[8]

As negotiations on the Medicare bill continued, President Johnson and House Ways and Means Chairman Wilbur Mills sought the position of the American Medical Association (AMA) on "important particulars."[9] In order to respond to AMA's concerns, President Johnson agreed to add a provision allowing physicians to charge "reasonable" rates under Medicare rather than establishing a centralized rate structure for physician compensation.[10] These concessions helped the Johnson Administration win the support of individual physicians and other doctors' and providers' groups.[11]

President Bush made the same type of deals to pass the Medicare Prescription Drug, Improvement and Modernization Act, which added a prescription drug benefit to Medicare after four decades of failed efforts. In this case, passage was made possible due to negotiations that

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[4] Social Security Administration, *Chapter 1: The First Round – 1912 to 1920* (online at www.ssa.gov/history/corningchap1.html).

[5] Ted Marmor, *The Politics of Medicare* (2000).

[6] Edward Berkowitz, *Medicare and Medicaid: The Past as Prologue*, Health Care Financing Review (2008).

[7] Jonathan Oberlander, *The Political Life of Medicare* (2003).

[8] House Committee on Energy and Commerce, Democratic Staff, *Interview with Sylvia A. Law, New York University* (Mar. 22, 2012).

[9] Herman Somers and Anne Somers, *Medicare and the Hospitals: Issues and Prospects* (1967).

[10] Transcript, Lawrence O'Brien Interview XI, by Michael L. Gillette, Internet Copy, LBJ Library, at 28 (July 24, 1986).

[11] For example, The National Medical Association, the Group Health Cooperative of Puget Sound, The Kaiser Foundation Health Plan, and the Health Insurance Plan of New York all supported passage of Medicare. *See, e.g.*, *Segregation, Civil Rights, and Health Disparities: The Legacy of African American Physicians and Organized Medicine, 1910-1968*, Journal of the National Medical Association (June 2009); H. Frank Newman, *Medicare and the Group Health Cooperative of Puget Sound*, Conference of The New York Academy of Medicine (Apr. 1968).

resulted in the support to two key groups: the American Association of Retired People (AARP) and the Pharmaceutical Research and Manufacturers of America (PhRMA).[12]

AARP initially opposed the legislation that passed the House and Senate, citing concerns about the overall value of the benefit for seniors, the lack of a guarantee that private plans would be available to seniors, and whether the bill would encourage private employers to drop retiree drug coverage.[13] During the course of consideration, a senior AARP official e-mailed Barry Jackson, a Deputy Assistant to the President, to suggest compromise, writing, "Privately, we are suggesting some fairly moderate ways for handling the biggest issues in an effort to find an agreement that can be passed."[14] On October 29, 2003, President Bush spoke directly with AARP President James Parkel. According to a White House spokesman, President Bush told Mr. Parkel, "[w]e can get this done if you will work with us."[15]

During final negotiations over the bill, AARP "made three demands: more money to entice employers to maintain health benefits for their retirees, a temporary, limited program of competition between traditional Medicare and private insurance plans, and the removal of a Senate provision that AARP said would allow employers to eliminate all health benefits for retirees eligible for Medicare or state health plans."[16] The final agreement addressed all three AARP concerns. The key aspect of the agreement with AARP was the addition of $89 billion in subsidies and tax benefits for employers to encourage them to maintain private prescription coverage to retired workers.[17] In addition, the Senate provision that AARP found to be troublesome was eliminated, and the AARP concern about the need for competition in the Part D program was addressed via a provision that allowed the Health and Human Services Secretary to approve "fallback" drug plans and pay them higher rates in regions where Medicare beneficiaries would otherwise not have a choice of at least two prescription drug plans.[18] On November 17, 2003, AARP endorsed the agreed-upon legislative compromise at a press conference with Republican leaders Bill Frist and Dennis Hastert.[19]

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[12] *See* Thomas R. Oliver, Philip R. Lee, and Helene L. Lipton, *A Political History of Medicare and Prescription Drug Coverage*, The Milbank Quarterly (2004).

[13] *AARP Balks at Drug Plan*, USA Today (July 17, 2003).

[14] *The Seduction*, American Prospect (June 2004).

[15] *AARP Decision Followed a Long GOP Courtship*, Washington Post (Nov. 20, 2003).

[16] *AARP Endorses Republicans' Medicare Bill After Being Consulted During the Writing*, Associated Press (Nov. 17, 2003) (online at http://www.yuricareport.com/Miscellaneous/AARPendorsesBushMedicarePlan.html).

[17] Congressional Budget Office, *A Detailed Description of CBO's Cost Estimate for the Medicare Prescription Drug Benefit* (July 2004).

[18] *Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, P.L. 108-173, § 1860D-1.

[19] *AARP Decision Followed a Long GOP Courtship*, The Washington Post (Nov. 20, 2003); *As House Debate Continues, Medicare Bill Nears Vote*, New York Times (Nov. 22, 2003).

Following the announcement, AARP began a multi-million dollar "advertising blitz" urging passage of the legislation.[20] At the time, AARP chief executive William Novelli said that the group would "pull out all the stops" to help pass the bill.[21] After the bill was signed, President Bush singled out AARP's support as a driving force behind the bill's passage stating: "I appreciate the seniors and the seniors' groups, such as the AARP, who lobbied hard. ... And it worked."[22]

The agreement to win the support of PhRMA was equally important to passage of Medicare drug legislation in 2003. The initial legislative agreement established "the framework of a privately delivered benefit" desired by PhRMA.[23] As the bill moved through Congress, the industry then "went to work on the details" with the Bush Administration and House and Senate negotiators.[24] PhRMA was able to obtain two major concessions that increased taxpayer costs: a ban on the Medicare program directly negotiating for discounts and a shift of the drug benefit for low-income seniors from Medicaid to Medicare, which would substantially increase payments to drug manufacturers.[25] When the bill went to conference, PhRMA was also able to weaken a provision that had been added in the House allowing U.S. purchasers to buy lower-priced drugs from Canada, adding language that virtually guaranteed that the Secretary of Health and Human Services would not be able to approve drug importation.[26]

The closed-door negotiations with PhRMA resulted in a bill the drug industry supported and spent heavily to enact. PhRMA and PhRMA-funded organizations like "Citizens for a Better Medicare" spent over $60 million on advertisements in favor of the bill.[27] Drug makers also spent more than $30 million to run advertisements supporting the passage of Medicare Part D.[28]

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[20] *Democratic Candidates Criticize AARP*, Washington Post (Nov. 19, 2003); *How the Medicare Prescription Drug Benefit Became Law*, Mother Jones (Sept. 2008); *As House Debate Continues, Medicare Bill Nears Vote*, New York Times (Nov. 22, 2003).

[21] *AARP Endorses Medicare Drug Benefit Plan*, Associated Press (Nov. 17, 2003).

[22] President George W. Bush, *Remarks at Spring Valley Hospital in Las Vegas, Nevada* Nov. 25, 2003 (online at http://www.presidency.ucsb.edu/ws/index.php?pid=64437&st=&st1=#ixzz1ps0FCMJ7).

[23] *Industry Fights to Put Imprint on Drug Bill*, New York Times (Sept. 5, 2003).

[24] *Id.*

[25] *Industry Fights to Put Imprint on Drug Bill*, New York Times (Sept. 5, 2003).

[26] The new language required that, for importation to be allowed, the HHS Secretary to submit a certification to Congress that importation of drugs would "pose no additional risk to the public's health and safety" and "result in a significant reduction in the cost of covered products for American consumers." *Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, P.L. 108-173, § 1121.

[27] *Surrogates for Their Agenda*, Center for Public Integrity (July 7, 2005).

[28] The Annenberg Public Policy Center, Legislative Issue Advertising in the 108th Congress (Mar. 2005) (online at

PhRMA officials interviewed by Committee staff confirmed the similarities between PhRMA's efforts to pass a Medicare drug benefit and its efforts in support of health reform. In both cases, PhRMA identified legislative compromises its members were willing to make, reached agreements with the White House and key legislators to obtain concessions, and then lobbied and advertised for passage of these laws. Bryant Hall, PhRMA's head of federal affairs during the health care reform debate, described the PhRMA involvement in the health care reform bill as "nothing out of the ordinary" and nearly identical to the organization's efforts in 2003.[29] He said, "what PhRMA has always done is put significant resources into bills they want passed."[30]

There are many other examples of Presidents working closely with industry and other organizations to enact their legislative agendas. In 2001, the Bush White House worked closely with the Tax Relief Coalition, a group of large and small business associations, to build support for the President's tax cuts. High-level White House officials, including Senior Advisor and Deputy Chief of Staff Karl Rove, began planning strategy early in the Administration with business groups in the coalition, and these trade associations aggressively generated phone calls, e-mails, and letters to Congress in support of this Administration priority.[31]

Four years later, President Bush assembled a similar coalition to support his 2005 efforts to privatize Social Security. In this instance:

> The White House worked closely in conjunction with corporate lobbyists, public advocacy groups, selected senior groups, and unions to form the Coalition for the Protection and Modernization of America's Social Security, which organized support groups in 32 states. The effort included media advertising, town hall meetings, phone calls, and information booths, with the most efforts focused on the members of congressional tax-writing committees. Rove was the White House mastermind of the overall effort, which leaned heavily for funding on administration allies in the business community, particularly the National Association of Manufacturers, financial and securities trade associations, Progress

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http://www.annenbergpublicpolicycenter.org/Downloads/Political_Communication/LegIssueAds108Congree/Report_IssueAds108thCongressMarch2005.pdf).

[29] House Energy and Commerce Committee, *Interview of Bryant Hall, Vice President, Federal Affairs, Pharmaceutical Research and Manufacturers of America* (May 9, 2012).

[30] *Id.* Rick Smith, PhRMA's Senior Vice President for Policy and Research, described PhRMA's actions in similar ways, noting that the group's actions during the health care reform debate were "consistent with" similar actions on behalf of Part D and other legislation, and that the agreement and advertising on behalf of health care reform were typical of how the group handled past legislative battles. House Energy and Commerce Committee, Democratic Staff, *Interview of Richard I. Smith, Senior Vice President, Policy and Research, Pharmaceutical Research and Manufacturers of America* (May 17, 2012).

[31] Joseph A. Pika, *The White House Office of Public Liaison,* Presidential Studies Quarterly (Sept. 2009).

> for America, and the Club for Growth, which were collectively expected to contribute millions to the administration effort.[32]

President Clinton's 1993 enactment of the North American Free Trade Agreement (NAFTA) was made possible due to a "series of rapid-fire concessions to vegetable growers, wheat farmers, and other special interests," including producers of key items ranging from wine to flat glass.[33] President Ronald Reagan's 1981 tax cut was dubbed the "Christmas Tree Bill"; it passed after the President signed off "on a complex price support system for Louisiana sugar cane growers."[34] President Ronald Reagan used the same approach to build industry support for the 1981 sale of Airborne Warning and Control System (AWACS) surveillance planes to Saudi Arabia. At the time, this was the largest foreign arms sale in U.S. history. A unified Congress could have prevented the deal, and vocal legislative opposition to the sale put its success in doubt. As part of its strategy to secure the needed votes, the Reagan Administration used an "aggressive" lobbying campaign involving "the entire spectrum of the American business community," which saw its interests advanced by defense industry ties to the Saudis.[35] At the peak of the campaign, representatives of over 40 companies, led by the Business Roundtable, met several times each week with White House staff to identify specific senators who could be "vulnerable to political pressure" in support of the AWACS sale.[36] One scholar has described this lobbying effort as "decisive" in the Senate's ultimate approval of the AWACS deal.[37]

<u>The Pharmaceutical Provisions Provided Benefits for Seniors and Taxpayers</u>

The drug coverage provisions in the Affordable Care Act provide significant benefits to both seniors and taxpayers. Key elements of these provisions include:

- Requirements that drug manufacturers provide a 50% discount for drugs purchased by seniors in the Part D donut hole starting on January 1, 2011.

- Complete closure of the Part D donut hole for seniors by 2020.

- Provisions that save seniors money by slowing the increase of the Part D "catastrophic threshold," the maximum out-of-pocket costs that seniors must pay before qualifying for catastrophic coverage which pays for 95% of their drug costs.

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[32] *Id.*

[33] *See, e.g., Clinton, Vegetable Farmers Reach NAFTA Agreement*, Orlando Sentinel (Nov. 10, 1983); *Tariff Talks: Too Much, Too Soon?* Journal of Commerce (June 29, 1994); *It's just more politics as usual in the U.S. Capital*, Guelph Mercury (Dec. 29, 2009).

[34] *Reagan 101*, Center for Individual Freedom (Feb. 2, 2012); *Capitol Horse-Trading Seen as Politics, American Style*, Los Angeles Times (Nov. 22, 1993).

[35] Stephen Emerson, *The American House of Saud*, at 185, 194, 208 (1985).

[36] *Id.* at 194.

[37] *Id.* at 208.

- A new excise tax on drug manufacturers that will raise $30 billion between 2011 and 2021.

- New and increased rebates for drugs used under the Medicaid program that raises almost $30 billion between 2011 and 2021.

- An expansion of the "340B" drug discount program to allow certain children's hospitals, critical access hospitals, and rural referral centers to purchase outpatient drugs at substantial discounts.

There was controversy about the PhRMA agreement that was negotiated in June 2009. A number of House members, including Chairman Waxman, believed that the agreement with PhRMA could have gone further and extracted greater concessions from the industry. Some of these concerns, however, were addressed when the Senate-passed and House-passed bills were reconciled and substantial changes were made to the pharmaceutical provisions. There was widespread acceptance that the drug coverage provisions in the final legislation were a positive and substantial step forward as far as they went.

The initial agreement as passed by the Senate was estimated to cost the drug industry $80 billion in taxes and reduced revenues over ten years, a cost that industry officials viewed as an "enormous" amount at the time.[38] The reconciliation legislation increased the PhRMA excise tax by $10 billion over ten years (from $20 billion to $30 billion). It also made all seniors – not just those below 400% of the poverty level – eligible for discounts from PhRMA companies when they are in the donut hole. The most important change fully closed the donut hole by adding a federal contribution to seniors' drug costs and significantly increased the number of prescriptions for which PhRMA would be required provide discounts by excluding the new federal contribution in determining seniors' out of pocket costs.[39] These changes imposed additional

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[38] House Energy and Commerce Committee, Democratic Staff, *Interview of Richard I. Smith, Senior Vice President, Policy and Research, Pharmaceutical Research and Manufacturers of America* (May 17, 2012).

[39] This policy decision is reflected in the way Part D "True Out of Pocket" (TROOP) cost is calculated under the law. Seniors leave the donut hole (in which, for brand name drugs, the senior pays 25% of costs, PhRMA pays 50% of costs, and the government pays 25% of costs) and enter the catastrophic portion of the benefit (in which seniors pay 5% of costs, the government pays 95% of drug costs, and PhRMA pays nothing) when their TROOP cost reaches the Part D Out-of-Pocket Threshold, which in 2012 is $4,700. Under the original PhRMA agreement, the 50% discounts offered by PhRMA counted towards TROOP costs. PhRMA wanted the same treatment for the additional contribution that Medicare would make to close the rest of the donut hole, but this request was opposed by House leaders and was not included in the final legislation. The result of this policy is that seniors use more drugs for which drug manufacturers are required to provide a 50% discount before reaching the catastrophic portion of the benefit. Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), § 3301(c).

costs on drug manufacturers. In interviews with Committee staff, PhRMA officials indicated that the final agreement would cost the industry $110 to $125 billion.[40]

One provision that was not in the bill that passed the Senate or in the final legislation was a policy to allow importation of prescription drugs. In an interview with Committee staff, Bryant Hall, who was PhRMA's head of federal affairs and its primary health reform lobbyist in 2009 and 2010, told the Committee that a White House promise of opposition to drug importation was never a part of any final agreement.[41] Mr. Hall said that although PhRMA sought a ban on reimportation, such an agreement was not reached with the White House or the Senate Finance Committee.[42]

Mr. Hall stated that e-mails that implied such an agreement were misleading.[43]
Mr. Hall also told the Committee that the reason drug importation was not in the final bill was because Senate Republicans voted against it en masse, not because of any action by the White House. He stated that you "can't diminish what happened on the Senate floor," where Republican opposition kept support for drug importation significantly below the 60-vote threshold needed for enactment.[44]

There Was No "Secret" PhRMA Agreement

Some Republican members have alleged that the White House cut private deals with PhRMA and other healthcare providers. The PhRMA e-mails show that the private communications between White House officials and PhRMA officials do not discuss secret arrangements.

In March 2009, the White House held a large public forum that included PhRMA, White House officials, other outside groups, and both Democratic and Republican members of Congress.[45] The forum was designed to "discuss ideas on how to bring down health care costs and increase coverage."[46] On May 11, 2009, President Obama held another high-profile meeting with a broad group of health industry stakeholders, including PhRMA.

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[40] House Energy and Commerce Committee, *Interview of Bryant Hall, Vice President, Federal Affairs, Pharmaceutical Research and Manufacturers of America* (May 9, 2012); House Energy and Commerce Committee, Democratic Staff, *Interview of Richard I. Smith, Senior Vice President, Policy and Research, Pharmaceutical Research and Manufacturers of America* (May 17, 2012).

[41] House Energy and Commerce Committee, *Interview of Bryant Hall, Vice President, Federal Affairs, Pharmaceutical Research and Manufacturers of America* (May 9, 2012).

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] The White House, *White House Forum on Health Reform Attendees and Breakout Session Participants* (Mar. 5, 2009) (online at http://www.whitehouse.gov/the-press-office/white-house-forum-health-reform-attendees-and-breakout-session-participants).

[46] *Id.*

On June 20, 2009, President Obama announced an agreement with Senate Finance Committee Chair Max Baucus and PhRMA to reduce the costs of drugs for seniors in the Part D donut hole. President Obama stated:

> I am pleased to announce that an agreement has been reached between Senator Max Baucus and the nation's pharmaceutical companies that will bring down health care costs and reduce the price of prescription drugs for millions of America's seniors. As part of the health reform legislation that I expect Congress to enact this year, pharmaceutical companies will extend discounts on prescription drugs to millions of seniors who currently are subjected to crushing out-of-pocket expenses when the yearly amounts they pay for medication fall within the doughnut hole.[47]
> As was reported at the time, PhRMA made substantial concessions in the agreement, including offering to contribute $80 billion over ten years toward health reform.[48]

Press accounts subsequently described the agreement as including a 50% discount for brand-name drugs for seniors in the donut hole,[49] additional Medicaid drug rebates,[50] and new industry fees.[51]

Several weeks after President Obama's announcement, White House officials met with the CEOs from five pharmaceutical companies. As the Wall Street Journal reported at the time, the purpose of the meeting was "to consider specifics of a cost-saving agreement the industry reached last month with health-care negotiators."[52] The White House confirmed in the article that the meeting took place.

The e-mails obtained from PhRMA are consistent with this public record. They reveal that following the March 2009 forum, the White House reached out to PhRMA staff in April to begin "a conversation and figuring out how we can work together."[53] In early May, these

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[47] *Statement from President Obama on Agreement to Bring Down Drug Prices for American Seniors*, White House Office of the Press Secretary (June 20, 2009).

[48] *See, e.g., Health Reform Gets Boost With Rx Deal*, Politico (June 20, 2009).

[49] *Federal Saving From Lowering of Drug Prices is Unclear*, New York Times (June 22, 2009).

[50] *More Cost Cuts Sought From Drug Industry*, New York Times (July 22, 2009).

[51] *Id.*

[52] Wall Street Journal, *White House Assures Drug Makers on Reimportation* (July 7, 2009) (online at http://online.wsj.com/article/SB124700977149808565.html). The article reported that Merck CEO Richard Clark, Pfizer CEO Jeffrey Kindler, Amgen CEO Kevin Shares, Abbot Laboratories Miles White, and AstraZeneca CEO David Brennan all attended the meeting.

[53] E-mail from Robert Kocher, The White House, to Kavita Patel, The White House, and Rick Smith, PhRMA (Apr. 7, 2009) (PHR-EC-600).

conversations became more specific, with PhRMA officials describing it as the "cost-curve project" in e-mails with the White House officials.[54] A May 8, 2009, e-mail from Mimi Simoneaux Kneuer of PhRMA to White House Office of Health Care Reform Director Nancy-Ann DeParle provided the White House with an initial "list of policies that our industry supports which would help bend the cost curve over time."[55] Several of these concepts were included in the Affordable Care Act.[56]

On June 10, 2009, PhRMA's Bryant Hall sent an e-mail to Ms. DeParle, asking to chat about an "important" issue.[57] The next day, Lauren Aronson, a White House staffer, wrote to Mr. Hall asking to "go over the donut hole proposal with you ... and some folks on our team."[58] On June 17, 2009, PhRMA CEO Billy Tauzin e-mailed Deputy White House Chief of Staff Jim Messina, stating, "Our five principal CEOs have accepted the terms discussed with the Committee yesterday, and we are prepared to recommend acceptance by the full Board tomorrow morning. … I can assure you that we will deliver a final yes to you by morning."[59] Three days later, President Obama announced that the agreement was in place.

The e-mails also describe the July 7, 2009, meeting between White House officials and the CEOs of five pharmaceutical companies. Sandra Beaty, Chief of Staff to Pfizer CEO Jeffrey Kindler, wrote: "[s]everal PhRMA CEO's and PhRMA leadership met yesterday at the White House with Sen. Baucus, Senate Staff, Rahm Emanuel, Nancy-Ann DeParle … and others … The purpose of the meeting was to solidify the PhRMA agreement for support of the $80 billion (over 10 years) to fund healthcare."[60]

The health reform legislation that passed the Senate in December 2009 incorporated the provisions negotiated with PhRMA in June. House members were not part of the June agreement and were not bound by its provisions. The health reform legislation that passed the House in November 2009, H.R. 3962, included the components of the June agreement as well as

[54] E-mail from Bryant Hall, PhRMA, to Nancy-Ann DeParle, White House Office of Health Care Reform Director (May 6, 2009) (PHR-EC-553).

[55] E-mail from Mimi Simoneaux Kneuer, PhRMA, to Nancy-Ann DeParle, White House Office of Health Care Reform Director (May 8, 2009) (PHR-EC-556).

[56] For example, the Affordable Care Act included new provisions to improve clinical drug trials (P.L. 111-148 §6301, 6302) and improves and expands the use of prescription drug medication therapy management (P.L 111-148 §302, 10328).

[57] E-mail from Bryant Hall, PhRMA, to Nancy-Ann DeParle, White House Office of Health Care Reform Director (June 10, 2009) (PHR-EC-569).

[58] E-mail from Lauren Aronson, White House, to Bryant Hall, PhRMA (June 11, 2009) (PHR-EC-571).

[59] E-mail from Billy Tauzin, PhRMA, to Jim Messina, White House Deputy Chief of Staff (June 17, 2009) (PHR-EC-636).

[60] E-mail from Sandra Beaty, Chief of Staff to the Chief Executive Officer, Pfizer, to DL-ELT (group) (July 8, 2009) (PEC0008).

additional provisions that increased the cost of the legislation to PhRMA. For example, the House-passed bill included a provision to require PhRMA to provide substantial rebates on Medicare Part D drugs used by dual-eligible and low income beneficiaries. This provision alone, if enacted into law, would have cost PhRMA approximately $80 billion.[61]

The final health care reform law modified the June 2009 agreement and the legislation passed by the Senate. These changes were negotiated between House and Senate Democrats and the White House in January and March 2010. They improved benefits for seniors and taxpayers and imposed significant additional costs on PhRMA companies, increasing the total cost to the industry to $110 to $125 billion.[62]

As described above, PhRMA's excise tax payments increased by $10 billion to $30 billion over ten years; PhRMA was required to provide a 50% discount to all seniors who hit the donut hole, not just those seniors with incomes below 400% of the poverty level as in the Senate-passed bill; and the federal contribution to closing the donut hole was not counted as out-of-pocket spending by seniors, which had the effect of increasing the number of drugs seniors must consume before receiving catastrophic coverage and thus increased the number of drugs subject to the 50% PhRMA discount. A final change, which was advocated by AARP, benefited PhRMA by reducing the rate at which the Part D "catastrophic cost cap" increases between 2014 and 2019. Compared to current law, this change lowers drug expenditures by seniors in the donut hole and accelerates their transition to catastrophic coverage, where the federal government pays 95% of drug costs.

These changes in the final bill were not secret deals between PhRMA and the White House. They were negotiated by Chairman Waxman, other congressional leaders, White House staff, and the President.

[61] Letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to Rep. Charles B. Rangel, Chairman, House Committee on Ways and Means (Oct. 29, 2009).

[62] House Energy and Commerce Committee, *Interview of Bryant Hall, Vice President, Federal Affairs, Pharmaceutical Research and Manufacturers of America* (May 9, 2012); House Energy and Commerce Committee, Democratic Staff, *Interview of Richard I. Smith, Senior Vice President, Policy and Research, Pharmaceutical Research and Manufacturers of America* (May 17, 2012).