Medicare Negotiating Authority

In 2003, Congress enacted the Medicare Modernization Act, which created the Medicare prescription drug benefit (Medicare Part D). Unlike Medicare Parts A and B, which are administered by the federal government, Medicare Part D is entirely administered by private plans who develop their own formularies based on guidelines set by CMS. Most chemotherapy regimens involving infused products are covered under Medicare Part B, and therefore not generally covered under the negotiating authority proposals. However, oral chemotherapy treatments and some cancer supportive therapies are covered under Medicare Part D.

The Medicare statute expressly prohibits the Secretary of Health and Human Services (HHS) from interfering in negotiations between pharmaceutical manufacturers and Part D plans and from mandating a specific Part D formulary (the so-called "noninterference clause").[1] Some policymakers have proposed eliminating the noninterference clause and proactively giving the Secretary the authority to enter into negotiations with pharmaceutical manufacturers.

Supporters contend that using the Secretary's leveraging power will yield lower prescription drug prices (as the Medicaid best price system does for that program), particularly for high-priced, single sourced drugs for which there is little or no competition.

Opponents contend that the private plans that administer the Medicare Part D benefit have done a better job of negotiating for lower prices than the Secretary of HHS would be able to do.

Projected Savings Estimates

In 2004, the Congressional Budget Office (CBO) estimated that simply striking the noninterference clause would have a "negligible effect" on federal spending because, in their estimation, the Secretary of HHS would not be able to negotiate a better price than the private plans.[2] However, in a later estimate CBO suggested that there is "potential for some savings" if the Secretary were given the authority to negotiate prices with pharmaceutical manufacturers of "single-sourced drugs that do not face competition from therapeutic alternatives."[3]

ACS CAN Position

ACS CAN does not support legislative proposals that would require the Secretary to engage in negotiation with pharmaceutical manufacturers or to create a formulary for the Part D program. We have seen no evidence to suggest that such proposals will reduce prescription drug prices while not disrupting the Medicare Part D program which has been widely successful since it launched in 2006.[4] In fact Part D premiums have remained relatively stable: when the Part D program began in 2006, the average monthly premium for a standalone Part D plan was $25.93, compared to $39.21 in 2016.[5]

However, ACS CAN would support legislation that would allow the Secretary to engage in negotiations between the Part D plan sponsor and the pharmaceutical manufacturer at the request of the Part D plan sponsor and in cases of sole-source drugs that do not otherwise face competition. Many cancer drugs would constitute sole-source drugs. As discussed above, the CBO has indicated this policy has a potential for savings. Further discussions are warranted to determine appropriate enforcement mechanisms that could be used by the Secretary of HHS as part of the negotiations with pharmaceutical manufacturers.

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[1] 42 U.S.C. § 1395w-111(i).
[2] Congressional Budget Office. Letter to the Honorable William H. Frist, M.D., January 23, 2004. Available at https://www.cbo.gov/sites/default/files/108th-congress-2003-2004/reports/fristletter.pdf.
[3] Congressional Budget Office. Letter to the Honorable Ron Wyden, March 3, 2004. Available at https://www.cbo.gov/sites/default/files/108th-congress-2003-2004/reports/03-03-wyden.pdf.
[4] America's Health Insurance Plans. The Medicare Part D Program: A Record of Success. September 2016. Available at https://www.ahip.org/wp-content/uploads/2016/09/PartD_Report_9.26.16.pdf.
[5] Hoadley, J, Cubanski, J, & Neuman, T. Medicare Part D in 2016 and Trends over Time. [Report]. Kaiser Family Foundation. September 2016. Available at http://www.kff.org/medicare/report/medicare-part-d-in-2016-and-trends-over-time/.