



MEDICARE PRESCRIPTION DRUG PRICING

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ISSUE

Is the federal government allowed or required to negotiate prescription drug prices with manufacturers on behalf of Medicare beneficiaries?

SUMMARY

Federal law allows the government to negotiate Medicare drug prices only for veterans and Medicaid beneficiaries. Specifically, the 2003 Medicare Prescription Drug, Improvement, and Modernization Act (MMA)([P.L. 108-173](#)) noninterference provision prohibits the Secretary of Health and Human Services (HHS) from negotiating Medicare drug prices or establishing a preferred drug list.

Over the last several years, Congress has considered legislation to remove this prohibition and require manufacturers to issue prescription drug rebates for “dual-eligibles” (i.e., low-income seniors eligible for both Medicare and Medicaid) which they currently provide to Medicaid beneficiaries.

FEDERAL LAW

The 2003 MMA expanded the Medicare program by creating a voluntary prescription drug benefit known as Part D. The benefit took effect in 2006 and provides prescription drugs through private stand-alone drug plans (called PDPs) and Medicare Advantage plans.

MMA includes a “noninterference” provision that expressly prohibits the HHS secretary from (1) negotiating prescription drug prices with prescription drug manufacturers on behalf of Medicare beneficiaries and (2) establishing a preferred drugs list. Specifically, the law provides that:



In order to promote competition under this part and in carrying out this part, the Secretary – (1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and (2) may not require a particular formulary or institute a price structure for the reimbursement of covered Part D drugs ([§ 1860D-11\(i\)](#)).

Instead, Medicare prescription drug prices are negotiated between prescription drug manufacturers and insurance companies that administer Part D plans.

Additionally, when Part D took effect, drug coverage for dual-eligibles switched from Medicaid to Medicare and drug manufacturer rebates were discontinued. This resulted in a significant increase in prescription drug costs for this population.

PROPOSED FEDERAL LEGISLATION

For several years, Congress has considered (1) removing the prohibition on negotiating Medicare drug prices and (2) requiring prescription drug rebates for dual-eligibles (such rebates are provided to Medicaid beneficiaries).

Most recently, the 114th Congress considered, but did not pass, the following legislation:

1. [Medicare Prescription Drug Price Negotiation Act of 2015](#) (S. 31, H.R. 3061) would have directed the HHS Secretary to negotiate Medicare prescription drug prices directly with prescription drug manufacturers;
2. [Medicare Prescription Affordability Act of 2015](#) (S. 2023, H.R. 3513) would have required (a) the Centers for Medicare and Medicaid Services (CMS) to negotiate Medicare prescription drug prices directly with prescription drug manufacturers and (b) manufacturers to pay CMS drug rebates for dual-eligibles;
3. [Medicare Prescription Drug Savings and Choice Act of 2015](#) (S. 1884, H.R. 3261) would have required CMS to negotiate prices with drug manufacturers and establish and apply a drug formulary and formulary incentives; and
4. [Medicare Drug Savings Act](#) of 2015 (S. 1083, H.R. 4207) would have required prescription drug manufacturers to pay HHS drug rebates for dual-eligibles.

Generally, those who support allowing the federal government to negotiate for lower Medicare prescription drug costs argue that Medicare beneficiaries should receive the same lower prescription drug prices that veterans and Medicaid beneficiaries receive. Specifically, establishing the government as the single

negotiating entity, instead of thousands of individual private plans, would result in significantly lower prices for beneficiaries and reduce program costs. Opponents argue that doing so would be a form of price control that would interfere with market competition. They also cite concerns that a reduction in prescription drug manufacturers' profits may result in less money for researching and developing new drugs.

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