

The Daily Dish

Congress on Drugs, Again

DOUGLAS HOLTZ-EAKIN | MAY 11, 2023

Washington D.C. being upset about drug prices is about as shocking as the sun rising in the east. So it is not surprising that the Senate Committee on Health, Education, Labor, and Pensions is holding a markup today of legislation affecting the so-called pharmacy supply chain. But it is also not necessarily a good idea.

The U.S. pharmaceutical industry is characterized by a complicated, opaque system of distribution and reimbursement among manufacturers, wholesalers, pharmacy benefit managers (PBMs), pharmacies, providers, and insurers that rely on revenue from fees, price mark-ups, and after-the-fact rebates. In short, it's complicated.

So the potential for unintended consequences is quite high when, as some of the legislation does, lawmakers target a single piece of this complicated system in isolation. In this case, it is the PBMs in the crosshairs. It is even more problematic when at this moment the Federal Trade Commission (FTC) is undertaking a review of PBMs to identify any anti-competitive practices. As Eakinomics noted earlier, wouldn't it make a lot more sense to wait until the FTC releases its findings and *then* engage in legislation?

Finally, one of the proposed PBM reforms introduced by Senator Sanders is a federal ban on "spread pricing." What is spread pricing? It is two things. First, it is when the PBM guarantees the plan sponsor (the insurance company) the price of a prescription, but runs the risk that the actual reimbursement to the pharmacy is either below (good news for the PBM) or above (a loss for the PBM) that guaranteed price. The PBM is simply absorbing some of the financial risk.

Second, spread pricing is a contractual arrangement between two private entities that Congress should keep its hands away from.

Congress took a drug pricing scalp in the Inflation Reduction Act, to little benefit and at great potential disruption. That fiasco happened after years of proposals and debate. It is

not hard to imagine what happens if they move too fast.