The Daily Dish

Executive Disorder

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Eakinomics: Executive Disorder

This past Sunday, the president interrupted the return of the National Football League to issue two executive orders (here and here) that completed the process the president promised in July, when he signed four executive orders (EOs) on drug prices. Recall that one of the EOs was to change reimbursement in Medicare Part B from average sales price (ASP) plus six percent to the lowest price among our economic peers – the so-called "most favored nation" (MFN) provision.

Importing price controls from other countries is a horrifically bad idea, but the president seemingly left an escape clause: If the industry could negotiate with the White House another approach by August 24, he would discard the EO. Negotiations dragged past the deadline, but the president's actions on Sunday indicate that they failed.

Indeed, the two EOs direct the Secretary of Health and Human Services (HHS) to move to paying a MFN price for both Part B (outpatient) and Part D (pharmacy) drugs – a much more sweeping regulatory fiat. Most analysts expect the MFN provision to be implemented as an "interim final rule," which means that it will take effect immediately. As of this moment, HHS has not released the rules. Indeed, it is not easy to imagine exactly how this will get inserted into the private negotiations that are the foundation of Part D. All we know is that the EO stipulates that:

"The 'most-favored-nation price' shall mean the lowest price, after adjusting for volume and differences in national gross domestic product, for a pharmaceutical product that the drug manufacturer sells in a member country of the Organisation for Economic Co-operation and Development (OECD) that has a comparable per-capita gross domestic product."

This is about as illuminating as the president's typical stump speech, so we will have to await the actual rules to sort this out.

Lest this seem personal, notice that candidate Joe Biden is proposing exactly the same folly. In addition to having the government "negotiate" drug prices – a euphemism for price controls – reimportation, and limiting price increases to the general rate of inflation, the Biden plan includes the following gem: "For these cases where new specialty drugs without competition are being launched, under the Biden Plan the Secretary of Health and Human Services will establish an independent review board to assess their value. The board will recommend a reasonable price, based on the average price in other countries (a process called external reference pricing) or, if the drug is entering the U.S. market first, based on an evaluation by the independent board members."

And therein lies the real danger of the EOs. It is one thing for one party to have no clue how dangerous price controls will be to pharmaceutical innovation and access. It is another for the president to give them additional ammunition in EOs that are undoubtedly intended as empty campaign stunts, are almost guaranteed to be litigated, and will never take effect.