The Daily Dish

The Drug Reform Dance Continues

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Eakinomics: The Drug Reform Dance Continues

As Congress approaches a vote on H.R. 3, Speaker Pelosi's "Elijah E. Cummings Lower Drug Costs Now Act," the world is awash with information regarding approaches to lowering prescription drug costs. In addition to a rich archive of material in AAF's Drug Pricing Clinic, Tara O'Neill Hayes has a new, convenient comparison of the major legislative vehicles.

Last night, the Congressional Budget Office (CBO) released its cost estimate of H.R. 3, which contained three important insights. First, you can indeed reduce federal spending if you combine price-fixing with extortion – something the authors of H.R. 3 call "Fair Negotiation." CBO puts reduced spending at $456 billion. Second, given that the Medicare Trust Fund is on track to hit zero in 2026 and that the social safety net is, in general, facing a financial crisis, you might think that these budgetary savings would be used to shore up the health care future for seniors.

Think again. H.R. 3 as a whole reduces the federal deficit by $5 billion over the 10-year budget window; that is, the authors manage to spend nearly every penny on new benefits that will be just as unaffordable as the old benefits in a few short years. Cognitive dissonance alert! Democrats will use the phrase "fiscally responsible" in association with this bill. The only thing funnier is the new season of The Marvelous Mrs. Maisel.

The third lesson is that you price-fix the domestic drug market at your peril. Failing to provide adequate reimbursements means that capital markets will stop funding drug development and innovation. But how big is the impact? CBO opines, "approximately 8 fewer drugs would be introduced to the U.S. market over the 2020-2029 period, and about 30 fewer drugs over the subsequent decade. (Under current law, the Food and Drug Administration approves, on average, about 30 new drugs annually, suggesting that about 300 drugs might be approved over the next 10 years.) The estimates are in the middle of the distribution of possible outcomes, in CBO's assessment, and are uncertain."

The uncertainty is real. Looking at the same data, the administration emphasized in its Statement of Administration Policy (SAP), "The Council of Economic Advisers finds that H.R. 3's price controls would affect as much as one third of drugs under development, meaning that out of 300 projected new medicines that would otherwise be approved over 10 years by the Food and Drug Administration, 100 could be severely delayed or never developed."

That's quite a difference, and both are within the range of plausible outcomes. The bottom line, however, is that the SAP concludes, "If H.R. 3 were presented to the President in its current form, he would veto the bill" largely because the cost of lost innovation "on individuals and their families will be significant, personal, and long-lasting." (There's also that pesky Constitution; "this price-fixing mechanism places price controls on drugs available under Medicare and commercial plans, and imposes devastating fines on manufacturers, raising serious concerns under the Fifth Amendment’s Takings Clause and Eighth Amendment’s Excessive Fines Clause.”)

Importantly, the president did not slam the door on the legislative progress. The SAP emphasizes, “The Administration strongly prefers the Prescription Drug Pricing Reduction Act of 2019, which was reported out of the Senate Finance Committee on a bipartisan basis. This legislation offers a sound approach to delivering relief to seniors from high prescription drug costs while safeguarding the ongoing development of life-saving and sustaining medicines. Additionally, H.R. 19, the Lower Costs, More Cures Act, shares many of the same bipartisan elements of the Prescription Drug Pricing Reduction Act and is also a far better approach to lowering drug prices and discovering life-saving cures than H.R. 3.”

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