The Daily Dish

The Latest Drug Pricing Bill – A Mixed Bag

TARA O'NEILL HAYES | AUGUST 7, 2019

Eakinomics: The Latest Drug Pricing Bill – A Mixed Bag
Guest authored by Tara O'Neill Hayes, Deputy Director of Health Care Policy at AAF

Congress has been hard at work this year putting together numerous bills related to prescription drug development, pricing, and the supply chain—all with the hopes of reducing government and patient spending for prescription drugs. In fact, lowering prescription drug costs seems to be one of the few policy areas in which some bipartisan agreement may be possible. The latest effort on this front comes in the form of a multi-faceted package from the Senate Finance Committee.

What's in the proposal? Perhaps nothing that'll knock your socks off, but there are a few notable provisions. Most exciting (yes, I'm biased) is the proposal to redesign the Medicare Part D benefit and provide seniors an out-of-pocket cap on their pharmacy prescription drug costs. AAF proposed such a framework last August, and this would be the most substantial reform of the program since its inception.

Also included are several proposals to encourage greater use of biosimilars—generic-like versions of biologic medicines. For example, one provision would, for the first 5 years of a biosimilar being on the market, pay providers more if they administer that drug rather than the (more expensive) biologic. In Part D, plans' quality ratings would be adjusted to account for the degree to which their formulary encourages patients to use biosimilars. Other provisions range from requiring refunds for unused drugs to expanding site-neutral payments.

Of course, as with almost any bipartisan bill, there are also some problematic provisions. The bill would add inflation penalties to Medicare Parts B and D: Every time a beneficiary takes a drug for which the price has increased faster than inflation, drug manufacturers would be required to pay a refund equal to the price above the inflation-adjusted price. In Medicaid, where such a penalty already exists, the maximum penalty would be increased to 125 percent of the drug's price. While it is understandable that policymakers would want to, as they have framed it, disallow taxpayer subsidization of price increases, the economic reality is that inflation penalties are essentially taxes, and taxes on producers get passed on to the consumer. Further, such a penalty is likely to encourage higher launch prices.

Consequently, Republican senators were loath to apply the inflation penalty to the entire market, but Senator Cassidy hit on one potential area of the drug market that seems more ripe for compromise: Part D's protected classes. These are a group of six drug classes for which beneficiaries' access is protected, as all Part D plans must cover these drugs. This policy eliminates price competition, as a result, and insurers have virtually no leverage to negotiate discounts. In short, the protected classes also protect the manufacturers' ability to set whatever price they want.

The result is predictable: A recent study found that 94 percent of protected-class drugs had price increases exceeding inflation from 2012-2017; the median net price increase for these drugs was 36.5 percent over 5 years

while inflation rose just 6.8 percent. Given that the government has already distorted the market (and there is no appetite for repealing the protected classes), maybe further government intervention is a necessary evil in this slice of the market to keep prices down. Although, a much more efficient solution has already been built in: Moving the mandatory rebates into the catastrophic phase creates an incentive to not increase prices while simultaneously also discouraging higher launch prices.

This bill, both the good and bad, will likely come up for a vote this fall, and senators will likely want to make further changes. Stay tuned.