Weekly Checkup

Medicare, the Negotiation of Drug Prices, and the Kerfuffle at Gucci Gulch

CHRISTOPHER HOLT | MARCH 18, 2022

“Let’s be clear.” Finance Committee Chairman Ron Wyden (D-OR) made those words his mantra at this week’s hearing on drug prices and the Build Back Better Act (BBBA). Chairman Wyden wanted everyone to be clear that the BBBA’s Medicare “negotiation” provisions will save the federal government money. Wyden’s repeated clarifications might have led the casual observer of the hearing to think there was strong disagreement between the chairman and both his Republican counterparts on the committee and AAF President Douglas Holtz-Eakin—a witness at the hearing—over the question. In reality, all parties were basically saying the same thing. **So, to quote Chairman Wyden, “let’s be clear” about what exactly the debate over Medicare negotiating drug prices is all about.**

Under current law, the secretary of Health and Human Services (HHS) is prohibited from interfering in negotiations between Medicare prescription drug plans and drug manufacturers. This “non-interference” clause has led to the charge that Medicare is prohibited from negotiating drug prices, leading to higher costs because Medicare can’t leverage its purchasing power, and thus leaving the program hostage to drugmakers’ outrageous price demands. There are some basic flaws in this line of thinking. **First, drug prices *are* being negotiated—just not by the HHS secretary. This year, the average Medicare beneficiary can choose from among 23 stand-alone Part D plans, and 31 Medicare Advantage plans that include drug coverage.** The plans negotiate prices, on behalf of enrollees, for the drugs the plan will cover, offering better formulary placement in exchange for steeper discounts. Sometimes a plan might decline to cover a therapy at all, choosing instead to offer an exclusive deal to a competing product at a better rate, but because there are so many plans, beneficiaries can select one that covers the therapies they need at the best prices. **The second flaw is thinking that Medicare has anything to offer in a negotiation. Medicare doesn’t actually purchase the drugs directly; the Part D plans do.** And Medicare doesn’t actually have any enrollees to negotiate on behalf of; again, the beneficiaries are covered by the various plans. Without either patients or drugs, it’s unclear what Medicare is supposed to negotiate. And this is where we arrive at Wednesday’s kerfuffle at Gucci Gulch.

In his opening statement, Holtz-Eakin cited past Congressional Budget Office (CBO) analyses (including one written by Holtz-Eakin himself) that have consistently concluded that simply allowing the HHS secretary to negotiate the prices of prescription drugs would not, in fact, lead to lower prices. The secretary isn’t buying anything, doesn’t have anyone directly to buy it for, and can’t offer anything in exchange for discounts. For negotiations to work, you would effectively need to eliminate all 54 options the average beneficiary has today and replace them with a single Medicare drug plan. That plan would have a formulary in order to give the secretary leverage, which means some drugs would be unavailable to Medicare patients, and prices for covered drugs would vary based on formulary placement. **Wyden repeatedly sought to clarify that these are “outdated” analyses, and that CBO has recently found that the BBBA’s price negotiation provisions would save federal dollars. But neither Holtz-Eakin nor committee Republicans dispute that. Instead they argued that calling the BBBA initiative a “negotiation” is disingenuous.**

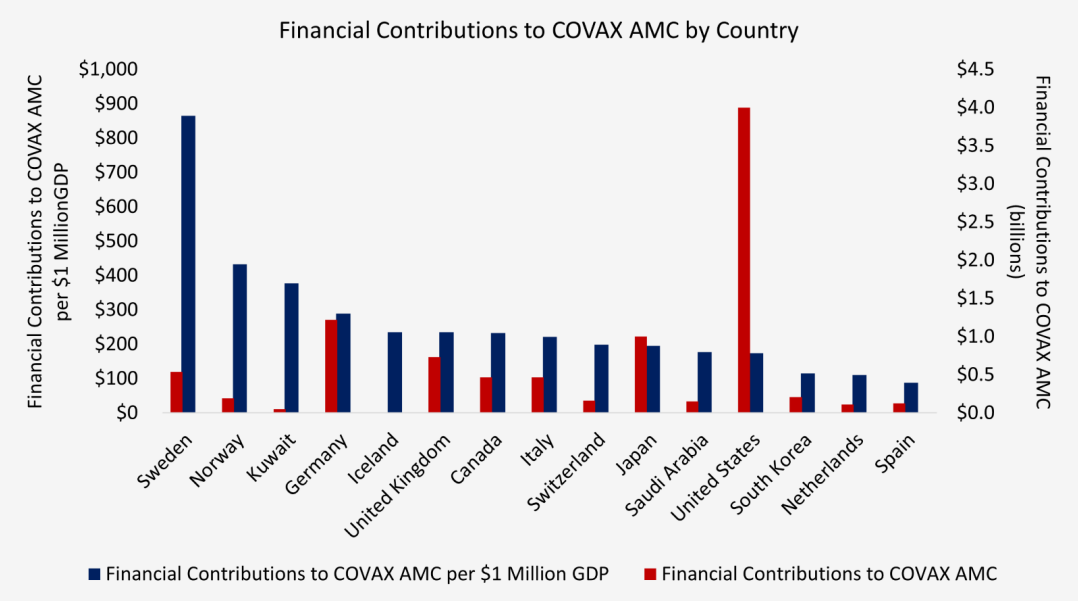
BBBA doesn’t establish a negotiation. Rather, it arbitrarily caps the drug’s price at a percentage of the average sales price, not to exceed 75 percent, and then gives the secretary a cudgel with which to beat further price

concessions out of drugmakers—a 95 percent excise tax on the gross (rather than net) revenue of any product whose manufacturer the secretary deems to have failed to negotiate in good faith. Effectively, the secretary could demand a price of $5 for a drug that normally sells for $200, and if the manufacturer doesn't agree, the secretary could literally just take all their money. **So, let's be clear, the BBBA might well reduce federal spending on drugs, but it would do so through price-fixing and extortion, not through negotiation.**

CHART REVIEW: FINANCIAL CONTRIBUTIONS TO COVAX BY COUNTRY

Margaret Barnhorst, Health Care Policy Fellow

The Kaiser Family Foundation published a report earlier this month tracking financial donations made to Gavi's COVID-19 Vaccines Advance Market Commitment (COVAX AMC), which helps provide low- and middle-income countries access to COVID-19 vaccines. As of March 3, 2022, the United States had donated a total of $4 billion to COVAX AMC, which far exceeds other donations by any single country and even the combined donations of the next five highest donor countries. When standardized per $1 million gross domestic product (GDP), however, Sweden leads with $865.40 donated per $1 million GDP, while the United States ranks 12th with $174.40 donated per $1 million GDP. Any additional financial donations toward global vaccine efforts outside of COVAX AMC, such as those reported by the United States ($800 million), Germany ($245 million), and Australia ($380 million), were not included in the analysis. There is no objective measure for the share of GDP that countries *should* contribute toward COVAX AMC, however, it would take an additional $15.9 billion for the U.S. to match Sweeden's per $1 million GDP rate, bringing the total U.S. contribution of $19.9 billion. That additional $15.9 billion would amount to 144 percent of the total global contributions to the program.



TRACKING COVID-19 CASES AND VACCINATIONS

Margaret Barnhorst, Health Care Policy Fellow

To track the progress in vaccinations, the Weekly Checkup will compile the most relevant statistics for the week, with the seven-day period ending on the Wednesday of each week.

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Sources: Centers for Disease Control and Prevention Trends in COVID-19 Cases and Deaths in the US, and Trends in COVID-19 Vaccinations in the US

Note: The U.S. population is 332,567,933.