

The Right Prescription?

Legislative Efforts to Lower Drug Prices Should Focus on Increasing Competition



COMMENTARY

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With new drugs launching with exorbitant price tags often into the hundreds of thousands if not millions of dollars, and year-over-year price inflation still in the double-digits, the national debate on pharmaceutical pricing is far from over. In fact, escalating drug prices have become a major focus of attention for a range of audiences and stakeholders, from media and consumers to lawmakers and the Trump administration.

A great deal of discussion in the Capitol and from the administration is focused on how to deliver price relief to consumers. Ultimately, manufacturers set drug prices. However, Congress and the administration can enact laws and implement regulatory fixes that can rein in prices.

Many such proposals are up for consideration now that lawmakers are back in session after the summer recess. Some of these seek to create effective tools to increase competition and lower drug prices, while others may limit private sector choice, potentially leading to higher costs.



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At CVS Health, our commitment to helping people on their path to better health begins with ensuring access to quality care at the lowest possible cost. It extends to the work our Government Affairs team does to educate lawmakers and advocate for legislation that will lower costs, amplifying the voices of our clients and their plan members so they are clearly heard.

Closing Loopholes, Increasing Competition

Several of the bills advancing in Congress would increase competition by improving the accuracy of drug classifications for payment purposes, increasing the availability of biosimilars, and addressing abuse of the patent system that prevents or delays generic drugs from coming to market.

More than a dozen such provisions are included in the Senate Finance Committee's Prescription Drug Pricing Reduction Act of 2019.¹ Individual bills that target "patent thickets" also have been considered by the Senate Judiciary Committee.²

By increasing competition in the marketplace, these bills would enhance our ability to negotiate lower drug costs.

Transparency

Much of the health care discussion in Washington, D.C. is focused on increasing transparency in the health care marketplace. Transparency, as long as information proprietary to our clients and CVS Health is not disclosed, may advance our common cause. That's one reason we announced our **Guaranteed Net Cost** pricing model, a new option that focuses on net spend per prescription, after discounts and rebates, for each distribution channel. With the new model, we take accountability for the impact of inflation and shifts in drug mix and 100 percent of the rebates are passed through to the client.

We also offer real time prescription benefits, which provide up-to-the-minute, member-specific drug-cost information in the doctor's office, at the pharmacy counter and directly to consumers, on their phone and online. Prescribers and patients can now see in real-time what the patient would pay out-of-pocket for a specific prescription, lower-cost therapeutic alternatives, and whether any prior authorization or step therapy is required. This tool helps providers and members to make more informed decisions and potentially save money.

100% of rebates

are passed to the client with our
Guaranteed Net Cost pricing mode.

CVS Health also supports transparency legislation advancing on the Hill, including a bill to require greater pharmacy benefit manager (PBM) transparency (S. 801).³ This legislation would require PBMs participating in Medicare Part D to provide drug pricing and rebate data to the two government agencies charged with analyzing health care data recommending legislation to Congress.

We do not, however, support the pending proposals that require public disclosure of drug rebate and discount information. Sharing that information publicly will only benefit drug manufacturers, not our clients or consumers. Specifically, we have asked that Congress balance a desire for transparency with the goal of reducing drug prices, as lawmakers consider further mandated rebate disclosures in the Prescription Drug Pricing Reduction Act and the Lower Health Care Costs Act (S. 1895).⁴

Eliminating Rebates

Earlier this year, the administration proposed eliminating negotiated drug rebates in Medicare Part D. CVS Health raised serious concerns with the proposal, noting that the Centers for Medicare & Medicaid Services (CMS) actuaries estimated that the majority of Part D beneficiaries would face higher costs in premiums than any savings they get at the drug counter. Our own estimates indicate that 70 percent of beneficiaries would likely be worse off if this proposal were finalized.

While the administration has since abandoned this proposal, Congress has explored eliminating rebates in the commercial sector. We have strongly objected, noting that our clients would face increased costs for the same reasons seniors — without the benefit of negotiated rebates — would have faced higher premiums if the rebate rule had gone into effect.

Mandating Private Sector Contracts

Most troubling among the proposals currently advancing in Congress are the bills aimed at regulating contract negotiations in the commercial marketplace with little to no effect on reducing costs. Senate Bill 1895, for example, includes a provision to prohibit the use of spread pricing agreements within the commercial market. If enacted, the law would eliminate a valuable tool — spread pricing — favored by many clients to mitigate risk for increases in drug prices or utilization.

Several other bills would also limit the ability to lower costs through pharmacy networks.

- **Phair Pricing Act (H.R. 1034/S. 640)**

This bill would require all price concessions between a pharmacy and the PBM be included at the point of sale and require the U.S. Department of Health and Human Services (HHS) to create pharmacy quality measures.^{5,6} The bill also requires disclosure of all fees, price concessions and programs to CMS. CVS Health supports the standardization of performance metrics for measuring pharmacy effectiveness.

- **Improving Transparency and Accuracy in Medicare Part D Drug Spending Act (H.R. 803/S.988)**

If passed, it would prohibit Medicare Part D plan sponsors/PBMs from retroactively reducing payment (i.e., direct and indirect remuneration fees) on claims submitted by pharmacies.^{7,8} These fees are the backbone of some pharmacy pay-for-performance programs, and are key for ensuring beneficiary access to high-quality pharmacies. The Administration recently decided against finalizing a proposal to mandate the point of sale, pass-through of these fees but Congress could still act this fall to regulate price concessions. We have advocated for federal standards for pharmacy performance programs in Medicare Part D so they are actionable, fair, competitive, and clearly communicated by the plans to the pharmacies. We believe the standards should support CMS Stars outcomes objectives.

- **Phair Relief Act of 2019 (S. 2247)**

This proposed legislation would require pass-through of rebates to plan sponsors and limit PBM contracting related to pharmacy-negotiated price concessions.⁹



Examination of PBMs

PBMs and the services they provide have come under greater scrutiny in Washington, D.C., largely due to finger pointing from the pharmaceutical industry and others to deflect Congress' attention. Currently, two pending bills would require a review of the industry:

- **PBM Accountability Study Act of 2019 (S. 1532)**
This bill would require the General Accounting Office to study the role of PBMs in the pharmaceutical supply chain and to provide Congress with policy recommendations.¹⁰
- **Prescription Drug Pricing for the People Act (S. 1227 and H.R. 2376)**
If passed, this legislation would require the Federal Trade Commission to study the role of intermediaries in the pharmaceutical supply chain including PBMs.^{11,12}

We are confident that if these bills were to become law, the resulting reviews would confirm the value PBMs bring to their clients, their members and the health care system.

Lowering List Prices

A handful of the proposals advancing in Congress are aimed squarely at reducing list prices. The Administration recently outlined goals to permit Canadian drug importation, and states, including Florida, have examined similar proposals. The administration has also explored internationally based pricing benchmarks for determining drug list prices, and the Senate Finance Committee recently reported a bill to set inflationary caps on drug prices in Medicare.

This month, we also expect the House Democrats to propose a new bill to require the Secretary of HHS to negotiate prices for high-cost prescription drugs with no generic or biosimilar alternative. All of these proposals face stiff opposition from the pharmaceutical industry.

What's Next?

With the presidential election season heating up, we expect Congress to continue to focus on the high cost of prescription drugs throughout the fall. Any final bill will come together at the end of the year as part of a larger funding package, and debate over specific bills could even spill over into next year.



We will continue to lobby Congress to pass legislation aimed at lowering drug prices — and oppose efforts to reduce our ability to negotiate lower health care costs on behalf of our clients and consumers.

Want to know how we can collaborate to advocate for market-based fixes for high drug prices? [Ask Us](#)



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Public Policy

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1. <https://www.finance.senate.gov/imo/media/doc/FINAL%20Description%20of%20the%20Chairman's%20Mark%20for%20the%20Prescription%20Drug%20Pricing%20Reduction%20Act%20of%202019.pdf>.
2. https://en.wikipedia.org/wiki/Patent_thicket.
3. <https://www.congress.gov/bill/116th-congress/senate-bill/801>.
4. <https://www.congress.gov/bill/116th-congress/senate-bill/1895>.
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10. <https://www.congress.gov/bill/116th-congress/senate-bill/1532?s=1&r=93>.
11. <https://www.congress.gov/bill/116th-congress/senate-bill/1227>.
12. <https://www.congress.gov/bill/116th-congress/house-bill/2376>.

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