

# Medicare Drug 'Reform' Bill a 'Hollow Victory' for Democrats

by Michelle Chen

**Interested parties on two sides of the Medicare prescription-drug debate say last week's effort to give the government power to negotiate prices was a big deal, but experts say it is unlikely to have any real impact.**

**Jan. 23** – Democrats in Congress are touting a bill that purports to give the government greater leverage to reduce prescription-drug costs for seniors. But some skeptical healthcare reformers warn the measure is more of a political gesture than a real move to rein in the pharmaceutical industry.

The Medicare Prescription Drug Price Negotiation Act, sponsored by Representative John Dingell (D–Michigan), passed the House on a mostly party-line vote earlier this month.

The Negotiation Act, if approved by the Senate and signed into law, would alter a controversial provision in Medicare's Part D prescription-drug program that bars the secretary of Health and Human Services from negotiating prices with drug makers. It would instead direct the secretary to negotiate with manufacturers over the prices they charge for drugs used by Medicare beneficiaries.

The bill has attracted predictable enemies: the influential industry groups Pharmaceutical Research and Manufacturers of America (PhRMA) and the National Association of Manufacturers warn the Negotiation Act could lead to price controls that would unnecessarily constrain market forces. President Bush has vowed to veto the legislation, contending in a written statement that "government interference impedes competition" and "reduces convenience for beneficiaries" at taxpayers' expense.

But the bill has also been criticized from another vantage-point. Advocates for farther-ranging reforms say the legislation is too weak to make medicines more affordable for seniors.

Specifically, they note that the legislation does not give the government a real bargaining chip, since it keeps the actual purchase and distribution of Part D benefits firmly in the grasp of private insurance plans.

Although the Negotiation Act repeals Part D's outright ban on negotiations, it upholds a provision preventing the Department of Health and Human Services from establishing a list of drugs to be provided to Part D enrollees. Such lists are known as "formularies," and are a key mechanism for negotiations between insurers and drug makers.

Critics say that under the legislation, without the ability to threaten to shut a drug out of a formulary, the government could do little to goad a manufacturer to meet its asking price, as companies face no direct financial consequences for ignoring government pressures.

Kim Dayton, a professor specializing in elder law at William Mitchell College of Law, called the legislation "a hollow victory for the Democrats."

"This doesn't make any changes at all in the structure of the [Part D] program," she told *The NewStandard*, "which is the source of the problem."

The Congressional Budget Office (CBO) affirmed that analysis in a letter issued before the bill passed. The CBO stated that "private entities have both the incentives and the tools to negotiate drug prices that the government under the legislation would not have." Because of this loophole, the CBO explained, the secretary's influence was unlikely to yield lower prices than those private companies would have obtained

on their own.

Centrist healthcare-reform groups, such as Families USA, point to the Department of Veterans Affairs (VA) drug benefit as an example of how government negotiating power can bring down costs. According to the group's analysis of twenty commonly prescribed drugs, VA beneficiaries consistently pay lower rates than Part D seniors for the very same products.

But those seeking stronger reforms say the comparison is moot, because unlike Medicare under the proposed law, the VA system buys the medicines on its formulary directly from drug companies. By contrast, Part D beneficiaries would continue to fill their prescriptions through a complex bureaucracy of private drug plans, which vary widely in their payment schemes and coverage options.

Despite the limitations of the Democrats' proposal, it faces opposition within Congress, which is shadowed by a drug-industry lobby that spent almost \$147 million to sway politicians in 2005, according to the political-spending clearinghouse Center for Responsive Politics. Senators Olympia Snowe (R-Maine) and Ron Wyden (D-Oregon) are promoting an even-more-restrained bill that would limit the "negotiation" mandate to certain conditions, such as cases where a single company controls the entire supply of a type of drug.

Proponents of the Negotiation Act defend it as a step toward corporate accountability in the Part D system.

Vicki Gottlich, with the public-interest litigation group Center for Medicare Advocacy, said the Act was only a "quick fix" that skirted more-systemic affordability issues. But she said that since the bill requires Medicare to report periodically to Congress on its bargaining activities, lawmakers would have more insight into what private plans pay manufacturers and in turn, what they skim off as profits when providing drugs to seniors.

Within the current Part D system, Gottlich continued, "There's no transparency," as private insurance plans conceal their negotiations from the public as proprietary information.

Yet legal expert Dayton warned that, whether handled by the government or by private companies, the ability to bargain for lower prices alone might not remedy unfair prices. Private companies have an interest in lowering prices as well, she noted, but "their interest is not in securing the lowest cost and passing it on to beneficiaries. Their interest is in securing the lowest cost and then charging the beneficiaries whatever they can get."

Similar accountability issues apply to the government, Dayton said, since the four-page Negotiation Act is silent on affordability standards or other cost controls that could be a benchmark for evaluating whether the secretary is really bargaining in good faith.

The Department of Health and Human Services, for its part, has expressed no desire to involve itself in the prescription-drug market. In a recent public statement, Leslie Norwalk, acting administrator of the Centers for Medicare & Medicaid Services, defended Part D in its current form, arguing that competition between private bidders already provides adequate consumer choice and affordable plans for the approximately 23 million enrollees.

Several reform groups, while endorsing the House bill as a minor step forward, have pushed for the creation of a government-run senior drug plan in which Medicare itself bulk-purchases drugs for beneficiaries.

In the last session of Congress, some House Democrats proposed legislation to create a "Medicare Operated Prescription Drug Plan," which would have directly provided drugs as private plans do, at prices negotiated by the government as a purchaser. That proposal, discussed briefly last year before stalling, would have gone farther than the new bill by establishing a national premium rate and directing the Department of Health and Human Services to "encourage the use" of cheaper versions of certain drugs.

Groups like the California Nurses Association and Physicians for a National Healthcare Program, which push for a publicly administered, single-payer insurance system, say that to ensure affordability and address

systemic inequities, the government has a responsibility both to regulate pharmaceutical prices and to provide its own comprehensive benefit program.

Charles Idelson, spokesperson for the California Nurses Association, said of the current House bill, "It's positive that they took this vote. But it's only an incremental reform to a much more serious and larger problem, which goes beyond outrageous drug prices to the entire disgrace that is our national healthcare system."

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