

Inside CMS

January 11, 2007

## ADVOCATES CHEER, CMS PROTESTS AS HOUSE UNVEILS PART D NEGOTIATION BILL

SECTION: Vol. 10 No. 1

LENGTH: 848 words

House Democrats introduced long-awaited legislation last Friday (Jan. 5) that would require the Bush administration to negotiate directly with pharmaceutical companies for lower drug prices under Part D, prompting immediate applause from consumer advocacy groups which have long contended that such a move would make the benefit more affordable for beneficiaries. CMS, however, issued its own statement cautioning that adopting such a measure would likely restrict beneficiaries' access to drugs.

A much-hyped plank of the '100 hours' agenda of House Democrats, the three-page bill would require HHS Secretary Michael Leavitt to haggle directly for lower prices under Part D even though the federal government does not offer its own plan option.

"The Secretary shall negotiate with pharmaceutical manufacturers the prices (including discounts, rebates, and other price concessions) that may be charged to [prescription drug plan] sponsors and [Medicare Advantage] organizations for covered part D drugs for part D eligible individuals who are enrolled under a prescription drug plan or under an MA-PD plan," the bill reads. It is slated for a floor vote Friday (Jan.12).

Unlike the rules governing drug-price negotiations conducted through the Department of Veterans Affairs (VA), the House bill would not create a national formulary, leaving some observers to wonder how the bill will effectively secure lower costs. "Without the ability to exclude drugs from a formulary, you have no negotiating leverage," one source told Inside CMS.

Furthermore, despite Democrats' claims that the legislation will lead to taxpayer savings, the Congressional Budget Office (CBO) has scored the bill "a big zero," according to a Democratic staffer, adding that "the CBO is usually a very conservative entity, [and] it doesn't mean that in reality it's going to actually happen."

The score means that CBO does not believe taxpayers and the federal government will see savings from negotiation, but patient advocates suggest the point of the legislation is to save seniors money and hailed the introduction of the bill.

"The insurance companies offering Part D have been unable to provide affordable drug prices to people with Medicare," Robert Hayes, president of the Medicare Rights Center, wrote in a Jan. 5 endorsement letter to Speaker Nancy Pelosi (D-CA). "If this bill becomes law and the Bush Administration negotiates with the pharmaceutical industry, lower prescription prices will help millions of [beneficiaries] avoid the Part D doughnut hole."

Similar letters of endorsement were sent also from a host of other senior advocates, including AARP, the **Center for Medicare Advocacy** (CMA) and Consumers Union.

But, perhaps in a move designed to preempt the bill's introduction, CMS last Thursday (Jan. 4) issued a Part D "fact sheet," intended as a guide for journalists covering the prescription benefit -- a significant portion of which is dedicated to the contention that government negotiation would cripple the benefit at the expense of beneficiaries.

"Government interference with price negotiation in the Medicare prescription drug benefit is unnecessary because experience with Part D thus far demonstrates that competition and plan negotiation are clearly working," the notice states. "Were the government to negotiate prices directly in an attempt to obtain lower prices, access to drugs would likely be restricted."

"Price negotiating requires limiting access to some drugs, while promoting others in exchange for price discounts," the fact sheet continues. "A 'Medicare formulary' would thus limit access to some drugs in order to offer a preferred position to others."

But the bill's supporters contend the true limitation is the current prohibition on government negotiations. "The [current] law only lets individual plans negotiate with drug companies -- this is akin to Wal-Mart allowing each local store to negotiate prices, but refusing to allow bulk purchasing for all of Wal-Mart," **Judith Stein**, executive director of CMA, said in a statement.

The bill's introduction came on the same day that the health consumer group Families USA first reported that drug prices negotiated by the five companies with the highest Part D enrollment are about 58 percent higher than those for the same drugs negotiated by the VA.

Meanwhile, the negotiation push is also catching on in the Senate. On Jan. 4, a "sense of the Senate" negotiation bill was introduced by Senate Democratic leaders, with another more specific negotiation bill arriving yesterday (Jan. 10). A Finance Committee hearing on that issue is slated for today (see related story). By contrast, the House bill will bypass the committee and markup processes, leading to Republican criticisms.

A Pelosi spokesperson countered that the bill -- and the process surrounding it -- is merely an instance of Democrats following through on their campaign promises. "On the campaign trail, the issue of drug negotiations and our plans on it really resonated with voters," the Pelosi aide said. "[Pelosi] has made it a priority to lead by consensus."