Democrats Sympathize with Complaints About Medicare Formularies
Congress Might Give Pharmacies More Negotiating Leverage with Part D

Stephen Barlas

Whether Congress passes a bill this year allowing major changes to be made in the Medicare drug benefit, Democrats and Republicans—now split on whether the federal government should negotiate drug prices—will probably agree at least on some smaller reforms. Giving pharmacies more leverage with Medicare Part D drug plans and with their pharmacy benefit manager (PBM) partners is high up on that list.

The push by pharmacists for more bargaining leverage with PBMs was a highlight at hearings by the Senate Finance Committee in early May. At that time, representatives of the National Community Pharmacists Association (NCPA) and the American Pharmacists Association (APhA) made the case for the Community Pharmacy Fairness Act of 2007 (H.R. 971/S.885). This act would allow pharmacists to unite to negotiate with Part D insurance plans without running afoul of antitrust laws.

That bill is an anathema to the Pharmaceutical Care Management Association (PCMA), which represents PBMs. PBMs partner with insurance companies to offer Medicare Part D drug plans, which have proliferated beyond anyone’s expectation. A survey just published by the PCMA showed that sweeping collective bargaining rights could increase prescription drug costs for Medicare and commercial payers by 11.8%, or $29.6 billion, over five years.

“The independent drugstore lobby wants a license to collude so that it can demand higher prices from patients and payers and reap more profit for themselves,” said PCMA President Mark Merritt.

PCMA objections aside, the pharmacy groups have attracted the attention of key lawmakers.

“It is troubling to me that many pharmacies are still having difficulty getting fair and timely compensation from drug plans,” says Senator Max Baucus (D-Mont.), chairman of the Senate Finance Committee.

In May, this committee held hearings on Part D plans in preparation for Senate action on H.R. 4, the Medicare price negotiation bill that the House had approved earlier this year.

Pharmacy groups want Congress to attach the Community Pharmacy Fairness Act as an amendment to any Medicare bill. Again, Congress is unlikely to pass a bill that would allow the federal government to negotiate with drug companies to set prices for Part D. However, less ambitious proposals might fly.

The Community Pharmacy Fairness Act was introduced in past congressional sessions but was stymied by the Republican leadership. It has 124 co-sponsors in the House, where it was referred to the Judiciary Committee. The chairman of the committee, Representative John Conyers (D-Mich.), is a co-sponsor.

Bruce Roberts, RPh, NCPA Executive Vice President and Chief Executive Officer, says:1

Under current law, the hands of independent pharmacists are tied because they aren’t allowed the same leverage as large chains and others to negotiate the terms of contracts with health plans. Passage of H.R.971 would give these small business owners the green light—and the clout—to get a better deal for their patients.

Pharmacies would use their new leverage, he suggests, to negotiate for terms in a contract that could accomplish the following:

- restrict the number of changes that PBMs can make in their formularies
- reduce preauthorization hassles to obtain refills or formulary-restricted medications
- limit the switching of patients to medications pushed by drug plans in connection with manufacturer rebates

At the hearings in Senator Baucus’ committee on May 2, Tim Tucker, a pharmacist and president-elect of the APhA, noted that matters of formulary management remain the number one complaint of APhA members regarding the administration of the Part D benefit. He explained:2

Pharmacists continue to report that a large number of physicians, frustrated by the uncompensated and burdensome work required to facilitate formulary management decisions, will not respond to formulary requests from pharmacists. Nor is it easy for pharmacists to figure out what drugs are on a formulary. Current postings are sporadic, difficult to find, and confusing.

If pharmacies and pharmacists were the only ones complaining about complicated formularies, members of Congress could ignore their pleadings for legislative relief; they could argue that only commercial interests are at issue. But advocates for senior citizens are making the same complaints, and the 43 million members of Medicare make up a potent voting bloc.

Vicki Gottlich, a senior policy attorney with the Center for Medicare Advocacy, a national, nonprofit, nonpartisan organization, endorsed the pharmacies’ complaints at the Senate Finance Committee。”

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hearings. She told Senator Baucus’ committee that beneficiaries, their doctors, and their advocates do not have the information they need to support a request to a Part D plan for prior authorization to get a nonformulary drug or to support a request for an exception. (An exception is a second, more complicated means of obtaining a nonformulary drug.)

The battle over Medicare formularies, in the end, may turn out to be politically predictable. When the Republicans, long sympathetic to insurance company concerns, were in control, they refused to move the Community Pharmacy Fairness Act in past sessions of Congress. Now Democrats determine which bills move forward. Given that the bill has Republican support, its chances for passage look brighter than ever before.

REFERENCES