



**Legislative Bulletin.....January 12, 2007**

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**H.R. 4—Medicare Prescription Drug Price Negotiation Act of 2007**

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**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 0

**Total Cost of Discretionary Authorizations:** \$0

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:**

**Total New Private Sector Mandates:**

**Number of Bills Without Committee Reports:** 1

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

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**H.R. 4—Medicare Prescription Drug Price Negotiation Act of 2007**  
***(Dingell, D-MI)***

**Order of Business:** The bill is scheduled to be considered on Friday, January 12, 2007, pursuant to H.Res. 6, a rule that the House passed last week closing the bill to amendments, waiving all points of order against the bill and its consideration, deeming the previous question as ordered, providing for three total hours of debate, and providing for one motion to recommit. (Note: H.Res. 6 was the resolution adopting House Rules for the 110<sup>th</sup> Congress.)

It also provided for the consideration of several portions of the Democrats' 100-Hour Agenda.) **In other words, this bill will come to the floor under a closed rule and without the applicability of any of the new House rules that the Democrats have implemented.**

**Summary:** H.R. 4 would repeal a provision in current Medicare Prescription Drug law, which prohibits the Secretary of Health and Human Services (HHS) from “interfering” with the negotiating of prescription drug prices on behalf of Medicare beneficiaries. In addition, current law prohibits HHS from requiring a particular formulary or instituting a price structure for the reimbursement of covered part D drugs.

### **Current Law**

SEC. 1860D-11

(i) NONINTERFERENCE.—In order to promote competition under this part and in carrying out this part, the Secretary—

- (1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and
- (2) may not require a particular formulary or institute a price structure for the reimbursement of covered part D drugs.

In addition to repealing the above prohibitions, H.R. 4 would also *require* Medicare to “negotiate” drug prices with pharmaceutical manufacturers. Specifically, the bill states the following:

(i) Negotiation of lower Drug Prices—

- (1) IN GENERAL - Notwithstanding any other provision of law, the Secretary shall negotiate with pharmaceutical manufacturers the prices (including discounts, rebates, and other price concessions) that may be charged to PDP [prescription drug plan] sponsors and MA organization 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 would require HHS, no later than June 1, 2007, and every six months thereafter, to submit to the House Committees on Ways and Means, Energy and Commerce, and Oversight and Government Reform and the Senate Committee on Finance, a report on “negotiations conducted by the Secretary to achieve lower prices for Medicare beneficiaries and the prices and price discounts achieved by the Secretary as a result of such negotiations.”

H.R. 4 does not provide guidelines or instructions to the Secretary outlining in what manner the negotiations are to take place. However, H.R. 4 states three rules of construction, which attempt to outline the author’s intent regarding HHS authority under this Act. In the first rule, the bill provides that nothing in the Act is to be construed as authorizing the Secretary to establish or require a particular formulary (a preferred list of drugs). It is unclear whether this language, if enacted, would be successful in prohibiting the Secretary from establishing such a formulary. The second rule provides that the Act should not be construed as affecting the Secretary’s current authority to review all PDPs submitted to CMS for review of the provided formulary. The third rule would provide that nothing in the Act should be construed as preventing PDPs from continuing to obtain a discount or reduction of the price for drugs below the price “negotiated” by the federal government.

Finally, the provisions in H.R. 4 would take effect on the date of enactment and would first apply to negotiations and prices for plans beginning on January 1, 2008.

**Additional Background:** Enacted in 2003, the Medicare Prescription Drug, Improvement, and Modernization Act (MMA), provided a new voluntary Medicare prescription drug entitlement to seniors (Part D), which began on January 1, 2006. Under the entitlement, participants receive the prescription drug benefit through private entities that offer prescription drug plans (PDPs) or through Medicare Advantage (MA) plans offering a prescription drug benefit.

As noted above, MMA included a noninterference provision, which prohibits the HHS interference in negotiating prescription drug prices. As such, in the current system, PDP sponsors, such as insurance companies, (or a mediator, such as pharmacy benefit managers) compete against each other and negotiate prices directly with the manufactures. These negotiated prices then allow the PDPs to attract consumers by offering lower co-pay options and premiums.

**Possible Conservative Concerns:** Some conservatives may be concerned that allowing the federal government to “negotiate” prescription drug prices may result in a system that places cost before quality, and at the same time, does not result in the savings touted by proponents. Some also contend that allowing the federal government to negotiate with manufacturers regarding prices will not provide for true negotiations, but that the government would essentially mandate a certain price for each drug and the companies not willing to meet that price would be squeezed out of the program.

It is also plausible that companies, which could meet that government-mandated price, might have to let quality deteriorate or sacrifice investments in new drugs. Seniors would likely have access to a smaller range of drugs than under the free-market system. Unlike with the purchase of other products, such as toothpaste—when often a decision can be made based solely on the cost—much more than cost alone must be taken into account when a doctor and patient choose the right drug to treat a given ailment. Although various toothpastes may be interchanged without the sacrifice of quality, prescription medication is not easily swapped in light of small, but significant, differences between several medications designed to alleviate the same condition.

In addition, many recent reports indicate that requiring the federal government to “negotiate” drug prices with the manufactures would not result in any savings to the federal treasury or the taxpayer. As noted below in the “Cost to Taxpayers” section, CBO has outlined that allowing HHS to negotiate prices “would have a negligible effect on federal spending.” And, the current market-bases system has actually begun to *lower* federal prescription drug costs. The Centers for Medicare and Medicaid Services (CMS) released a statement in August 2006 stating, “Because of strong competition is continuing in 2007, Medicare drug benefit costs are coming down further. The ‘bids’ by the prescription drug plans are 10 percent lower, on average, in 2007 than 2006.” In short, allowing PDP sponsors to negotiate directly with the manufactures has pushed prices downward, saving the federal government and taxpayers money.

**Committee Action:** On January 5, 2007, the bill was referred to the Committees on Energy and Commerce and Ways and Means, neither of which took any official action.

**Administration Position:** According the Statement of Administration Policy, “If H.R. 4 were presented to the President, he would veto the bill.” The SAP also states, “Government interference impedes competition, limits access to life-saving drugs, reduces convenience for beneficiaries, and ultimately increases costs to taxpayers, beneficiaries, and all American citizens alike. Furthermore, competition is reducing prices to seniors, providing a wide range of choices, and leading to a more productive environment for the development of new drugs.”

**Cost to Taxpayers:** In a January 10, 2007 letter to Chairman Dingell and Ranking Member Barton, CBO state that enacting H.R. 4 “would have a negligible effect on federal spending because we anticipate that the **Secretary would be unable to negotiate prices across the broad range of covered Part D drugs that are more favorable** than those obtained by PDPs under current law” (emphasis added).

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes. The bill would expand the ability of the federal government to be involved in determining prescription drug prices for seniors.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Constitutional Authority:** A committee report citing constitutional authority is not available.

**Outside Organizations:** H.R. 4 is being opposed by:

- National Right to Life
- U.S. Chamber of Commerce
- National Association of Manufacturers
- Club for Growth
- America’s Health Insurance Plans
- National Taxpayer’s Union
- American Benefits Council
- National Business Group on Health
- National Retail Federation
- The ERISA Industry Committee

The Heritage Foundation released several papers strongly opposing H.R. 4.

AARP is supporting H.R. 4.

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