

Medicare Negotiation and Competitive Licensing Act - H.R.1046/S.377

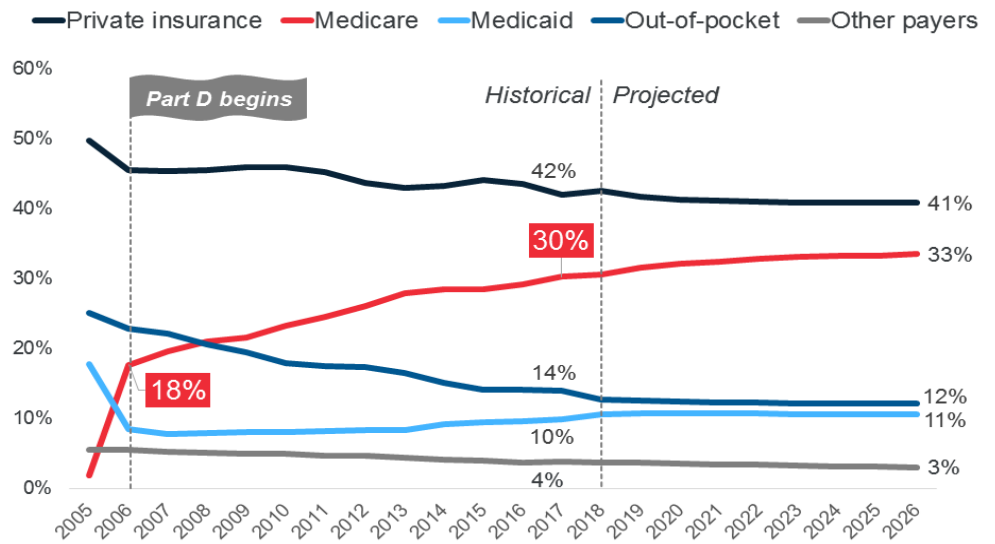
Facts

- Nearly one in five American adults aged 55 and older reports skipping critical doses of medications or not filling a prescription because of cost.¹
- In the last five years, prices increased on average by 12% for each of the top 20 most commonly prescribed brand-name drugs for seniors, approximately tenfold higher than the average rate of inflation.²
 - 12 of these drugs had price increases of over 50% over the same time.²
- Even with Medicare’s prescription drug coverage (Part D), seniors can still have significant out-of-pocket costs, particularly if they require specialty medicines or multiple brand-name drugs.³

Background

Paying for prescription drugs accounts for roughly 20% of the annual Medicare budget, approximately \$129 billion in 2016.³ This astronomically high number is due in large part to the “non-interference clause”, which prevents Medicare from negotiating drug prices directly with manufacturers as do other insurers. Despite the fact that Medicare Part D is the largest drug purchaser in the world, Medicare pays between 70-80% more than Medicaid or the Department of Veterans Affairs (VA) for pharmaceuticals. Thus, this clause prevents Medicare from leveraging its massive bargaining power to negotiate for lower drug prices for our seniors.

Percent of total U.S. retail prescription drug spending by payer



SOURCE: KFF analysis of CMS National Health Expenditure Data for Historical (CY2005-2017) and Projected (CY2018-2026) Retail Prescription Drug Expenditures.



Medicare’s share of retail prescription drug spending nearly doubled since 2006

Rationale

Drugs make up a major portion of Medicare costs, accounting for approximately \$1 for every \$5 spent.³ When patients cannot afford their medications, they often resort to rationing their prescriptions or skip them altogether. This can be detrimental to their health. Our patients should be able to afford the treatments they are prescribed. The Medicare Negotiation and Competitive Licensing Act is a first step towards making medicines affordable.

Key points of H.R.1046/S.377:

- **Medicare negotiation:** It will remove “non-interference clause” and authorize the U.S. Department of Health and Human Services (HHS) Secretary to directly negotiate drug prices with pharmaceutical drug manufacturers on behalf of all Medicare part D beneficiaries.
- **Increases generic competition:** If a negotiation fails (e.g. when a manufacturer refuses to offer a reasonable price), the HHS Secretary will have the authority to issue competitive licenses to allow generic manufacturers to produce the drug and introduce competition into the market.
 - Seniors are protected from unreasonable prices by allowing for generic competition. Medicare could turn to another manufacturer for needed medicine, ensuring patient access to treatments.
- **Saves money and lives:** It is estimated if Medicare can get the same pricing as the VA, it will save \$16 billion annually.
- **Rewards originator's innovation:** If a competitive license is issued, it will still provide reasonable compensation to the original patent holder, thus continuing to reward their innovation.
- **Prohibit anti-competitive behavior:** Under this bill, “pay-for-delay” deals that slow or prevent generic medicines from entering the marketing will be prohibited.
- **Get the same deals as other countries:** In the event that negotiations fail and a competitive license is issued, the bill would provide an interim price based on the international reference price. This would ensure that Medicare does not pay more than the average price paid in other countries of similar economies. If a company refuses to sell at this price, the competitive license would be expanded to cover sale to all federal programs, beyond Medicare Part D.

*Adapted from Public Citizen's Fact Sheet:
[Harness Medicare's Purchasing Power to Negotiate Lower Drug Prices](#)*

AMSA Policy Recommendation

AMSA strongly urges Congress to allow Medicare to negotiate for lower Rx prices and HHS to issue competitive licenses when pharmaceutical companies won't negotiate by supporting passage of H.R.1046/S.377.

Sources:

1. U.S. Senate Committee on Homeland Security and Governmental Affairs. Brand-Name Drugs Increasing at 10X Cost of Inflation, McCaskill Report Finds. <https://www.hsgac.senate.gov/media/minority-media/breaking-brand-name-drugs-increasing-at-10x-cost-of-inflation-mccaskill-report-finds>
2. Kaiser Family Foundation. 10 Essential Facts About Medicare and Prescription Drug Spending. <https://www.kff.org/infographic/10-essential-facts-about-medicare-and-prescription-drug-spending/>
3. Public Citizen. Harness Medicare's Purchasing Power to Negotiate Lower Drug Prices. <https://www.citizen.org/sites/default/files/mncla-leave-behind.pdf>