

Lawmakers' Plans for Lower Drug Prices Leave Uninsured Behind

By Jacquie Lee and Shira Stein

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- Bills that affect uninsured most directly haven't seen action in Congress
- Number of uninsured rose by 1.4 million between 2016 and 2018, CBO says

Policy proposals that would have an immediate effect on lowering high prescription drug prices for the uninsured are getting little attention in a Congress that has made reducing drug costs its goal.

Of the policy suggestions being floated in the White House and Congress, the options with legs focus primarily on Medicare drug costs or price transparency initiatives, which wouldn't be of much help to the uninsured.

Most policy discussions focus on the three main payer types: Medicare, Medicaid, and to a smaller extent commercial insurance, "yet the uninsured are the ones with the most access problems," Inmaculada Hernandez, associate director of the Center for Pharmaceutical Policy and Prescribing at the University of Pittsburgh, said.

After the number of people without insurance dropped substantially from over 44 million in 2013 to about 27 million in 2016, new federal statistics show the uninsured rate is rising. The number of uninsured Americans has increased by at least 1.4 million from 2016 to 2018, according to a Congressional Budget Office report released this month. Meanwhile list prices for drugs continue to go up.

It's the uninsured who are most vulnerable to pharmaceutical list price hikes. Insurers, pharmaceutical companies, and drug middlemen will fight over who's to blame for rising prices, but all seem to agree on one thing: High list prices put medication out of reach for too many Americans.

And although a handful of Democratic presidential hopefuls have signed on to Medicare for All to expand health coverage and drug access, those tracking federal drug price efforts aren't holding their breath.

"Medicare for All would work well and Americans would be satisfied with it long-term," Hernandez said, but "it is highly unlikely to happen."

A Ripple Effect

There is a middle ground in a lot of the proposed legislation that could eventually trickle down to people without insurance. Cutting back on tactics brand drug companies use to keep generics off the market—like refusing to sell generic drugmakers necessary samples—would theoretically benefit everyone, including the uninsured.

But the connection would be “three degrees away,” Sudip Parikh said, referring to bills like the CREATES Act (S. 340, H.R. 965) that are designed to get more generic drugs on the market and their ability to lower prices for the uninsured. Parikh is vice president and director at the Drug Information Association. Previously, he worked on the Senate Appropriations Committee for nine years under two Republican senators.

Similarly, there are also bills that stop “pay-for-delay” tactics (H.R. 1499, S. 64, H.R. 938) where brand companies pay generic companies to hold off on marketing a generic product. Conventional drug policy knowledge says prices begin to decline when at least three generic versions of a drug are available to patients.

“However, we have seen in many cases where entry of competitors does not lead to lower list prices, but to higher list prices with also higher rebates,” which tend to benefit the drug middlemen, but not patients, Hernandez said, referring to her research.

Legislation demanding transparency within the drug supply chain (H.R. 1520, H.R. 1503) would help both the insured and uninsured understand drug pricing better, but that wouldn't directly lead to lower prices for anyone.

Of the bills floating through this Congress to address high prices, these examples are the most likely to get through both the House and the Senate. They aren't direct price controls, but they try to tamp down on drug companies abusing the regulatory system—something both Republicans and Democrats can get behind.

Slashing Prices Right Now

Drug importation from Canada and prohibitions on drug price spikes are the only proposals that would have a more immediate effect on uninsured patients, but none of these is getting attention from committees in Congress.

Both the Food and Drug Administration and Sen. Chuck Grassley (R-Iowa) have shown they're open to the idea of importing drugs from other countries. Grassley sponsored a bill that would allow importation for personal use (S.61), and Democrats in the House and Senate introduced a bill that would also allow wholesalers and pharmacists to do so (S.97). Grassley also cosponsored a bill (S.844) to allow expedited generic drug reviews and temporary importation in the event of a drug shortage.

Various measures that would prohibit price spikes or gouging have been introduced in the House and Senate. These measures would address high list prices for drugs, which are what the uninsured typically pay.

One bill (S.637) would prohibit price gouging above a certain amount and would allow the Department of Health and Human Services to remedy the increase by refunding money to consumers and/or requiring drug makers to offer the drug at the initial lower price. Some states have passed similar legislation, with less harsh penalties.

Other potential penalties for price increases include a tax on drugs that have price spikes (H.R. 1093), a reduced market exclusivity period for the manufacturer (H.R. 1188), or a removed exclusivity period (H.R. 465).

Some of the proposals (S. 102, S.977) define price spikes as anything exceeding the often lower median international prices and echo the Trump administration's international indexing proposal.

Federal Beneficiaries Only

Any bills aimed at lowering drug prices for Medicare beneficiaries would have no direct effect on uninsured people because they would affect only the Medicare prescription drug benefit, known as Part D. Medicare and Medicaid prices are typically seen as a baseline for private insurers, so changes to drug pricing in those programs could lead to changes by private insurers.

Four different bills (H.R. 275, H.R. 448, H.R. 1046, S.62) in the House would allow the HHS to directly negotiate prescription drug prices under Medicare Part D. Those prices are currently negotiated by private insurers who run Part D. Two of those bills have companion bills introduced in the Senate.

There are a variety of bills that would affect drug rebates for Medicare beneficiaries, including bills that would pass rebates to consumers (S.3, S.640) and a bill that would create more transparency around drug middlemen like CVS and Express Scripts (H.R. 1035). There is also a bill (H.R. 2038) that would allow private insurers to negotiate drug prices and would exempt them from antitrust enforcement for doing so.

The Trump administration's health-care policies to bring down prices have also focused primarily on Medicare beneficiaries. The relatively little emphasis on the uninsured is creating some concern among public health officials, especially as the uninsured rate has risen.

"Usually what we see in a strongly growing economy is more coverage versus less coverage," Edwin Park, a research professor at the Georgetown Center for Children and Families, said.

Park said he's concerned with the growth of people without insurance. He expects the number to increase by the time the fall census is taken.

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