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Durbin Seeks Tool for Medicare Drug-Price Bargaining

By Kerry Young, CQ Roll Call

April 22, 2016 -- Senate Assistant Minority Leader Richard J. Durbin stands apart on a key point from the crowd of Democrats with bills to allow direct Medicare negotiations on drug prices. He wants the federal health program to have the same powerful tool that insurers use in bargaining, which is the right to decline or limit coverage of certain medicines through the creation of a so-called formulary.

This aspect of Durbin's plan is a "refreshing admission" about how direct Medicare negotiations for the Part D drug plans likely would have to work, said Robert Moffit, a senior fellow at the conservative Heritage Foundation. In contrast, Sen. Bernie Sanders, I-Vt., and Democrats who introduced five competing Medicare drug negotiation bills have included language in their measures specifically excluding the creation of a government-run formulary.

"It's honesty in public policy," said Moffit, a former federal health official, about the Illinois Democrat's bill (S 1884), which he opposes. Durbin "is telling them upfront that, no, they are not going to be able to have access to the drugs that they have today."

The drug industry is fiercely opposed to Durbin's idea of a new Medicare-run drug plan as an option for the Part D program, which serves about 40 million seniors and people with disabilities in its traditional fee-for-service program. The idea of a broad Medicare formulary is commonly seen as politically unviable because of the perspective of the drug industry, which cooperated with the Obama administration on the 2010 health care law.

Yet Durbin's plan for a Medicare-operated drug formulary resembles an approach already used by the Department of Veterans Affairs. Insurers in both the Medicare Part D drug program and private health insurance coverage also use formularies. Under his plan, drugs would be evaluated on their therapeutic merits, and an appeals process would address disputes by consumers about coverage limits. Restrictions on coverage are common in cases where several drugs offer similar benefits, such as cholesterol-reducing pills.

Durbin sees this as a bid to use the clout of Medicare, the nation's largest single buyer of health care, to drive steeper discounts than Part D now gets with private insurers creating their own individual formularies for their portion of the Medicare population. The cost of the Part D program may near \$100 billion this year, up from \$44 billion in its debut year, 2006, according to the Medicare board of trustees.

"Competition gives the consumer a fighting chance," Durbin said in an interview.

Lawmakers designed the Medicare drug benefit in a 2003 law (PL 108-173) so that insurers such as Humana and UnitedHealth negotiate with drugmakers over covering medicines in their formularies.

But proposals to allow the federal government to negotiate directly save little if they do not provide tools for the government, which could include a system-wide formulary, to exert pressure on drugmakers, according to the Congressional Budget Office.

"Your negotiating power is creating by your willingness to make choices about which drugs to offer," said David Blumenthal, president of nonprofit Commonwealth Fund, who previously published research on the VA drug formulary. "It's a way of having your cake and eating it, too, saying, 'We are going to get you a lower price without any restriction on your choice.'"

Political Realities

Still, even liberal Democrats are reluctant to call for Medicare to develop a Part D formulary. A sentence specifically saying that the Department of Health and Human Services isn't authorized to create a Part D formulary is in each of a handful of pending Medicare drug negotiation bills. They include companion

measures by Sanders and Rep. Elijah E. Cummings of Maryland (S 2023, HR 3513), and companion measures from Sen. Amy Klobuchar, D-Minn., and Rep. Peter Welch, D-Vt.(S 31, HR 3061). Rep. Jan Schakowsky, D-Ill., offered a companion House bill (HR 3261) to Durbin's Medicare Part D bill that allows the creation of a formulary, but also separately introduced a bill (HR 4207) that specifically blocks a formulary.

These measures may be opening bids in Democratic attempts to change how Medicare approaches the Part D plans. Some advocates for this approach see it as a chance to use Medicare's enormous purchasing clout to push for price discounts, without asking the consumers in the Part D plans to face the limitations of a formulary. Others see it as an acknowledgment of political realities.

The introduction of the formulary-free Medicare Part D bills reflects the growing interest in halting rising drug prices, said John Rother, president of the nonprofit National Coalition on Health Care.

"There is going to be posturing in this area because it's such a hot issue," he said.

Congress almost certainly won't take any major steps this year to address the rising cost of the Part D program, which roughly doubled to an annual cost of \$88 billion in its first decade of existence. The drugmakers' trade group, the Pharmaceutical Research and Manufacturers of America (PhRMA), is among the powerful lobbying organizations seeking to preserve the current approach of having insurers handle the negotiations.

"Harmful proposals to fundamentally alter the structure of the program could jeopardize access to affordable prescription drug coverage for seniors and people living with disabilities, drive up premiums, reduce choice and restrict coverage," PhRMA said in a statement.

Still, lawmakers will face continued pressure to rein in growth in the prices of drugs, especially for senior citizens, Rother said. AARP earlier this month released results of a new survey in which 81 percent of respondents age 50 and older said drug prices are too high and 87 percent want politicians to support efforts to make them more affordable.

"The cost of drugs is a top-of-mind issue now for voters, both Democratic and Republican, and they are really demanding action," Rother said. "Next year, Congress will want, for lots of reasons, to address drug prices. The idea of leaving things the way they are now is unsustainable and not politically smart anymore, either."

