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CMS adopts light touch with insurers covering negotiated drugs

By Robert King

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The Biden administration used a heavy hand to get drugmakers to play ball with Medicare price negotiations but wants a lighter touch with the insurance companies that cover the medicines.

Certain drug prices may be lower come 2026 if the negotiated rates take effect, but how much seniors pay out of pocket for their medicines has as much to do with insurance companies as it does the brand-name manufacturer.

Insurers, for example, could steer patients to a more expensive drug if its maker offers the insurance company a higher rebate. The plans could use tools such as prior authorization, which require approval before a doctor can prescribe the medicine, to cut their costs or influence which drugs ultimately make their way to seniors' medicine cabinets.

"You can certainly imagine a scenario where plans would want to shift utilization away from the selected drugs in favor of non-selected drugs if in fact they are getting a better deal," said Juliette Cubanski, deputy director of Medicare policy at the think tank KFF, in an interview with POLITICO.

The concern comes as much of the attention on Medicare price negotiations has focused on the drugs, but little attention has been paid to the role insurance companies will likely play and how they could impede the administration's ultimate goal.

The Centers for Medicare and Medicaid Services is concerned enough to warn insurance plans that they will have to justify any effort to restrict access to the negotiated drugs.

"This justification should address applicable clinical factors, such as clinical superiority, non-inferiority, or equivalence of the selected and non-selected drugs," the agency said this summer.

Meena Seshamani, the director of Medicare, said in a statement to POLITICO that insurers will have "flexibility" but the agency will also "monitor for any practices that may undermine access to selected drugs."

CMS may also implement requirements to ensure that insurers are not undermining access to the selected drugs, she said.

The nation's leading Medicare Part D plans — Humana, United Healthcare, CVS Health and Cigna — did not respond to requests for comment. AHIP, the trade group for the insurance industry, declined to comment.

Medicare price negotiations also could be delayed or stopped if any one of a series of lawsuits filed by drugmakers and advocacy groups are successful.

The concern for what insurers might do stems, in part, from a Medicare Part D reform that will take place in 2025, the year before new negotiated drug prices could take effect. The coming reform, which was also part of the Inflation Reduction Act, requires insurers to pay for a significantly higher percentage of brand-name drugs once Medicare recipients spend past a certain point.

CMS will review all Part D plans for 2026 and reject efforts to hinder access. For instance, a plan can't impose higher out-of-pocket costs or greater prior authorization for a negotiated drug than it has on a non-negotiated drug in the same class.

However, with plans facing higher costs due to the Part D reform, they will be motivated to bring down any drag on their profits.

“Plans are going to want to try to manage the financial implications of [the redesign] probably by trying to seek additional rebates from manufacturers,” said Cate Brandon, a partner in the health sciences and regulatory group for the firm Arnold & Porter. “Drugs subject to negotiation ... may not be in the same position to offer rebates than non-selected drugs.”