

# Prescription Drug Bill

November 21, 2003

This week in Congress, there has been much debate about the controversial Republican Medicare Prescription Drug Bill.

**This is a bill written by the big drug manufacturers to benefit the big drug manufacturers. The bill actually contains language that states the Federal Government shall be prohibited from negotiating with the big drug manufacturers to bring down the high cost of medicine! That is in the bill. And they call it a seniors' bill?**

The second problem is the privatization aspect. Private plans will not offer the same, comprehensive benefits Medicare does. Because private plans' first concern is profits, those plans will likely offer more limited benefits to our seniors than Medicare would.

And finally the prescription drug plan currently on the table does not even start until 2006, and only provides seniors \$1,042.50 on the first \$5,044.00 in prescription drug costs.

When Members of Congress vote on this bill this week, they will be choosing to vote on the side of the big drug manufactures, or on the side of America's seniors. In voting against this bill, I will be voting on the side of our seniors. And I will not stop fighting until seniors can walk into the pharmacy of their choice.

**O**n November 21, the *Wall Street Journal* published an op-ed by former Republican Representative Dick Arme y warning Republicans they could pay a high political price if they voted for the Republicans' Medicare drug bill. "The [bill] is in fact bad news for senior citizens and possibly even worse political news for the Republican Party," he wrote. The *Journal's* editors issued an equally dire warning in an editorial next to Arme y's op-ed. "Republicans and their friends are busy congratulating themselves that their new Medicare prescription drug benefit is going to be a huge political windfall," the



editorial began. But, said the editors, Republicans who think this bill will help the GOP in 2004 are deluding themselves.

The Republican leadership ignored the *Journal's* advice. On November 22, the House, under immense pressure from the White House, passed the bill and on November 25 the Senate did likewise.

There are two good reasons to think the *Wall Street Journal's* editors and Dick Armey are correct in predicting that Republicans will suffer retribution for their role in passing this bill. First, the early polling data indicate U.S. citizens, especially the elderly, are upset with the bill. Second, Democrats have denounced the bill with uncommon enthusiasm and cohesiveness. All nine Democratic

presidential contenders expressed opposition to the bill, Congressional Democrats voted in large numbers against it, and, after the Senate passed the bill, Democratic leaders announced their intention to make the bill a campaign issue in the 2004 elections.

A poll commissioned by the AFL-CIO, conducted on November 17 and 18 by Hart Research shortly after the House-Senate conference committee reported the details of the bill, found that only 26 percent of Medicare beneficiaries held a favorable view of the bill while 65 percent held an unfavorable view. (Interestingly, only 16 percent of the Medicare beneficiaries who had no drug coverage supported enactment of the bill.) The National Annenberg Election Survey, conducted from November 19 to 23, found a split among all non-elderly adults (about 40 percent for and against), but among those 65 and older 33 percent were supportive while 49 percent were opposed.

Of the bill's numerous defects, the public seems at this date to be unhappy about three in particular: the bill's paltry drug coverage; the bill's requirement that seniors sign up with a private-sector insurance policy to get the paltry drug coverage; and the probability that employers who currently pay for retiree drug coverage will cease to do so.

The drug coverage is puny. For an estimated \$420 annual premium, seniors will get a policy that requires them to pay \$3,600 of the first \$5,100 of their drug expenditures. Beyond \$5,100, Medicare pays 95 percent. In a November 30 story headlined "Florida elderly feel let down by Medicare drug benefit," the *New York Times* quoted this assessment by a 72-year-old Florida resident: "You would have to be a major, major user of very expensive medications to get any kind of half-way decent benefit [from this bill]."

Seniors are going to be exasperated further by the bill's requirement that they buy drug coverage from a private-sector firm, either as part of a typical HMO policy or in the form of a stand-alone drug policy. Only in areas of the country where each of these two types of policies are unavailable will Medicare be allowed to sell the coverage directly.

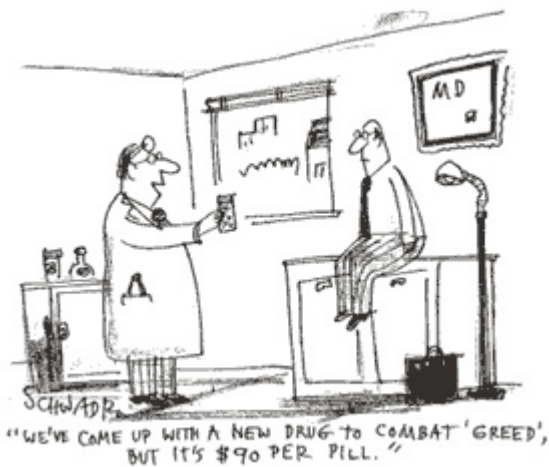
As if this weren't bad enough, experts predict that a significant portion of the minority of seniors who currently have good employer-provided drug coverage will lose it because of the new Medicare drug coverage. To minimize this problem, Congress set aside \$86 billion (of the \$400 billion to be spent by this bill over the next decade) to pay for tax incentives for employers who continue paying for drug coverage for their retired employees. However, the subsidy is too small to eliminate the financial incentive for employers to drop drug coverage for their retired employees. Richard Evans with Bernstein Research told the *New York Times* that employers that now offer drug coverage to retired employees would save \$1,000 per retiree if they rejected the tax incentives and dropped coverage. The Congressional Budget Office estimates that 23 percent of seniors with employer-sponsored drug coverage will lose it as a result of the new bill, while the Employee Benefit Research Institute estimates 2 to 9 percent will be dropped.

There are three other, lesser known defects in the bill that will also irritate voters as news about them spreads: Medicare is not allowed to use its negotiating clout to reduce the price it pays for prescription drugs; the bill does nothing to make it easier for U.S. citizens to import drugs from Canada and other industrialized nations; and the bill takes a first step toward greater privatization of Medicare. The net effect of these defects is that U.S. citizens have bought slightly improved Medicare drug coverage at an outrageous price.

The restriction on Medicare's ability to reduce drug prices and the inaction on drug importation were the highest priorities of the drug manufacturers; privatization was the highest priority of the health insurance industry, but it was also supported by Big Pharma (big pharmaceutical companies). Big Pharma and the HMOs were the most powerful lobbyists for the bill and they were, logically enough, its main beneficiaries. As Howard Dean put it, "Congress found a way to protect the drug industry's prices and HMO industry's profit margins." (HMO here refers to any health insurance company that uses managed-care tactics, a definition that describes nearly all health insurers in operation today.)

Until 1999, Big Pharma opposed adding drugs to Medicare. The Clinton administration's decision in that year to support Medicare drug coverage, coupled with growing public outrage over rising drug prices, forced the industry to change its position to one of support for Medicare drug coverage.

But the industry attached a condition to its support. The entire Medicare program had to be turned over to HMOs or, failing that, the drug coverage had to be provided through HMOs. Big Pharma feared that if drugs were covered the way other medical services are covered under Medicare that Medicare would use its great bargaining power to extract large discounts from the drug manufacturers. HMOs also extract discounts from drug companies, but because HMOs are smaller than Medicare, they are unable to get discounts as large as Medicare could. Even the nation's largest HMOs are small compared with Medicare. Medicare insures 40 million people while the nation's three



largest insurers—Wellpoint, after its merger with Anthem is consummated, United Health Group, and Aetna—insure 26, 20, and 13 million people respectively. The average HMO is much smaller than these giants.

But the drug industry's proposal for special treatment of Medicare drug coverage, which Republicans adopted, had an obvious drawback, namely, that seniors are reluctant to enroll in HMOs even though HMOs offer better coverage than traditional Medicare, and HMOs have been reluctant to participate in Medicare even though they have been grossly overpaid by Medicare since 1985. The elderly, like the nonelderly, do not like HMO restrictions on their choice of doctor and HMO interference in their relationship with their doctor. The only reason 11 percent of Medicare beneficiaries are enrolled in a Medicare HMO is that HMOs offer better coverage than traditional Medicare does. The reason HMOs can afford to offer better coverage is that the Medicare program pays them up to 40 percent more than Medicare would have paid if the HMO enrollees had stayed in the traditional Medicare program. This overpayment was unintentionally ordered by Congress. In calculating how much Medicare should pay HMOs for each senior lured away from the traditional Medicare program, Congress assumed HMOs would enroll typical seniors, but HMOs, as it turned out, attracted primarily healthy seniors.

**T**he Republicans' solution to the problem of limited enrollment of Medicare beneficiaries in HMOs was twofold: Congress should increase its welfare payments to HMOs to induce more HMOs to participate in Medicare and to help HMOs finance coverage that is superior to traditional Medicare's; and Congress should authorize a peculiar new form of insurer—one that offers only drug insurance—to participate in Medicare. The HMO industry, which denies it is overpaid by Medicare, gladly accepted Republican support for higher HMO subsidies, but the industry was cool to the idea of creating stand-alone drug insurance. Insurance for drugs only has never existed, for an obvious reason: unlike everyday health insurance, which is purchased not just by the sick, but by healthy people who may incur no medical expenditures at all, the vast majority of people who would buy drug-only coverage would be people with a known, pre-existing need for drugs. That means drug-only coverage will have to be very expensive, so expensive as to be unmarketable under normal conditions (that is to say, absent a huge subsidy from the taxpayer).

Despite the evidence that HMOs cannot insure the elderly without large subsidies and despite warnings from the HMOs that they are unlikely to start selling drug-only policies, Republicans insisted that drug coverage could be made available in most parts of the country through either an HMO or a drug-only policy if the subsidies were high enough. Republicans inserted provisions in the final bill that raise the HMO subsidy by at least \$13 billion over the next decade. Democrats replied that even with larger subsidies there was still a very high probability that private insurers would not offer drug coverage in some areas of the country and demanded that Medicare be allowed to provide drug coverage in those areas where fewer than two private-sector policies (an HMO policy and a stand-alone drug policy) were available. Republicans acceded to this demand.

**For Republicans and Big Pharma, it wasn't enough to win privatized drug coverage. They also demanded that two provisions be added to the bill that would give Big Pharma maximum freedom to charge exorbitant prices: a prohibition against Medicare negotiating with drug manufacturers to lower drug prices on behalf of either traditional Medicare or HMOs selling Medicare drug coverage; and a ban on the importation of foreign drugs.**

Because the U.S. is the only industrialized nation in the world that lets pharmaceutical manufacturers charge whatever they want, U.S. drug prices are roughly double what they are in the rest of the industrialized world. That price difference has caused millions of U.S. citizens to buy their drugs from foreign countries. That behavior has provoked Big Pharma and the Bush administration's Food and Drug Administration to undertake a campaign to stop drug importation. That campaign would have been stopped in its tracks by a provision in the House version of the Medicare drug bill that would have forced the FDA to permit drug importation. But Big Pharma easily persuaded the conference committee to junk this provision in the House bill. Rep. Gil Gutknecht (R-MN), who led the fight in the House to permit importation, stated after the November 22 House vote, "Come next November, most American consumers will still be paying \$360 for tamoxifen and Canadians and Germans will be buying it for \$60."

Thus, the taxpayer got the worst of all possible deals. Instead of taking advantage of Medicare's tremendous efficiency vis a vis HMOs (Medicare spends 97 cents of every dollar of revenue on medical costs while HMOs spend 80 cents), Congress elected to funnel our tax dollar through the bloated HMOs so that the HMOs can take their 20 percent off the top to finance activities like marketing, policing doctors, lobbying, and paying dividends. Instead of taking advantage of Medicare's ability to negotiate lower prices (Medicare currently pays doctors and hospitals about 20 percent less than HMOs do), Congress elected to pay the higher drug prices that HMOs will inevitably have to pay.

The Medicare bill has one other defect—in addition to scrawny drug coverage aggravated by employers dropping retiree coverage, no Medicare authority to negotiate lower drug prices, and no meaningful drug importation provisions—that is likely to generate more opposition than support from the public: The bill authorizes a privatization experiment that may serve as a beachhead for an HMO takeover of the entire Medicare program over the next two decades. The bill requires the Secretary of Health and Human Services to conduct the experiment in 6 cities where Medicare HMOs enroll at least 25 percent of the elderly. This privatization experiment is a milquetoast version of George W. Bush's original proposal to force all seniors to join HMOs to get drug coverage (see "Privatizing Medicare," *Z Magazine*, September 2003). Nevertheless, it has the potential to metastasize into a disease that could threaten the entire Medicare program.

**T**he experiment, which begins in 2010, will set up a fight, possibly a fight fixed in the HMO's favor, between the traditional Medicare program and HMOs. In those six cities,

Medicare beneficiaries will no longer be guaranteed access to medical services. Instead, they will be guaranteed only a voucher with which they will shop for health insurance. They will have the option of buying insurance from heavily subsidized HMOs or traditional Medicare, which, for the first time in its history will have to charge a premium. HMOs will use their “unconscionable subsidies”—in the words of Senator Ted Kennedy (D-MA)—to provide better coverage at a lower premium than Medicare can and this will put financial pressure on seniors to bestow their voucher on HMOs. Healthy seniors will be the first to gravitate to HMOs; sicker seniors will be wary of HMO interference in the doctor-patient relationship. This phenomenon, known as “favorable selection,” will leave traditional Medicare stuck with sicker seniors. This will force traditional Medicare’s costs and premiums up, which will drive more of the healthiest remaining seniors into HMOs and round the cycle will go until traditional Medicare is priced out of the market. This gradual destruction of traditional Medicare in the pilot cities due to favorable selection is what Newt Gingrich was talking about when he announced in 1995 that the Republican’s Medicare proposal would cause traditional Medicare to “wither on the vine.”

Whether traditional Medicare is driven from “the market” by the HMOs in the six pilot cities will depend on the size of the subsidy to HMOs. Because HMOs are very inefficient compared to traditional Medicare and because seniors need sizable bribes (in the form of improved coverage) to enroll in HMOs, the subsidies have to be huge to induce HMOs to participate in a battle with traditional Medicare. If the subsidies are not gargantuan, HMOs’ only other option will be to demand that doctors and hospitals give them huge discounts off their fees. But doctors and hospitals are already angry with HMOs because HMOs have forced them to cut their fees and have interfered in their relationships with patients. For these reasons, providers, especially doctors, may put up intense resistance against privatization experiments in their areas. Some members of Congress have already taken a “not in my backyard” position. Senators Hillary Rodham Clinton (D-NY), Jon Kyl (R-AZ), and Gordon Smith (R-OR) have indicated they don’t want the privatization experiments conducted in their states.

Ultimately, the enthusiasm and skill with which Democrats generate additional public opposition to the new law will be the most important factor in determining whether Bush and the Republican Party are rewarded or punished by voters for their role in passing this egregious bill. The early signs do not bode well for Republicans. Despite the endorsement of the bill by AARP and despite threats from Republicans to terminate the political careers of Democrats who voted against the bill, Democrats have been eager to express their disgust with the bill. “This bill is a calculated program to unravel Medicare, to privatize it, and to force senior citizens into the cold arms of HMOs,” said Senator Kennedy. “We may spend the rest of our careers repairing the flaws of this bill,” said Senator Tom Daschle (D-SD). Coming from Democrats, a generally docile bunch, these are strong words. They are perhaps the strongest evidence that Republicans will be burned for their support of the Medicare bill. The *Wall Street Journal* agrees. As the previously mentioned *Journal* editorial put it, “Republicans ought to be spooked that Democrats clearly calculate they have nothing to lose by vehemently opposing this bill.”

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