

We must ensure that choices are available and easy to comprehend and that formularies provide a broad range of therapeutic options at a reasonable cost to patients. We must work with physicians and other providers to reach beneficiaries with limited incomes. These steps will ensure that elderly people and people with a disability continue to benefit.

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Medicare Part D — The Product of a Broken Process

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Most Americans agree that affordable drug coverage under Medicare has been needed for some time. But instead of a solution to a growing problem, Congress gave the country a prescription-drug plan that achieves few of its original goals. The current problems with Medicare Part D are largely the direct result of the undemocratic way in which the plan was authored and passed. The final legislation, heavily influenced by drug-company and health insurance lobbyists, focused mainly on the needs of those industries instead of those of the seniors it should serve.

The political process used to pass Part D was the worst abuse of the legislative process I have seen during my 20 years in Congress. In the months before its passage, a few powerful Republican leaders worked to undermine conscientious reform proposals. In early 2003, while the House bill was being drafted, Democrats and Republicans authored 59 sensible amendments to it. At the behest of the Republican leadership, however, the House Committee on Rules rejected all but one, preventing them from being debated by Congress. Many of those amendments — among them, one

requiring the administration to use beneficiaries' collective purchasing power to negotiate lower prices and one allowing Americans to import cheaper drugs from Canada — would have made the legislation far more effective and probably would have received bipartisan support, had they been allowed onto the floor.

Next, the conference process, whereby the House and Senate versions of legislation are reconciled, was fundamentally corrupted and kept almost entirely secret by senior Republicans. Democrats on the conference committee were excluded from deliberations, to the point of being physically barred from the conference room on one occasion. The pharmaceutical industry, however, was invited in.

Serious conflicts of interest on the part of the bill's primary authors were common. The chairman of the Commerce Committee, Representative Billy Tauzin (R-La.), coauthored the bill while negotiating a \$2-million-per-year job as a lobbyist for the Pharmaceutical Research and Manufacturers of America (PhRMA), the drug industry's trade organization. The top Republican aide on a subcommittee involved in writing the legislation also left his

position soon afterward to lobby for PhRMA. Thomas Scully, the administration's top Medicare official, deliberately understated the program's projected cost by \$134 billion, and when the chief actuary of the Centers for Medicare and Medicaid Services (CMS) objected, Scully reportedly threatened to fire him if he shared his true estimate with Congress. Soon after the legislation passed, Scully resumed his career as a health care-industry lobbyist.

When the conference report was brought to the House for a vote, members were given less than one day to read the 850-page bill, a violation of House rules. When the vote was called at almost 3 a.m., voting Democrats stood unanimously with 22 Republicans in opposing the legislation. Had the vote been gavelled down in the customary 15 minutes, the bill would not have passed. So the Republican leadership held the vote open for a record three hours while attempting to change the outcome — through intimidation and other tactics that, again, violated House rules. Finding itself with a narrow lead at 5:53 a.m., the Republican leadership immediately brought the vote to a close.

Many abuses undoubtedly took place that night. Representative Nick Smith (R-Mich.) later revealed what may have been the worst: that former Majority Leader Tom DeLay (R-Tex.) and Representative Candice Miller (R-Mich.) tried to bribe him with political favors to change his vote — an infraction for which the House Ethics Committee later admonished them. Through these means, the Republican leadership succeeded in passing a bill whose goal was, according to Representative Bill Thomas (R-Calif.), to “end Medicare as we know it.”¹

Thomas’s words proved as prophetic as they were ironic. Part D works better for the pharmaceutical and insurance industries than for beneficiaries. Drug-industry lobbyists worked to prevent the reimportation of cheaper medications from Canada and to add patent protection against generic drug makers. Independent analysts predicted that with such victories, the bill would increase drug-industry profits by \$139 billion over the next eight years.²

The elderly and disabled, pharmacists, nursing homes, and families, for their part, have been burdened by a flawed plan that was not drafted with them in mind. Unlike existing government health plans, Part D does not allow the administration to negotiate drug prices with pharmaceutical companies. As a result, these companies are charging taxpayers up to 80 percent more for drugs purchased under Part D than for those purchased under other plans.

Millions of seniors had to enroll in a plan by an arbitrarily selected deadline or face premium increases for each month beyond it — an incentive that clearly benefits insurance companies. Seniors have had little time to choose

among plans. And these plans may change drug formularies whenever they want to, without penalty. Doctors, not insurance-company bureaucrats, should be deciding which drugs their patients need, but that fundamental premise of responsible health care was thwarted by this legislation.

Part D is a costly endeavor for patients, states, and consequently taxpayers. The bill requires beneficiaries to pay a \$250 deductible and 25 percent of their annual drug costs up to \$2,250. They must then cover all annual expenses between \$2,251 and \$3,600. This “doughnut hole” rule will cost patients a substantial amount of money.

States, already overburdened by health care costs, are required to partially fund Part D. Some states are actually losing money under it, because the formula used to calculate their share is based on a per capita cost for people eligible for both Medicare and Medicaid (“dual-eligibles”).

Implementation of the program was barely considered in the effort to push the bill through Congress, and chaos has ensued. Seniors and their families remain confused about which plans to choose. And many states have had to declare emergencies to ensure that dual-eligibles continued to receive their medications. Lack of communication of key rules to telephone operators at Medicare’s toll-free patient hotline has resulted in the failure to provide needed medication to many beneficiaries on time. In addition, faulty CMS eligibility data have resulted in regular denials of prescriptions; and both beneficiaries and pharmacists are regularly paying out-of-pocket costs to ensure continuity of treatment.

Part D has not yet fulfilled its basic promise: to make Medicare’s

drug coverage closer to universal, especially among the neediest Americans. At least six million Medicare beneficiaries without drug coverage had still not enrolled as of late April. More important, more than 80 percent of beneficiaries in the lowest income bracket had yet to enroll.

The flaws in the legislation and failures in implementation result directly from the conflicts of interest in the drafting of the bill and a corrupted legislative process. In my estimation, the Medicare Prescription Drug and Modernization Act of 2003 violates the tradition, spirit, and intent of Medicare. Americans are now subsidizing insurance and pharmaceutical companies through tax dollars and out-of-pocket expenses, while receiving low-quality care.

Several short-term fixes are obvious. The Secretary of Health and Human Services ought to negotiate directly for lower drug prices, and we need to simplify the types of plans offered and eliminate the doughnut-hole rule. Democrats have fought for these changes and have pledged to take Part D back to the drawing board, should we get the opportunity.

But more broadly, we must reform the way our government does business. Accountability and transparency must be returned to Congress, and free debate and consideration of critical issues must be restored to its halls.

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