WHG Side-by-Side

October 15, 2021

The following is a side-by-side of the most pertinent drug pricing proposal provisions currently under consideration for inclusion in the final reconciliation package Specifically, this resource examines the following pieces of legislation:

- The Energy & Commerce and Ways & Means reconciliation recommendations;
- The House Moderate Democrats Reduced Costs and Continued Cures Act;
- The 2020 Senate Finance Prescription Drug Pricing Reduction Act (PDPRA);
- The Menendez-Cassidy Seniors Prescription Drug Relief Act; and
- The Crapo Lower Costs, More Cures Act.

The specific provisions compared include drug price negotiations, Part D redesign, inflation rebates, Part B reforms, and competition.

Provision	W&M Subtitle J E&C Subtitle E Reconciliation Build Back Better Inclusive of HR 3	Bill Text Peters Bills Reduced Costs and Continued Cures Act (RCCCA)	S. 4199 Senate Finance Bill Grassley-Wyden Prescription Drug Pricing Reduction Act of 2020 (PDPRA)	S.2327 Menendez- Cassidy Bill Seniors Prescription Drug Relief Act	S. 2164 Crapo Bill Lower Costs, More Cures Act (LCMCA)
Negotiations					
Negotiations	Negotiation eligible drugs would include the 250 most costly and high-priced Part D drugs, including insulin, and use an average international market (AIM) reference price for the target price if negotiations fail. Applies to Medicare, with the option for commercial insurers to	Negotiation-eligible drugs include Part B single-source drugs and biologicals without competition and for which the exclusivity period has expired. If a negotiated price cannot be reached, the maximum allowable cost will be an amount that is at least 65 percent and not more	Not Applicable	Not Applicable	Not Applicable

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	use the negotiated prices	than 75 percent of the average sales price for that drug product.			
Part D Redesign					
Out-of-Pocket (OOP) Cap	$2,000	• $1,200 OOP cap for beneficiaries with incomes 300 percent or less • $1,800 OOP cap for beneficiaries with incomes between 300 and 400 percent FPL; and • $3,100 OOP cap for beneficiaries with incomes above 400 percent FPL.	$3,100	$3,100	$3,100
Manufacturer Discount	10 percent in initial coverage phase 30 percent in the catastrophic phase	10 percent in the initial coverage phase 10 percent in catastrophic phase.	7 percent in the initial coverage phase 14 percent in catastrophic phase.	10 percent in the initial coverage phase 10 percent in catastrophic phase.	10 percent in the initial coverage phase 10 percent in catastrophic phase.

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		For individuals that are eligible for the low-income subsidy (LIS) program, the manufacturer discount program is phased-in from 1 percent to 10 percent over 10 years for manufacturers in which total Part D reimbursement was less than 1 percent.		For individuals that are eligible for the low-income subsidy (LIS) program, the manufacturer discount program is phased-in from 1 percent to 10 percent over ten years for manufacturers in which total Part D reimbursement was less than 1 percent.	
Part D Smoothing	The Secretary is directed to establish a program in which beneficiaries will have the option to make copayment in periodic installment over the remainder of the year in instances in which the negotiated price exceeds the OOP cap.	Secretary shall establish, through notice and comment rulemaking, a process under which PDP sponsors and MA-PDs automatically enroll eligible beneficiaries in the option to have their monthly OOP cost-sharing capped and paid in monthly installments. Eligible beneficiaries include those who are subsidy eligible and	Secretary shall establish, through notice and comment rulemaking, a process under which PDP sponsors and MA-PDs automatically enroll eligible beneficiaries in the option to have their monthly OOP cost-sharing capped and paid in monthly installments. Eligible beneficiaries include those who are subsidy eligible and	Directs the HHS Secretary to establish a process in which each Part D plan will automatically enroll applicable enrollees in an option to have their monthly out-of-pocket (OOP) cost-sharing capped and paid in monthly installments.	Directs the HHS Secretary to establish a Part D OOP cost smoothing process in which beneficiaries who spend a significant percentage (as specified by the Secretary, but at least 30 percent) of their annual OOP threshold within a 30-day period would be permitted to pay their OOP costs in monthly installments.

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		likely to incur a significant percentage of costs for Part D drugs.	likely to incur a significant percentage of costs for Part D drugs.		
Inflation Rebates					
Applicable Drugs and Benchmark year	Rebates for Part B brands, biologics, and biosimilars with an average cost of $100; and all Part D drugs with an average cost of $100 or more benchmarked to the 2016 price. Part D drugs that have a negotiated maximum fair price are exempt from the inflation rebate.	Rebates for Part B brands, biologics, and biosimilars with an average cost of $100; and all Part D drugs with an average cost of $100 or more benchmarked to the 2016 price. Part B drugs that have a negotiated price are exempt from the inflation rebate.	Rebates for Part B brands, biologics, and biosimilars and all Part D drugs benchmarked to the 2019 price.	Not applicable	Not applicable

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Part B Reforms					
Part B Payment Reform	Not Applicable	The value of any coupons provided under a drug manufacturer's drug coupon program would be included in calculating the average sales price of a Part B drug. Would also establish a maximum add-on payment of $1,000, which would increase at the rate of inflation for subsequent years.	The value of any coupons provided under a drug manufacturer's drug coupon program would be included in calculating the average sales price of a Part B drug. Would also establish a maximum add-on payment of $1,000, for 2022 through 2029, and then the max add-on would increase at the rate of inflation for subsequent years.	Not Applicable	Part B payments for drugs would be based on the percentile rank of a drug, with respect to per beneficiary allowed charges, which is defined as the allowed charges for the drug for which payment is made divided by the number of individuals for whom any payment for the drug was made. The corresponding average sales price (ASP) reimbursement rates follow: • For drugs at least equal to the 85th percentile, reimbursement would be 104 percent of ASP; • For drugs at least equal to the 70th percentile, reimbursement would

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					be 106 percent of ASP; • For drugs at least equal to the 50th percentile, reimbursement would be 108 percent of ASP; and • For drugs less than the 50th percentile, reimbursement would be 110 percent of ASP. The bill would also establish a $1,000 maximum add-on payment for most drug and biologicals and a $2,000 maximum add-on for immunotherapies.
Temporary Increase in	Not Applicable	For a period of five years, payment for biosimilar would be the	For a period of five years, payment for biosimilar would be the	Not Applicable	Not Applicable

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Biosimilar Payments		lesser of: 1) eight percent of the of the average sales price or wholesale acquisition cost of the reference biological product, whichever is less or (2) 106 percent of the average sales price or wholesale acquisition cost of a single source biologic, whichever is less.	lesser of: 1) eight percent of the of the average sales price or wholesale acquisition cost of the reference biological product, whichever is less or (2) 106 percent of the average sales price or wholesale acquisition cost of a single source biologic, whichever is less.		
Biosimilar Payment During Initial Period	Not Applicable	During an initial period in which prices for the sales for the biosimilar is not sufficiently available to compute an average sales price, payment would be the lesser of: (1) the wholesale acquisition cost of the biosimilar or (2) 106 percent of either the average sales price or wholesale acquisition cost of the reference biological product.	During the initial period, the biosimilar payment rate would be the lesser of: 1) the biosimilar's wholesale acquisition cost plus 3 percent; or 2) the average sales price plus 6 percent of the reference biological product.	Not Applicable	During the initial period, the biosimilar payment rate would be the lesser of: 1) the biosimilar's wholesale acquisition cost plus 3 percent; or 2) the average sales price plus 6 percent of the reference biological product.

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Competition					
Pay-For-Delay	Not Applicable	Authorizes the Federal Trade Commission (FTC) to take enforcement action against pay-for-delay agreements.	Not Applicable	Not Applicable	Not Applicable
Product Hopping	Not Applicable	Empowers the FTC to prohibit product hopping, including hard switches and soft switches.	Not Applicable	Not Applicable	Not Applicable
Patent Thickets	Not Applicable	Limits the number of patents that can be included in a “patent thicket” to 20 patents of a certain type.	Not Applicable	Not Applicable	Not Applicable

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