



Want to Monitor Medicare's New Drug Benefit Program? Start by Sending a Check for \$120,000

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Republicans have long rallied against the welfare state, and Democrats against a rapacious private sector. So it is hardly surprising they don't see eye-to-eye on the contentious issue of health care reform. But there is a middle ground. In fact, one of the largest social experiments in American history is currently underway to test whether the government and the private sector can partner to deliver health services more efficiently.

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We are talking about Medicare's new drug benefits, otherwise known as Part D. Begun in 2006, Part D is the largest expansion of the Medicare program ever. But rather than offering coverage itself—as Medicare does with most elderly and disabled beneficiaries—the Centers for Medicare & Medicaid Services (CMS) offers coverage through private-sector plans. Medicare beneficiaries in every state have a choice of around 50 stand-alone prescription drug plans.

All Americans should be watching to see whether this public-private model delivers prescription drugs effectively, and to assess whether it might serve as a model for wholesale health care reform. Or, as we have seen in some privatization situations, will Part D allow pharmaceutical manufacturers and insurance

companies to collude to rip-off consumers and the government?

MONITORING PART D

Given the billions of dollars at stake, Part D must be monitored. However, Congress did not see fit to mandate an independent, comprehensive evaluation of Part D, and it will take years for the complete story to unfold, making it unlikely the media will follow this experiment closely. Fortunately, there are those of us in the research community who view such an evaluation as crucial, not only for Medicare's sake but also as a potential model for future health care reforms, including providing health care to the currently uninsured.

Key to a comprehensive evaluation is performance data, and this brings us to our point.

The government is stonewalling on data. Two years into the program, CMS has just recently published provisional rules governing release of Medicare Part D data to external researchers. Unfortunately, the proposed regulations are clearly inadequate.

FAILURE TO DISCLOSE REAL PRICES

For retail customers in most industries, the bottom line is the retail price of the product, and they have no direct interest in or need to know about the arrangements and prices existing between retailers and wholesalers. It does not matter whether wholesale transactions are conducted at negotiated prices, or at list prices with negotiated discounts. Competition is not harmed if wholesale transactions are protected by a cloak of “commercial privacy”; indeed, privacy can in some cases encourage competition.

The situation is drastically different with drugs in Medicare Part D. Insurers and pharmaceutical companies negotiate list prices and these “negotiated prices,” rather than retail competition, directly dictate what consumers actually pay for the product. Depending upon how much pharmaceuticals

a person is consuming, she may wind up paying 5%, 25%, or even 100% of the price the insurer negotiates.

What is most worrisome is the possibility that the insurer and the manufacturer collude in negotiating high prices at taxpayer and consumer expense. The insurer can agree to a high price, but in return negotiate a large rebate from the pharmaceutical company. As a consequence, consumers and CMS may each end up paying those high prices without benefiting from the rebate. Such rebates are of dubious legality, although the practice is common in the pharmaceutical industry. But if these rebates are protected by “commercial privacy,” then there is little or no opportunity for beneficiaries to discover that they are being harmed. This creates the distinct possibility that insurance companies and pharmaceutical firms are now or will soon take advantage of this quasi-regulated, quasi-competitive marketplace to line their pockets at the expense of senior consumers and CMS (and therefore taxpayers).

In the Medicare Part D market where beneficiaries have a direct financial stake in the negotiations between insurers and pharmaceutical companies on list prices of drugs,

and are harmed by high list prices with rebates, commercial accountability is more important than commercial privacy. Rebates that result in higher list prices should be made public so that beneficiaries receive the information necessary to know whether they are getting the best prices for the drugs they must purchase. Because of the subsidies paid by Medicare to insurers in the Part D market to reinsure catastrophic drug bills, Medicare and the taxpayers who support it are also harmed if kickbacks are used to increase list prices of drugs. Medicare thus has a direct financial interest, and presumably the regulatory power, to oversee drug price negotiations and ensure that the process is not abused through use of rebates. Is CMS providing this oversight? The Federal government’s current policy is not to release data on rebates. This secrecy makes us nervous. At a minimum, the government is failing to reassure the public that firms in the Part D market are not using rebates to abuse beneficiaries and taxpayers.

FAILURE TO IDENTIFY HEALTH PLANS

What other data are so sensitive that CMS won’t release it? Not the pharmacy records; CMS is happy to release records of

every prescription drug a beneficiary has taken. What they won't disclose to researchers is the information on which plan the beneficiary chose. CMS will encrypt this information so that external, independent researchers cannot evaluate plan performance or link to information readily available on CMS's own web site, including how much people pay for their plans, what drugs are covered, and how much they pay out-of-pocket for drugs. CMS might release these data on a discretionary basis, but only if they approve of your research plan. And if they choose to release it, the data will cost you; we recently requested data from CMS and were told it would cost \$120,000. These are unprecedented requirements that would sharply limit the number of research organizations with access.

The flimsy rationale for this restriction is that the information on drug prices in specific plans would allow sponsors to anticipate other bids in the annual bidding process. This claim is implausible. Right now, information on premiums are available on the web for all to see, as are market shares. Further, price data are available for Part D from private third parties like IMS Health. Thus, the release of beneficiary

claims tied to plan choices will have little impact on the information available to insurance companies when they make their bids.

These restrictions will, however, seriously limit research on the effect of drug therapies on health outcomes, and will cripple the study of the overall cost and effectiveness of health care. Most sadly, it will block independent assessments of the Part D market as a model for broader health care reform.

In short, if CMS and the Federal Government move forward with their proposed rules, external researchers and the public will have far less information on the Part D market than has been typical in the past for regulated industries such as electric power, even though the existence and form of the Part D market depends on a massive public subsidy and detailed CMS operating regulations.

COMMERCIAL ACCOUNTABILITY OUGHT TO TRUMP COMMERCIAL PRIVACY

CMS is right to be concerned about releasing sensitive data, even for research purposes. Medicare files contain hundreds of millions of health records on beneficiaries scattered around the country. But there are ways to

ensure adequate privacy. Our institutions, the University of California and the RAND Corporation, deal with confidential data all the time, including sensitive military secrets, and—most ironically—Medicare data itself on a contract basis for CMS. However, we would run afoul of CMS regulations if we used Medicare data that we already have in-house to examine Part D.

The Part D market has been promoted as a demonstration of how a partnership between the government and the private sector can rationalize health care delivery and control costs. To truly prove its worth, however, the market must be transparent to the public, which is already suspicious of insurance and pharmaceutical companies. Taxpayers and beneficiaries both have a direct financial stake in the deals cut by pharmaceutical companies and insurers; given that, they should not be kept in the dark through sketchy claims of “commercial privacy.”

Letters commenting on this piece or others may be submitted at <http://www.bepress.com/cgi/submit.cgi?context=ev>.

REFERENCES AND FURTHER READING

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