

Guest Opinion: Make lawmakers cut kickbacks, hold drug companies accountable

Posted at 5:51 AM

Senate Finance Committee Chairman Chuck Grassley (R-Iowa) opened Round 2 of drug pricing hearings Feb. 26 by saying: “We’ve all seen the finger-pointing ... most Americans... most members of Congress are sick and tired of the blame game.”

Especially true for those of us who lack the cushy health plan enjoyed by members of Congress, or who have paychecks far less hefty than those who run Pharmacy Benefit Manager (PBM) and Group Purchasing Organization (GPO) companies that profit from manipulating prescription and hospital drugs while offering little value to the patient.

Senator Ron Wyden (D-Ore.) spoke of bipartisanship, mentioning this system encourages behemoth profits and is not “too complicated for Americans to understand”.

Committee senators grilled seven CEOs of America’s biggest pharmaceutical companies, with several senators professing that the system was, in fact, too complicated to understand.

Here’s something the senators and their constituents probably don’t realize. In the American system of healthcare, pharmaceutical companies alone do not set list prices. Those prices are juiced upward by “rebates” paid by pharmaceutical manufacturers to the PBMs that control the distribution channels. According to multiple analyses, while list prices for many drugs have risen dramatically, net prices (the amount after subtracting the “rebates”) have stayed fairly flat.

As much as \$200 billion per year has been lost to PBMs and their hospital counterpart GPOs since “rebates” were first legalized in the late 1980s.

Merck CEO Ken Frazier let the conflict-of-interest cat out of the bag: “To get our drugs on formulary, our goal was to get the patient the lowest copay...” But the game has evolved. Frazier said that the Mercks must now “pay the supply chain [i.e., PBMs and GPOs] the biggest rebate” (a polite word for “kickback”) for a spot on the formulary, the list of drugs insurers will cover.

Where does that lead? The drug manufacturer that’s willing to pay those “rebates” corners the market, and competition plummets.

Manufacturers agree that getting rid of “rebates” would be helpful, but only if legislators could muster the will to go beyond the Health and Human Services Department’s recent prohibition on “rebates” for Medicare and Medicaid and make them illegal in the commercial sector. And that is where the chasm between Democrats and Republican really widens.

In his closing remarks, Wyden challenged every Big Pharma CEO to answer in writing: “If rebates go away... will you reduce list prices by the amount of the rebate?”

The high cost of biologic drugs, those produced from living organisms, was another hot topic.

The top 10 biologics are all blockbusters, pulling in anywhere from a low of \$1.5 billion to an astounding \$18 billion for AbbVie’s HUMIRA®. Costing \$37,000 after the “rebate,” HUMIRA®, used by arthritis patients, drew particular comment in the hearing.

At one time, the debate was over whether the makers of biologics deserved a period of patent protection (in view of the vast sums invested in researching and development) or should compete from the outset with generics. During the crafting of the Affordable Care Act (ACA), the debate centered on the duration of the protection for biologics. The results? 1) CEOs funneled \$70 million to two political action committees that would buy ads for senators who supported the ACA. 2) “Sharing back” \$120 billion of the \$200 billion windfall projected from increased coverage and 12 years of patent protection for biologics, like HUMIRA®, and that Medicare would not negotiate drug prices down.

How does Big Pharma get to make such sweet deals? Follow the money. None of those CEOs was strangers to the senators grilling them Feb. 26.

The companies whose CEOs testified have given \$1.6 million to the campaign committees of 27 of 28 current members of the Finance Committee over the last decade. Leading the pack has been Pennsylvania Senator Bob Casey, accounting for \$121,000. Senator Carper (D-Del.) has received \$100,000. Four Republicans took in similar amounts.

I call on the entire Finance Committee and the Congress to take Senator Wyden's challenge. Go beyond HHS's prohibition on kickbacks for PBMs; do the same for GPOs, and for the PBM commercial market. Compel Big Pharma to reduce prices by the amount of the "rebates" saved. Allow Medicare to negotiate drug prices down. And make a reasonable change to the duration of the protective patent period for biologics.

If the Senate and House are not brave enough to do that, we will surely know where to point our fingers.

Marion Mass, M.D.; Bucks County pediatrician; co-founder, Practicing Physicians of America. Member of this paper's editorial board. No conflicts of interest.