



CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

January 10, 2007

Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

At the request of your staff, the Congressional Budget Office has reviewed H.R. 4, the Medicare Prescription Drug Price Negotiation Act of 2007, as introduced on January 5, 2007. The bill would revise section 1860D-11(i) of the Social Security Act, which is commonly known as the “noninterference provision” because it prohibits the Secretary of Health and Human Services from participating in the negotiations between drug manufacturers, pharmacies, and sponsors of prescription drug plans (PDPs) involved in Part D of Medicare, or from requiring a particular formulary or price structure for covered Part D drugs.

H.R. 4 would require the Secretary to negotiate with drug manufacturers the prices that could be charged to PDPs for covered drugs. However, the bill would prohibit the Secretary from requiring a particular formulary and would allow PDPs to negotiate prices that are lower than those obtained by the Secretary. The bill would also require the Secretary to report to the Congress every six months on the results of his negotiations with drug manufacturers.

CBO estimates that H.R. 4 would have a negligible effect on federal spending because we anticipate that the Secretary would be unable to negotiate prices across the broad range of covered Part D drugs that are more favorable than those obtained by PDPs under current law. Since the legislation specifically directs the Secretary to negotiate only about the prices that could be charged to PDPs, and explicitly indicates that the Secretary would not have authority to negotiate about some other factors that may influence the prescription drug market, we assume that the negotiations would be limited solely to a

Honorable John D. Dingell
Page 2

discussion about the prices to be charged to PDPs. In that context, the Secretary's ability to influence the outcome of those negotiations would be limited. For example, without the authority to establish a formulary, we believe that the Secretary would not be able to encourage the use of particular drugs by Part D beneficiaries, and as a result would lack the leverage to obtain significant discounts in his negotiations with drug manufacturers.

Instead, prices for covered Part D drugs would continue to be determined through negotiations between drug manufacturers and PDPs. Under current law, PDPs are allowed to establish formularies—subject to certain limits—and thus have some ability to direct demand to drugs produced by one manufacturer rather than another. The PDPs also bear substantial financial risk and therefore have strong incentives to negotiate price discounts in order to control their costs and offer coverage that attracts enrollees through features such as low premiums and cost-sharing requirements. Therefore, the PDPs have both the incentives and the tools to negotiate drug prices that the government, under the legislation, would not have. H.R. 4 would not alter that essential dynamic.

I hope this information is helpful to you. The CBO staff contacts for further information are Eric Rollins and Shinobu Suzuki.

Sincerely,



Donald B. Marron
Acting Director

cc: Honorable Joe Barton
Ranking Member