

Will Americans Finally See Drug Prices Decrease?

According to the White House, “Americans pay two to three times as much as people in other countries for prescription drugs, and one in four Americans who take prescription drugs struggle to afford their medications. Nearly 3 in 10 American adults who take prescription drugs say that they have skipped doses, cut pills in half, or not filled prescriptions due to cost.”¹ In an effort to combat this growing crisis, both the federal government and private companies have taken a number of steps over the past year aiming to lower drug prices. This Health Capital Topics article will review those actions and the potential unintended consequences of these actions.

The federal government’s attention on lowering drug costs was refocused as a result of President Joe Biden’s January 9, 2021 executive order that “directed various actions...[to] reduce prices for prescription drugs...”² On August 16, 2022, in a large step forward toward the president’s goal, the Inflation Reduction Act of 2022 (IRA) was signed into law. Among other items, the omnibus law contained a number of provisions aimed at lowering prescription drug costs. First, the law allows the federal government to negotiate on behalf of Medicare beneficiaries to reduce costs for certain high-cost prescription drugs.³ For those drugs, the U.S. Department of Health & Human Services (HHS) will negotiate for a “maximum fair price.”⁴ In an effort to maintain drug price levels going forward, the IRA also discourages pharmaceutical companies from arbitrarily inflating prices on certain drugs.⁵ Between 2019 and 2021, 50% of Medicare-covered drugs saw price increases higher than the rate of inflation.⁶ Beginning 2023, if manufacturers’ prices on those drugs rise quicker than the rate of inflation, those manufacturers will be required to pay rebates to beneficiaries, which amount will be the difference between the inflation rate and the rate of increase in the drug price.⁷ Second, the IRA will lessen the prescription drug costs directly incurred by patients by establishing maximum caps on various beneficiary spending. Medicare beneficiaries’ out-of-pocket costs for insulin will be capped at \$35 per month and all cost sharing for vaccines covered under Part D will be eliminated.⁸ Additionally, starting in 2025, beneficiaries’ out-of-pocket costs under Part D will be capped at \$2,000 per year.⁹ Then, beginning in 2024, beneficiaries will not be required to pay a coinsurance above the catastrophic threshold (which was \$7,050 in 2022); previously beneficiaries had to pay a 5% coinsurance on drugs once hitting the catastrophic threshold.¹⁰

Buoyed by the IRA’s passage, President Biden released another executive order on October 14, 2022, specifically directing the Department of Health & Human Services (HHS) to “consider whether to select for testing by the [Center for Medicare & Medicaid Innovation (CMMI)] new health care payment and delivery models that would lower drug costs and promote access to innovative drug therapies for beneficiaries...including models that may lead to lower cost-sharing for commonly used drugs and support value-based payment that promotes high-quality care.”¹¹ HHS has 90 days to identify those models and report back on the agency’s plan and timeline for testing those models.

There is concern that the actions taken by the federal government, which only apply to the Medicare program, will not lower drug prices across the board, as pharmaceutical companies could just shift losses onto commercial payors – this would affect approximately half of all Americans.¹² Therefore, a holistic solution to high drug prices will require involvement by private companies, which efforts are well underway.

On January 19, 2022, Dallas Mavericks owner and billionaire investor Mark Cuban announced the launch of The Mark Cuban Cost Plus Drug Company, a registered pharmaceutical wholesaler that sells generic drugs through an online pharmacy at much cheaper prices than traditional drug distributors. All of the pharmacy’s drugs are priced at the manufacturers’ price plus a 15% markup and a \$3.00 pharmacist fee, a steep discount from traditional drug distributors.¹³ These discounts are enabled by the company negotiating prices directly with manufacturers, rather than through a middleman.¹⁴ Although the pharmacy does not accept health insurance, it claims that consumers will still pay less than if they were to pay with their insurance.¹⁵ Over the past 10 months, it has served 1.2 million customers and now sells over 1,000 generic drugs (a significant increase from the 100 drugs it started selling in January 2022).¹⁶ The company hopes that the “radical transparency” in its pricing model will force other pharmacies to do the same, pushing down prices. To further disrupt the drug industry, The Mark Cuban Cost Plus Drug Company is building a pharmaceutical facility in Dallas so that they can produce their own drugs, allowing them to further decrease prices and/or expand the number of drugs it sells; the building is expected to be completed next month.¹⁷

While The Mark Cuban Cost Plus Drug Company may be the most well-known company to take on the pharmaceutical industry, it is certainly not the only one. In July 2022, DiRX, an online pharmacy platform, launched a subscription model, where consumers pay a \$300 annual flat fee and receive unlimited access to over 1,000 generic drugs.¹⁸ One month later, CivicaScript, a hospital-owned nonprofit subsidiary,¹⁹ began manufacturing and selling abiraterone, a prostate cancer drug, at approximately \$3,000 less than the average price under Medicare Part D. This drug was specifically chosen due to its “high list price and significant patient need.”²⁰ While this is the first drug released by CivicaScript, it will not be the last.

While this is a laudable start to combating the longstanding issue of high drug prices, there is still much to be done. For example, all of the programs discussed above are specific to generic drugs, which are a small part of the overall pharmaceutical market; brand-name drugs comprised approximately 84% of U.S. drug spending in 2021.²¹ Further, taking away business from the “middlemen” – pharmacy benefit managers (PBMs) – may result in PBMs simply increasing their prices for brand-name drugs, further pushing up the costs of those newer medications.²²

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2 *Ibid.*

3 H.R. 5376 - Inflation Reduction Act of 2022” 117th Congress (2021-2022), <https://www.congress.gov/bill/117th-congress/house-bill/5376> (Accessed 8/18/22).

4 Capped at: “75 percent of the Average Manufacturer Price for those [drugs] on the market for nine to 11 years (25 percent discount offered by the drug maker); or 65 percent for 12 to 15 years (35 percent discount offered by the drug maker); or 40 percent for 16 years or longer (60 percent discount offered by the drug maker. “The Inflation Reduction Act of 2022: Medicare Drug Pricing Provisions Will Change the Health Care Industry” By Jennifer F. Walsh, et al., Foley & Lardner LLP, August 16, 2022, <https://www.foley.com/en/insights/publications/2022/08/inflation-reduction-act-2022-medicare-drug-pricing> (Accessed 8/25/22).

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9 *Ibid.*

10 *Ibid.*

11 The White House, Executive Order, October 14, 2022.

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14 *Ibid.*

15 *Ibid.*

16 *Ibid.*; “Mark Cuban’s bid to disrupt the drug supply chain” By Tina Reed, Axios, October 27, 2022, <https://www.axios.com/2022/10/27/mark-cuban-drug-supply-chain> (Accessed 10/27/22).

17 “Our mission” The Mark Cuban Cost Plus Drug Company, <https://costplusdrugs.com/mission/index.html> (Accessed 10/27/22); “Mark Cuban’s bid to disrupt the drug supply chain” By Tina Reed, Axios, October 27, 2022, <https://www.axios.com/2022/10/27/mark-cuban-drug-supply-chain> (Accessed 10/27/22).

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