



# What They're Saying: Safe Harbor Rule

In 2019, the Department of Health and Human Services (HHS) and the HHS Office of the Inspector General released a proposed rule to end safe harbor protection for prescription drug rebates in Medicare Part D. **But experts across the system agree: this proposal will increase drug prices in the short-term. It also does nothing to address the high and rising drug prices set by drug companies over the long-term.**

## ACADEMICS

- **Aaron Kesselheim, Associate Professor of Medicine, Harvard Medical School:** "Simply trying to eliminate rebating without any other steps threatens to drive up drug prices overall...Rebates are a key mechanism that insurers use to try to reduce net drug prices."
- **Rachel Sachs, Associate Professor of Law, Washington University in St. Louis:** "Given the uncertainty around the behavior of relevant stakeholders in response to the rule, the proposal does not (and possibly cannot) aim to predict whether pharmaceutical companies will respond by reducing list prices, a goal of the administration's."
- **Walid Gellad, Director, Center for Pharmaceutical Policy and Prescribing, University of Pittsburgh:** "Transparency can help the public and policy makers make more informed decisions about what to do about high drug prices — who to target, what policies to put in place, etc...Just the transparency alone is unlikely to lower prices."
- **Zach Cooper, Associate Professor, Yale University:** "Until data on the true net price of Rx drugs becomes available, the discussion of Rx pricing is going to be focused on rebates. Unfortunately, rebates...aren't the core reason drug prices are high."
- **Joseph Antos, Resident Scholar in Health Care and Retirement Policy, American Enterprise Institute:** "The Medicare actuary points out that although the intention is to relieve the cost burden on Medicare beneficiaries who use more prescription drugs, that would not be accomplished without imposing new costs on other beneficiaries and taxpayers."
- **Fiona Scott Morton, Professor of Economics, Yale School of Management:** "A solution to tackle the problem of high out-of-pocket consumer costs that also promotes competition...is more desirable than one that reduces competition, such as the HHS Rule. The HHS Rule, by reducing competition between drugs, will lead to higher equilibrium prices."
- **Craig Garthwaite, Professor and Director of Health Care, Northwestern Kellogg School of Management:** "There is no other part of the healthcare market that is currently more vilified than confidential rebates...a palpable anger that ultimately resulted in the Trump Administration proposal to end this practice. But this vilification is vastly misplaced. Confidential rebates are necessary to secure large discounts because when a manufacturer knows all of its customers won't observe a big discount it gives to a particular client, it is more willing to give such a large discount in the first place."

## STAKEHOLDERS

- **Douglas Holtz-Eakin, President, American Action Forum:** "[Part D] did come in about 30% below the projections I made as CBO Director at the time. It was not because we did not anticipate the entry of generics—we certainly did...We underestimated the capacity of the combined prescription drug plans and PBMs to strike deals with manufacturers. The power of the negotiation proved stronger than anticipated and it came in cheaper. I believe that's a big policy success."
- **Peter Maybarduk, Director of Access to Medicines, Public Citizen:** "To solve the problem of high drug prices, ultimately we will need to challenge the source: the monopoly pricing power of Big Pharma."
- **Matt Eyles, President and CEO, America's Health Insurance Plans:** "The focus on rebates has been a distraction from the real issue — the problem is the price...Manufacturers have complete control over how drug prices are set. Already this year, more than three dozen drug makers have raised their prices on hundreds of medications."
- **Allyson Y. Schwartz, President and CEO, Better Medicare Alliance:** "The concern remains that this move fails to address the root cause of high prescription drug costs which starts with list prices set by drug manufacturers...The proposed rule risks destabilizing Part D premiums for seniors."
- **Lauren Aronson, Executive Director, Campaign for Sustainable Rx Pricing:** "While we applaud the rule's intent, it misses the central problem with prescription drug prices: big pharma's price setting. We need to focus on real solutions that lower costs, not raise them even further."