

Prescription Drug Provisions in the Inflation Reduction Act of 2022

On August 16, 2022, President Biden signed into law the [Inflation Reduction Act of 2022](#). This is an expansive piece of legislation and covers a very wide variety of policies. This Health Policy in Transit will briefly describe the provisions related to prescription drugs, specifically those that affect employer plan sponsors.

Starting in 2026 and phasing in over four years, Medicare will now be required to negotiate prescription drug prices. CMS will select drugs to be negotiated from the 50 “negotiation-eligible” drugs with the highest total Medicare Part D spending and the 50 “negotiation-eligible” drugs with the highest total Medicare Part B spending.

“Negotiation eligible drugs” include brand-name drugs or biologics and exclude, among other things, drugs that have a generic or biosimilar available and drugs less than 9 years (for small-molecule drugs) or 13 years (for biological products) from their FDA-approval or licensure date, and so-called orphan drugs, as designated by FDA. These negotiation provisions do not apply directly to the commercial market; it remains to be seen if/how these newly negotiated prices may affect employer plans.

The legislation makes several changes to Medicare Part D, including:

- Elimination of the 5% coinsurance for catastrophic coverage, adding a \$2,000 cap on out-of-pocket spending, and limiting annual premium increases,
- Expansion of eligibility for the Medicare Part D Low Income Subsidy,
- Elimination of cost sharing for adult vaccines covered under Part D and expansion of access to adult vaccines under Medicaid and CHIP, and
- Limits monthly cost sharing for insulin products to \$35.

Again, none of these provisions apply directly to employer-sponsored plans, but we will be monitoring implementation to see how these changes may affect employer plan sponsors, and potentially change the overall prescription drug market.

Plan Sponsors Left at the Altar

The provision we were watching most closely, and actively advocating on, was the requirement for drug companies to pay rebates if prices rise faster than inflation for prescription drugs. We advocated strongly that the commercial market remain in the provision because of the large potential for cost shifting onto employer plans, which are already dealing with quickly increasing prescription drug prices. If pharmaceutical manufacturers end up losing revenue on drug prices in Medicare due to price negotiations, we are concerned that those manufacturers will end up attempting to recoup that revenue by increasing prices for commercial plans, which are not subject to those negotiation requirements.

In the week leading up to final debate and passage of the Act in Congress, the Senate Parliamentarian ruled that commercial plans (i.e. not Medicare) had to be excluded from the rebate provisions; the rebate provisions could only apply to Medicare. This is due to the fact that the bill was being considered under reconciliation rules to avoid being subject to the filibuster. Reconciliation bills need only a simple majority to pass and must relate directly to federal revenues and expenditures.

The National Alliance, along with the other employer organizations we work with closely, are disappointed in this decision. The National Alliance released this [statement](#) after the Parliamentarian’s decision. This [Axios article](#) describes the issue well.

Health Policy in Transit A Purchaser Viewpoint