

# Elimination of Current Manufacturer Rebates in Part D Will Harm Medicare Beneficiaries

Fact Sheet August 2020

## Key Facts

- 47 million beneficiaries have prescription drug coverage through Medicare Part D.
- 21.6 million beneficiaries have prescription drug coverage as part of a non-employer MA-PD plan.
- 9.9 million beneficiaries are enrolled in MA-PD plans and currently pay no premium for their prescription drug coverage.
- The previous Proposed Rebate Rule's various cost estimates range from saving taxpayers \$100 billion to costing taxpayers nearly \$200 billion over ten years.

In 2019, The Department of Health and Human Services' (HHS) Office of Inspector General (OIG) issued a proposed rule that would eliminate the regulatory safe harbor protection for rebates negotiated between drug manufacturers and pharmacy benefit managers (PBMs) and would create a new safe harbor protection for negotiated point-of-sale discounts.

In July of 2019 the Administration announced the withdrawal of the Proposed Rebate Rule from the Office of Management and Budget (OMB). While the Administration withdrew the Final Rule from OMB and did not finalize the Proposed Rule, it did not officially withdraw the Proposed Rebate Rule itself from the Federal Register.

An Executive Order issued in July of 2020 revives this Proposed Rebate Rule and adds a requirement that the Secretary of HHS publicly confirm that proposed changes will not increase federal spending, increase beneficiary out-of-pocket costs, or beneficiary premiums.

## Background on the Proposed Rebate Rule

The Proposed Rebate Rule would eliminate the regulatory safe harbor protection for rebates, which allows the current discounts negotiated between pharmacy benefit managers (PBMs) and drug manufacturers. The Proposed Rule would create a new safe harbor protection that would have discounts passed through to the beneficiary at the point-of-sale rather than be used for lower premiums for all beneficiaries.

Part D rebates, which result from discounts on drugs' list price to the PBM, are currently used by Part D plans to lower premiums for all of its enrollees. In Medicare Advantage-Prescription Drug (MA-PD) plans, where plans have a combined premium for medical and drug benefits, Part D rebates serve to lower premiums for all beneficiaries and support supplemental benefits.

## Impact of the Proposed Rebate Rule on Beneficiaries

### *Impact to Beneficiary Premiums*

According to the Department of Health and Human Services' analysis, this change is estimated to increase premiums for all Part D beneficiaries by **19% in the first year and 25% over the next ten years**. This would represent the largest increase in Part D premiums in the program's history.

According to a BMA-commissioned analysis, which uses the same assumptions on rebate allocation as CMS' Office of the Actuary (OACT), Avalere estimates that pharmaceutical rebates would **decrease by \$5.6 billion**. As a result, MA-PDs would either need to increase premiums or decrease supplemental benefits.

Assuming all MA-PDs that charge premiums offset the entire reduction in pharmaceutical rebates, the result would be an increase in premiums for 8.5 million beneficiaries. Avalere's analysis finds that MA-PD monthly premiums would **increase by \$29 per beneficiary**, almost doubling the average premium. In addition, plans that offer zero-dollar premiums would need to reduce their supplemental benefit offerings.

### *Impact to Supplemental Benefits*

MA-PD plans use Part D rebates to keep premiums for prescription drug coverage low for beneficiaries. In fact, 9.9 million beneficiaries in MA-PD plans today pay no premium for their medical and prescription drug coverage. Rebates also allow MA-PD plans to help finance supplemental benefits, such as dental or vision coverage. The elimination of Part D rebates will reduce MA-PD plans' resources for supplemental benefits. According to Avalere's analysis, MA-PD plans could see an average **28% decrease in rebate funding**, or a **decrease of \$228 per person per year**.

### *Impact to Federal Spending*

The impact of the Proposed Rule on federal spending is unclear. The Proposed Rebate Rule included estimates which range from **costing taxpayers nearly \$200 billion** to saving \$100 billion over ten years. The potential of cost to the government of \$200 billion has raised serious concerns. Compliance with the Executive Order's new requirements that the Secretary of HHS attest that implementation of the Rule will not increase costs to the government or to beneficiaries is questionable given the facts as provided by both government and private sector analyses.

## BMA Policy Recommendations

Reducing the cost of prescription drugs should not raise costs elsewhere for beneficiaries, reduce access to supplemental benefits, or increase costs to the government.

BMA urges HHS to work with stakeholders to identify solutions that reduce drug costs by lowering manufacturer list prices, supporting management tools, and encouraging sound prescribing practices and medication adherence.