



## Self-Funded Health Plans May Have a New Ally in the Fight against Specialty Drug Prices

*This article represents “commentary” and represents views of the authors. We welcome other opinions on the subject*

By Brady Bizarro, Esq.

**T**hroughout the bitter and seemingly endless presidential election cycle, Donald Trump and Hillary Clinton vehemently disagreed on almost every issue, especially those involving health policy. Yet, there was at least one health policy issue on which both candidates agreed: prescription drugs are too expensive.

For self-funded health plans, this is old news. The industry continues to face increasing costs overall, and prescription drugs make up a significant portion of those costs. Specialty drugs are particularly culpable. Specialty drugs accounted for 32 percent of all drug expenditures in 2014 despite making up less than one percent of all written prescriptions, according to research conducted by Express Scripts.



Self-funded health plans employ a variety of cost-containment strategies in an effort to ameliorate the fiscal burden of prescription drugs. These include increased cost-sharing (through copayments, coinsurance, and deductibles) and utilizing manufacturer copay cards and tiered benefit programs. Now, the self-funded industry may be given new tools by the President-elect to fight the pharmaceutical companies.

Chief among President-elect Trump's health policy priorities is his campaign promise to "repeal and replace" the Affordable Care Act. In addition, he has announced at least two priorities which depart from conventional conservative thinking and have important implications for the future of self-funding: requiring price transparency from all healthcare providers and permitting consumers to import drugs from overseas.

As part of Trump's plan for "Healthcare Reform to Make America Great Again," the President-elect proposed that Congress must:

*Remove barriers to entry into free markets for drug providers that offer safe, reliable and cheaper products. Congress will need the courage to step away from the special interests and do what is right for America. Though the pharmaceutical industry is in the private sector, drug companies provide a public service. Allowing consumers access to imported, safe and dependable drugs from overseas will bring more options to consumers.*

It is hard to overestimate the savings a self-funded health plan can realize if permitted to import drugs from overseas. One of the main reasons why prices for brand-name drugs are typically lower in most developed countries than in the U.S. is because of increased negotiating power. In the U.S., the government has forfeited its negotiating power.

Medicare, the largest single purchaser of prescription drugs in the U.S., is prohibited by law from negotiating prices with pharmaceutical companies. By contrast, in the United Kingdom, brand-name drug prices are generally much lower because the government and the industry negotiate agreements which contain set spending caps and require drug companies to reimburse the government any amount which exceeds the cap.

While some of these agreements do contain an opt-out provision for the reimbursement requirement, most pharmaceutical companies agree to these contracts as-is in order to gain access to a much larger market.

Also consider the case of Canada, which is often touted as a prime example of a source of low-cost prescription drugs. The Canadian government negotiates with pharmaceutical companies on behalf of the public.

As a result, brand-name and even generic drugs are less expensive in Canada than they are in the United States. In 2004, the median



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prescription drug prices in Canada were nearly 79 percent lower than those in the U.S., according to the Patent Medicine Prices Review Board Annual Report.

The 2013 report revealed that Canadian consumers still paid less than half of what U.S. consumers paid for patented-drug products. If the President-elect succeeds in pushing through legislation which ends the ban on foreign drug imports, U.S. consumers could realize similar savings.

This would not be the first time that a politician has attempted to lift the ban on importing foreign drugs. The Safe and Affordable Drugs from Canada Act of 2015 was sponsored by Senator John McCain (R-AZ) and had bi-partisan support, including from Senator Bernie Sanders (D-VT). The bill remains stalled in the Senate Committee on Health, Education, Labor, and Pensions.

There was also an attempt to permit importation in 2009 while the Affordable Care Act was being pushed by Democrats, but that effort also failed. Despite failed past attempts, there are many reasons to think that the importation of prescription drugs from overseas may actually become legal (at least in some form) under a Trump Administration.

First, public support for change and increased price transparency is at an all-time high, especially in light of recent, high-profile price-gouging controversies. In August 2015, Turing Pharmaceuticals acquired the exclusive rights to distribute Daraprim, a drug used to treat AIDS-related symptoms. A month later, the company raised the price of Daraprim from \$13.50 per pill to \$750 per pill overnight, an increase of over 5,500 percent (before 2010, the drug cost \$1 per pill).

A joint study by the Infectious Disease Society of America and the HIV Medicine Association found that the increase in price would result in an average bill of \$634,500 per year for most patients.

In response to the public outcry, the CEO of Turing Pharmaceuticals defended his company's actions, citing the need to modernize the drug and create new alternatives with fewer side effects. A year later, the price of the drug is \$375 in the U.S., and between \$1 and \$2 per pill internationally.

Turing Pharmaceuticals is not the only company to drastically increase the price of its brand-name drugs and face near-universal criticism.

Mylan, a global generic and specialty pharmaceuticals company, faced an even bigger political firestorm in the summer of 2016 when it raised the price of a two-pack supply of its popular EpiPen to \$608 (the same two-pack EpiPen is available in the United Kingdom for \$69).

The EpiPen, which sold for \$100 as recently as 2009, is an epinephrine auto injector device used to control allergic reactions to food and environmental allergens. What made this case more contentious was a media report revealing that over the past eight years, while the price of EpiPens increased 461 percent, the salary of Mylan's CEO rose 671 percent, up to \$18.9 million a year.

Although many experts agree that these examples are egregious, it is important to note that there are enormous costs associated with pharmaceutical research and development. Furthermore, there is a very real need to encourage drug development as a matter of good public health and public policy.

This is why the U.S. government provides regulatory protections to assist pharmaceutical firms in the development of life-saving drugs. Nonetheless, recent polling confirms that Americans are fed up with the price of brand-name drugs. Nearly eight in ten Americans agree that drugs are too expensive, and almost 86 percent agree that pharmaceutical companies should be required to reveal how drug prices are set, according to a survey released by the Kaiser Family Foundation in September 2016.

In addition to the public outcry over specific pricing controversies, the Food and Drug Administration (FDA) has sent mixed signals regarding the agency's willingness to enforce the ban on foreign drug imports. The FDA's website explains that the agency has a policy "that it typically does not object to personal imports of drugs that FDA has not approved under certain circumstances..." Those circumstances include when less than a three-month supply is

imported, and when the consumer importing the drug verifies in writing that it is for her own use and provides contact information for the doctor providing her treatment.

Perhaps most importantly, President-elect Trump will enjoy the benefits of a Republican-controlled House and Senate. While in recent weeks he has shown signs of scaling back some of his campaign promises, this particular health policy initiative enjoys bi-partisan support. As such, there may be no better opportunity to push through legislation lifting the ban on safe, dependable imported drugs. ■

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