

Did landmark laws from Congress enable high drug prices?

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In this Sept. 21, 2016 file photo, Mylan CEO Heather Bresch testifies on Capitol Hill in Washington. Lawmakers are venting outrage these days over high prescription drug costs, but if Congress is looking for culprits, it may want to look in the mirror. Republican and Democratic-controlled Congresses, and presidents of both parties, may have set the stage for the startling prices that now have consumers on edge. (AP Photo/Pablo Martinez Monsivais, File)

Lawmakers are venting outrage over high prescription drug costs, but

lawmakers and presidents of both parties may have set the stage for the startling prices that have consumers on edge.

As the proverb says: Physician, heal thyself.

In the last 13 years, Congress passed major legislation that expanded taxpayer-financed coverage for prescription drugs but lacked explicit mechanisms for dealing with costs, instead relying mainly on market forces. Lawmakers look like unwitting enablers in the eyes of some experts.

Congress "inadvertently created a situation where price increases are much more rapid," said economist Paul Ginsburg, a Medicare expert who directs the Brookings Institution health policy center.

Government-sponsored coverage injected more dollars into the market for medications, and new consumer protections curtailed some blunt instruments insurers used to control costs, such as annual and lifetime limits on the dollar value of coverage.

"The history we see over and over again is that when the government steps in as a guaranteed payer without regard to price, it will be taken advantage of," said Dr. Peter Bach, director of Memorial Sloan Kettering's Center for Health Policy and Outcomes.

Congressional indignation was on display recently as House members grilled Mylan CEO Heather Bresch about price increases for her company's EpiPens, prefilled syringes that deliver a rescue drug for people suffering life-threatening allergic reactions. The company was accused of gouging patients, but there was little introspection about the role of government.

It's not as though a secret signal went out from Capitol Hill that it was

OK for Mylan to charge \$608 for an EpiPen two-pack. Instead, government policies foster an environment that makes it easier to introduce new medications at a high price and to charge more for existing drugs.

"It has dramatically changed the pricing environment," explained Ginsburg. "If a manufacturer sets the price higher, there will be less resistance to that price because a lot more people will be able to access that drug than in the past. The rational thing for the manufacturer would be to raise the prices both of existing drugs and newly introduced ones."

Consider the following:

—Passed in 2003 under President George W. Bush, Medicare's "Part D" prescription benefit provided drug coverage to seniors. Medicare was forbidden to negotiate prices. Instead, private insurers and pharmacy benefit managers would keep costs in check. For a while it seemed to be working amid greater use of generic drugs. But expensive new "specialty" drugs and price increases for some older medications changed things. A feature of the program that protects beneficiaries from "catastrophic" costs has allowed drugmakers and insurers to pass the bill for very expensive medications on to taxpayers.

—Enacted in 2010 under President Barack Obama, the Affordable Care Act, or ACA, expanded coverage for the uninsured. It made prescription drugs an essential benefit, and barred dollar limits on insurance coverage. The drug industry supported the legislation and, according to documents released by House Republicans, got a White House commitment not to seek Medicare rebates opposed by drugmakers. The administration helped defeat an attempt to let patients import lower-cost drugs from abroad.

—Obama's health care law provided makers of cutting-edge biologic

drugs 12 years of protection from generic competitors, not a shorter period sought by consumer advocates.

"It's not clear to what extent Part D and the ACA may have directly caused the very large increases in drug prices in the last five years or so," said Rick Foster, formerly Medicare's chief actuary, or number-cruncher. "Having said that, it wouldn't surprise me if the significant increase in insurance coverage—and especially the catastrophic protection—contributed to the drug price increases."

The drug industry, a formidable lobby, rejects such speculation.

"Fundamentally, we disagree that there is not adequate cost containment for medicines built into Part D, or the ACA," said Lisa Joldersma, vice president of policy and research with the Pharmaceutical Research and Manufacturers of America.

"We think the market is best able to manage the holistic picture and to strike the right balance across cost containment, access and continuous innovation," she added.

The public seems receptive to government action. A Kaiser Family Foundation poll released Thursday shows strong support for requiring drug companies to disclose how they set prices (86 percent), Medicare negotiations (82 percent), price limits on costly drugs to treat cancer and diseases like hepatitis (78 percent), and allowing Americans to import medications from Canada (71 percent).

Rep. Xavier Becerra, a senior California Democrat, says he doesn't believe Obama's overhaul and Bush's prescription benefit are responsible for high-cost drugs. But he still thinks Congress has to act.

"I don't think there's anyone who doesn't believe we need to do more

aggressive oversight of the industry," said Becerra.

Republican Sen. Chuck Grassley of Iowa said Congress needs to monitor the programs it sets in motion. "When companies are allowed to manipulate public programs, consumers and taxpayers lose out," he said.

It may be a little late, suggests Urban Institute economist Eugene Steuerle.

"Government simply cannot provide monopoly power and at the same time say that it will pay a price set in the private market by those companies," said Steuerle. "Turning the power of the purse over to monopolists is absurd."

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