

Expanding Medicare Drug Pricing Implications in President Biden's Proposed FY 2024 Budget

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On March 9, 2023, the White House released President Biden's proposed budget for fiscal year 2024 (FY 2024 Budget). The FY 2024 Budget, which the White House previewed in a March 7, 2023 fact sheet, contains numerous proposals that are intended to extend the solvency of Medicare's Hospital Insurance (HI) Trust Fund by at least 25 years (*i.e.*, from its current projected insolvency date of 2028 at least into the 2050s), in large part by doubling down on key drug pricing provisions in the Inflation Reduction Act of 2022 (IRA). Key stakeholders in the drug pricing provisions of the IRA and FY 2024 Budget include pharmaceutical manufacturers, Medicare Advantage Organizations (MAOs), and Part D Plans (PDPs).

Together, the White House estimates that the FY 2024 Budget's augmentation of the existing IRA drug pricing provisions will amount to \$200 billion in savings to the Medicare HI Trust Fund over the next decade. The White House also estimates that reduced prices for drugs subject to negotiation under the IRA will result in "billions of dollars" in savings in beneficiaries' out-of-pocket costs.

The drug pricing provisions of the FY 2024 Budget, which build upon the existing drug pricing powers granted to the government in the IRA, specifically propose to:

- Strengthen the government's newly acquired authority to negotiate drug prices under the IRA by allowing Medicare to negotiate prices for more drugs and bringing drugs into negotiation sooner after they launch (for more information see Wiley's previous alert summarizing the IRA's Drug Price Negotiation Program).

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- Extend the IRA's requirement that drug companies pay rebates to Medicare when they increase prices faster than inflation to commercial health insurance (for more information see Wiley's previous alert summarizing the IRA's Inflation Rebate Program).
- Expand the U.S. Department of Health and Human Services' drug price negotiation power to include negotiation for supplemental drug rebates under Medicaid and the Children's Health Insurance Program, resulting in an additional \$8 billion in savings to these essential government health care programs.

In addition to the expansion of the government's drug price negotiation powers, the FY 2024 Budget proposes additional changes to Medicare, which include:

- Increasing the Medicare tax rate on earned and unearned income above \$400,000 from 3.8% to 5%;
- Closing "loopholes" in existing Medicare taxes by (i) ensuring that Medicare taxes apply to incomes over \$400,000 per year and (ii) dedicating the revenue from the Medicare net investment income tax to the HI Trust Fund;
- Imposing a \$2 per prescription cap on Part D cost-sharing for certain generic drugs (*e.g.*, those used to treat chronic conditions like hypertension and high-cholesterol);
- Eliminating cost-sharing for 3 behavioral health visits per year;
- Requiring parity between physical health and mental health coverage in Medicare;
- Expanding coverage for behavioral health providers; and
- Removing "unnecessary" limitations on beneficiary access to psychiatric hospitals.

The FY 2024 Budget remains subject to Congressional review and implementation. Implementing the above proposals, particularly those relating to expanding the drug pricing provisions of the IRA, would considerably expand the government's authority with respect to drug price negotiations. Industry has signaled that such expansion could result in substantial changes to research and development trends across the pharmaceutical industry.

Wiley's multidisciplinary Medicare Drug Pricing team is closely monitoring these trends and other federal drug pricing developments and is available to advise on any questions that may arise. For more information about Medicare implications under the FY 2024 Budget or the IRA generally, please contact one of the attorneys listed on this alert.