

**Statement for the Record
by the**

**American Federation of State, County and
Municipal Employees (AFSCME)**

**for the Hearing
on**

**Ideas to Improve Medicare Oversight to Reduce Waste, Fraud
and Abuse**

Before the

**Subcommittee on Health
Committee on Ways and Means**

U.S. House of Representatives

April 30, 2014

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This statement is submitted on behalf of the 1.6 million workers and retiree members of the American Federation of State, County and Municipal Employees (AFSCME) for the hearing held April 30, 2014 on combating and reducing waste, fraud and abuse in Medicare.

Medicare is an amazing success story. Thanks to Medicare, older Americans have access to modern medicine no matter what their health status or individual income. For nearly 50 years, it has helped generations of Americans to keep a foothold in the middle class as they age. Because of its guaranteed benefits, seniors and their families are protected from financial ruin due to the ravages of illness. However, as the largest payer for most health care services in our country, it is important that protecting Medicare from waste, fraud and abuse be a priority.

Fortunately, the Affordable Care Act (ACA) protects taxpayer and Medicare dollars against criminal actions by beefing up enforcement tools, ramping up detection and pursuing those who steal, waste or abuse Medicare dollars.

- The ACA increases federal sentencing guidelines making it easier to get tougher on criminals who steal from Medicare. The law requires the U.S. Sentencing Commission to increase the federal sentencing guidelines for health care fraud offenses by 20-50% for crimes that involve more than \$1,000,000 in losses. The ACA makes obstructing a fraud investigation a crime. Thanks to the ACA, it will be easier for the federal government to recapture monies acquired through fraudulent practices. In FY 2013, fraud prevention and enforcement efforts recovered a record-breaking \$4.3 billion in taxpayer dollars from those trying to cheat federal health programs serving seniors.
- The ACA beefs up data matching and integration for law enforcement agencies. This makes it easier to identify criminals and prevent fraud among federal agencies that pay for health care. As a result, as of September 2013, more than 225,000 providers lost the ability to bill Medicare. And, over 14,600 Medicare providers and suppliers had their ability to bill Medicare revoked because of felony convictions or noncompliance.

Regrettably, if the policy of ACA repeal were to become law, as called for in the House-passed budget, the new enforcement tools would disappear and likely lead to more criminals evading detection, prosecution and time in jail.

Congress should Change the Laws that Allow Pharmaceutical Companies to “Legally” Overcharge Medicare

We expect the hearing to explore improving our nation's efforts to combat and reduce illegal activities taken by Medicare providers to cheat Medicare through fraud and abuse. We urge Congress to consider also combatting the ways in which pharmaceutical manufacturers can overcharge Medicare. This "legal" waste, fraud and abuse is significant and undermines Medicare solvency. It also harms taxpayers and beneficiaries.

Medicare Part D coverage for prescription drugs is estimated to cost \$80 billion in 2014 and is expected to double by 2022, in large part due to "legal" overpayments to drug manufacturers. We urge Congress to enact the following policies to curb the pharmaceutical industry's ability to "legally" overcharge Medicare.

- **End "legal" drug overcharges for low-income beneficiaries.**

When Medicare Part D was implemented, the cost of providing medicines to millions of people on Medicaid shot up overnight. Medicaid gets far lower drug prices than Medicare. But Medicare Part D told the pharmaceutical industry they no longer had to provide the Medicaid discount for the same people who were shifted to Medicare Part D plans.

Ending this "legal" windfall for the drug industry would recover more money for Medicare than even record-breaking fraud recoveries. The Congressional Budget Office says that simply restoring the Medicaid discounts for Medicare's low-income beneficiaries would save \$116 billion over 10 years.

- **Unleash the purchasing power of 50 million Medicare beneficiaries.**

Current law forbids Medicare from using the purchasing power of nearly 50 million Medicare beneficiaries to negotiate directly with drug companies for lower prices. The discounts obtained by private Medicare Part D plans are three times less than the ones the government gets for Medicaid. Even modest concern over Medicare's solvency and the use of taxpayers' dollars should compel Congress to give Medicare tools to pursue lower drug prices for the program. Estimates are that Medicare could save more than \$200 billion over 10 years.

- **Close the Part D coverage gap, sooner.**

The ACA has helped nearly eight million people with Medicare save \$10 billion on their medications due to the law's required prescription drug discounts to close the coverage gap for Medicare prescription drugs – known as the "donut hole." The ACA closes this coverage gap by 2021. Increasing the drug-maker discounts required by the ACA would shorten the donut hole phase-out period. If coverage gap was ended in 2016 it would help the sickest beneficiaries and save \$7.9 billion for Medicare over 10 years.

- **Stop brand-name drug manufacturers from postponing generic entry into the market.**

Many brand-name pharmaceutical manufacturers pay off generic drug companies to delay introducing a less expensive generic drug, which keeps brand name prices artificially high for Medicare and its beneficiaries. Authorizing the Federal Trade Commission to stop these anti-competitive and "legal" wasteful pay-for-delay agreements would save Medicare \$9.1 billion over 10 years.

- **Stop allowing drug companies to charge more for new drugs that are not an improvement over current medicines.**

Countries such as Germany, New Zealand and Australia have successfully used a review process to reduce spending on expensive new drugs. Under the administrative processes new brand name drugs that are no more effective than existing treatments do not receive additional payments from those countries' health care programs. This process encourages pharmaceutical companies to invest in innovative drugs that improve health outcomes.

Conclusion

Medicare provides health and financial security to millions of Americans, even during the worst economic crisis since the Great Depression. Thankfully, the health care law does much to combat waste, fraud and abuse in Medicare, but the greater threat to Medicare is not fraud – it is the House-passed budget and “legal” wasteful overcharges from drug companies.

The House-passed budget would expose Medicare to more waste, fraud and abuse and leave beneficiaries to be preyed upon by unscrupulous criminals because it would strip away longer sentences for Medicare fraud crimes and take away tools to detect and combat waste, fraud and abuse.

We urge Congress to consider also combating the ways in which pharmaceutical manufacturers can overcharge Medicare. These “legal” mechanisms for waste, fraud and abuse are significant and undermine Medicare solvency. They also harm taxpayers and Medicare beneficiaries and should not be allowed to continue.