Inflation Reduction Act: Considerations for pharmaceutical companies

August 11, 2022

In brief

The Senate on August 7 voted 51 to 50 along party lines to pass the “Inflation Reduction Act” budget reconciliation bill (the bill). The tie-breaking vote in the evenly divided Senate was provided by Vice President Kamala Harris. The Senate action clears the way for the House to return from its August recess on Friday, August 12 to vote on the bill.

**Observation:** House Democratic leaders expect to be able to pass the bill without change so it can be signed into law by President Biden before the end of August.

The bill features significant changes to federal prescription drug pricing policies that seek to reduce costs for individuals receiving care through Medicare. The bill also includes a three-year extension of expanded Affordable Care Act (ACA) health care benefits through 2025.

Key revenue-raising provisions affecting pharmaceutical companies include (1) a 15% book-income alternative minimum tax on corporations with financial accounting profits over $1 billion and (2) a 1% excise tax on a publicly traded US corporation for the value of its stock that is repurchased by the corporation during the tax year.

**Action item:** Stakeholders should analyze the bill and communicate with policy makers on the potential effects of such tax increases on their employees, job creation, and investments in the United States.

See our Insight, [Senate passes “Inflation Reduction Act” reconciliation bill](https://www.pwc.com), for more information on the bill.

In detail

Prescription drug pricing provisions

The bill’s prescription drug pricing provisions would:

- enable Medicare to negotiate the price of some high-cost, single-source prescription drugs;
- institute new inflationary rebates under Medicare;
- cap Medicare Part D prescription drug out-of-pocket costs at $2,000 per year;
- implement a $35 per month cap on Medicare patient copay cost for insulin;
• expand eligibility for full low income subsidies (LIS);
• extend ACA premium subsidies; and
• make certain vaccines free for Medicare Part D beneficiaries by eliminating any cost-sharing.

The bill approved by the Senate reflects changes made in response to a review by the Senate parliamentarian on whether the bill’s provisions comply with Senate reconciliation rules. The parliamentarian ruled that a requirement for pharmaceutical companies to pay a rebate if the prices of certain prescription drugs exceeded a specified rate of inflation was permitted under Senate rules to apply to Medicare plans but could not be applied to private sector health plans.

A provision to impose a $35 per-month cap on the copay amount individuals can be charged under private-sector insurance plans for insulin also was dropped from the bill in response to an objection that the provision violated Senate reconciliation rules. The Senate voted 57 to 43 to waive the objection but failed to secure the 60 votes required under Senate rules. The bill retains the $35 per-month cap on insulin copay charges for Medicare participants.

**Prescription drug pricing negotiation noncompliance excise tax**

The bill seeks to achieve its goal of lowering prescription drug costs for Medicare patients by imposing a nondeductible excise tax on manufacturers, producers, or importers that fail to enter into negotiated drug pricing agreements. The tax would apply to each sale made during specified “noncompliance periods.”

**Observation:** The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) expect that no pharmaceutical company would fail to negotiate. As a result, no direct revenue gain is estimated to be raised from this excise tax provision. Each pharmaceutical company likely will assess strategic options for their portfolios and pipelines, which may lead to identifying anticipated and potentially unintended effects of the law, including:

- Pharma adjusting strategic and operational levers to create value and sharpen focus on cost management, such as delivering ROI from automation and digital innovations, applying accelerated drug development lessons from COVID-19 to post-pandemic business, and implementing other approaches to reduce cycle times and decrease costs;
- Higher launch prices, with companies expecting drugs to be negotiated for discounts after nine (small molecule) or 13 (biologics) years post launch;
- Limited patent settlements that technically allow limited generic/biosimilar entrants, therefore potentially deeming the drug no longer single source and eligible for negotiation;
- Re-evaluation of discounts provided in the commercial market;
- Re-evaluation of value provided through copay and patient assistance programs;
- Removal of product(s) from the US market; and
- Longer term, re-focusing drug development on assets less likely to be a top Medicare drug and/or exploring lifecycle options to shift sales to newer products.

The tax would be “an amount such that the applicable percentage is equal to the ratio of (1) such tax, divided by (2) the sum of such tax and the price for which so sold.”

The “applicable percentage” is:

- 65%, for sales during the first 90 days of the noncompliance period,
- 75%, for sales during the 91st day through the 180th day of the noncompliance period,
- 85%, for sales during the 181st day through the 270th day of the noncompliance period, or
• 95%, for sales during any subsequent day.

The applicable percentages correspond to tax rates of 186%, 300%, 567%, and 1900%, respectively, on the price of the drug before the tax.

The noncompliance periods begin on specified dates following the publishing of selected drugs subject to price negotiation or the deadline for these prices to be renegotiated. There also is a noncompliance period for days on which the Secretary of Health and Human Services (HHS) certifies that information required to be submitted under an agreement is overdue.

The bill includes an “anti-abuse” rule under which, “in the case of a sale which was timed for the purpose of avoiding the tax,” the HHS Secretary may treat the sale as occurring during a noncompliance period.

**Observation:** It is unclear how the timing of a sale would be deemed to be for the purpose of avoiding this excise tax or how far back this anti-abuse rule could be applied. Excise tax provisions generally would apply to sales made after the date of enactment.

The bill prohibits administrative appeals of the tax, and no suit would be allowed until full payment of the tax is made, including interest and penalties.

**Extension of ACA subsidies**

The bill would lower ACA health care insurance premiums by extending for three years the premium tax credit that was temporarily expanded as part of the 2021 American Rescue Plan Act. Specifically, the expansion of affordability percentages used in calculating the premium tax credit to make credits available for individuals with incomes above 400% of the federal poverty line, as well as credit amounts for those already qualified, would apply through 2025. Without the extension, these provisions would expire at the end of 2022.

**Key revenue-raising provisions**

**Corporate book-income alternative minimum tax**

A corporate alternative minimum tax (AMT) based on financial statement income (book minimum tax, or BMT) provision would impose a 15% minimum tax on adjusted financial statement income (AFSI) for corporations with average annual AFSI over a three-tax year period in excess of $1 billion.

**Excise tax on corporate stock repurchases**

The bill imposes a nondeductible 1% excise tax on a publicly traded US corporation for the value of any of its stock that the corporation repurchases during the tax year.

See our Insight, *Senate passes “Inflation Reduction Act” reconciliation bill*, for more information on these revenue-raising provisions.

**For more information**

[Text](#) of the Inflation Reduction Act of 2022 as passed by the Senate.
Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

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