



U.S. SENATE COMMITTEE ON

Finance

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Floor Statement of U.S. Senator Chuck Grassley, of Iowa
"Medicare Part D — History of the Non-Interference Clause"
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Mr. President, I am back again today to talk about the Medicare drug benefit. Yesterday, I spoke about how the benefit uses prescription drug plans and competition to keep costs down and how well that has worked now for the two years of its operation. Today, I will get to the crux of this debate: the so-called prohibition on government negotiation with drug makers.

Opponents of the Medicare drug benefit have misrepresented the non-interference clause language. That language doesn't prohibit Medicare from negotiating with drug makers. It prohibits the government from interfering in the negotiations that are actually happening. Much of this debate hinges on a convenient lapse in memories about the history of the non-interference clause.

So today, we are going to take my colleagues on a little trip down memory lane. For our first stop on memory lane, let me read something to you. This is a quote from someone talking about their very own Medicare drug benefit proposal. Under this proposal, Medicare would not set prices for drugs. Prices would be determined through negotiations between the private benefit administrators and drug manufacturers. The person who said this clearly wanted private negotiation with drug companies for a Medicare benefit, not government negotiation. He was proposing, and I quote again, "negotiations between private benefit administrators and drug manufacturers." It couldn't be more clear than that.

You are going to be shocked to hear who said this. The quote is from none other than President Clinton. President Clinton made that comment as part of his June 1999 plan for strengthening and modernizing Medicare for the 21st century. President Clinton went on to say that under his plan, again quoting, "[p]rices would be determined through negotiations between the private benefit administrators and drug manufacturers." Quoting further, he said "The competitive bidding process would be used to yield the best possible drug prices and coverage, just as it is used by large private employers and the Federal Employees Health Benefit Plan today."

President Clinton also described his plan as using private negotiators as opposed to government negotiators because "[t]hese organizations have experience managing drug utilization and have developed numerous tools for cost containment and utilization management." Does this ring any bells?

It should, because it's the same framework used in today's Part D Medicare prescription

drug benefit. Private negotiation with drug companies and it's based on the nearly 50 year history of the Federal employees health plan.

And, here is another interesting spot on memory lane for you history buffs, the Clinton plan had a coverage gap-a donut hole-just like the eventual bill signed into law in 2003. And, like many others, the brand new Speaker of the House has questioned why one would pay premiums at a point in time when you are not receiving benefits as is the case with the donut hole. Well, that's how insurance works.

Go look at any homeowners policy, auto insurance policy or even in Part B of Medicare. You pay premiums to have the coverage. And that is also how President Clinton's plan was meant to work.

In Sunday's Washington Post, Speaker Pelosi was quoted on her thoughts about having a donut hole. She said, "how could that be a good idea unless you're writing the bill for the HMOs and the pharmaceutical companies and not for America's seniors." Now, was she referring to President Clinton's plan, proposed in June of 1999?

As I said, President Clinton proposed this plan in June of 1999. On April 4, 2000, S. 2342 was introduced here in the Senate. S. 2342 would have created a drug benefit administered through private benefits managers. So, here again, private negotiations with drug companies. Sound familiar? It's just like today's Medicare drug benefit that is law.

And here is another important stop during our trip down memory lane. This bill, S. 2342 included the following language, and I quote: "NONINTERFERENCE- Nothing in this section or in this part shall be construed as authorizing the Secretary to authorize a particular formulary or to institute a price structure for benefits, or to otherwise interfere with the competitive nature of providing a prescription drug benefit through benefit managers."

This is the first bill- the very first one - where the non-interference clause appeared. This is the first prohibition on government negotiation that was proposed. But S. 2342 wasn't introduced by a Republican. It was introduced by my esteemed colleague, the late Senator Moynihan.

One month later S. 2541, the MEND Act, was introduced. Let me read you some language from that bill. "Noninterference - In administering the prescription drug benefit program established under this part, the Secretary may not - (1) require a particular formulary or institute a price structure for benefits; (2) interfere in any way with negotiations between private entities and drug manufacturers or wholesalers; or (3) otherwise interfere with the competitive nature of providing a prescription drug benefit through private entities."

That wasn't a Republican bill either. It was introduced by Senator Daschle who was joined by 33 other Democrats including Senators Reid, Durbin, and Kennedy. That's right-33 Senate Democrats cosponsored the bill.

You see, it turns out that the Democrats didn't want the government, nor did President Clinton, interfering in the private sector negotiations either. They recognized then that the private sector would do a better job and they didn't want the government messing it up.

In June 2000, two Democratic bills were introduced in the House of Representatives that also included noninterference language. H.R. 4770 was introduced by then Democratic Leader, Dick Gephardt. That bill had more than one hundred Democrat cosponsors including the new Speaker of the House and Representatives Rangel, Dingell, and Stark. The prohibition on government negotiation included in H.R. 4770 was almost identical to the language in Senator Daschle's bill.

Now here is the text of the actual noninterference clause that was included in the Medicare Modernization Act signed into law in 2003: NONINTERFERENCE- In order to promote competition under this part and in carrying out this part, the Secretary-

1. may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and
2. may not require a particular formulary or institute a price structure for the reimbursement of covered part D drugs.

Sounds quite a bit alike doesn't it?

Last week, the senior Senator from Illinois described the 2003 Medicare law as being written by the pharmaceutical industry. But the non-interference clause first appeared in legislation introduced by Democrats who now oppose the same provision that's in the present law. Now the opponents of the Medicare drug benefit always say that the noninterference clause is proof that the drug industry wrote that law. My question is, if that's what you think, did the pharmaceutical industry write yours?

Now I bet you are wondering just how many Democrat bills had the now-infamous non-interference clause-the prohibition on government negotiating. Well, here is the whole timeline.

As you can see here, that prohibition on the government negotiating-the non-interference clause-has been in 7 bills by Democrats between 1999 and 2003, including a bill introduced in the House on the same day as H.R. 1, the bill that became law.

Well, there were seven. And here they all are on this chart. First it was in the Moynihan bill, then there was the Daschle-Reid-Kennedy bill. That was followed in the House by a bill introduced by Representative Eshoo, and then the Gephardt-Pelosi. Representative Stark then had his own bill. The senior Senator from Oregon then introduced his bill in Senate. Finally, over in the House, Representative Thompson of California introduced a bill with the same prohibition. Now it seems to me that on the other side of the aisle, there should be some consideration of where this provision came from.

Now I know what the response will be. It will be that even though Democratic bills had nearly the exact same prohibition on government negotiation - practically word for word in seven bills over a long period - opponents now think that approach is no longer the best for Medicare.

Sort of like we supported it before we opposed it. Beneficiaries and the public deserve more than that. I yield the floor.

As Chairman of the Senate Committee on Finance, Senator Grassley was the principal

Senate author of the Medicare Prescription Drug, Modernization and Improvement Act of 2003.