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Introduction

The U.S. government's recent but unusual push to negotiate drug prices has struck a chord with many Americans, with polls showing a significant, bipartisan majority favoring the action.[1] This action presents an opportunity to appreciate medical patents' role in spurring innovation forward. Amid changing policies, medical patents shape the accessibility and affordability of care through their impact on drug pricing. Drug prices in the United States are notably high—about 2.4 times those in other developed countries.[2] This disparity can be attributed to several key factors:

1. The U.S. patent system; the extended period of patent exclusivity delays the availability of more affordable generic drugs.[3]
2. A nearly inelastic demand for medications with no generic form; individuals prioritize their health, often willing to pay any price for necessary drugs.[4]
3. Relative U.S. inaction compared to foreign countries; many other nations negotiate drug prices, forcing pharmaceutical companies to recoup costs and maximize profits by exploiting abandoned American consumers.

Examining the frameworks behind this disparity reveals the trade-offs accompanying increased government regulation. While pushing for affordability may win over constituents in the short term, promoting innovation must still be at the front wheel of policymaker's actions. In the 1980s and 1990s, European governments adopted strict price controls on medicines, while the United States took the opposite approach—maintaining and enhancing its market-based drug system.[5] As a result, the biopharmaceutical industry in the United States grew rapidly, with increased research and development ("R&D") investment, jobs, and drug innovation, while European biopharmaceutical innovation began to lag.[6]

Medical Patents

Patents play a vital role in driving scientific innovation and medical advancements forward. By granting companies temporary exclusive rights to new medicines, the patent system incentivizes the enormous investments in R&D needed to bring new treatments to market. Although patents temporarily create monopolies, this feature is vital to making the risky and costly business of drug discovery financially workable for companies. The prospect of securing profitable patents on successful products motivates pharmaceutical firms to pursue research that can lead to effective therapies.

Government Response

In 2022, the Inflation Reduction Act allowed the government to negotiate directly with drug companies, with its outcomes set to take effect in 2026. Proponents say using Medicare's massive buying power would be a counterweight to the skyrocketing drug prices. Research shows that about half of adults say they have delayed or gone without care in the last year due to cost;[7] statistics like these make it reasonable to think negotiation-enabling legislation would be an overall benefit. Conceptually, however, increased governmental regulation precisely contradicts the profit-motivated creature of innovation. Enabling governmental regulation can put medical advancements in jeopardy if done too harshly. Therefore, policymakers must carefully balance both affordability and present-day incentive structures.

Proposals

A key consideration is that, at least hypothetically, pharmaceutical spending on R&D rises with expected profits.[8] Preserving our current rate of innovation requires avoiding policies that

could erode industry profitability. While negotiating drug prices may seem like a silver bullet, it demands a second look. Although such negotiations might lead to potential cost savings for the average American drug consumer, they carry the cost of potentially jeopardizing pharmaceutical companies' ability to fund cutting-edge research and development, thereby slowing medical innovation.

The U.S. was the last country where manufacturers could meaningfully turn to make their cost-benefit analysis flash green.[9] Additionally, the laws of supply and demand illustrate that artificially lowering the price of a drug while keeping supply static would increase demand to a level that could cause rationing of those drugs and misallocation of access.

Addressing the profound issue of drug pricing disparities in the United States demands a more global approach that transcends merely alleviating the burden on American consumers. Instead, it calls for a shift in financial responsibilities associated with drug development costs. An idyllic balance would strive to 1) keep pharmaceutical profits intact to incentivize innovation while 2) alleviating the burden on Americans. To achieve this equilibrium, foreign consumers must share more of the costs.

To defend American interests, policymakers should consider a more protectionist approach. This approach entails levying taxes on drug exports to countries importing at significantly lower prices. This levy serves a dual purpose: firstly, it dissuades pharmaceutical companies from negotiating so steeply, thus mitigating the detrimental impact on American wallets. Secondly, it could help recoup health costs and R&D expenses not shouldered globally. An approach like this would keep pharmaceutical profits intact while lowering the U.S.'s burden of drug manufacturing.

It is crucial to acknowledge that the United States should not remain passive in its role as the rainmaker of advancements in healthcare. As the United States withstands the worst of research and development expenses, the actual costs of medications, and assumed associated risks,[10] the primary beneficiaries must be its own funders, i.e., citizens. Notably, approximately one in four newly approved drugs from 2008 to 2017 stem from the contributions of American taxpayers,[11] not to mention that almost all privately funded drugs have relied on prior publicly funded research efforts.[12]

Solutions that could remedy this situation include:

1. More National Institutes of Health ("NIH") funding: Publicly funded efforts are a boon to private drug makers, with each $125 million grant from the NIH leading to $375 million more in new market value, 33 patents, and one drug.[13]
2. Protection of U.S. interests: Disparate foreign drug prices are only possible if U.S. consumers foot the bill. The U.S. must take action to even the playing field and have foreign countries pay congruent prices.

3. Healthier conversations: Though pharmaceutical companies undoubtedly try to gouge the American consumer in bad faith, demonizing them is misplaced anger and unsustainable. Efforts must be made to temper the dialogue and assist in convincing the general public that there are smarter ways to lower our drug prices than punishing our innovators.

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