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Drug deal may be bad trip for Dems

By: [David Rogers](#)

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A Senate-side deal last month with drug manufacturers is coming back to bite House Democrats looking for savings to pay for their own health care reform bill this summer.

Having struck a bargain with Senate Finance Committee Chairman Max Baucus (D-Mont.), the industry is aggressively targeting individual House Democrats, warning of repercussions in the 2010 elections if they go along with a tougher set of savings advocated by House Energy and Commerce Committee Chairman Henry Waxman (D-Calif.).

The politics is especially rich and captures the crosscurrents in the health care debate.

PhRMA, the powerful Pharmaceutical Research and Manufacturers Association lobby, is openly playing one chairman against the other. Billions of dollars are at stake; a politically sensitive population, the elderly, is caught in the middle. With House Democrats expected to finalize their bill this week, President Barack Obama could face pressure to come off the sidelines and spell out better where he stands.

What Baucus agreed to specifically in his June 20 bargain is still in some dispute. But PhRMA is bluntly telling House moderates that the senator will oppose the rebates demanded by Waxman and that the smart move is to kill that provision outright and save themselves political pain in 2010.

"Nothing is absolute, but we are telling them that it will be harder for us to support

them,” one industry official told POLITICO. The target list includes House Blue Dog and New Democrat Coalition moderates — many of whom have been helped by PhRMA in the past and would fear the deep pockets of the lobby turned against them next year.

The goal is to create enough pressure that the House leadership will relent. Just five days after the Baucus deal, a June 25 draft letter — urged along by PhRMA — was already circulating among House Democratic offices favoring the senator’s approach.

In that agreement, the industry pledged \$80 billion in savings, including a 50 percent reduction in the price of brand drugs bought by elderly people who are most vulnerable to the gaps in the current government-supported coverage. The White House welcomed the offer, and by playing to seniors,

PhRMA also played to Democratic concerns that the party’s larger health reform plan is worrying elderly voters because of proposed savings from Medicare.

The industry believes its willingness to make a deal early was a boost to Baucus — and one not without some risk to itself, given the annoyance it provoked from old conservative allies. But left out of this picture are the tens of billions of dollars that House Democrats would argue were given away to drug manufacturers as part of the bargaining in the Republican-backed Medicare prescription drug law enacted in November 2003 — with Baucus’s help.

About 6 million low-income elderly, who had received some drug benefit under Medicaid, were moved into the new Medicare D program in 2006, and this shift effectively freed drug companies of the tougher rebates demanded under Medicaid.

As chairman of the House Oversight Committee, Waxman produced an investigative report in July 2008 focused on the comparative costs of drugs purchased for this so-called dual eligible population—under Medicare D versus Medicaid.

The average discount obtained by the Part D plans was 14 percent, according to his findings. The average discount provided under Medicaid for the same group of drugs would have been 34 percent, well over twice as high.

“Because dual eligible beneficiaries have low incomes, the federal taxpayer pays over 98 percent of their drug costs under Medicare Part D,” the report concluded. “Over the next 10 years, dual eligible beneficiaries are expected to use \$432 billion worth of drugs. If drug manufacturers provided the Medicare Part D program with the same prices that Medicaid receives, these drug costs could be reduced by as much as \$86 billion, a large savings for taxpayers.”

By reinstituting a rebate, Waxman seeks to effectively close the 20 percentage point gap shown in his data, and the savings would be plowed back into Medicare D to fill gaps in coverage.

The most controversial of these is the so-called doughnut that impacts seniors with annual drug costs over \$2,700. Medicare D covers only up to that point, after which an elderly patient must show he or she has paid \$4,750 out of pocket before the government steps back in to help.

PhRMA's deal with Baucus promises some immediate relief by lowering the cost of brand drugs for those caught in the hole of the doughnut. Waxman's goal is to close it entirely, but that will take more time — and the income from the rebate.

In their discussion draft, released before the July 4 recess, House Democrats suggested the rebate would apply not just to “duals” but to an additional 3 million low-income seniors under Medicare D. But Waxman appears most focused on the Medicaid overlap; given the political pressures, the legislation to be introduced is likely to confine itself to the initial 6 million.

Nonetheless, PhRMA sees any rebates as a big step backward. In making its deal with Baucus, the industry believes it won a commitment from the senator that he won't sign a final House-Senate conference report that includes what Waxman wants. When questioned by POLITICO, Baucus's office said his commitments didn't go that far. But the industry clearly sees this as a red-letter issue and, ideologically, one that smacks of crude price controls.

This is because the rebate itself is a function of the so-called average manufacturer price, or AMP, under the Medicaid regime. AMP reflects wholesale drug prices paid to manufacturers, with the exception of some discounted sales such as for veterans and military personnel. As a practical matter, industry officials say the cost of the rebate inevitably has a ripple effect back up the line, affecting the AMP calculation and, therefore, market prices elsewhere.

“This is a line in the sand for us,” said Ken Johnson, a senior vice president for PhRMA, who argued that the long term impact would fall most heavily of future research funding. “Eighty billion dollars is a huge amount of money and we've made that commitment to move comprehensive health reform forward. We believe in savings but this is about saving lives.”

Democrats disagree, and privately, industry officials will admit Waxman is not “without merit” in saying the government is now paying more to subsidize drugs for dual eligible patients than it would have under Medicaid. But the counterpoint is that previously cash-paying elderly are now benefiting from the discounted prices allowed under the Medicare D prescription drug plan. Introducing rebates into this universe could put these consumer savings into jeopardy, the companies say.

In many respects, the fight reflects the legacy of Democratic bitterness still over how Republicans rammed through the prescription bill in 2003. “It's our money, and we want it,” one aide said, reflecting her frustration with the deals made then with PhRMA. And Democrats would argue that the savings will be reinvested in the long run to buy more medicine from the companies.

"That's true," said an industry official. "But you're going up at a discounted price that's pretty substantial."