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Drug Bust

[Chris Mooney](#)

What in the world are prescription-drug discount cards? After President Bush's midsummer announcement of a plan to endorse these private-sector marketing gimmicks through Medicare, many in the media appeared flummoxed. The papers duly reported on Democrat-Republican skirmishes over whether the cards could deliver real price breaks for Medicare's 14 million beneficiaries who lack prescription-drug coverage--and noted that pharmacy-benefits giants like AdvancePCS, Express Scripts, Caremark, Merck-Medco, and Wellpoint were queuing up to run Bush's program as a self-regulated consortium. But some confused reporters referred to the creation of a single, national Medicare discount "card." Bush hadn't envisioned anything nearly so grand. He'd merely proposed having Medicare bless certain preexisting card programs and feature them in a \$35-million "education" campaign this fall--what Arthur Levin, who directs the Center for Medical Consumers, jokingly calls "the nothing plan."

Though Bush's plan may do nothing, it didn't come out of nowhere. The notion of pushing discount cards as a free-market solution to the problem of high prescription-drug prices has been brewing in GOP circles for some time. Its principal messiah has been Nebraska Senator Chuck Hagel, but card proposals also figured in a number of 2000 Senate races and were touted by Republican losers John Ashcroft (Missouri) and Spencer Abraham (Michigan) and winner John Ensign (Nevada). The fact that Bush happens to be buddies, from his oilman days, with AdvancePCS Chairman and ceo David Halbert can't have hurt the proposal. Bush was one of the company's original investors, according to the *Fort Worth Star-Telegram*.

The president's voluntary plan seems clearly designed as a stopgap measure to stave off the more politically difficult issue of a Medicare drug benefit. The administration says it can implement the card program without any legislation. Maybe this explains why no one seems to have bothered scrutinizing discount cards to see how well they work.

In theory, the cards use aggregate buying power to negotiate discounts from pharmacies and manufacturers. But since drug manufacturers enjoy monopolies over patented drugs, they are free to set wholesale prices at whatever level they like. Any cost savings will come out of the thin margins of retail druggists, whose profits have already been squeezed to the bone by hmos.

What the plan does invite, big time, is consumer deception. In the states, various card programs have repeatedly been implicated in schemes to defraud seniors. Common deceptions include cards posing as insurance (which they're not), claiming nonexistent contracts with pharmacies (which frequently don't accept the cards), exaggerating discounts (which frequently don't materialize), and even selling personal medical information. "Generally, what are called cash discount cards are scams," says John Rector, general counsel of the National Community Pharmacists Association (NCPA), which has filed a lawsuit against the administration over the cards. "You'll see them on late-night television. They pitch to the consumer: 'If you pay a monthly fee, you'll get a radical discount.'"

Bush's plan would limit qualified cards to those that charge Medicare recipients a fee of no more than \$25. But the mischief is not in the fee. In 1999, Arkansas became the first state to regulate the cards strictly. Arkansas Democratic Congressman Mike Ross, a pharmacy owner who was a state senator at the time, pushed the law, which he describes as designed "to do away with fraudulent so-called discount prescription-drug cards." Also in 1999, the California Department of Corporations ordered 46 discount-card companies to "cease and desist" from operations in the state. Meanwhile, Iowa Attorney General Tom Miller filed a consumer-fraud lawsuit against American Discount Services, Inc., accusing the company of misleading senior citizens with its health discount cards. American Discount Services was eventually ordered to pay \$10,000 in restitution fees.

In the past few years, other states have also cracked down on discount cards. Laws passed in Kansas, Georgia, and Texas set the strictest benchmark: No company may issue a discount card unless the card expressly states that it is not a form of insurance; furthermore, any discount card must be specifically authorized under a separate contract with every individual pharmacy it claims as a participant. Yet despite these regulations, Kansas Insurance Commissioner Kathleen Sebelius reports that her office continues to receive complaints. "The most common misunderstanding is that cards are an insurance product," Sebelius wrote in a recent letter to the anticard Democratic Congressman Pete Stark of California, "and the most common complaint heard is that while the literature touts discounts upwardly of 40 to 60 percent, the discount is ... often less than 10 percent."

So: more and more states are cracking down on discount drug cards for fraudulent activities. Simultaneously, our president has proposed endorsing selected discount drug cards through Medicare, paying to advertise for them, and then basically letting them regulate themselves.

In fairness, there are legitimate discount-card programs that provide prescription drugs to consumers at reduced rates--AARP even offers one--and card issuers would have to meet conditions in order to win Medicare endorsement. But none seem particularly daunting. For example, when applying for certification, the programs would have to present lists of pharmacies they've contracted with but not the actual contracts themselves, according to Peter Ashkenaz, a spokesman for the Centers for Medicare and Medicaid Services, a branch of the Department of Health and Human Services (HHS). And after winning government endorsement, the programs would be more or less on their own, part of a self-policing consortium. "There's no proposal that HHS or anyone else would actually have control over any of this," complains Marion Berry, a Democratic congressman from Arkansas.

Health advocates like Joe Baker, executive vice president of the Medicare Rights Center, worry that this unregulated scenario will lead to all manner of deception, with a Medicare seal of approval. "Our experience with that kind of self-industry regulation is not good," says Baker. "We typically have seen problems with consumer fraud and inappropriate or misleading marketing materials. Without a government agency really overseeing this program, there is a fear that there could be unscrupulous behavior."

Indeed, even the biggest discount-card issuers--particularly Merck-Medco, whose YOURxPLAN card, released jointly with *Reader's Digest*, has 1.9 million subscribers--have been accused of some of the same practices that states have stepped in to regulate. For example, on www.yourxplan.com, Merck-Medco blazons that it offers "more than 40,000 participating pharmacies," a claim that the NCPA, which represents 25,000 independent pharmacies, says is "pure deception." (Granted, pharmacies have a clear economic stake here: They stand to eat much of the cost of Bush's discount proposal.)

Nor is it clear that the YOURxPLAN card offers real savings. According to a report by California Congressman Henry Waxman's Democratic staff for the House Committee on Government Reform, Merck-Medco's discount card provides no significant deals on the "five highestselling drugs for seniors." And at a time when pharmacy-benefits managers (PBMs) are coming under increased scrutiny, Merck-Medco seems to be at the top of investigators' lists. News outlets have reported that in Pennsylvania, Assistant U.S. Attorney James Sheehan has subpoenaed Merck-Medco executives (among other industry representatives) as part of an inquiry that appears to focus on whether PBMs get kickbacks from drug manufacturers for favoring certain drugs in their

formularies. In New York State, meanwhile, star lawyer David Boies's firm, Boies, Schiller, and Flexner, has signed on to a class action case charging that Merck-Medco gets incentives from drug companies to switch patients to higher-priced drugs, thereby defrauding employers whose benefits plans the company manages.

Merck-Medco's joint YOURxPLAN program with *Reader's Digest* has been mentioned as a top model for Bush's drug-discount-card proposal. And indeed, the charge of favoring some manufacturers' drugs over others--and trying to get patients to switch--has dogged not just PBMs but PBM-issued prescription-drug discount cards.

The privacy concerns raised by Bush's discount-drug-card proposal have also gone virtually unmentioned but may, if anything, be even more grave. Last year, in a rare article on prescription-drug discount cards, *The Boston Globe* detailed problems with a New Hampshire statewide program akin to Bush's. New Hampshire contracted with a card issuer called National Prescription Administrators (NPA). According to the *Globe*, NPA sells "prescription information ... to drug manufacturers, who then send patients information about competing products."

Pharmacy groups insist that it's part of the very nature of prescription-drug discount cards to sell personal information, which they describe as a key source of revenue for the cards that far exceeds mealy profits from customer premiums. "It's certainly true generally that one of the products pbms offer in the marketplace is information about prescribing patterns of individual physicians," notes Sheehan. But the federal prosecutor says he doubts that the companies sell personally identifiable information, though they certainly use data in the aggregate.

There's also a possibility that drug discount cards may be able to escape regulation under insurance laws written to protect privacy (after all, they're not insurance). According to HHS's Centers for Medicare and Medicaid Services, card programs participating in the federal project will be governed by all relevant state laws as well as the federal Health Insurance Portability and Accountability Act (HIPPA). Still, various forms of information used for marketing and profit by PBMs will be permitted under the Bush plan--which promises the companies key access to Medicare beneficiaries.

For one thing, HIPPA is currently in phase-in mode, and the relevant sections will not be effective until 2003 (although Medicare could require compliance ahead of time). And even under HIPPA, "the privacy regulations allow some marketing ... [although] the patient has to be given some opportunity to opt out," observes Joanne Husted, senior counsel for the Health Privacy Project of Georgetown University's Institute for Health Care Research and Policy. Such marketing could include the promotion of other services offered by the card-issuing companies or carried out by their business associates. Chris Hoofnagle, legislative counsel of the Electronic Privacy Information Center, emphasizes that such marketing efforts can be conducted "with the personally identifiable information of a patient."

HHS's Ashkenaz confirms that it will be up to Medicare beneficiaries who enroll in the card programs to "opt out" of having their personal information used for advertising and educational purposes. "The burden is on the consumer," says Hoofnagle. "We think that's unfair."

The Bush prescription-drug discount plan is fresh evidence of why there's no substitute for universal prescription-drug coverage that's organized and regulated by the government. The president's scheme is mainly a marketing bonanza for companies endorsed by the program. Not only do the companies get to hype their discount service to everyone participating in Medicare--a highly coveted market of vulnerable senior citizens facing ever rising drug costs--but they can also pitch their other products to the same lucrative target audience, all under the government's auspices.

When you add to that the fact that Bush's plan seems to offer little protection against scams and questionable discounts, the public interest served becomes harder and harder to find, drowned out by a marketing frenzy. Perhaps Marion Berry, the Arkansas congressman, describes the Bush program best: "These companies have

been around for a long time, and basically what we're doing is presenting them with a profit opportunity. This," says Berry, "is 2 A.M. television."

[Chris Mooney](#)

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