

2 Pharmacy Groups Sue to Block Bush's Drug Discount Plan

By Amy Goldstein
Washington Post Staff Writer
Wednesday, July 18, 2001; Page A04

Two organizations that represent the nation's pharmacies sued federal health officials yesterday to try to block President Bush's proposal to offer prescription drug discount cards to all elderly Americans.

The legal action is part of an intensifying campaign against the administration's latest idea for making medicine more affordable to people on Medicare. It also parallels protests that have emerged in states that have begun similar pharmacy discount programs.

Yesterday's lawsuit by the trade associations for independent and chain drugstores alleges that the plan unveiled by Bush last week is illegal. It contends that federal health officials designed the plan in "secret meetings," did not follow the steps for new regulations and lacked permission from Congress.

More fundamentally, the suit reflects concerns by retailers and congressional Democrats that the discount cards will not substantially lower the price of prescription drugs for older Americans but will further squeeze profit margins of pharmacies that are struggling in an era of managed care.

Bush latched onto the idea of discount cards as what he called a "first step" to give older patients rapid help with the escalating price of medicine while the administration and Congress struggle to revamp Medicare, the nation's health insurance program for the elderly. Among the broader Medicare proposals is adding coverage of prescription drug costs.

Under Bush's plan, which is to begin by the winter, Medicare will not directly offer the pharmacy discounts. Instead, the Department of Health and Human Services will endorse private companies that manage pharmacy benefits and already offer discounts to younger patients. These companies, the theory goes, will negotiate reduced prices for Medicare patients with pharmaceutical manufacturers and pharmacies, then pass on savings to people who buy their discount cards.

"They are constructing a scheme where they . . . endorse certain players in the marketplace over others," said Larry Kocot, general counsel of the National Association of Chain Drug Stores, which filed the lawsuit in U.S. District Court for the District of Columbia, joined by the National Community Pharmacy Association. Kocot said the groups plan to ask a judge within a few days to immediately prevent the program from taking effect.

A spokesman for HHS Secretary Tommy G. Thompson, named in the suit, declined to comment on the litigation. The spokesman, William Pierce, said the discount cards are a proven strategy to "provide immediate relief to seniors."

In announcing the program, Bush explicitly addressed one of the issues raised in the lawsuit. He said that one advantage of the discount cards is that they would not require congressional approval -- or government subsidies -- and thus could be implemented swiftly.

The pharmacies' objections are similar to complaints they have raised in the four states that have recently created similar discount programs for elderly residents.

As more than half the states have initiated various strategies during the past few years to make medicine more affordable for older people, Iowa, New Hampshire, Washington and West Virginia have adopted the ones that most closely resemble the one the federal government is designing. Their programs were created by governors, not legislatures, and also rely on private companies that sell cards promising pharmacy discounts.

The opposition has been most intense -- and effective -- in Washington, where a coalition of pharmacy groups went to court last winter to try to shut down the new program there and won. Using one of the same arguments raised in yesterday's lawsuit, that coalition argued that the governor lacked the authority to start the program, which began in March and has enrolled 6,000 elderly state residents.

State officials are dismantling the program. "I think we tried and died here," said Ree Sailors, health policy adviser to Gov. Gary Locke (D).

In New Hampshire, pharmacists' objections have hindered a discount card program in subtler ways. Pamela Walsh, press secretary to Gov. Jeanne Shaheen (D), said the program, which began 18 months ago to offer free discount cards to all elderly residents, has saved an average of 15 percent on brand-name drugs on 239,000 prescriptions.

But Walsh said the program "frankly . . . works better in some areas of the state than others" because "some pharmacies have been reluctant to participate."

Iowa's program, announced last September by Gov. Tom Vilsack (D) and Sen. Tom Harkin (D), has taken longer than expected to start, in part because a board that is designing it has been working closely with local pharmacists to try to avoid hurting them financially. The intent of the program is for the company that is chosen to manage the pharmacy benefits to negotiate discounts with drug manufacturers, rather than drugstores -- the same model Bush and HHS officials said they hope the federal program will use.

"We are being careful. There have been lawsuits all over the country," said Carol Kuhle, a geriatrician at the Mercy/Mayo family practice residency who leads Iowa's board. "We want to try to anticipate all the difficulty, so when you open the doors, it flies and flies well."

State pharmacy groups, like the national trade associations, are concerned, in particular that the companies hired to offer discount cards will encourage elderly people to get their medicine by mail order, circumventing local drugstores.

© 2001 The Washington Post Company