

Gilead, AbbVie: Rep. Khanna and Other Democrats Urge HHS to Take Patents, Pave Way for Cheaper HCV Generics

Legislative Update

California Representative Ro Khanna and other Democratic lawmakers, in [a letter today](#), urged HHS Secretary Alex Azar to pave the way for cheaper generic drugs to treat the hepatitis C virus (HCV), helping patients who can't afford brand-name medicines from Gilead and AbbVie.

Patent holders such as Gilead and AbbVie can choose whether to sell their drugs and for how much. But under 28 U.S.C. § 1498, the federal government can take patents if it provides reasonable compensation to the patent holder. By taking the patents, HHS allows generic drugmakers to enter the market and sell cheaper drugs to patients and government health programs such as Medicare and Medicaid.

Although such seizures rarely happen, the mere exploration of the idea can put pressure on companies to cut prices. That happened in 2001 after then-HHS Secretary Tommy Thompson suggested the federal government would buy generic versions of Cipro, prompting drugmaker Bayer to lower prices for the anthrax antidote.

HCV drug price cuts would be felt most by Gilead. The company sells four HCV products - Harvoni, Epclusa, Sovaldi, and Vosevi - according to its 10-Q filing for the third quarter of 2017. Global sales of the four drugs totaled \$2.2 billion in that quarter, equal to 34.3 percent of the company's total product sales. U.S. sales for Harvoni, Epclusa and Sovaldi totaled \$1.3 billion in that quarter, or 20.2 percent of total product sales.

AbbVie, maker of new HCV treatment Mavyret, has less exposure to HCV drug price cuts. HCV medicines generated \$764 million, or 4 percent, of the company's \$20.5 billion of worldwide net revenue for the nine months ended September 30, 2017, according to the company's 10-Q.

In an interview with *The Capitol Forum*, Congressman Khanna emphasized that humanitarian and fairness concerns justify seizing the patent in this case. "The reality is that there are millions of Americans who suffer from Hepatitis C. Most of them simply cannot afford access to this lifesaving drug. The federal government has it in its power to pay a reasonable price for this drug and make it accessible," Khanna said.

Khanna added that research for Gilead's main HCV drug was partially funded by the National Institutes of Health and that "Gilead did not develop the drug itself but instead acquired it from another company and already profited handsomely."

"Taxpayers foot a hefty bill so companies like Gilead can conduct research, and develop lifesaving and life-extending drugs," said Representative Peter Welch (D-VT), who also signed the letter. "But the market is broken. Skyrocketing prices are keeping breakthrough therapies out of the hands of the patients who need them."

Gilead has endured years of criticism about the prices it charges for HCV drugs. For instance, in 2015 economist Jeffrey Sachs [accused](#) the company of exploiting its "monopoly rights" to charge \$84,000 per treatment for Solvadi and \$96,000 per treatment for Harvoni, even though "actual production costs are estimated to be somewhere" between \$68 and \$136, Sachs said.

In comparison, AbbVie charges \$26,400 for Mavyret, according to the lawmakers' letter.

In April of last year, Secretary Rebekah E. Gee of Louisiana's Department of Health penned [a letter](#) seeking advice about whether she should urge HHS to seize HCV patents to bring down costs, especially for Medicaid recipients.

Gee wrote in her letter that the prices of HCV drugs are so high that "even with modest declines in these prices, treating all patients with Hepatitis C would cost nearly as much as the US currently spends on all prescription drugs." Gee added that "as a result, nationally only about 10% of patients with Hepatitis C receive treatments like Sovaldi and Harvoni."

In an interview with *The Capitol Forum*, Gee noted that "when these drug prices are so high, states like Louisiana that are lower income really struggle to afford the treatments."

Under current federal law, states are powerless to tackle the problem themselves because they are not allowed to negotiate drug prices for their Medicaid programs. Gee also emphasized that it is not just individuals with Hepatitis C who suffer the consequences of the high prices.

Because state budgets have to be balanced, "it is impossible for states to pay for these life-saving medicines without making hurtful cuts in other areas, such as education," Gee said.