

I urge my colleagues to strike these unjust provisions and let Native Americans know what happened to their money.

INTRODUCTION OF THE MEDICARE  
MARKET ACQUISITION DRUG  
PRICE

**HON. FORTNEY PETE STARK**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 18, 2002*

Mr. STARK. Mr. Speaker, I rise today to introduce the Medicare Market Acquisition Drug Price Act of 2002. This bill would correct a long-standing and well-documented problem with the way Medicare pays for the few outpatient prescription drugs it covers today. This bill would save taxpayers billions of dollars, without compromising Medicare beneficiaries' access to cancer treatment or other services. Congress should enact this bill immediately.

This problem must be resolved—this year—whether or not we succeed in creating a new Medicare prescription drug benefit. Due to pharmaceutical industry efforts, this problem was not addressed in the prescription drug legislation recently introduced and passed by the House Republican leadership. Despite their neglect of the issue, I believe there is bipartisan consensus that Medicare should not continue to pay exorbitant prices for prescription drugs. I urge my colleagues to join me in supporting this bill.

Medicare currently pays for only a limited number of outpatient drugs, generally ones that a patient cannot self-administer, such as chemotherapy drugs. Medicare spends over \$5 billion every year on these drugs. Under current rules, Medicare vastly over-pays for these drugs, because it bases payments on the artificially high "average wholesale price" (AWP) reported by the drug's manufacturer—regardless of the actual price a provider pays for the drug. There is abundant evidence that drug manufacturers have boosted their own drug sales and increased their profits, at great taxpayer expense, by manipulating the AWP of their drugs. Simply put, drug manufacturers report inflated prices, sell providers the drugs for much less, and then encourage providers to bill Medicare for the maximum allowable amount—95 percent of the inflated AWP reported by the manufacturer.

This bill offers a straightforward solution to this problem. It would require Medicare payments to be based on the actual market prices at which manufacturers sell their drugs. This price, called the average acquisition price, would be verifiable. The Secretary would have the authority to audit drug companies' reports. Drug companies would be subject to steep fines for deliberately filing false or incomplete information.

Mr. Speaker, the current Medicare AWP rules are a sham and must be changed. Consider the following:

The General Accounting Office has described the AWP as "neither 'average' nor 'wholesale'; it is simply a number assigned by the product's manufacturer." The GAO found that Medicare's payments for physician-administered outpatient drugs were at least \$532 million higher than providers' potential acquisition costs in 2000. Similarly, the GAO found that Medicare paid at least \$483 million more

for supplier-billed drugs than suppliers' potential acquisition costs in 2000. Some drugs were available at prices averaging just 15 percent of the manufacturer's reported AWP, while Medicare continued to pay 95 percent of AWP.

The Office of the Inspector General at the Department of Health and Human Services found that Medicare could save \$761 million per year by paying the actual wholesale prices available to physicians and suppliers for just 24 of the outpatient drugs currently covered by Medicare.

Numerous states, consumer groups, and private health plans have sued drug manufacturers for fraudulently inflating Medicare drug prices.

These suits follow on the heels of a record Medicare and Medicaid fraud settlement by TAP Pharmaceutical Products. In October 2001, TAP pleaded guilty to a charge of conspiracy to violate federal law. TAP agreed to pay \$875 million—the largest criminal fine ever levied by the government for health care fraud—to settle the suit, in which the government alleged the company artificially inflated the AWP of the company's prostate cancer drug Lupron.

Drug manufacturers have resisted efforts to investigate this problem. For example, last summer the GAO continued its investigation into AWP on Congress' behalf and requested drug price information from many manufacturers. One pharmaceutical company, Pfizer, refused to comply with GAO's request until this January, when GAO subpoenaed the company's CEO, Henry McKinnell.

Mr. Speaker, the problem is well known. The solution is straightforward. Both the GAO and the OIG have recommended that we revise Medicare's drug payment policies to reflect actual market prices, accounting for rebates and other discounts available from manufacturers. That is exactly what this bill does.

Manufacturers would be required to report the actual average market acquisition prices for their drugs as a condition for Medicare coverage of those drugs. Each manufacturer would have to certify the accuracy of its reports and the Secretary of HHS would be empowered to audit price information to verify the accuracy of the reports. Drug manufacturers would be subject to unlimited civil monetary penalties for filing false reports and would be subject to a penalty of \$100,000 for each day they fail to provide timely information.

The bill is also carefully crafted to ensure that the reimbursement revisions will not adversely impact Medicare beneficiaries' access to care. First, to ensure these drugs are available in areas of the country where providers must purchase covered drugs at prices above the average, the actual reimbursement level to providers would be set 5 percent above the average acquisition price. Second, Medicare would pay dispensing fees to reflect differences in the costs of dispensing different drugs and biologics. Third, the bill would ensure continued access to cancer treatment. Oncologists have argued that inflated AWP reimbursements are necessary to compensate for the administration of cancer medicines. This bill would correct this anomaly by revising Medicare payments for oncology services to appropriately account for these indirect costs, in accordance with GAO recommendations.

Mr. Speaker, I sincerely hope that Congress will act to provide a meaningful Medicare pre-

scription drug benefit this year. On top of the many other serious concerns I have with the drug benefit passed by the Republican leadership, I am deeply disappointed that it did not address the abuses of the current AWP system. We must not shirk our responsibility to ensure that Medicare properly pays for the limited outpatient prescription drugs it already covers. There is no need for taxpayers to continue to fill pharmaceutical companies' coffers with the ill-gotten gains of the current AWP system. I hope all of my colleagues will join me in passing this important legislation.

HONORING HISPANIC CITIZENS—  
9TH DISTRICT OF TEXAS

**HON. NICK LAMPSON**

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Thursday, July 18, 2002*

Mr. LAMPSON. Mr. Speaker, I rise today to honor local Hispanic citizens from the 9th District of Texas who were chosen for their work in the community. While the dedication of Hispanic leaders is well-known throughout the United States, local citizens, right here in the Southeast Gulf Coast region, are just as important to ensuring equal rights and economic progress for all Texans.

Last month I asked members of the communities in the 9th District to nominate individuals for my "Henry B. Gonzalez Latino Leadership Award," named in honor of the late Congressman Henry B. Gonzalez, that gives special recognition to those who have worked selflessly, often without recognition, and made contributions both in the Hispanic community and the broader society as well. Recipients were chosen because they embodied a giving and sharing spirit, and had made a contribution to our nation.

While their efforts may not make the headlines every day, their service and dedication to our country is nevertheless vital to our entire region. This region of Southeast Texas is not successful in spite of our diversity; we are successful because of it.

Please join me in recognizing and congratulating these leaders for their work and commitment to their communities and to Southeast Texas. It is leaders like these men and women that continue to be a source of pride for Texas. The winners of this years Henry B. Gonzalez Latino Leadership Award" are:

Alice Flores, Elias de la Cerda, Jr., Ruben F. DeHoyos, John J. DeLeon, Joe Escobedo, Jr., Ella Flores, Roberto C. Flores, Robert D. Gallegos, Tina Garcia, Manuel Guajardo, Manuel R. Gonzalez, Elida Saenz Matthews, Eugenia Rios, Elisa Vasquez, Gilbert Zamora, Jr., Manuel Urbina II, Gilbert Hinojosa, Joseph Cantu, Gregory Flores, Carlos Hernandez, and Jesus Abrego.

Mr. Speaker, the recipients of the "Henry B. Gonzalez" award are dedicated and hard-working individuals who have done so much for their neighbors and for this nation as a whole. Today, I stand to recognize their spirit and to say that I am honored to be their Representative.