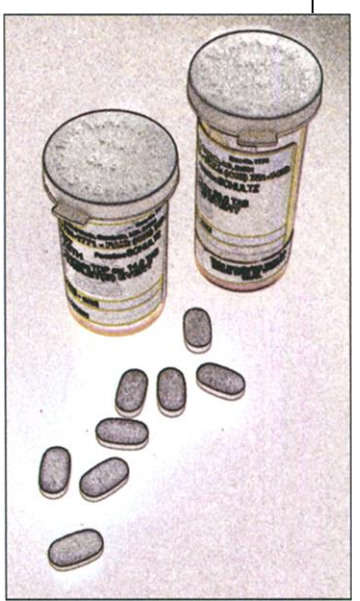
Drug Prices: Real Problem, Wrong Solution

Drug pricing has been an important political issue, off and on, ever since the Kefauver hearings in the late 1950s, and it now reappears in a strange disguise. After several failed efforts at passing "reasonable pricing" legislative amendments, Congress now will be asked to consider targeting—guess what?—not the drug companies, but U.S. research universities. Senator Ron Wyden (D-OR) has introduced language instructing the National Institutes of Health (NIH) to submit to Congress a plan whereby, if a drug produces half a billion dollars or more in sales and was developed from NIH-supported work in universities, the government should recover some of the profits. That would undercut a long-standing government policy that encourages technology transfer and has produced a rich harvest of innovation.

The concern is easy to understand: Drug pricing now threatens to block medical rescue for some of the world's most afflicted people. The African AIDS epidemic has awakened consciences across the developed world. Some of the promising but costly therapies were developed from basic research conducted at universities, which own patents on the discoveries and have been collecting royalties from commercial licensees. Angry students at Yale and Minnesota have been protesting those payments, and their anguish is understandable: To have workable but unaffordable therapies for this disease is difficult to accept. Thus, intense political scrutiny has been focused on the universities as well as the drug companies.



Just as hard legal cases can make bad law, emerging crises often make bad policies. Senator Wyden wants to attack the problem by reaching for the most available handle—the universities. His approach rests on persuasive-sounding logic: NIH has made substantial investments in basic research in universities; that research has led to successful drugs developed by pharmaceutical companies; and universities are receiving large royalty payments in return. All of this is true and reflects exactly what was intended by the Bayh-Dole Amendments in 1980. That legislation permitted universities to develop intellectual property protection for their inventions even when federal funding supported the work, thus encouraging the transfer of inventions to commercial developers. As university technology licensing offices become more sophisticated at negotiating terms with industry, royalty revenue streams have become large enough to attract political attention, although they contribute only trivially to a drug's price.

Does that mean that the government should get some of that revenue back? That's what Wyden thinks. Leaving NIH some room to be creative, he has offered two different recoupment proposals. One would have NIH receive some fraction of each royalty stream—in effect, garnishing the payments to the university. The other would require that universities return the value of the grant that led to the product. The agency now must develop a response, due in July 2001, telling Congress what it proposes to do.

NIH and its congressional overseers should consider two problems. One is practical: The scientific and economic history of innovation tells us that its trajectory is tortuous and often obscure. To demonstrate that one particular grant gave rise to a discovery that in turn enabled the development of a specific drug will not be easy. The second is economic: Long before Bayh-Dole (indeed, back when Vannevar Bush presided over the conversion of military research into the plowshare of basic academic work), it was understood that the role of federal funding was to promote discoveries that would then attract the risk capital necessary for subsequent product development. The public would then benefit not only from the products themselves but also from the new employment and tax revenue they would generate.

Before Congress contemplates such a radical reformulation of Bayh-Dole, it should conduct a careful study of the present returns to the government from past basic research support. The guess here is that such an analysis will demonstrate that the economic benefits are very large indeed. If that is true, it would be a serious policy error to risk diminishing the incentives for technology transfer in order to divert some of the same income that helps support further university research. If the eggs really are golden, why punish the goose? As for the universities, they might think again about whether it's wise to press for continued royalty payments on real "blockbuster" drugs, especially those serving the most vulnerable populations. Sometimes it's politically wiser to let enough be enough.

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