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The Dangers of Federalizing Hearing Aid Rules

One of the obstacles to reversing the tide of growing government is that so many of the laws and regulations advanced with the rhetoric of limited government end up expanding government's scope and power instead. Politicians disingenuously talk of freeing markets by passing new regulations or of expanding access to a product by introducing market-distorting taxes and subsidies that ultimately reduce supply and raise prices.

The latest example of this behavior comes from Sen. Elizabeth Warren's Over-the-Counter Hearing Aid Act, which is advancing now as part of a separate measure to reauthorize certain expiring fees that fund Food and Drug Administration activity. The hearing aid bill is being pitched as an effort to increase access to costly hearing aids and encourage competition.

But as always, the big-government devil is in the details.

Rather than just deregulate hearing aids, Warren's bill calls for new regulations from the secretary of health and human services. These regulations go beyond just setting the basic parameters for selling hearing aids over the counter; they also would "provide reasonable assurances of the safety and efficacy of over-the-counter hearing aids" and "establish or adopt output limits appropriate for over-the-counter hearing aids," even though regulators would most likely be less qualified to set such limits than the market.

And even if Health and Human Services Secretary Tom Price is not inclined to exploit vague statutory authority to provide "reasonable assurances of the safety and efficacy of over-the-counter hearing aids," the authority would still be there for the next administration's HHS secretary to use in a more aggressive manner.

The same problem arises with a provision overriding state rule-making authority. Supporters contend that state laws are overly restrictive and privilege the hearing care industry at the expense of patients. But even those who are sympathetic to calls for loosening state rules ought to be concerned about having the federal government step in.

Once the federal government has authority to override state regulations, even if it initially uses it to loosen the rules, it can easily change course later and make them even more restrictive. And unlike the case with state rules, there's no competing jurisdiction, such as another state, for patients to move to in the event that they are unsatisfied. It's a one-size-fits-all scheme, nationwide.

On top of these concerns, the already lightly regulated market for cheap and accessible personal sound amplification products, or PSAPs, would most likely become collateral damage of the legislation. The FDA forbids the PSAP industry to market its products as a solution to hearing loss, but that hasn't stopped the industry from providing a much cheaper alternative for those with mild to moderate hearing loss, a potential benefit that has been acknowledged by the National Academy of Sciences and the President's Council of Advisors on Science and Technology. PSAPs are more widely used for

nonmedical purposes such as hunting, which would be threatened by more regulation.

The Warren bill includes calls for "new guidance" on PSAPs, with the intention of including more of them in the new over-the-counter hearing aid classification. For PSAPs, that means more regulation, not less, and probably higher costs.

There are undoubtedly opportunities to improve access to hearing aids and increase competition in the market, but we must be careful not to allow the need for reform to be exploited for the sake of expanding, rather than reducing, government power.

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