

Health Policy in Transit A Purchaser Viewpoint

Proposed PBM Reform Legislation Falls Short

The Pharmacy Benefit Manager Transparency Act ([S. 127](#)) was introduced in the Senate on January 26, 2023. While we have long supported PBM reform, we have significant concerns with this particular bill. First and foremost, this legislation was drafted without the input of the plan sponsor community, the primary customers of PBMs. While the bill does include limited language requiring transparency from PBMs, from an employer perspective, this language is wholly inadequate. The transparency called for would give an employer virtually no insight into the “black box” in which a PBM is spending the employer’s (and patients’) money, instead solely focusing on information related to reimbursement and payments to pharmacies.

Employer experience demonstrates that PBMs too often engage in opaque and anti-competitive business practices that are geared to improve their own bottom line at the expense of plan sponsors and employees and their families. This bill does not offer any solutions for the root causes of these issues. The National Alliance and the broad employer community remains committed to working with policymakers to enact legislation that would address the problems employers face when working with PBMs.

Perhaps most importantly, the bill would not apply ERISA fiduciary responsibility to PBMs. We have been very direct and vocal in our position that PBMs must be fiduciaries and therefore responsible to employer plan sponsors to use plan funds in the best interest of those employers. If this bill became law, a PBM would still not be required to act in the best interest of a group health plan and its enrollees.

In addition, the bill does not address key concerns employers have with PBMs, including:

- It does not apply reasonable limitations on so-called “spread pricing.”
- It does not require PBMs to be transparent about secret agreements with pharmaceutical manufacturers, which may be affecting drug prices, formulary placement, and other critically important aspects of prescription drug benefits.
- Further, while the bill calls for a study on PBM practices, it fails to outlaw direct payments related to drug formulary placement. Patients deserve immediate relief from these practices. Moreover, a study is not needed and will only cause patients to suffer unnecessarily high prices and lack of access to competing products for additional years.

We believe Congress should enact legislation to fundamentally reform PBM business practices and the drug supply chain. For the plan sponsor community to support a bill aimed at PBM reform, such legislation must:

- Require PBMs to provide plan sponsors with timely reports on the costs, fees and rebate information associated with their PBM contracts.
- Prohibit PBMs from engaging in spread pricing or charging a plan sponsor, health insurance plan, or patient more for a drug than the PBM paid to acquire the drug.
- Require the PBM to pass on 100% of any rebates or discounts to the plan sponsor.
- Require PBMs to act as fiduciaries under ERISA.
- Require PBMs to disclose to plan sponsors any bona fide fee arrangements.
- Prohibit PBMs from altering a plan sponsor’s formulary in exchange for remuneration from a third party.