

CAPITOL STREET

May 14, 2024

PBM: Things are (Finally) Happening in 2024

FTC Report July & Blue Shield of CA Update

Relevant Companies



»» Our Take & Next Up

PBM policies could see the light of day in an end of the year package as a pay-for, as we await FTC study results (July) and monitor alternative models (Blue Shield of CA). We predict that PBM provisions that are likely to be included in a lame duck package will largely be Medicare & Medicaid reforms (transparency, spread pricing ban, de-linking). Some commercial transparency requirements are also likely to pass, with less business impact compared to more onerous reforms (like a spread pricing ban). The Biden admin is not expected to act on PBMs until his 2nd term (if he is reelected) and will be led in part by the FTC 6(B) study results that are expected this summer. PBM reforms overall if passed will lift the overhang of an industry being under constant pressure. Meanwhile, the PBM business model continues to evolve with new arrangements (like BS of CA un-bundling PBM services, to be implemented in 2025).

»» Key Points

PBM provisions in House & Senate bills are largely in Medicare & Medicaid, with minimal commercial impact, and would offset other programs in need of funding (e.g., telehealth). See our past memos [here](#) and [here](#) on reforms and overall outlook. Provisions are largely focused on transparency, spread pricing and de-linking. Policies in play are listed below (Medicare reforms save ~\$700 M over 10). Senate Finance provisions also aim to tie enrollee cost-sharing to net prices (costs \$1.2 B over 10). Commercial reforms focus on ownership disclosure and reporting related to compensation, fees, rebates & formularies.

MEDICARE

- Written Agreements: PBMs must provide Prescription Drug Plans (PDPs) with a written explanation of any contract with a drug manufacturer that provides a rebate or discount for a drug contingent upon formulary placement or utilization management conditions.

- Pricing Data: PBMs must define, interpret, and apply terms related to pricing guarantees transparently. They will be required to submit details on drug coverage, costs, rebates, reimbursement amounts, and other relevant data.
- Disclosure of Exclusions: PBMs must clearly identify any drugs, claims, or price concessions excluded from pricing guarantees.
- Formulary Transparency: Mandates disclosure and justification for providing more favorable coverage of certain drugs, such as generic drugs, specialty drugs, and biosimilar biological products.
- Disclosure of Financials: Info on PBM affiliates, and financial arrangements with consultants are also subject to reporting requirements.
- De-linking: PBMs and their affiliates are restricted from (1) receiving income for their services other than flat service fees; (2) basing any service fees on the prices of covered drugs or any associated discounts, or rebates (saves \$226 M over 10).

NOTE: The above policies save ~\$700 M over ten

MEDICAID

- Medicaid spread pricing ban: PBMs would be required to pass-through pricing for covered outpatient drugs reimbursed under Medicaid, including for managed care organizations (saves \$313 M over 10).

COMMERCIAL

- Requires PBMs to report to plan sponsors any ownership of in-network pharmacies and any design benefits or parameters that encourage or require the use of those pharmacies.
- PBMs would also be required to report on the percentage of total prescriptions and a list of all drugs dispensed from pharmacies in which they have an ownership stake (info on any differences in prices to enrollees based on ownership would also have to be reported)
- Annually disclose any direct and indirect compensation to group health plans.

What is De-Linking? PhRMA supports this provision & it is gaining momentum. Rebates tied to list prices continue to be scrutinized by lawmakers as a source of revenue. De-linking reform prohibits PBMs from charging fees based on the Part D drug's list price, and limits compensation to a flat dollar amount service fee (Medicare) (saves \$226 M over 10).

We think PBM legislative reforms are not detrimental to the business model & likely pass 4Q24 (lame duck, to offset telehealth & workforce). Most PBM "abuses" are prevalent in commercial (ESI) versus Medicare & Medicaid. Commercial reforms passed out of committee include a spread pricing ban in employer-sponsored coverage and ACA marketplace plans passed by the Senate HELP committee (Chair Sanders, I-VT). The HELP committee also moved forward other commercial policies including reporting requirements to HHS and plan sponsors on drug spending, rebates, and other fees, and reporting requirements for intra-company prescription drug transactions. On the House side, the House passed *Lower Costs, More Transparency Act* ([here](#)) that also institutes PBM reporting requirements for group plans.

Blue Shield of CA announced it would nix CVS and work with 5 point solutions: We think this faces an uphill battle. BS of CA has recently hired Matt Gibbs of Capital Rx to lead Pharmacy operations. Recall that Capital Rx is an innovative PBM model ([here](#)). BS of CA announced in August 2023 that their new PBM model would integrate 5 companies (Amazon Pharmacy, Mark Cuban Cost Plus Drug Company, Prime Therapeutics, Abarca, CVS Caremark Specialty) for pharmacy services starting in 2025. This unbundling of PBM services may increase transparency and lower costs for plans (with each partner monitored), but integration of partners (some with overlapping businesses) will be challenging. It will be a significant lift to ensure a system that manages pharmacy services & claims in an accurate, timely and cost-effective manner.

Biden will likely take PBM action if he wins a second term, and if legislation is not passed in lame duck.

- It is unlikely the White House will act with legislation in play 4Q, but if reforms do not pass the Congress by year end, we expect administrative action in a Biden second term.
- Recall the PBM White House summit on March 4 (link to our memo [here](#)) Participants included Sandra Clarke, COO of Blue Shield of California, Mark Cuban, Domestic Policy Advisor Neera Tanden, Secretary of HHS Xavier Becerra, and Chair of the FTC Lina Khan.
- The roundtable was a discussion that rehashed many of the same issues of concern: PBM consolidation, spread pricing, impact of pharmacy fees.

FTC early study results are due mid-summer ([here](#)). The PBM 6(b) inquiry will examine several business practices that have drawn public scrutiny in recent years, including: PBM control over formularies, pressure on independent pharmacies, and spread pricing. Consolidation in the PBM market and use of affiliated Group Purchasing Organizations (GPOs) is also expected to be addressed in the study results. The early results will indicate how the agency is thinking about rebating and steering practices as it pertains to competition and will likely include analysis of the impact to payers/patients and largely to pharmacies (a key lawmaker concern).

Ipsita Smolinski
Managing Director | Capitol Street
ipsita@capitol-street.com

900 19th St NW 6th Fl
Washington, D.C. 20006

202.250.3741 | www.capitol-street.com

CAPITOL STREET

Copyright 2024 Capitol Street.

This communication, including this broadcast and any attachments hereto, is intended solely for the original recipient(s) and may not be redistributed without the written consent of Capitol Street. This communication is for informational purposes only and is not intended as an offer or solicitation for the purchase or sale of any financial instruments, nor is it intended as advice to purchase or sell such instruments