

CAPITOL STREET

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PBM Reform (Still) Likely at Year End

FTC Part 2 Analysis Coming as Judiciary Explores Vertical Integration

Relevant Companies



»» Our Take & Next Up

We believe bipartisan PBM reform is still likely to pass the Congress by Dec 31, with provisions described below, but still do not view the policies as detrimental to the PBM business model. Yesterday, the House Judiciary Committee (Chair Jordan, R-OH) held a hearing on the role of PBMs and the impact of vertical integration ([here](#)). While the hearing was largely exploratory in terms of potential policy solutions, PBM reform proposals that have moved out of other committees are still in play and likely to pass this year as they represent attractive pay-fors as well. Congress is currently focused on passing a short-term funding and a three-month extension is likely which will give rise to an end of the year vehicle that likely include healthcare. (1) telehealth (2) PBM reform (3) other policies such as physician pay & clinical lab reforms may also be included along with (4) *BIOSECURE*, though the anti-China bill would likely be a separate vehicle (Defense Authorization Act).

»» Key Points

PBM reform is (finally) likely to pass at the end of year. We still anticipate anti-PBM policies to materialize in an end of the year package as a pay-for. PBM provisions that are likely to be included in a lame duck package are expected to be Medicare & Medicaid reforms (transparency, spread pricing ban, de-linking) with some possible commercial transparency requirements on plan reporting and annual disclosures (as passed in the House).

Policies we think will pass, with some 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 (saves ~\$700 M over ten)

- 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).

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

- Major commercial reforms are unlikely to pass due to concerns of potential ripple effects on smaller PBMs. However, commercial transparency provisions are in the mix of potential reforms, passing out of the House in December 2023.
- 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.

The FTC's PBM [report](#) released earlier this summer fell short of expectations for some lawmakers and witnesses. Republican lawmakers pointed to Commissioner Holyoak's dissenting statement, stressing the lack of empirical evidence about the impact of PBM conduct on consumer welfare. Dr. Richard Frank, director at the Brookings institution, noted that the evidence presented by the FTC in the interim report was pretty thin and the agency highlighted several limitations themselves in the report.

- The FTC remains in discussions with PBM GPOs (Ascent, Zinc, Emisar) and their info may not be received until 2025, for follow on results likely middle of next year at the soonest.
- As a reminder, the report largely confirmed what the agencies and lawmakers already know: consolidation and ripple effects to individuals, pharmacies, and drug manufacturers; PBM control over formularies; pressure on independent pharmacies and rebating practices. FTC results note how the vertically integrated and concentrated market structure has allowed PBMs to control drug costs and availability, limit access to generics and biosimilars, and engage in patient steering to their own affiliate pharmacies. See our analysis [here](#).
- Up next, the FTC is reportedly preparing to sue the big 3 (CVS, CI, UNH) due to their rebating practices for insulin and insulin products, according to the [Wall Street Journal](#). We could see the lawsuit materialize this Fall.

Antitrust reform is unlikely anytime soon, but lawmakers stressed the impact of vertical integration. The tone of the hearing leaned pro-PBMs with witnesses commenting on the integral role of PBMs in the marketplace and how PBMs act as a counterweight to high prices from drug manufacturers. On potential antitrust actions, the difficulty of bringing antitrust litigation for vertically integrated entities were discussed. Witness Dr. Richard Frank proposed the alternative possibility of using Robinson-Patman, which limits price discrimination, to restrict vertically integrated entities' ability to shift revenue. Lawmakers also discussed the impact of requiring fiduciary responsibility for PBMs. Notably all the witnesses were against banning rebates and spread pricing outright. Transparency remains a more supported reform, however, there were concerns of transparency potentially increasing costs.

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