

PBM Punches Keep On Coming

4 Catalysts: FTC Rulemaking, Transparency Bill, Rebate Rule Insulin

Pharmacy Benefit Managers are being hit on all sides. We focus on four catalysts and our take in the text below. We are less concerned about the near-term impact to PBM/Plans, but this will play out overtime. We are more cautious in the longer term (12 months+).

INSULIN BILL

- **Improving Needed Safeguards for Users of Lifesaving Insulin Now (INSULIN) Act was released (updated) this week by the leaders of the Diabetes Senate caucus.** The bill has been updated from a prior version, and could change from here. There is no CBO score as of yet.
- **Plans and PBMs would no longer receive rebates for insulin & related products in commercial group/individual, ERISA, Medicare Part D, and MA prescription drug plans (starting in 2024).** The bill also prohibits plans from imposing prior authorization on insulin products. If passed, the bill is expected to negatively impact PBM margins (CVS, UNH, CI, ANTM, HUM).
- **Passage would be especially hurtful to smaller players.** By eliminating rebates and capping enrollee co-pays, an increasing share of the cost burden will fall on the plans. This is likely not an issue for the big 5 PBMs that are aligned with insurers & have healthy cash flows but smaller PBMs will feel an impact to their bottom-line.
- **Starting in 2023, the bill caps insulin co-pays at \$35 or 25% of the list price per month, whichever is lower ~ Commercial group/individual, ERISA, Medicare Part D, and MA prescription drug plans.** Catastrophic health insurance plans will also be required to provide coverage of selected insulin products. But this is not a free-for-all coverage. Plans (CNC, MOH, UNH) will still be allowed to impose higher cost-sharing if insulin products are delivered by an out of network provider.
- **OUR TAKE:** Leader Schumer (D-NY) plans to put the Insulin bill on the floor, daring Republicans to vote against it. The bill likely does not pass i.e. Byrd Bath, so is unlikely to be fully eligible for Reconciliation. We do not view 60 votes as likely on this bill; the bill also has not been scored yet (which takes time). *Affordable Insulin Now* passed the House, and there could be a House-Senate play to conference the *INSULIN Act* with this, for final passage.

FTC

- **FTC vote on PBMs was 5-0 on Friday June 17 (FTC Public Meeting, led by Commissioner Lina Kahn).** FTC's intent is to examine rebates and fees paid by drug manufacturers to pharmacy benefit managers (PBMs) and other intermediaries in exchange for disfavoring the lowest cost drug products. Commissioner Bedoya (newest Commish) assured the FTC will use every tool they have to investigate drug manufactures, pharmacy middlemen, and pharmaceutical prices. Insulin is included here.

- **FTC PBM investigation will culminate in a report in 6-12 months.** We expect to see a report and potential rule made on PBMs and the large portion of rebates they are keeping. FTC believes that PBMs are keeping too much of the money from rebates and therefore increasing drug prices. Our antitrust expert, Seth Bloom, spoke to Capitol Street clientele on 6/16 re the FTC practice of not typically enacting making rules, but Commissioner Khan's passion means we can expect one.
- **FTC is investigating the Big 6.** In early June, the FTC announced that it will investigate the six largest PBMs (Caremark; Express Scripts, OptumRx, Humana, Prime Therapeutics, and MedImpact Healthcare Systems). The study aims to gather information on practices including PBM control over formularies, pressure on independent pharmacies, and spread pricing. Consolidation in the PBM market is also expected to be addressed in this investigation. Companies have 90 days from the order to respond and we expect the investigation to take several more months.
- **OUR TAKE:** The FTC PBM investigation is more onerous potentially than the Pharma merger review/new standards, according to our antitrust expert on June 16. We will see a report and likely rulemaking in the next 6-12 months.

PBM TRANSPARENCY BILL

- **Senate Commerce Committee (Chair Cantwell, D-WA) advanced the *PBM Transparency Act* in a 19-9 vote yesterday.** This act would prevent practices and the dissemination of "false" information related to PBM services for prescription drugs.
- **Spread pricing would be banned.** PBMs **(1)** cannot charge a health plan or payer a different amount for prescription drugs's ingredient cost or dispensing fee than the amount the PBM reimburse a pharmacy for the prescription drug **(2)** cannot reduce reimbursement payment to a pharmacist for a prescription drugs ingredient cost or dispensing fee **(3)** cannot increase fees or lower reimbursement to a pharmacy in order to offset reimbursement changes.
- **Spread is still allowed/predominant in Medicaid & Commercial.** CMS has made spread pricing nearly impossible in Medicare Advantage (MA).
- **OUR TAKE:** There is no House version of this bill as of yet. This near-permanent ban on spread unlikely passes this year but inclusion in a larger bill is not impossible in 2022. It's very unlikely to pass stand-alone. This bill unlikely passes the Byrd Rule (51 votes), the vehicle for the BBB in 2022

REBATE RULE – FURTHER DELAY (PBM GOOD NEWS)

- **PBM Rebate Rule delay (one-year, \$21 B savings) pays for the Gun Reform package.** This saves about \$20.9 B over ten. The Gun Bill costs about \$15 B. It's a gimmick, since the Rebate Rule never got off the ground, but the projected increase in premiums means that a delay actually saves the government dollars.
- **The Rebate Rule was not set to be implemented until 2026.** The Rebate rule, finalized under the Trump administration, eliminates the safe harbor protections for rebates that drug makers negotiate with pharmacy benefit managers for favorable coverage terms unless those discounts are passed on to patients at the pharmacy counter.

- **OUR TAKE:** PBM haters say it was unnecessary to delay the Trump era rule even further. Pharma is likely displeased at the further delay. Gun reform bill looks to pass the Congress by this weekend thereby making the Rebate Rule delay by one more year almost a done deal.