

PBM Transparency Act Likely to Pass Senate Cmte

Bipartisan Anti-PBM Reform Revisited With Other Bills Pending

The Senate Commerce, Science, and Transportation Committee (Chair Cantwell, D-WA) met to discuss Pharmacy Benefit Manager (PBM) conduct and to tee up the *PBM Transparency Act* for committee markup in the coming months. Link [Here](#).

- **The *PBM Transparency Act* ([here](#)) was debated and will likely pass the full Committee as soon as March 1, or the first week of March.** The bill was reintroduced in January 2023 and is co-sponsored by Chair Cantwell (D-WA) and Senator Chuck Grassley (R-IA), among others.
- **Currently, there is no House equivalent bill and no CBO score, but it likely costs the government, which can be an uphill battle in this PAYGO environment.** The bill attempts to regulate PBM conduct through FTC enforcement of unfair conduct and explicit requirement for PBMs to provide full disclosure of costs and fees. The bill:
 - **PBMs are required to pass through 100% of any rebate to health plan or payer.**
 - **Complete disclosure of the cost, price, and reimbursement** of prescription drugs to health plans and pharmacies; all fees, markups, and discounts the PBM charges or imposes on health plans and pharmacies; or the aggregate remuneration fees it receives from drug makers to health plans, payers, and any federal agency.
 - **PBMs would have to file an annual report with the FTC**, including the total amount they pocket through spread pricing and pharmacy fees.
 - **Bans spread pricing.** As well as DIR fees (clawbacks to pharmacies).
 - **Authorizes the FTC and state attorneys general** to enforce mandates, including by seeking civil penalties for each violation, plus an additional penalty of up to \$1 M.
- **Bill is troubling to PBMs, along with the FTC study of the Big 6.** We saw the same PBM discourse being emphasized by committee members: 3 PBMs control 80% of the market, PBMs are engaging in behaviors that are harmful for patients and pharmacies like spread pricing, and patient steering. Consolidation was repeatedly called out as a driving factor of bad behavior. Dr. Erin Trish, one of the witnesses, stated that PBMs play an important role in the drug supply chain, but consolidation results in misaligned financial incentives.
- **Dr. Casey Mulligan, an economist, was alone in opposing *PBM Transparency Act* among witnesses.** PBMs act like Costco, and bring savings to those who participate (largely plans); there will be unintended consequences if PBMs are regulated. He stated that the large PBMs will adapt to new regulations, but small players may be driven out of business and consolidate further.
- **Bill modifications are likely.**
 - **Mistrust of the FTC** may lead to bill modification. Sen Sullivan (R-AK) voiced his distrust of FTC head and solicited from the witnesses other agencies to include in PBM oversight e.g., GAO in addition to the FTC. Dr. Mulligan fears that the general nature of given authorities would cause the FTC to “rewrite the lexicon”.
 - **A small business exemption.** Anti-PBM reform is largely bipartisan but Ranking Member Ted Cruz (R-TX) was concerned about the unintended impacts to smaller PBM players.

- **With drug reform passed into law (IRA) and implementation under way, Congress wants to now attack PBMs, and we think legislation may pass by YE.** Recall that despite the noise, PBMs were largely spared last year from legislative oversight. Congress is capitalizing on the bipartisan nature of anti-PBM sentiment and the *PBM Transparency Act* may see movement in 2023 or 2024. Cost will impact odds of passage in our view.
- **The Senate Judiciary Committee (Chair Durbin, D-IL) passed out of committee last week five (5) drug pricing bills, including one on FTC oversight of PBMs.** *The Prescription Pricing for the People Act*, also co-sponsored by Sens Cantwell (D-WA) and Grassley (R-IA), directs the FTC to report on the effects of consolidation in the PBM industry on pricing, as well as other abusive behavior by PBMs. It was passed out of the Judiciary by voice vote. This is less onerous to PBMs but one to watch.
- **OUR TAKE/NEXT STEPS: The *PBM Transparency Act* is likely to pass the Senate Commerce Committee in early March and potentially the entire Senate this Spring; we await CBO scores and House action.** Transparency provisions have bipartisan support, particularly from Sen Grassley (R-IA), but odds of enactment will depend on cost. There is currently no House companion bill, but anti-PBM sentiment continues to be bicameral. The House E&C Committee is concurrently working on a bigger anti-PBM bill, with pharmacist and Rep Buddy Carter (R-GA) vocally opposed to the PBM business model. We expect introduction 1H23. The agencies continue to act on drug pricing. We may see NIH action regarding March-in Rights, and CMS is working to implement IRA provisions (inflationary rebates, Medicare negotiations, Part D restructuring).