CAPITOL STREET

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# Anti-PBM Bills Progress to House Vote, Eventual Passage

## FTC Widens PBM Probe to GPOs Zinc & Ascent

Relevant Companies


Lawmakers continue to focus on transparency and spread pricing bans for Pharmacy Benefit Managers (PBMs) as the House Energy & Commerce committee (Chair McMorris Rodgers, R-WA) passed 3 major anti-PBM (*PBM Accountability Act, Drug Price Transparency in Medicaid Act, Fairness for Patient Medications Act*) bills today. Note *PBM Accountability Act* has no Senate companion but reflect similar themes of transparency seen in the Senate. Link to markup here.

## Our Take & Next Up

**All three PBM bills now move to the House floor, with commercial and Medicaid reforms in the mix.** The lack of a commercial spread pricing ban and focus on reporting requirement for payers likely increases bipartisan support in the House, while the Senate expands reforms to commercial markets. With other bills in motion in the Senate, we expect anti-PBM reforms to pass later this year, possibly as an add-on to the Oct 1, 2023 *Animal User Fee Act* or *Pandemic and All Hazards Preparedness Act* (PAHPA). We are seeing increased GOP opposition to commercial spread pricing bans due to government interference in private markets. This may influence Senate bills with spread pricing bans (the *PBM Reform Act*, the *PBM Transparency Act*) to include favorable changes or exceptions.

**The FTC's 6B study on PBMs is ongoing & expanded, potentially slowing final release (next 1-2 years).** The incremental probe of PBM GPOs was unexpected, but it increases the reliability of the FTC study as it will include newer PBM business practices. We expect the study to be completed within the next 2 years.

## Key Points

**1-House Energy & Commerce (Chair McMorris Rodgers, R-WA) unanimously passed *the PBM Accountability Act* today** (here). The bill is cosponsored by Health subcommittee Chair Guthrie (R-KY), Health subcommittee Ranking member Eshoo (D-CA), among others. The bill now heads out of committee to the House floor for House passage.

- **Starting in January 2025 for commercial and 2026 for Medicare, the bill would require PBMs to provide annual reporting to plans on information related to Rx transactions.** Transparency requirements would apply to commercial and Part D plans, with the most requirements on commercial transactions. Despite the focus on commercial plans, this bill is more flexible than PBM transparency bills seen in the Senate as the disclosure requirements are meant for plan sponsors and clients. There are also no spread pricing bans.
- **For commercial group plans starting in January 2025, PBMs will have to report to payers on:** Drugs covered that were dispensed, including each drug's wholesale acquisition cost (WAC), co-pay assistance amount, the total out-of-pocket spending by enrollees on such drug; Rationale for formulary placement for certain drugs; Rebates, fees, and net spending received for therapeutic categories of drugs under which 3 or more drugs and included on the formulary; Total net and gross spending on prescription drugs by the health plan during the reporting period; amounts paid directly or indirectly in rebates, fees to brokers, consultants, advisors, or any others who referred the group health plan's or health insurance issuer's business to the PBM.
- **Medicare Part D reporting requirements, starting in January 2026, are focused on rebates and pharmacy transparency.** The bill would require PBMs to report the negotiated price for each coverage Part D drug, average per-drug amount in direct and indirect remuneration paid by pharmacies, and details on rebates collected by PBMs.

**2-The *Drug Price Transparency in Medicaid Act* which bans spread pricing in Medicaid also passes out of committee unanimously and moves toward House passage** (here). Starting 18 months after enactment (estimated 2025 start date), the bill requires pass-through pricing models with reimbursement limited to ingredient cost and a professional dispensing fee. Spread pricing would be prohibited under Medicaid and PBM reimbursement for administrative services would also be limited. Spread pricing is seen in Medicaid managed care plans where PBMs charge more for a drug (typically generic drugs) than what they reimburse the pharmacy for. This bill has a lower impact on PBMs as Medicaid margins are low and PBMs have pivoted to fees and specialty pharmacy due to years of scrutiny over spread and rebates.

**3 - Commercial cap on co-pay for "highly rebated drugs" will shift costs for certain drugs with high list prices and low net prices**. The committee also passed unanimously the *Fairness for Patient Medications Act*(here) which would restrict cost sharing under commercial plans for drugs that are certified as a "highly rebated drug" starting in January 2025. A "highly rebated drug" will be a drug for which total rebates, reductions in price, and other payments in the previous year aggregated across commercial markets exceeded 50% of total annual spending. Cost sharing for patients would be restricted to the quotient of the annual net price paid by the plan divided by 12. Reimbursement for diabetic therapies, anticoagulants, asthma/COPD therapies are likely to be impacted due to their high negotiated rebates. Currently, there is no Senate companion.

**House E&C anti-PBM work is similar to transparency bills moving in the Senate, and both chambers will likely coordinate final PBM bill passage**. While House bills focus on relatively lower impact policies like transparency requirements and Medicaid spread pricing bans, Senate anti-PBM bills are more ambitious with a focus on commercial spread ban and federal reporting requirements. With the number of bills moving in different committees, we expect some type of anti-PBM reform to pass later this year.

- Earlier this month, the Senate HELP committee advanced the *PBM Reform Act* that requires PBMs to pass 100% of rebates from drug makers to health plans, ban spread pricing in commercial, and includes PBM reporting requirements to plans and to HHS (here).
- In April, the Senate Finance committee released a legislative framework (here), previewing PBM reforms to come.
- The *Pharmacy Benefit Manager (PBM) Transparency Act* (here) passed the Senate Commerce, Science, and Transportation Committee (Chair Cantwell, D-WA) earlier this year. The bill bans commercial spread pricing as well as arbitrary, unfair, or deceptive DIR fees, and contains reimbursement and price disclosures requirements to the FTC and to plans.

**FTC Probe**

**FTC deepens its inquiry into PBMs with orders issued to Zinc Health Services (CVS), and Ascent Health Services (CI) for info on GPOs.** Two group purchasing organizations (GPOs) that negotiate drug rebates on behalf of other PBMs have received the compulsory orders. The orders require information and records on business practices. GPOs are currently viewed as black boxes, and the FTC is aiming to have some insight into the way that they operate. The goal of the inquiry is to expose unfair PBM practices which include complex reimbursement practices, directing patients towards PBM-owned pharmacies, and negotiating rebates and fees with drug manufacturers that may impact the cost of prescription drugs to payers and patients. See FTC release here.

**The ongoing FTC study – started in 2022 -- focuses on the 6 largest PBMs**: CVS Caremark; Express Scripts; OptumRx (UNH); Humana Pharmacy Solutions (HUM); Prime Therapeutics; and MedImpact Healthcare Systems. Caremark, Express Scripts and Optum

make up 80% of the PBM market with all three a part of large national health plans: Aetna, Cigna and UnitedHealthcare, respectively. These companies also own GPOs, providers, and more.

**PBM supply chain role in Rx prices is a major focus of the study as noted by Commissioners**. The study from last year aims to gather information on scrutinized practices including PBM control over formularies, pressure on independent pharmacies, and spread pricing. Consolidation in the PBM market is also expected to be addressed.

**Zinc (serves CVS Health) and Ascent (serves CI's Express Scripts, Prime Therapeutics, Envolve Pharmacy Solutions, and Humana Pharmacy Solutions) identified as GPOs.** Zinc and Ascent are also known as rebate aggregators, that negotiate rebates with drug manufacturers on behalf of the PBMs and hold the contracts that govern those rebates. Companies have been relatively quiet on their GPO business and there is very little info on fee arrangement or contracting practices. PBMs appear to benefit from increased shields from disclosing rebating practices and the opportunities to leverage additional fees in GPOs.

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