

CAPITOL STREET

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PBM “Delinking” in Part D & MA

Senate Language to Expand Over Time: Steering, Transparency, Spread

Relevant Companies



Yesterday, Sens. Menendez (D-NJ) and Blackburn (R-TN), along with Senate Finance Chair Ron Wyden (D-OR), and Ranking Member Mike Crapo (R-ID) introduced their first pharmacy benefit managers (PBM) reform bill [here](#). The bill is the first of several pieces of legislation that will likely make up the Senate Finance Committee’s anti-PBM package.

»» Our Take & Next Up

The PBM Act is expected to be included in the larger Senate Finance PBM reform package. We expect additional legislation on Medicaid / spread pricing, patient steering as well as transparency to be added to the Finance anti-PBM package, and it will likely mirror the other bills in the House. In the Senate HELP committee, the *DRUG Act* requires a commercial flat fee for PBMs & is expected to be revisited this session. We do not expect a commercial flat fee to be included in the final Senate healthcare package, but the Part D/MA flat fee may be preferable as lawmakers try to reign in federal healthcare spend (CMS [actuary](#) this week said that Medicare spending is expected to grow 7.5% from 2022-2031, faster than any other payers i.e., Medicaid, Commercial). At year-end, we expect a few PBM provisions to pass in a healthcare extenders-type package including (1) hospital site neutral policies, (2) PBM policies we have discussed around spread and transparency (3) telehealth possibly and (4) workforce funding alongside must pass bills.

»» Key Points

The Patients Before Middlemen (PBM) Act prohibits PBMs (CI, UNH, CVS) from accepting compensation that is based on the price or utilization of a drug in Medicare Part D. The impetus of the bill appears to be lessons learned from insulin pricing/rebating arrangements, per the SFC investigation in 2021 ([here](#)). PBMs would not be

allowed to base their compensation on wholesale acquisition cost (WAC) or drug benchmark price, discounts, rebates, fees, or other remuneration with respect to drugs prescribed to enrollees in the plan; or any other amounts prohibited by the Secretary. The bill is very expansive on what would not be allowed which reflect the intent of the lawmakers to prevent any PBM profit from drug utilization or list prices.

“De-linking” PBM reimbursement is not present in other Senate PBM reform, but was discussed in the Senate HELP committee’s PBM markup in May. The bill would also require PBMs to pay back to HHS “any amount in excess of the designated service fees.” The separate *PBM Reform Act* does not include provisions on “delinking.” However, the HELP markup featured discussion on how to discourage PBMs from favoring drugs with high list prices with Sen Marshall (R-KS), *PBM Act* cosponsor, introducing a commercial de-linking amendment that was tabled.

The commercial flat fee requirement is expected to be revisited but may not pass in 2023. Sen. Marshall (R-KS) is sponsoring *Delinking Revenue from Unfair Gouging (DRUG) Act* that requires PBMs to only charge a flat fee for group plans starting January 2026.

What does the new Senate Finance PBM bill do? In Medicare Part D (and MA plans), PBMs would only be allowed to receive compensation that are “bona fide service fees” that would have to be laid out in a contract between the PBM and the Part D sponsor. A flat fee model is becoming increasingly common in the commercial market as PBMs and plans adapt to increasing oversight and lawmaker scrutiny. Recall in April, Express Scripts (CI) launched [ClearCareRx](#) that allows clients to pay a flat per-member-per-month fee that covers administrative services, PBM product services, reporting and analytics.

This new bill does not address spread pricing, steering, or include transparency requirements on rebates, discounts, or reimbursement but that is likely coming soon from the Finance Committee. The *PBM Act* requires PBMs to submit an annual certification of compliance, but has no additional transparency requirements. Transparency and spread pricing were part of the larger Senate Finance framework [released](#) in in April. We expect additional legislation from committee members to address these challenges highlighted by the committee.

The bill is sponsored by a bipartisan group of six Senators, which is not surprising from the Senate Finance Committee; one that has has a history of working together on bipartisan issues. Co-sponsors are Senate Finance Chairman Ron Wyden (D-OR), Senate Finance Ranking Member Mike Crapo (R-ID), Senators Bob Menendez (D-NJ), Marsha Blackburn (R-TN), Jon Tester (D-MT), and Roger Marshall (R-KS).

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