July 26, 2023

Senate PBM Package Passes Committee, Saves Little

PBM Reform Likely Passes 4Q23

Relevant Companies

Today, the Senate Finance Committee (Chair Wyden, D-OR) passed (26 yes, 1 no) its a bipartisan PBM bill, the *Modernizing and Ensuring PBM Accountability (MEPA) Act (*here). The bill is the latest PBM reform bill to advance in the Senate. It includes provisions on requiring the use of service fees in Part D and MA for PBMs ("delinking PBM reimbursement to prices"), transparency requirements, and a spread pricing ban in Medicaid. Link to markup is here.

Our Take & Next Up

We think PBM transparency, limits on spread and other policies (Medicaid, Medicare) will likely pass 4Q23. Any reforms that start in the next 2-3 years provide ample time for the PBM business model to evolve, minimizing detrimental effects. PBMs have already shifted to fee-based services with less rebate-dependent revenue sources. *Modernizing and Ensuring PBM Accountability (MEPA*) *Act* passed Finance on a bipartisan basis and will likely have portions incorporated in a healthcare omnibus at year-end. Growing anti-PBM reform bills in both House and Senate, state bills & a looming FTC study continues to pressure industry and increases odds of some type of passage. While PBM oversight in commercial is less likely to pass, contracting transparency could be considered.

Key Points

Bill's PBM savings are minimal (<$1B), indicating the incremental nature of legislation. The most impactful provision saves $740 M over 10 years. CBO score here. The bill is budget neutral with savings being balanced by a $1.7 B investment in the Medicare Improvement fund over the next 10 years. Individual provisions savings mirror those from the PBM Transparency Act ($740 M in savings over 10) from the Senate Commerce, Science, &

Transportation committee (Chair Cantwell, D-WA). Due to similar savings and some policy overlaps, we expect Senate leadership to prioritize policies from HELP and Finance Committees.

Senate Finance anti-PBM bill includes transparency, Part D pharmacy reform, and Part D service fee requirements that start in 2026. Notable provisions are below.

- **Starting 2026, PBMs that service Medicare Part D and MA plans will only be allowed to receive 'bona fide service fees' as income ($702 M in savings over 10 years when scored with transparency provisions).** This is the policy with the biggest financial impact to PBMs as fees will likely be limited to be consistent with "fair market value".
- **By July 1 every year (starting in 2026), PBMs will have to report drug utilization, rebate, and reimbursement information to both (1) Part D plan sponsor and (2) HHS.**The report must include information on all drugs covered by the plan that were dispensed, the number of plan enrollees for whom the drug was dispensed, the total number of prescription claims, average wholesale price, total rebates paid by manufacturers, total OOP cost, all direct or indirect remunerations, avg pharmacy reimbursement, and total manufacturer derived revenue. PBMs will also have to justify their formulary placement for generic and biosimilars. PBM affiliates, including GPOs, would also be required to report datapoints like fees collected from manufacturers.
- **Starting in Jan 2025, Part D and MA plans will only be allowed to use standardized pharmacy performance measures for payments, price concessions, or fees paid or charged to a pharmacy.**Measures will be determined by HHS and will be evidence-based and reasonable and focus on patient health outcomes.
- **PBMs will be banned from spread pricing practices in state Medicaid programs ($313 M in savings over 10), though we note this is a dying state practice.** Any payment made by the PBM for a drug under Medicaid is limited to the ingredient cost, a professional dispensing fee, and must be passed through in its entirety to the pharmacy or provider that dispenses the drug. Payment for administrative services will be limited to the fair market value.
- **Retail community pharmacies will be required to participate in the National Average Drug Acquisition Cost (NADAC) survey ($722 M in savings over 10) to improve Medicaid transparency**. Data would be publicly available. The NADAC survey measures pharmacy acquisition costs and is often used in the Medicaid program to inform reimbursement to pharmacies.
- **All amendments included are budget neutral and represent minor changes to the original draft.** Amendment changes include expanding data reporting to Group Purchasing Organizations (GPOs), directing CMS to conduct beneficiary-focused listening sessions on Part D improvements and increasing the data required on generic/biosimilar medications in Part D plans. Other amendments would call for various studies from the agencies, for example, GAO would study outpatient prescription drug shortages.

House Ways and Means Committee (Chair Smith, R-MO) also passed a PBM transparency bill that impacts Commercial plans (ERISA). The vote was 25-Yes to 16-No and the bill can be found (here). The PBM reform is packaged within the Committee's larger healthcare transparency bill. Starting 3 years after enactment (likely 2027), the bill would require PBMs serving commercial (ERISA) plans to disclose a yearly report to their plan sponsors on amount of copay collection, WAC, amount received in remunerations, total net spending, a list of each therapeutic category that were dispensed, among other reporting requirements. The annual reporting categories are similar to transparency requirements seen a bill that passed the House Education & Workforce this month.

State PBM bills/implementation is heating up in individual states: New York and Florida looking to apply state requirements to ERISA plans, and potentially Medicare. Florida is in the process of enacting PBM reform

that could impact ERISA plans due to legislative ambiguity (see our June 12 memo for details). New York is hoping to expand its state licensing and transparency requirements to Medicare. Whether state regulation will be applicable beyond fully insured plans (and have a greater commercial impact) will be determined by the pending appeal of PCMA v. Mulready in the Court of Appeals for the Tenth Circuit, which will determine if federal preemption stands against an Oklahoma state law regulating PBMs' ability to develop their pharmacy networks. PBM state challenges will be addressed in an upcoming state roundup.

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