

May 1, 2023

Members of the Senate Health, Education, Labor and Pensions (HELP) Committee:

As representatives of the nation's employers, who collectively provide health insurance benefits to over 160 million Americans, we urge Congress to take meaningful action to implement transparency, accountability, and reform in the pharmacy benefit manager (PBM) industry. Many of the undersigned groups have worked with and supported efforts by the HELP Committee since 2018 to advance policies that would reorient PBM practices in order to lower drug costs and drive value for our workers, their families, and retirees.

If Congress wants employers to be able to meaningfully lower drug costs for our employees, here are the minimum 4 changes that are required:

- **Require complete and unrestricted transparency into the PBM “black box.”** It is not practical for employers to reduce drug costs if we don't know what those drug costs are. Likewise, we need to know how the PBM is making money, where it is deriving fees or other profits from, what arrangements the PBM has with drug manufacturers or other third parties, including more transparency into PBM-owned pharmacies and other entities in the supply chain under common ownership and/or control as a PBM. We must be able to rely on independent outside experts of our choosing to help us audit our PBMs, any related entities, and their contracts. While transparency is of great importance, transparency alone is not enough.
- **Ban so-called “spread pricing.”** Spread pricing arrangements allow a PBM to charge an employer-sponsored plan (or patient) more than the PBM actually pays for a drug, usually with no disclosure of how much the price has been inflated. We are not aware of a desire from employers to maintain this kind of arrangement. Most small and medium-sized employers are not familiar with PBM practices and are not aware that they have been enrolled in spread-pricing plans. This practice is especially pernicious when intertwined with PBM-owned mail-order and specialty pharmacies, with patients usually steered to these dispensing channels.
- **Require 100% pass-through of rebates, discounts, fees, and other payments from drug manufacturers.** When a drug manufacturer remits these kinds of payments to a PBM, they should be considered plan assets, and should be spent only in the interests of plan beneficiaries. Instead, often times these payments are given creative names or purposes, are channeled through new intermediaries (such as “aggregators” or offshore “group purchasing organizations”), and never accrue to the benefit of patients.
- **Congress already applied fiduciary standards to employers. Apply those same standards to PBMs.** Employers are required to (1) act in the best interests of the plan and its beneficiaries, and (2) protect the plan's assets and be good stewards of the plan's funds. This is not an unreasonable ask for PBMs. In fact, unless and until Congress applies this standard to PBMs, profit incentives will continue to drive PBMs to engage in market behaviors that are counter to the best interests of the millions of employees who receive their health care through their employers.

We are greatly encouraged that the HELP Committee has focused on this critical issue, which has the potential to save billions of dollars, leading to more affordable drug costs and more affordable insurance for workers and families. We look forward to working with you to advance these and other reforms through the legislative process, to provide much-needed relief for employers and employees.

Sincerely,

Alabama Employer Health Consortium
The Alliance (Midwest)
American Rental Association
Business Group on Health
Corporate Health Care Coalition
CUPA-HR
Dallas-Fort Worth Business Group on Health
Economic Alliance for Michigan
Employers' Advanced Cooperative on Healthcare (Arkansas)
Employers' Forum of Indiana
The ERISA Industry Committee
Florida Alliance for Healthcare Value
Greater Philadelphia Business Coalition on Health
HealthCareTN
Houston Business Coalition on Health
Kansas Business Group on Health
Lehigh Valley Business Coalition on Health
Mid-Atlantic Business Group on Health
Midwest Business Group on Health
National Alliance of Healthcare Purchaser Coalitions
National Association of Benefits and Insurance Professionals (NABIP)
National Retail Federation
Nevada Business Group on Health
New Mexico Coalition for Healthcare Value
North Carolina Business Group on Health
Partnership for Employer-Sponsored Coverage (P4ESC)
Purchaser Business Group on Health
Rhode Island Business Group on Health
Self-Insurance Institute of America, Inc.
Small Business Majority
Silicon Valley Employers Forum
Society of Professional Benefit Administrators
Texas Business Group on Health
Washington Health Alliance
WellOK - The Oklahoma Business Coalition