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Senate Finance Markup of the Modernizing and Ensuring PBM Accountability Act

The Senate Finance Committee (SFC) convened a markup of the Modernizing and Ensuring Pharmacy Benefit Manager (PBM) Accountability (MEPA) Act (section-by-section, CBO score, description of the Chairman's Mark). The bill was advanced out of Committee by a vote 26-1. Overall, the bill features the following:

- Limiting PBM reimbursement to a bona fide service fee;
- Establishing transparency requirements related to prescription drug prices and rebates, use of PBM-affiliated pharmacies, and formulary coverage of biosimilars and generics;
- Requiring transparency of contracts and agreements between PBMs and manufacturers;
- Establishing standardized pharmacy performance measures and increasing pharmacy transparency in Part D; and
- Prohibiting spread pricing and ensuring accurate payments to pharmacies in Medicaid

There were 53 amendments that were offered on the bill. The full list of amendments can be found here and a description of all the amendments can be found here. Prior to the markup, amendments were adopted on a bipartisan basis, which can be found here. The adopted substantive amendments include the following:

- **Warner-Thune-Cortez-Masto-Tillis #2:** The amendment requires the Medicare Payment Advisory Commission (MedPAC) to issue two reports and related recommendations to Congress on the information being reported by PBMs under this section, including: (1) an initial analysis of information reported by PBMs during the early years of implementation; and (2) a second analysis several years later analyzing changes in trends revealed in the information reported over time;
- **Carper-Grassley #2:** The amendment would require that at least one practicing physician and one practicing pharmacist is independent and free of conflict with respect to any pharmacy benefit manager on pharmacy and therapeutics (P&T) committees.
- **Cantwell-Grassley-Menendez-Daines #1:** The amendment would expand type of entities that must report data to the Department of Health and Human Services (HHS) HHS Secretary to include certain PBM affiliates, to add data elements that would be required to be reported (to include fees received from manufacturers), and to add a requirement for the Centers for Medicare and Medicaid Services (CMS) to produce an annual report with confidentiality protections.
- **Stabenow-Lankford #1:** Beginning in plan year 2025, this amendment would allow prescription drug plan (PDP) sponsors to change the preferred or tiered cost-sharing status of a reference biological product if such sponsor adds a biosimilar for such reference product to the formulary. The PDP sponsor would need to submit a request to the Secretary in order to make such a change.

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- **Thune-Brown-Barrasso-Stabenow #1:** This amendment would mitigate PBMs from steering patients to PBM-owned pharmacies for medicines that do not qualify as "limited access drugs" by codifying a portion of the Part D manual.
- **Bennet-Lankford #1:** The amendment would require the Government Accountability Office (GAO) to complete a study of compensation and payment structures related to drug prices in the retail prescription drug supply chain.
- **Cortez-Masto-Young #1:** The amendment would require the Secretary to publicly post a biennial report related to preventing, identifying, or addressing inappropriate pharmacy rejections and inappropriate coverage denials under Part D.
- **Cardin-Cassidy #1:** This amendment would require GAO to complete a study of factors across the outpatient prescription drug supply chain that influence prescription drug shortages.
- **Lankford-Menendez #3:** The amendment would direct the HHS Office of the Inspector General (OIG) to conduct a study and generate a report on biosimilar and generic drug access under Part D.

All other amendments were offered and withdrawn based on the commitment of the Chair to continue to work on these policies. Such amendments include provisions that would increase access to generics and biosimilars; address direct and indirect remuneration (DIR) fees and pharmacy steering; examine the use of 340B program savings; incentivize research and development (R&D) to be exempt from Inflation Reduction Act negotiations; and require price disclosures on prescription drug advertisements.

The SFC is the fifth committee of jurisdiction to take up and advance PBM-related legislation out of committee. Impact Health provides a chart here of all PBM legislation Below we describe the major legislative vehicles for PBM reform by Committee:

- **Senate Health, Education, Labor, and Pensions (HELP) Committee** – S. 1339, the Pharmacy Benefit Manager Reform Act (summary) includes provisions related to PBM transparency, prohibiting spread pricing, and 100 percent rebate pass-through to insurers.

- **House Energy and Commerce (E&C) Committee** – H.R. 3561, the Promoting Access to Treatments and Increasing Extremely Needed Transparency (PATIENT) Act (summary) establishes PBM transparency requirements, prohibits spread pricing in Medicaid, and address cost sharing for highly rebated drugs.

  The bill is also inclusive of transparency requirements for hospitals and insurers; aligns payment rates for drug administration and hospital outpatient departments, provides increased funding for community health centers, the special diabetes program, and the Teaching Graduate Medical Education Program, and cancels $16 billion in cuts to Disproportionate Share Hospital (DSH) payments.

- **House Ways and Means (W&M) Committee** – H.R. 4822, the Health Care Price Transparency Act of 2023 (summary) features PBM transparency requirements and limiting Part D cost

sharing to the net price of Part D drugs. The bill also features hospital insurer transparency provisions, as well as proposals to address the use of prior authorization in Medicare Advantage.

- **House Education and Workforce Committee** – The Committee has advanced H.R. 4507, the Transparency in Coverage Act, H.R. 4508, the Hidden Fee Disclosure Act, and the DATA Act (summaries), which address PBM transparency requirements, PBMs use of gag clauses, and PBM and third-party administrator compensation to plan fiduciaries. The Transparency in Coverage Act also codifies the Hospital Transparency in Coverage final rule.