



Bipartisan Legislation Targets Pharmacy Benefit Manager Industry Practices

Senators Maria Cantwell (D-WA) and Charles Grassley (R-IA) have introduced the Pharmacy Benefit Manager Transparency Act (S. 4293), a bipartisan measure that would increase drug pricing transparency and hold pharmacy benefit managers (PBMs) accountable for industry practices that some believe drive up prescription drug costs at the expense of consumers. If enacted, the Federal Trade Commission (FTC) and the state attorneys general would be empowered to enforce the new law.

PBMs are intermediaries that negotiate and manage prescription drug benefits on behalf of health insurance companies, self-insured employers, and government programs. Currently, three PBMs control nearly 80 percent of the prescription drug market and operate with little oversight by federal regulators and out of the view of consumers. PBMs influence prescription drug costs, determine which drugs are covered by a health plan, and pocket unknown sums of money that might otherwise be passed along as savings to consumers. According to the bill's sponsors, this lack of transparency makes it difficult for the

public and regulators to fully understand how the prescription drug market drives up costs for consumers.

The proposed legislation would make it illegal for PBMs to engage in “spread pricing” in which they charge health plans and payers more for a prescription drug than what they reimburse to the pharmacy, and then pocket the difference – the “spread” – as profit. This practice can result in pharmacies being reimbursed less than their acquisition cost for a drug. And consumers may face higher health plan premiums to cover these middleman costs.

The proposal would also prohibit PBMs from arbitrarily, unfairly, or deceptively “clawing back” payments made to pharmacies, or arbitrarily, unfairly, or deceptively increasing fees or lowering reimbursements to offset reimbursement changes in federally-funded health plans.

The proposal would encourage fair and transparent PBM practices that benefit local pharmacies and consumers by making clear that a PBM would not be in violation of the law if it: (1) passes along 100 percent of any rebate to the health plan or payer; and (2) provides full and complete disclosure of critical information such as the cost, price, and reimbursement of prescription drugs to health plans, payers, and pharmacies; fees, markups, and discounts charged or imposed by PBMs; or the aggregate amount of rebates, discounts, administrative fees, and other forms of payments received.

The proposal would require PBMs to submit an annual report to the FTC on critical information such as: (1) the difference between how much each health plan paid the PBM for prescription drugs, and how much the PBM paid each pharmacy on behalf of health plans for such drugs; (2) the total amount of fees the PBM charged to pharmacies, and the total amount of reimbursements the PBM clawed back from pharmacies; and (3) the reasons for reassigning a prescription drug to a formulary tier with a higher cost, copay, or deductible for the consumer.

If enacted, the law would protect whistleblowers from being fired or reprimanded for bringing violations to light and ensures that employers cannot force employees to waive such whistleblower protections with pre-dispute arbitration agreements as a condition of employment.

[Full text of the Pharmacy Benefit Manager Transparency Act of 2022 \(S. 4293\)](#)

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