



July 26, 2023

The Honorable Chairman Ron Wyden
Senate Finance Committee
United State Senate
219 Dirksen Senate Office Building
Washington, DC 20510-6200

The Honorable Ranking Member Mike Crapo
Senate Finance Committee
United State Senate
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Re: The Modernizing and Ensuring PBM Accountability Act.

Dear Chairman Wyden and Ranking Member Crapo:

We applaud the Senate Finance Committee for marking up the Modernizing and Ensuring PBM Accountability Act, which will address concerns around Pharmacy Benefit Managers' (PBM) fees and provide greater transparency over PBM practices. Some PBM practices have put participants, beneficiaries, and enrollees' health and safety at risk, and restricted individuals' access to safe and affordable prescription drugs. ASHP is the largest association of pharmacy professionals in the United States, representing over 60,000 pharmacists, student pharmacists, and pharmacy technicians in all patient care settings, including hospitals, ambulatory clinics, and health-system community pharmacies. Our members have seen firsthand how PBM practices put patients at risk.

Fees: ASHP applauds the Committee's action regarding PBM fees. PBM fees imposed on pharmacies have increased exponentially over the last few years. According to data released by Centers for Medicare and Medicaid Services (CMS), "performance-based pharmacy price concessions, net of all pharmacy incentive payments, increased, on average, nearly 170 percent per year between 2012 and 2020 and now comprise the second largest category of DIR received by sponsors and PBMs, behind only manufacturer rebates"¹ The bill's prohibition on Part D plan sponsors and PBMs instituting network pharmacy performance fees, except when established and adopted by Department of Health and Human Services (HHS) and relevant to pharmacies is a good first step. We look forward to working with HHS to ensure that any fees adopted are relevant to the practice of pharmacy and accurately measure quality patient care. We also applaud the Committee's action prohibiting PBM remuneration other than bona fide service fees that might result in misaligned economic incentives.

¹ Federal Register / Vol. 87, No. 89 / Monday, May 9, 2022 / Rules and Regulations; page 27834).

Transparency: We appreciate the Committee's focus on transparency and PBM data reporting requirements that will provide greater clarity on the impact of PBM mandated white and brown bagging. The bill's requirement to report information on financial relationships between PBMs, affiliates, and other entities and the required HHS OIG study of the impacts of vertical integration will bring greater clarity to the practices of white and brown bagging that impact patient care.²

The bill's reporting requirements regarding affiliated pharmacies and 340B arrangements will help bring attention to discriminatory activity by PBMs toward 340B eligible entities and contract pharmacies.

Prohibition on Spread Pricing in Medicaid: We support the bill's prohibition on allowing PBMs to benefit from spread pricing in state Medicaid programs, and requiring a pass-through pricing model for covered outpatient drugs. We also support the bill's provision allowing state Medicaid programs the flexibility to determine how to allocate 340B savings generated by manufacturer discounts.

ASHP thanks you for your work to address abusive PBM practices. We look forward to continuing to work with you on this issue. If you have questions or if ASHP can assist in any way, please contact Frank Kolb at fkolb@ashp.org.

Sincerely,



Tom Kraus
American Society of Health-System Pharmacists
Vice President, Government Relations

² White bagging occurs when a PBM requires patient medications be distributed through a narrow network of specialty pharmacies that are often affiliated with the PBM before the pharmaceuticals are then sent to a site of care, such as a hospital, where they will be dispensed by a provider. Hospitals have strict quality controls and by circumventing the traditional and regulated hospital supply chain, white bagging raises patient safety risks by enabling diversion and heightening the possibility of drug spoilage/wastage. Brown bagging occurs when a PBM ships medications to a patient, who then must take the pharmaceutical to the provider for administration. These medications typically require special storage and handling. White bagging and brown bagging put pharmaceuticals at risk of spoilage, contamination, and diversion, putting patients' health at risk.