

ALERT

Senate Finance Committee Releases Framework for Pharmacy Benefit Manager Reform

April 27, 2023

On April 20, 2023, Senate Finance Committee Chair Senator Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) released a bipartisan framework for reducing prescription drug costs and implementing pharmacy benefit manager (PBM) reform.

The Committee's framework aims to address the "increasingly complex and opaque" interactions between the entities involved in the delivery and payment of prescription drugs, including the consolidation of numerous drug supply chain stakeholders. According to the Committee, such interactions have outpaced existing federal PBM and drug pricing policies and require new legislative solutions as a result—particularly given that prescription drug spending accounts for a significant share of national pharmaceutical spending.

The framework identifies four "key challenges" within the PBM industry requiring policy solutions: (1) a lack of transparency into financial flows and incentives that inform drug pricing, (2) barriers to pharmacy access, (3) "behind-the-scenes" practices that impede competition and drive up out-of-pocket costs, and (4) misaligned incentives resulting from the relation between PBM compensation and drug list prices.

To address these concerns, the Committee intends to pursue bipartisan legislation to "modernize and enhance . . . federal prescription drug programs." The framework provides the following examples of legislative solutions under current Committee consideration:

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Practice Areas

Health Care
Medicare Drug Pricing
Pharmacy Benefit Manager (PBM)
Contracting

- Delinking PBM compensation from drug prices to align incentives for lower costs;
- Enhancing PBM accountability to health plan clients to drive cost-cutting competition and produce better choices for beneficiaries;
- Ensuring discounts negotiated by PBMs produce meaningful savings for seniors;
- Addressing and mitigating practices that unfairly inflate the prices patients and government programs pay for prescription drugs;
- Modernizing Medicare’s “Any Willing Pharmacy” requirements to improve options and access for seniors; and
- Increasing transparency to foster a better understanding of how financial flows across the prescription drug supply chain impact government health care programs.

The framework’s release follows a March 30, 2023 Senate Finance Committee hearing examining current PBM practices and their impact on patient and taxpayer costs. Witnesses at the hearing—who included Matthew Gibbs, Pharm.D., President of CapitalRx, and Karen Van Nuys, Ph.D., Executive Director of the Value of Life Sciences Innovation program at the University of Southern California’s Leonard D. Schaeffer Center for Health Policy and Economics—testified to purported flaws with the existing drug pricing system, including a highly concentrated PBM market and the vertical integration of PBMs with health insurance plans.

The release also coincides with the Federal Trade Commission’s (FTC) ongoing investigation into the business practices of the six largest PBMs, as well as the FTC’s announcement that it will be ramping up enforcement efforts against PBMs whose receipt of rebates and fees increase patient costs and foreclose competition by lower-cost drugs.

This collective pressure by the FTC and Congress signals the strong possibility that significant reform to PBMs and the drug pricing system is forthcoming. Wiley’s multidisciplinary Medicare Drug Pricing team is closely monitoring these trends and legislative developments and is available to assist with any questions that may arise. For more information about the Senate Finance Committee’s framework, the FTC’s investigation and enforcement efforts, or PBM reform generally, please contact one of the attorneys listed on this alert.