

Cantwell Amendment #3 to the Chairman’s Mark of the Prescription Drug Pricing Reduction Act of 2019 (co-sponsored by Senator Lankford)

Short Title: To amend title XI of the Social Security Act to strengthen and expand pharmacy benefit manager transparency requirements

Description of Amendment:

Current law (Section 1150A of the Social Security Act, 42 U.S.C. 1320b-23) requires that pharmacy benefits managers (PBMs) report certain confidential information about their business practices to the Secretary of Health and Human Services. These transparency requirements apply to PBMs that contract with Medicare Part D plans; Medicare Advantage plans offering a prescription drug plan; and qualified health plans offered on the Affordable Care Act (ACA) exchanges. Under current law, PBMs are required to report (a) the percentage of all prescriptions managed by the PBM that are provided through retail pharmacies compared to mail order pharmacies, and the generic dispensing rate, (b) the aggregate amount and type of rebates, discounts, or price concessions that the PBM negotiates, and the aggregate amount passed through to the plan sponsor, and (c) the difference between the amount the health plan pays the PBM and the amount the PBM pays pharmacies (also known as the “spread”). Under current law, the Secretary may use the transparency information collected in Section 1150A (in a manner that does not reveal the identity of a specific PBM or plan) in carrying out the Medicare Part D program. The Secretary may also share the reported information with the Government Accountability Office, the Congressional Budget Office, and to state exchanges under the Affordable Care Act.

At Section 1150A of the Social Security Act, the amendment would strengthen and expand these requirements by:

1. Including PBMs contracting with state Medicaid programs in the types of PBMs required to report information to the Secretary;
2. Expanding the information PBMs are required to report, to include:
 - a. The percentage of rebates, discounts and price concessions passed on to the plan sponsor;
 - b. The percentage of the “spread” between the price the health plan pays the PBM and the price the PBM pays pharmacies for drugs;
 - c. The aggregate amount of bona fide service fees the PBM received from Medicare Prescription Drug Plan (PDP) sponsors, qualified health benefit plans, Medicaid managed care entities, and drug manufacturers.
3. Allowing more uses of the reported information, to include allowing the Secretary to disclose the information to:
 - a. States in carrying out their administration and oversight of state Medicaid programs;

- b. To the Federal Trade Commission to carry out section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45) and any other relevant consumer protection or antitrust authorities enforced by such Commission, including reviewing proposed mergers in the prescription drug sector.
- c. To assist the Department of Justice to carry out its antitrust authorities, including reviewing proposed mergers in the prescription drug sector.

Offset: To be provided if necessary