

The **Pharmacy Benefit Manager Transparency Act of 2023** was introduced by Senate Commerce Science, and Transportation Committee Chair Maria Cantwell and Senate Judiciary Committee Ranking Member Chuck Grassley to shine a light on the Pharmacy Benefit Manager (“PBM”) market and empower the Federal Trade Commission (“FTC”) and state attorneys general to stop unfair and deceptive PBM business practices.

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 an insurance plan, and pocket unknown sums of money that might otherwise be passed along as savings to consumers. This lack of transparency makes it difficult for the public and regulators to fully understand how the market drives up costs for consumers.

PROHIBITS UNFAIR OR DECEPTIVE PRICING PRACTICES

The 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 insurance plan premiums to cover these middleman costs.

The bill 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.

INCENTIVIZES FAIR AND TRANSPARENT PBM PRACTICES

The bill 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 Act if it:

- Passes along 100 percent of any rebate to the health plan or payer; and
- Provides full and complete disclosure of:
 - the cost, price, and reimbursement of prescription drugs to the health plans and pharmacies;
 - all fees, markups, and discounts the PBM charges or imposes on health plans and pharmacies; or
 - the aggregate remuneration fees it receives from drug makers to health plans, payers, and any federal agency.

MANDATES TRANSPARENCY

The bill would require PBMs to file an annual report with the FTC, shining a brighter light on how they charge health plans and pharmacies for prescription drugs. Specifically, it would require PBMs to disclose:

- The aggregate amount of 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;
- The aggregate total amount of fees the PBM charged to pharmacies and the total amount of reimbursements the PBM clawed back from pharmacies;
- Why the cost, copay, coinsurance, or deductible for a consumer increased, or why the reimbursement rate to a pharmacy decreased for a prescription drug; and
- For PBMs that control or are affiliated with a pharmacy, a description of any differences between what they reimburse or charge affiliated and nonaffiliated pharmacies.

ENFORCEMENT

The bill would authorize the FTC and state attorneys general to enforce its mandates, including by seeking civil penalties from PBM companies for each violation, plus an additional penalty of up to \$1 million.

ADDITIONAL ACCOUNTABILITY

The legislation 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.