

November 8, 2023

The Honorable Chuck Schumer
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, D.C. 20510

Dear Majority Leader Schumer and Republican Leader McConnell,

We are writing today to ask you to support the health care provided through private employers to 179 million Americans by enacting strong pharmacy benefit manager (PBM) reforms this year. It is imperative that affordable, private sector health benefits continue to be provided to America's workforce and that the health, well-being and productivity of American citizens is protected. Rising health prices are an unsustainable trend for everyone and employers are bracing for even greater costs in 2024.¹ For the reasons described below, the systemic market failure creating this problem cannot be fixed by the private sector alone and congressional action is necessary.

Needed reforms include commonsense changes to hold PBMs accountable to fair market practices when partnering with our nation's employers -- small, medium and large -- who are the largest customers of PBMs. PBM transparency, as with transparency across all healthcare stakeholders, remains one component of the goal to lower costs and ensure access to affordable, quality care. However, PBM transparency alone will not be enough to address the issues employers face in assuring that people covered by employer-sponsored plans are truly receiving the best care at the best price.

We applaud the Senate's efforts to address the impact of anticompetitive PBM business practices on drug prices. Legislation has been introduced; and committees have conducted numerous hearings and compiled extensive findings to document the impact of these anticompetitive practices, and policy solutions have been advanced.

¹ [Umland, Beth, Sunit Patel, Tracy Watts, Health Benefit Cost Expected to Rise 5.4% in 2024. Mercer. September 7, 2023.](#)

Now is the time to take a bold and significant step toward lowering skyrocketing drug costs faced by millions of American workers and families.

Enact a strong PBM reform law this year. Many of the undersigned groups have worked with and strongly support PBM transparency and accountability reforms passed in the Senate HELP Committee by a wide bipartisan vote, S. 1339, the “*Pharmacy Benefit Manager Reform Act*.” That proposal advances policies to reorient PBM practices to lower drug costs and drive value for workers and their families. Moreover, impactful and complimentary PBM reform legislation also passed on a wide bipartisan basis in the Senate Finance Committee. That proposal, the “*Modernizing and Ensuring PBM Accountability (MEPA) Act*,” takes measurable steps to end unfair practices and ensure cost savings inure to the benefit of patients in government programs like Medicare and Medicaid. All these legislative changes are needed now, and we urge the Senate to bring these proposals to the Senate floor for debate and passage.

Contrary to what some have incorrectly suggested, employers are not satisfied with the current state of their relationships with PBMs. Spiraling drug costs are a large part of America’s health care affordability problem, and rising drug costs have not happened in a vacuum. The three largest PBMs process more than 80 percent of prescription drug claims in the U.S., giving them immense market power, and making it impossible for employers to negotiate contract terms on behalf of their employees.² This market power drives higher costs -- and employers, employees and patients are paying the price. Congress has a real opportunity to enact meaningful oversight and accountability for the PBM industry by passing real reforms this year.

Moreover, employers do not agree with assertions by the PBM industry that the practice of “spread pricing” always benefits employers or that they have no problem accessing their own company’s data when they request it. Spread pricing is a common practice among many PBMs whereby they pay lower prices to pharmacies than they charge payors and patients for drugs and retain the entire difference. Certainly no one expects PBMs to perform their services without remuneration. However, employers engage the services of PBMs for the explicit purpose of obtaining essential, and even lifesaving, medicines at the best price possible. Yet, due to the opaqueness of the arrangement and other business practices, payors are completely unaware of the extent of the “spread.” This practice has caused the state of Kentucky to completely revamp its Medicaid program.³

² [Myshkeo, Denise and Peter Wehrwein, Beyond the Bid Three PBMs. Managed Healthcare Executive. December 14, 2022.](#)

³ [Yetter, Deborah, Reprieve for Kentucky’s independent pharmacies is saving Medicaid millions, Kentucky Lantern, October 5, 2023.](#)

To be clear: with regard to the claim that PBMs are producing enormous savings for employers because of spread pricing--if this were always the case then all PBMs would presumably want to share the specifics of those savings with their customers.

Likewise, some have asserted that to question the aforementioned PBM practices is contrary to free-market principles. Private-sector employers are at the forefront of preserving a free-market health care system, offering health care benefits to millions of Americans. Free markets, however, require competition. It is well-established that market failures do exist and, therefore, failure to intervene leads to an increasingly untenable situation for consumers. The organizations signing this letter firmly believe that congressional action is necessary to correct a dysfunctional marketplace and give employers the tools they need to advance their efforts to provide medicines to their workers and families at reasonable costs.

PBM practices impact American businesses and patients. Historically, PBMs have provided an important service to help businesses obtain low costs for prescription drugs on behalf of plan sponsors. However, employers are growing more and more concerned by reports of certain practices used by most PBMs. One such practice is when a PBM and offshore affiliates such as PBM group purchasing organizations (GPOs) reportedly negotiate rebate arrangements with drug manufacturers while charging customers large and undisclosed fees.

Since PBM fees are typically higher when the cost of the drug is higher, most PBMs will regularly give higher list price drugs preferential treatment on formularies. Sometimes this is in exchange for direct payments from drug companies to the PBM in the form of “administrative fees” -- such fees are controlled by the PBMs and are usually tied to the list price of the drug. This practice often excludes hundreds of other medications, including generics and biosimilars, that could have a lower list price and net cost to the employer plan or an independent, non-vertically integrated plan. For example, we highlight the lack of formulary access for the innovative new biosimilar drugs that have come on the market to treat arthritis, Crohns, and other inflammatory conditions.⁴

Accountability must include all stakeholders across the health care system with whom private sector companies negotiate and contract. Many of us have argued that PBMs should be held accountable under the law in the same way employers are held accountable. The same standards applied to employers should also be applied to PBMs,

⁴ See Policy Statement of the Federal Trade Commission on Rebates and Fees in Exchange for Excluding Lower-Cost Drug Products, https://www.ftc.gov/system/files/ftc_gov/pdf/Policy%20Statement%20of%20the%20Federal%20Trade%20Commission%20on%20Rebates%20and%20Fees%20in%20Exchange%20for%20Excluding%20Lower-Cost%20Drug%20Products.near%20final.pdf.

and any legislation should clearly specify the parameters of PBM responsibility to ensure that they act in the best interest of the employers and patients they serve.

The undersigned groups believe robust accountability for PBMs must include the strong provisions in S. 1339 that ban spread pricing and require 100% pass-through to employer plan sponsors of rebates, discounts, fees, and other payments from drug manufacturers. These reforms will effectively de-link PBM profits from high list prices for drugs so that PBMs can be profitable while helping to ensure that employers and consumers are the primary beneficiaries of the savings negotiated by PBMs. It is unacceptable that PBMs are allowed to charge employers and patients more than what they pay for a drug, with no disclosure of how much the price has been inflated.

So too must PBM reform include legislation approved on a widely bipartisan basis by the Senate Finance Committee (also found in a House of Representatives committee bill), that bans spread pricing in Medicaid and de-links PBM revenues from drug prices in government programs. These changes are complementary to the strong provisions and changes in S. 1339. All these important legislative changes are needed to end the incentives that steer plans and patients toward higher-priced medications and make health benefits provided to employees more unaffordable.

PBM transparency alone is NOT enough, but it is vital that Congress require complete and unrestricted transparency into the PBM “black box.” Clear information on pricing, rebates, fees, and discounts is essential for employers and patients to make informed decisions and to build a functioning free market for prescription drugs. The complex rebate structure and total lack of transparency with respect to most PBMs makes it difficult for employers to manage prescription drug costs. Federal legislation requiring robust and frequent reporting from PBMs to employers-- with strong independent auditing rights--is critical for employer efforts to lower prescription drug costs.

Thank you for your attention and support for comprehensive PBM reform legislation, as it is a matter of considerable urgency. Employers, on behalf of their employees, strive to provide access to affordable prescription drugs, and PBMs should be a partner in providing value to our employees. Each day that passes without PBM reform is a day in which health benefit costs erode employer competitiveness and employee access to good health care benefits at reasonable costs. The solutions we support have considerable bipartisan support in Congress. We implore you to pass these policies now, to fix an element of drug pricing that is clearly broken.

Sincerely,

AffirmedRx
The Alabama Health Consortium

The Alliance (Midwest)
American Benefits Council
American Rental Association
Association for Accessible Medicines
Biosimilars Council
Biosimilars Forum
The Coalition to Protect and Promote Association Health Plans
Commerce and Industry Association of New Jersey
The Council of Insurance Agents & Brokers
Dallas-Fort Worth Business Group on Health
Economic Allianan for Michigan
Employers' Advanced Cooperative on Healthcare (Arkansas)
Employers' Forum of Indiana
The ERISA Industry Committee
Florida Alliance for Healthcare Value
Georgia Association of Manufacturers
Greater Philadelphia Business Coalition on Health
GTMRx Institute
HealthCareTN
Hotel Association of New York City
Houston Business Coalition on Health
HR Policy Association
Kansas Business Group on Health
Lehigh Valley Business Coalition on Health
Leukemia & Lymphoma Society
Liviniti
Maryland Association of Chain Drug Stores
Mid-Atlantic Business Group on Health
Midwest Business Group on Health
National Alliance of Healthcare Purchaser Coalitions
Navitus
North Carolina Business Coalition on Health
Partnership for Employer-Sponsored Coverage (P4ESC)
Patients Rising
Pharmacy Benefit Dimensions
Pittsburgh Business Group on Health
Purchaser Business Group on Health
Rhode Island Business Group on Health
Savannah Business Group on Health
Self-Insurance Institute of America, Inc.
Silicon Valley Employers Forum
Small Business Majority

Society of Professional Benefit Administrators
Texas Business Group on Health
Texas Food & Fuel Association
Transparency-Rx Coalition
Washington Health Alliance
Washington Hospitality Association
WellOK – The Oklahoma Business Coalition

Cc: Senate Health, Education, Labor, and Pensions Committee Chairman
Bernie Sanders (D-VT)
Senate Health, Education, Labor, and Pensions Committee Ranking Member
Bill Cassidy (R-LA)
Senate Finance Committee Chairman Ron Wyden (D-OR)
Senate Finance Committee Ranking Member Mike Crapo (R-ID)