CHAMBER HILL

INSIGHTS

Senate Finance Committee Passes PBM Reform

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On July 26, 2023, the Senate Finance Committee held an open executive session to discuss and vote on modernizing and creating increased accountability for Pharmacy Benefit Managers (PBMs). The mark-up session was extremely bipartisan. Fourteen amendments were offered and immediately withdrawn by their respective sponsors. The final bill was voted out of the committee 26-1. (See Page 2 in this memo for a summary of all provisions adopted.)

In addition to passing the bill, Chairman Ron Wyden (D-OR) and Ranking Member Mike Crapo (R-ID) pledged that they would work in September to adopt many of the ideas set forth in the withdrawn amendments. In particular, Senators Wyden and Crapo said they want to pass the following out of committee in September:

- Amendment by Sen. Chuck Grassley (R-IA) – to create a hotline for pharmacies and others to report non-compliance by PBMs.
- Amendment by Sen. John Cornyn (R-TX) – to ensure that any rebates under Part D from PBMs are passed on to beneficiaries.
- Amendment by Sen. John Thune (R-SD) – to create a pilot program to encourage providers to use a real-time benefit tool to get patients pricing information at the point of prescription.
- Amendment by Sen. Thune – to encourage pharmacists to offer health care services such as health and wellness screenings, immunizations, and diabetes management by authorizing Medicare payments for those services where pharmacists are already licensed under state law to provide them..
- Amendment by Sen. Thune – to report how 340B savings are used including how such amount in excess of the acquisition costs of the drugs are used to provide uncompensated or undercompensated services to beneficiaries.
- Amendment by Sen. Bob Casey (D-PA) – to limit beneficiary cost-sharing to no more than the plan's price for the prescription drug covered under Medicare.
- Amendment by Sen. James Lankford (R-OK) – to ensure pharmacies are no longer subject to practices that limit network participation and steer patients away from certain types of pharmacies. The amendment ensures PBMs and plans use standardized pharmacy quality and performance metrics and that these metrics are fairly applied as well as ensuring transparency in payments and fees issued by PBMs.

- Amendment by Sen. Lankford – to ensure that approved generic drugs are not placed on the higher branded tier when released but placed on the generic tier instead.
- Amendment by Sen. Hassan (D-NH) – to require a MedPAC report to Congress on out-of-pocket costs that seniors pay to receive services at a hospital-owned physician's office vs. a free-standing physician office.

We will continue to follow committee work in these areas.

SUMMARY OF THE PROVISIONS IN THE ADOPTED BILL

The bill had three major subjects: PBM pricing, PBM transparency, and new provisions for retail pharmacies.

For pricing, the bill would delink PBM income from the price of the prescription drug. It would also require the PBM to ensure that written agreements with drug plans would be transparent and consistent when calculating pricing guarantees of cost performance evaluations.

To create more transparency, the bill also increases PBM reporting requirements by mandating annual reports on drug prices and other information to Part D plans and the Secretary of Health and Human Services (HHS). It also permits Part D plans to audit their partner PBMs to ensure compliance with agreed upon contracts. Any findings of non-compliance in the audit will create civil monetary penalties.

For pharmacies, this bill bans PBM spread pricing in Medicaid. It also requires the HHS Secretary to create new performance measures for pharmacies taking effect in 2025. The bill establishes a process by which Part D plan sponsors provide their network pharmacies comprehensive information about pricing prescription drug claims to help increase predictability in pharmacy reimbursement. Lastly, the bill requires retail community pharmacies to participate in the National Average Drug Acquisition Cost (NADAC) survey which is used in Medicaid programs.

There is also a mandated study for the HHS Office of the Inspector General (OIG) to look at the impact of vertical integration (in Plans, PBMs, and pharmacies) on beneficiary out-of-pocket cost and Medicare spending.

The $1.73 billion in savings from this bill is earmarked for the Medicare Improvement Fund and cannot be used for other purposes.

We trust you found this summary useful. Please reach out to us with any questions.