

February 5, 2024

Dear Chairman Comer and Ranking Member Raskin:

The Pharmaceutical Research and Manufacturers of America (PhRMA) would like to express our support for H.R. 6283, the DRUG Act, which would help address misaligned pharmacy benefit manager (PBM) incentives that experts have concluded can drive up costs for patients, employers, and the health care system as a whole.¹

PhRMA represents the country's leading innovative biopharmaceutical research companies, which are devoted to discovering and developing medicines that enable patients to live longer, healthier, and more productive lives. Since 2000, PhRMA member companies have invested nearly \$1 trillion in the search for new treatments and cures, including \$101 billion in 2022 alone.² We, like the American public, support a U.S. health care system that provides patients and their physicians with access to a wide range of treatment options, without cumbersome restrictions imposed by PBMs and their vertically integrated affiliates seeking to maximize their bottom lines.

Current PBM practices are bad for competition, innovation, and patients. PBMs are gatekeepers with extraordinary bargaining leverage which they use to maximize their profits, often in ways that harm patients and others. After nearly two decades of horizontal consolidation, just three PBMs account for 80% of the market.³ And in recent years, the three largest PBMs – CVS Caremark, Express Scripts, and OptumRx – have combined with health insurers, specialty and mail order pharmacies, and provider groups to form large, vertically integrated corporations that each rank among the top 15 companies on the Fortune 500.

Through this horizontal and vertical integration, PBMs' role in the prescription drug supply chain has grown, as has their influence over which medicines patients have access to, the circumstances under which those medicines are covered, when and where they can be dispensed or administered to patients, and the amount paid out of pocket by patients. Moreover, the amount and proportion of value extracted out of the health care system by these vertically integrated intermediaries has risen dramatically.

According to a recent analysis conducted by Nephron Research, the share of PBM profits from fees charged to manufacturers, pharmacies, health insurers, and employers increased by more than 300% over the last decade.⁴ The fees that PBMs charge to manufacturers are commonly based on a percentage of medicines' list prices and experts have noted that fees and other list-price based compensation may create incentives for PBMs to maximize their revenue by favoring higher priced medicines over lower cost alternatives.⁵ This practice can increase costs for employers and negatively impact patients with deductibles or coinsurance. Additionally, the list price-based fees PBMs obtain from manufacturers are widely perceived as a barrier to lowering list prices.⁶ Despite public statements by PBMs that they encourage manufacturers to lower list prices,^{7,8} at least one PBM has introduced contract terms that discourage list price reductions.⁹

The DRUG Act would break the link between PBM compensation and the price of medicines, helping to fix the misaligned PBM incentives that can drive up costs for patients. Delinking could also increase coverage of lower cost alternatives, including generics and biosimilars, and generate savings for employers and plan sponsors.¹⁰ Basing PBM fees on the services they provide, rather than the price of medicines, preserves PBMs' ability to freely negotiate their fees with manufacturers and other stakeholders. Reforms that hold PBMs accountable and provide relief to patients would spur more competition and make the market work like it should.

We hope you will support the passage of the DRUG Act, which will provide needed relief to the U.S. Office of Personnel Management (OPM) as it contracts with PBMs to administer the Federal Employees Health Benefits Program, as well as other commercial market payers seeking better accountability for PBMs as they work to provide health insurance benefits to their employees.

Sincerely,



Stephen J. Ubl
President and CEO
PhRMA

¹ See 84 Fed. Reg. 2340, 2341 (Feb. 6, 2019) (summarizing publications by MedPAC, OIG, and others discussing harms to patients).

² PhRMA. "2023 PhRMA Annual Membership Survey," July 2023. <https://phrma.org/en/resource-center/Topics/Research-and-Development/2023-PhRMA-Annual-Membership-Survey>

³ Fein A. The Top Pharmacy Benefit Managers of 2022: Market Share and Trends for the Biggest Companies, May 2023. <https://www.drugchannels.net/2023/05/the-top-pharmacy-benefit-managers-of.html>; Herman B. FTC may probe pharmacy benefit managers, Axios. February 14, 2022. <https://www.axios.com/ftc-study-pharmacy-benefit-managers-drug-prices-3078116f-382a-4b05-ac62-da5bc1d1b892.html>

⁴ Nephron Research. Trends in Profitability and Compensation of PBMs and PBM Contracting Entities, September 2023. <https://mailchi.mp/nephronresearch.com/pbmcompensation>

⁵ See 84 Fed. Reg. 2340, 2341 (Feb. 6, 2019) (summarizing publications by MedPAC, OIG, and others discussing harms to patients).

⁶ Percher E. Trends in Profitability and Compensation of PBMs and PBM Contracting Entities. Nephron Research. September 2023. <https://nephronresearch.com/trends-in-profitability-and-compensation-of-pbms-and-pbm-contracting-entities/>

⁷ Testimony of Steve Miller, Executive Vice President and Chief Clinical Officer, Cigna. "Drug Pricing in America: A Prescription for Change, Part III. United States Senate Committee on Finance. April 9, 2019. <https://www.finance.senate.gov/imo/media/doc/Cigna%20ExpressScripts%20Testimony%20of%20Steven%20Miller%20MD.pdf>

⁸ PCMA. "Comments on Department of Health and Human Services Office of Inspector General, Fraud and Abuse; Removal of Safe Harbor Protection for Rebates Involving Prescription Pharmaceuticals and Creation of New Safe Harbor Protection for Certain Point-of-Sale Reductions in Price on Prescription Pharmaceuticals and Certain Pharmacy Benefit Manager Service Fees. Proposed Rule." April 8, 2019. <https://www.pcmanet.org/wp-content/uploads/2019/04/PCMA-Comments-on-Safe-Harbor-Proposed-Regulations.pdf>

⁹ Gal A, Wilkes L, Chen A, et al. "Biopharma and managed care: UNH reaches out to pharma to manage rebate change, but change is hard and pain will spread." Bernstein Research. February 8, 2019.

¹⁰ 3 Axis Advisors. Evaluation of Federal Drug Pricing Proposals: A Series of Short Essays. July 25, 2023. <https://www.3axisadvisors.com/s/3AA-Delinking-PBMA-Analysis-Part-1-0723.pdf>