



July 23, 2024

The Honorable Chairman James Comer  
United States House Committee on Oversight and Accountability  
United State House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

The Honorable Ranking Member Jamie Raskin  
United States House Committee on Oversight and Accountability  
United State House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

**Re: The Role of Pharmacy Benefit Managers in Prescription Drug Markets Part III: Transparency and Accountability.**

Dear Chairman Comer and Ranking Member Raskin:

Thank you for holding this important hearing on Pharmacy Benefit Managers (PBMs). Some PBM practices have put participants, beneficiaries, and enrollees at risk, and restricted underserved individuals' access to safe and affordable prescription drugs. ASHP is the largest association of pharmacy professionals in the United States, representing over 60,000 pharmacists, student pharmacists, and pharmacy technicians in all patient care settings, including hospitals, ambulatory clinics, and health-system community pharmacies. Our members have seen firsthand how PBM practices can limit and put at risk patient care.

**Bring Transparency to PBM Rebates:** PBMs solicit and receive lucrative rebates from drug manufacturers in exchange for favorable formulary placement and marketshare, even when these medications may not be the lowest cost option for patients. These rebates are opaque and need greater transparency. Congress should require that PBMs and manufacturers provide full transparency into any rebate that results in favorable formulary placement for a medication, particularly when this results in higher out-of-pocket costs for the patient or the employer sponsored plan.

**Protecting Access to Low-Cost Biosimilars:** Uptake of biosimilars lags behind coverage of small molecule generic drugs. In exchange for lucrative rebates from drug manufacturers, insurers and their PBMs typically only cover one preferred brand of any given biologic product, excluding all other biosimilar products. This is contrary to how plans cover small molecule drugs where they are required to cover all commercially available generics and undermines patient access to lower costs versions of biological medications. Congress should require that, an individual or group health plan, and its PBM, that cover a reference (brand name) biologic or any biosimilar of the reference product, must cover *all* biosimilars of that product.

**Pharmacy Fees:** Pharmacy fees have increased exponentially over the last few years. According to data released by CMS, "performance-based pharmacy price concessions, net of all pharmacy incentive payments, increased, on average, nearly 170 percent per year between 2012 and 2020 and now comprise the second largest category of DIR received by sponsors and PBMs, behind only manufacturer rebates"<sup>1</sup> These fees were originally created to incentivize quality. However, they have become arbitrary. For instance, many times the quality metric a pharmacy fee is based on is irrelevant to the setting and medical condition a drug is used to treat. Pharmacy fees are also usually unknown until a drug is dispensed and the claim adjudicated. Until recently, these fees were enforced retroactively. While the retroactive collection of fees is expected to terminate based on CMS's recent ruling, vague administrative fees and unclear performance measures may not be impacted.<sup>2</sup> An individual or group plan, and its PBM, should be prohibited from enforcing pharmacy fees except when the quality measure on which a fee based is directly related to the condition a patient is being treated and is appropriate for the setting the patient is being treated in. Lastly, any fee to be collected and related to pharmacy performance should be clearly defined within the contract with a pharmacy, allowing pharmacies to properly forecast budgeting and understand expectations.

**Prohibiting White and Brown Bagging:** White bagging occurs when a PBM or other payor requires patient medications be distributed through a narrow network of specialty pharmacies that are often affiliated with the PBM before the pharmaceuticals are then sent to a site of care, such as a hospital, where they will be dispensed by a provider. By circumventing the traditional and regulated hospital supply chain, white bagging raises patient safety risks by enabling diversion and heightening the possibility of drug spoilage/wastage. Brown bagging occurs when a PBM ships medications to a patient, who then must take the pharmaceutical to the provider for administration. These medications typically require special storage and handling. White bagging and brown bagging put pharmaceuticals at risk of spoilage, contamination, and diversion, putting patients' health at risk. Congress should prohibit PBMs from imposing white and brown bagging.

**Protecting the 340B Program and Providers Against Discrimination:** Safety net hospitals rely on the 340B Drug Pricing Program to provide healthcare services, including care for uninsured and underinsured patients. However, PBMs have been discriminating against 340B providers, including excluding them from networks and reducing reimbursements for 340B purchased drugs. Congress should prohibit PBMs from discriminating against 340B providers with the intent of reducing reimbursements for 340B purchased drugs, or excluding 340B providers from networks or requiring payment of fees or the use of specific claims software for claims related to 340B discounted medications.

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<sup>1</sup> Federal Register / Vol. 87, No. 89 / Monday, May 9, 2022 / Rules and Regulations; page 27834.

<sup>2</sup> *Id.*

ASHP's Statement on the House Oversight Hearing on, "The Role of Pharmacy Benefit Managers in Prescription Drug Markets Part III: Transparency and Accountability."

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ASHP thanks you for holding this hearing regarding PBMs, which will ensure participants, beneficiaries, and enrollees have access to safe and effective drugs. We look forward to continuing to work with you on this issue. If you have questions or if ASHP can assist in any way, please contact Frank Kolb at [fkolb@ashp.org](mailto:fkolb@ashp.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Kraus", with a stylized flourish at the end.

Tom Kraus  
American Society of Health-System Pharmacists  
Vice President, Government Relations