Considerations for Section 306 of S. 1895, the Lower Health Care Costs Act

Section 306 of S. 1895, the Lower Health Care Costs Act, would significantly limit employers' choice in how they contract with pharmacy benefit managers (PBMs) by prohibiting the practice of spread (or risk mitigation) pricing; requiring that 100% of all rebates, fees, discounts, or other remuneration be passed through to plan sponsors; and requiring unnecessarily detailed reporting to plan sponsors. The result: higher costs, less predictability in managing pharmacy costs, and reduced flexibility for all employers.

Nothing in this section will reduce employer costs for prescription drugs, and several provisions may raise costs to employers.

Section 306 interferes in the ability of employers to choose contract terms that best suit their needs. Some employers choose risk mitigation ("spread") pricing instead of cost-plus ("pass-through") pricing to ensure predictability in knowing what their prescription drug costs will be. That choice should be theirs to make.

If changes are made to spread pricing and rebate retention clauses as Section 306 proposes, service fees will be the predominant method of PBM compensation going forward.

- Unlike risk mitigation and performance-based payment methods, service fees are not directly tied to incentives to reduce pharmaceutical costs or negotiate for lower net costs for specific drugs.
- Many employers prefer risk-based contracting strategies that incentivize performance and value. Risk mitigation pricing aligns the PBM's incentives with those of the employer or other plan sponsor to achieve the lowest possible cost.
- Moving to a flat, service fee model (such as cost-plus pricing) is going backward in time to fee-for-service for pharmaceutical benefits.

Spread pricing (or risk mitigation pricing) provides employers a price-certain for prescription drug benefit payments to pharmacies, where the PBM takes on the risks of daily fluctuations in drug prices and differing pharmacy charges for the same drug and is incentivized to push pharmacies to reduce their acquisition costs.

- The specific language in the bill does not contemplate that PBMs are at risk for drug prices and can (and do) sometimes pay pharmacies more than PBMs are paid by clients. Spread pricing does not necessarily guarantee a net-positive outcome for PBMs.
- Instead, it is a client-demanded contracting option that brings much needed predictability to many employer accounts. The very existence of spread pricing contracting is evidence of the demand for this type of contracting flexibility.
- According to the Pharmacy Benefit Management Institute, an independent research and education organization, 37% of respondents chose spread pricing contracts with their PBMs in 2018. Smaller employers (43%) reported they were more likely to use spread pricing than large employers (29%).[1] Some PBMs report that many more employer clients choose spread pricing.

[1] Pharmacy Benefit Management Institute. 2018 Trends in Drug Benefit Design. http://www.pbmi.com/benefitdesignrpts.

Payment requirements regarding partially or wholly owned pharmacies interfere with changes in the market that have led to significant improvements in efficiency and will increase costs to employers.

Requiring rebate pass through undermines performance-based contracts, through which the interests of the PBM and the employer or health plan sponsor are aligned to achieve the lowest possible cost—to negotiate the greatest discounts from manufacturers, since PBMs would keep a portion of the negotiated rebates.

The bill requires the disclosure of dozens of new data elements, not only increasing administrative costs due to new reporting burdens but also providing plan sponsors with information about specific drugs their employees are taking, which could raise privacy concerns.

- The new reporting requirements will be costly, requiring thousands of new hours of data analysis and reporting, and these costs will be directly borne by employers and other plan sponsors as the cost of providing pharmacy benefits to employees and other plan members increases.
- Requiring the reporting of the number of enrollees dispensed a specific drug, or even a drug in A particular therapeutic class, puts employers in possession of personally identifiable health information protected by HIPAA—with no clear benefit to the employer, and a high level of risk to the employee.

The employer or health plan sponsor, as the purchaser of pharmacy benefit services and as payer of a prescription drug benefit, should have the final say on the type of pricing model and contract that works best for them.

Removing options from employers in how they choose to structure their benefits will only increase costs and reduce predictability.