PCMA

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 limit employers' choice in how they contract with pharmacy benefit managers (PBMs) by prohibiting the risk mitigation contracting models (sometimes referred to as "spread pricing"), requiring exclusive use of pass-through models whereby the amount paid by the PBM to the pharmacy is passed through to the health plan sponsor, and the PBM is compensated through administrative fees. The result: higher costs, less predictability in managing pharmacy costs, and reduced flexibility for employers.*

Nothing in this section will reduce employer costs for prescription drugs, while several provisions may raise costs to employers. Section 306 interferes in the ability of employers to choose contract terms that best suit their needs.

- Employers and plan sponsors may choose risk mitigation pricing to ensure the predictability of their prescription drug costs. **That choice should be theirs to make.**
- **PBMs provide value by taking on financial risk and negotiating lower drug costs.** Removing options from employers and plan sponsors will not lower drug costs, insurance premiums, or enrollee's out-of-pocket costs, and will only increase costs and reduce predictability.

If changes are made to risk-mitigation pricing models (sometimes referred to as "spread") and rebate retention clauses as Section 306 proposes, service fees will be the predominant method of PBM compensation going forward. Service fees are not directly tied to incentives to reduce drug costs or negotiate for lower net costs for specific drugs.

A risk mitigation pricing model provides employers and other health plan sponsors cost predictability by giving a price-certain for prescription drug benefit reimbursement to pharmacies. If the pharmacy charges more than the rate agreed to between the plan sponsor and the PBM, the PBM takes a loss, as it must pay the pharmacy more than it will be reimbursed by the plan sponsor. If the pharmacy charges less than the PBM's negotiated rate with the plan sponsor, the PBM earns a margin.

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

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

PBMs report that many more of their employer clients, than suggested by PBMI, choose risk mitigation pricing.

Eliminating risk mitigation models and requiring pass-through pricing undermines performance-based contracts and disincentivizes competitively negotiated, private-sector arrangements that allow for greater cost predictability and lower risk for each prescription dispensed.

The bill also would require 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 the 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.**