Senate D Messaging

- Prioritize discussion around "pharma's delinking proposal" and emphasize that, if enacted, Big Pharma will get a $10B giveaway in Medicare alone in discounts they would no longer have to give – billions more in commercial market – which is why pharma has made this their #1 policy and business priority.
- Push the need for help with Senate leadership as final PBM language is negotiated and prepared for Senate floor consideration or inclusion in a year-end legislative package.
- Request they ask Leader Schumer not to allow a broad, sweeping anti-PBM legislative package and focus in particular on proposals related to delinking.
- Remind them of the list of other harmful proposals - emphasize the need for a more thoughtful and balanced approach to addressing high drug costs.
- Emphasize that Big Pharma stands to gain from other proposals on the table as well and encourage them to not do their bidding for them
- Educate that PBM services account for only 6 percent of drug costs, while this legislation does nothing to reduce pricing by the remaining 94 percent of the pharmaceutical supply chain and will not lower drug costs for patients.

OVERVIEW OF MOST SIGNIFICANT INDUSTRY CONCERNS/HARMFUL PROPOSALS:

- **Delinking** – separating PBM compensation from list price, threatening PBMs' ability to best drive down costs for clients, results in an annual $10B Big Pharma bailout in Medicare alone, representing discounts they would no longer give. This number is billions more when taking the commercial market into account.
    - In a recent employer group survey, 91% of employers say it is important to have flexibility and choice in how their organization uses rebate dollars, with 90% of employers who receive rebates from PBMs using those rebates to the benefit of employees, including lowering employee spending on benefits and enhancing coverage.
- Ban on commercial **spread pricing** agreements and **requiring 100 percent rebate pass through**, stifling client choice and ability of union plans – ERISA, Taft-Hartley, and EGWP – to design benefit and compensation arrangements that best fit the unique needs of their employees and retirees. Employers want predictability and choice and should be able to choose how to pay their PBMs. They don't have to choose spread or allow PBMs to retain any rebates but they should get to make that choice.
    - In fact, 93% of employers in a recent survey conducted by an employer group (CAPD) say it is essential to have flexibility and a range of choices in how they offer prescription drug benefits to employees, with 86% of employers saying it is important to have a range of options in how they pay PBMs for their services and expertise.
- Touch on concern with **transparency** proposals that could lead to tacit collusion, but emphasize industry willingness to address actionable transparency to clients.
    - A recent employer survey of more than 700 employers actually found that 89 percent of employers who use a PBM describe their contract as transparent.
    - PBMs already comply with extensive reporting requirements from various federal departments and agencies.

- Interference in employer/union choice to design most affordable benefits for their workers will ultimately hurt the employees.
    - Several unions recently wrote a letter to the Senate HELP Committee asking them to shield employer health plans from PBM legislation.
- Emphasize that across the board, anti-PBM proposals being considered are not only a win for Big Pharma but will **likely drive up the costs of prescription drugs for all patients.**
    - Research shows that "pharma's delinking proposal" will drive up premiums for Medicare (up to $10 billion) and commercial (up to $26 billion) plans, forcing patients to pay more for their coverage.
    - Employers and plan sponsors use the rebates that PBMs negotiate to lower premiums and offer more comprehensive benefits for employees – disrupting that system will lead to higher costs for employees and their families.
    - Transparency proposals would force the disclosure of information that helps PBMs negotiate with drug companies – if competition decreases, then drug companies will be less willing to negotiate, and the higher list prices will be passed on to patients.

Delinking:

- Delinking in Part D would result in a financial windfall for big drug companies, with an additional $10 billion every year for them in Medicare alone ($32 billion more in commercial market), while costing patients and payers up to $54 billion ($18B for Medicare & $26B for commercial).
    - Noting that pay for performance is a well-proven economic tool, University of Chicago Professor of Economics Casey Mulligan published new research findings that find that enactment of PBM "delinking" would:
        - Significantly increase drug costs, reduce drug utilization, and redistribute billions of dollars annually from patients and taxpayers to pharmacies and drug companies.
        - Reduce the negotiated rebates and discounts PBMs pass to union and employer health plans, and Part D plans that are used to lower drug costs for patients and taxpayers, which could lead plans to raise premiums to finance drug benefits.
        - Reduce health insurance coverage and appropriate drug utilization as costs for patients rise.
- The Medicare benefit's restructuring to reduce federal government risk, increase part D plan risk, and smooth and cap beneficiary out-of-pocket costs at $2000 is already in process under the IRA. Congress should use caution in attempts to impose further changes to the program in an effort to avoid destabilizing the program.
    - Part D plans are working around the clock to make these major changes to the program and to implement them as seamlessly as possible for patients.
    - No one, however, fully understands how these changes will impact the program and competition. Imposing additional, new, and untested proposals such as de-linking could destabilize the Part D program.
- Pay-for-performance arrangements are key methods to drive savings for employers, unions, and other plan sponsors.
    - Recent proposals in Congress have suggested prohibiting PBMs from being compensated based on a drug's list price or utilization. This drastic change in how PBMs work will cost employers, taxpayers, and patients exorbitantly – and will provide a massive financial windfall for drug companies who will be able to avoid discounting

    - their products, keeping what otherwise would be rebates as profit.
    - Delinking PBM compensation from a drug's list price singles out one supply and payment chain participant while all others continue to be paid based on that longstanding standard. Drug companies, wholesalers, pharmacies, and even physicians (in the case of physician-administered drugs) are compensated on a basis that ties back to the list price of a drug.
    - Throughout the U.S. economy people and businesses are incentivized to perform well through the opportunity to benefit from the effects of their efforts. Delinking would work in a manner contrary to established economic principles known to produce better outcomes.
- The fundamental problem is high list prices – which is set solely by drug manufacturers. Nearly every participant in the drug supply chain is compensated based on list price, underscoring that it all starts and ends with the prices set by drug companies.

Spread Pricing and Mandatory 100% Rebate Pass-through:

- We need to preserve employer/union choice in contracting options and the flexibility they value when designing their benefits.
    - Plan sponsors are not obligated to hire PBMs, but a vast majority choose to because of the flexibility and wide range of options they provide when designing their prescription drug benefit.
    - At a time when health care costs are soaring and high inflation is impacting all Americans, proposing an outright ban on spread contracting, as well as mandating that PBM clients have no choice on whether they want to pay for pharmacy benefit services through rebate retention, will only further drive-up costs for employers and patients.
    - Preserving options for employers, especially smaller self-insured employers, to choose how best to contract with PBMs will allow these plans sponsors make the choices that best suit their goals and needs when providing pharmacy benefits to their employees.
    - Employers, including many small and mid-sized businesses, choose spread pricing because of the price predictability, which enables them to extend their health benefit dollars.
    - Drug rebates are used to lower drug costs. When a PBM is able to capitalize on a competitive drug market and negotiate higher rebates, that equates to lower drug costs for patients and plan sponsors.
    - 93 percent of employers say it is essential to have flexibility and a range of choices in how they offer prescription drug benefits to employees, with 86 percent of employers saying it is important to have a range of options in how they pay PBMs for their services and expertise.
        - The same number (86 percent) say it is important to have flexibility in how their organization manages the financial risk related to prescription drug spending. Nearly one third of employers choose to manage that risk and compensate their PBM through "spread" or risk-mitigation/predictable pricing.

- **ASK:** please weigh in with Senate leadership to express concern with legislation that singles out PBMs and, in particular, legislation that limits employer/union choice and flexibility to contract with their PBMs in the ways that best meet their individual needs.

R Senate Messaging

- Political: Don't allow Senate Democrats, who are using Big Pharma's self-serving agenda, to "get a win" going into 2024.
- Prioritize discussion around "pharma's delinking proposal" and emphasize that, if enacted, Big Pharma will get a $10B giveaway in Medicare alone in discounts they would no longer have to give – billions more in commercial market – which is why pharma has made this their #1 policy and business priority.
- Request they ask Leader McConnell not to allow a broad, sweeping anti-PBM legislative package and focus in particular on proposals related to delinking.
- Remind them of the list of harmful proposals, all of which benefit Big Pharma– emphasize the need for a more holistic and balanced approach to addressing high drug costs.
- PBMs are effective private market negotiators with drug companies and pharmacies on behalf of employers. Eroding PBM tools only further plays into a one-size-fits-all government pricing/IRA expansion.
- PBM services account for only 6 percent of drug costs, while this legislation does nothing to reduce pricing by the remaining 94 percent of the pharmaceutical supply chain and will not lower drug costs for patients.
- Any legislation aimed at lowering costs must focus on the entire prescription drug supply chain and encourage greater competition, which is the most effective way to drive down costs.

OVERVIEW OF MOST SIGNIFICANT INDUSTRY CONCERNS/HARMFUL PROPOSALS:

- **Delinking** – separating PBM compensation from list price, threatening PBMs' ability to best drive down costs for clients.
    - In a recent employer group survey, 91% of employers say it is important to have flexibility and choice in how their organization uses rebate dollars, with 90% of employers who receive rebates from PBMs using those rebates to the benefit of employees, including lowering employee spending on benefits and enhancing coverage.
- Ban on commercial **spread pricing** agreements and **requiring 100 percent rebate pass through**, stifling employer choice.
    - In fact, 93% of employers in a recent survey conducted by an employer group (CAPD) say it is essential to have flexibility and a range of choices in how they offer prescription drug benefits to employees, with 86% of employers saying it is important to have a range of options in how they pay PBMs for their services and expertise.
- Touch on concern with **transparency** proposals that could lead to tacit collusion, but emphasize industry willingness to address transparency to clients.
    - A recent employer survey of more than 700 employers actually found that 89 percent of employers who use a PBM describe their contract as transparent.
    - PBMs already comply with extensive reporting requirements from various federal departments and agencies.
- **Government overreach into private market contracting and employer choice.**

Delinking:

- The Medicare benefit's restructuring to reduce federal government risk, increase part D plan risk, and smooth and cap beneficiary out-of-pocket costs at $2000 is already in process under the IRA. Congress should use caution in attempts to impose further changes to the program in an effort to avoid destabilizing the program.
    - Part D plans are working around the clock to make these major changes to the program and to implement them as seamlessly as possible for patients.
    - No one, however, fully understands how these changes will impact the program and competition. Imposing additional, new, and untested proposals such as de-linking could destabilize effect on the Part D program.
- Importance of allowing pay-for-performance arrangements that drive the biggest savings for employers, unions, and other plan sponsors.
    - A financial reward for greater rebates and discounts results in greater rebates and discounts.
    - Recent proposals in Congress have suggested prohibiting PBMs from being compensated based on a drug's list price or utilization. This drastic change in how PBMs work will cost employers, taxpayers, and patients exorbitantly – and will provide a massive financial windfall for drug companies who will be able to avoid discounting their products as deeply, keeping what otherwise would be rebates as profit.
        - In fact, a recent analysis estimated that annual federal spending on Medicare Part D premiums would increase $3 billion to $10 billion if "delinking" legislation was implemented
    - Delinking PBM compensation from a drug's list price singles out one supply and payment chain participant while all others continue to be paid based on that longstanding standard. Drug companies, wholesalers, pharmacies, and even physicians (in the case of physician-administered drugs) are compensated on a basis that ties back to the list price of a drug.
    - Throughout the U.S. economy people and businesses are incentivized to perform well through the opportunity to benefit from the effects of their effort. Delinking would work in a manner contrary to established economic principles known to produce better outcomes.

Spread Pricing:

- We need to preserve employer/union choice in contracting options
    - Plan sponsors are not obligated to hire PBMs, but a vast majority choose to because of the savings, flexibility and wide range of options they provide, helping plan sponsors extend their benefit dollars and enabling them to design their prescription drug benefits according to their needs.
    - At a time when health care costs are soaring and high inflation is impacting all Americans, proposing an outright ban on spread contracting as well as mandating that PBM clients have no choice on whether they want to pay for pharmacy benefit services through rebate retention, will only further drive up costs for employers and patients.
    - Preserving options for employers, especially smaller self-insured employers, to choose how best to contract with PBMs will allow these plans sponsors to make the choices that best suit their goals and needs when providing pharmacy benefits to their employees.
    - Employers, including many small and mid-sized businesses voluntarily choose spread

pricing because of the price predictability, taking away that choice just leaves employers, including small businesses, with fewer choices.
    - Drug rebates are used to lower drug costs. When a PBM is able to capitalize on a competitive drug market and negotiate higher rebates, that equates to lower drug costs for patients and plan sponsors.
    - 93 percent of employers say it is essential to have flexibility and a range of choices in how they offer prescription drug benefits to employees, with 86 percent of employers saying it is important to have a range of options in how they pay PBMs for their services and expertise.
        - The same number (86 percent) say it is important to have flexibility in how their organization manages the financial risk related to prescription drug spending. Nearly one third of employers choose to manage that risk and compensate their PBM through "spread" or risk-mitigation/predictable pricing.

- **ASK**: please weigh in with Senate leadership to express concern with legislation that singles out PBMs and, in particular, legislation that limits employer choice and flexibility to contract with their PBMs in the ways that best meet their individual needs.