The Draft Senate DRUG Act language Will Not Help Patients, Lower Drug Prices, or Save Anyone Money

The draft Senate Delinking Revenue from Unfair Gouging (DRUG) Act language is based on a pharma narrative that only serves to allow pharmaceutical manufacturers to increase drug prices and their own profits. The draft text proposes to limit pharmacy benefit managers (PBM) fees to a flat dollar amount that cannot be tied to 1) a drug's list price or benchmark; 2) discounts, rebates, fees, or other remuneration; or 3) any other amount as specified by the United States Department of Human and Health Services (HHS), Treasury, and Labor departments. This will serve to reduce PBM negotiating leverage to bring pharma's prices down, have a disproportionate financial impact on small drugmakers, disincentivize paying for value, reduce the number of checks on pharma's monopolistic pricing power, and limit union and employer choice. All told, pharma wins while everyone else pays more.

Today, the arm's length negotiations between manufacturers and PBMs over formulary access and formulary treatment results in significant savings in the form of lower overall drug costs for employers and other plan sponsors, and ultimately, lower premiums for patients.

"Delinking" isn't the solution to consumer affordability challenges

- The DRUG Act **disincentivizes value-based payment arrangements between PBMs and plan sponsors** by prohibiting PBMs from being compensated based on the success of the arrangement, including reducing overall plan costs.
- PBMs and plan sponsors often engage in contracts that include guaranteed discounts (in the form of rebates) for the plan sponsor. Employers, unions, and other plan sponsors can choose to let their PBM keep some of the discounts in excess of the guarantee in lieu of administrative fees. **The proposed legislation would limit plan sponsors' options by prohibiting PBMs from retaining any amount related to how well they are able to save the plan sponsor money.**
- Small plan sponsors often utilize pharmacy spread contracting, which also would be prohibited under the DRUG Act. This contracting allows for the PBM (rather than the sponsor) to bear the financial risk of a patient choosing an expensive pharmacy. If a patient goes to a pharmacy that costs more than the contracted terms, the PBM covers the excess costs. **This proposal further limits plan sponsors' options by prohibiting spread pricing.**

Unintended consequences

- The DRUG Act could change benefit offerings based on impacts to plan sponsors' **Medical Loss Ratio (MLR) and high-deductible health plans.** Because service fees are accounted for on the administrative cost side of the ledger of MLR, the language in the draft text would increase administrative costs while direct care costs for plan enrollees would remain unchanged. Additionally, some high-deductible health plans use list price to calculate patient out-of-pocket costs. This proposal does not deter higher list prices and removes tools that plan sponsors use to limit price increases.
- The DRUG Act would harm competition in the PBM space, **crowding out smaller competitors in the market and leading to further PBM market consolidation.** Because PBM compensation would be limited to bona fide service fees, there would be less contracting differentiation in the market, eliminating niche markets. The likely result would be plan sponsor contracts being awarded to larger PBMs with larger market share that can charge less for administrative services due to volume of business or guarantee higher price concessions from pharmaceutical manufacturers and pharmacies.

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