

Pharmacists Fight Back Act of 2024

Summary

On July 23, 2024, Rep. Auchincloss (D-MA) introduced the Pharmacists Fight Back Act, aimed at establishing pharmacy payment and reimbursement regulations, prohibiting certain PBM practices, and increasing prescription drug pricing transparency in federal health care programs (Medicare Part D, Medicaid, FEHB, and TRICARE).

Key Provisions

- Sets a reimbursement floor for pharmacies participating in federal health care programs requiring PBMs to reimburse in-network pharmacies the lesser of:
 - NADAC or WAC + 2%
 - NADAC or WAC + \$25and
 - A dispensing fee equal to the dispensing fee paid by the state in which the pharmacy is located
- Requires patient cost-sharing to be based on the lesser of:
 - 80% of all rebates
 - 80% of average aggregate rebate from the prior year or the highest possible rebate that could be received
- Prohibits PBMs from:
 - Steering beneficiaries to specific pharmacies
 - Charging beneficiaries more than the pharmacy reimbursement
 - Requiring beneficiaries to use brand-name drugs when generics are available
 - Offering spread pricing
 - Reconciling reimbursements in a manner that could reduce pharmacy reimbursement post adjudication unless an audit determines there has been an overpayment, misfill, or fraud and all recoupments are passed through to the appropriate federal health care program
- Designates knowing, willful violations of the act as felonies punishable by fines up to \$1,000,000 per act, imprisonment up to 10 years, or both
 - Civil actions can be brought in the name of and individual and the U.S. Government
- Defines the following terms:
 - Newly defines *affiliate* as an entity, including a pharmacy, that directly or indirectly through one or more intermediaries – owns, controls, or has an investment interest in a PBM; is owned, controlled by, or has an investment interest holder who is a PBM; or is under common ownership or corporate control of a PBM.
 - Defines *in-network pharmacy* as a pharmacy that is licensed by the State board of pharmacy in the State in which such pharmacy is located, that fills or seeks to fill a prescription for a prescription drug for a beneficiary, and is not an excluded entity and does not have an owner or employee who is on a list of excluded individuals or entities maintained by the Office of Inspector General pursuant to section 1128 of the Social Security Act (42 U.S.C. 1320a–7).
 - *This is essentially an “any willing pharmacy provision” as there is nothing in this definition requiring the pharmacy to agree to contract terms, accreditation standards, or certification requirements to participate in a pharmacy network.*
 - Newly defines *pharmacy benefits manager* as a person, business entity, affiliate, or other entity that performs pharmacy benefits management services.
 - Newly defines *pharmacy benefits management services* as the managing or administration of a plan or program that pays for, reimburses, and covers the cost of prescription drugs and

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- medical devices; and includes the processing and payment of claims for prescription drugs and the adjudication of appeals or grievances related to the prescription drug benefit.
- Defines *rebate* as any payments and concessions that accrue to a PBM or the plan sponsor client of such PBM, directly or indirectly, including through an affiliate, subsidiary, third party, or intermediary, including an off-shore entity or group purchasing organization, from a pharmaceutical manufacturer, its affiliate, subsidiary, third party, or intermediary, including payments, discounts, administration fees, credits, incentives, or penalties associated directly or indirectly in any way with claims administered by such PBM on behalf of a federal health care program.
 - Broadly defines *steering* as
 - Directing, ordering, or requiring a beneficiary to use a specific pharmacy or pharmacies, including an affiliate pharmacy, for the purpose of filling a prescription or receiving services or other care from a pharmacist;
 - Offering or implementing health insurance plan designs that requires a beneficiary to utilize a pharmacy or pharmacies, including an affiliate pharmacy, or that increases costs to a federal healthcare program or a beneficiary, including requiring a beneficiary to pay the full cost for a prescription drug when such beneficiary chooses not to use a PBM affiliate pharmacy;
 - Advertising, marketing, or promoting a pharmacy, including an affiliate pharmacy, over another in-network pharmacy;
 - Creating any network or engaging in any practice, including accreditation or credentialing standards, day supply limitations, or delivery method limitations, that exclude an in-network pharmacy or restrict an in-network pharmacy from filling a prescription for a prescription drug; or
 - Directly or indirectly engaging in any practice that attempts to influence or induce a pharmaceutical manufacturer to limit the distribution of a prescription drug to a small number of pharmacies or certain types of pharmacies, or to restrict distribution of such drug to non-affiliate pharmacies
 - Expands the scope of pharmacies required to report drug prices to Medicaid and increases the reporting requirements to include all discounts received
 - Requires publication of NADCA pricing information
 - Prohibits the use of non-retail pharmacy pricing to set retail pharmacy reimbursement rates

Key Concerns

- Increases costs by setting a reimbursement floor for pharmacies, and preventing the use of certain cost saving tools like spread and steering.
- Prevents PBMs from being able to construct pharmacy networks that promote high quality and control costs.
- Includes overly expansive definitions of *steering* and *rebates* and several other concerning definitions.
- Inappropriately dictates formulary design and prevents use of lowest net cost options.

Technical Issues

- In several places, it bans PBMs from practices and decisions not currently owned by the PBM (e.g. formulary design decisions).

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- Rebate adjudication requirements are overly prescriptive and not workable.

Talking Points

- This proposal would dramatically increase costs across government programs.
- This bill subsidizes pharmacies at the expense of taxpayers and patients.
- Patients' safety could be jeopardized by prohibiting PBMs from holding pharmacies to high standards.