



Employers' Prescription for Affordable Drugs

EmployersRx is a nationwide effort led by the Purchaser Business Group on Health (PBGH) that includes The ERISA Industry Committee (ERIC), American Benefits Council, National Alliance of Healthcare Purchaser Coalitions, Silicon Valley Employers Forum, HR Policy Association, and the Small Business Majority. Our members share a common goal – to bring more transparency and accountability to health care, ensuring employers and their employees are empowered by information.

Employers are proud to offer innovative health solutions that drive improvements to health care outcomes while constraining costs. Unfortunately with PBMs, employers strongly believe the market is not functioning as intended. Federal action is essential to support employer efforts to ensure employees have access to affordable prescription drugs, by addressing the anticompetitive aspects of the PBM business model and establishing clear regulatory oversight and accountability for the industry.

These actions must include:

1. **Full and complete transparency requirements.** Transparency for the primary customers of PBMs – employers – is a critical aspect to reform. Contracts between PBMs and employers typically do not provide details about fee or rebate schedules or amounts, prices, and fees generated from manufacturers and other parties, drug definition criteria, or amounts charged to pharmacies. Therefore, full and complete transparency along with strong reporting requirements is needed to ensure employers have access to real drug prices. For instance, Congress must take action to ensure that PBMs:
 - Cannot block a plan sponsor's ability to audit a PBM or have the auditor of their choosing;
 - Must disclose the fees (aka "bona fide service fees") they receive from drug manufacturers for nonspecific services affecting plan design and costs to employers and their plan beneficiaries;
 - Cannot engage in transparency "workarounds" by gaming legal requirements – such as the creation of new supply chain intermediaries like group purchasing organizations (GPOs), or rebate aggregator entities (e.g., as recently witnessed by PBMs establishing entities outside the U.S.); and



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- Must submit information regarding transactions between a PBM and any pharmacy wholly or partially owned by the PBM, including mail-order, specialty and retail pharmacies.
2. **Ban spread pricing.** PBMs should not be allowed to charge employers, health plans, or patients more for a drug than the PBM paid the pharmacy for that drug. Confidentiality clauses make it difficult for employers to identify what pharmacies pay and vice versa. This strategy has been especially problematic in numerous state Medicaid programs, and protections are needed for private sector employers as well.
 3. **Require PBMs to pass-through 100 percent of all rebates, discounts, and volume or access-based administrative fees to employers and plan beneficiaries.** The exploitation and manipulation of manufacturer rebate revenues and fees charged to employers for an ever-growing array of service and administrative fees has historically been a critical aspect of a PBM's business model. Due to significant public attention and pressure to pass rebate funds through to employers, PBMs are creating and/or increasing fees (over and above rebates) on manufacturers, pharmacies, other supply chain entities, as well as employers.
 4. **Hold PBMs accountable in the same way employers are held accountable.** Employers are required as plan fiduciaries to ensure they are good stewards of the health care benefits they provide for their employees – to act in their best interests, and to minimize costs. To fulfill that obligation, employers believe any legislation must require clear oversight and accountability of PBMs and specify the exact parameters of PBM responsibility.

EmployersRx looks forward to working with you to enact bipartisan, commonsense legislation that can pass Congress and be signed into law by President Biden.