



## Employers' Prescription for Affordable Drugs

March 22, 2023

The Honorable Maria Cantwell, Chair  
Committee on Commerce, Science  
and Transportation  
United States Senate  
254 Russell Senate Office Building  
Washington, DC 20510

The Honorable Ted Cruz, Ranking Member  
Committee on Commerce, Science  
and Transportation  
United States Senate  
512 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chair Cantwell and Ranking Member Cruz,

The Employers Prescription for Affordable Drugs (EmployersRx) is a nationwide effort led by the Purchaser Business Group on Health that includes The ERISA Industry Committee (ERIC), Americans Benefits Council, National Alliance of Healthcare Purchaser Coalitions, Silicon Valley Employers Forum, HR Policy Association and The Small Business Majority. Together, we have mobilized America's employers to educate and influence public policies that underscore the need to make prescription drugs more affordable and to spend resources more wisely.

We are therefore very supportive of transparency and strong accountability for the pharmacy benefit manager (PBM) industry, and applaud the committee's leadership and desire to address this very important issue. However, we have grave concerns with the "*Pharmacy Benefit Managers Transparency Act*," and because of these serious concerns, **we urge members of the committee to vote "NO" on the legislation.**

For employers, the cost of providing health benefits is quickly becoming untenable. Over time, PBM practices have played a role in distorting the true prices of drugs. Today, they are powerful gatekeepers that exert enormous influence over drug costs and access for 266 million Americans, a majority of whom receive their health coverage through their employer.

To put a point on it, your legislation was drafted without the input of employers who provide health benefits including prescription drug coverage for millions of American workers and their families. Employers are the primary customers of PBMs and have a legal responsibility as plan fiduciaries – we are bound by law to act in the best interest of the plan beneficiaries, and to be good shepherds of their money. Federal and state transparency laws and regulations are starting to shed light on PBM practices with the hope that this will provide better access to critical information that employers need to monitor health care services and pursue value for patients, but much more transparency is essential.



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While the bill includes PBM transparency language, it does not include the specific information that is needed and is focused on information related to reimbursement and payment to pharmacies. Reform is needed to ensure fairness to independent pharmacies and ensure that patients are treated fairly at PBM-owned pharmacies. However, transparency for the primary customers of PBMs--employers—is a critical aspect to reform and is completely missing in this bill.

Numerous important reforms are also missing. The bill does not adequately address drug rebates, an ongoing major concern among employers. Nor does the proposal include anything on the growing concerns about the creation and offshoring of group purchasing organizations and rebate contracting or aggregator entities by some PBMs. Although little public information is available about these businesses, they may be capturing additional fees from drug manufacturers to support PBM's growing reliance on non-rebate revenue, and represent yet another intermediary to frustrate transparency in the supply chain.

Moreover, the bill does not address several reforms required to ensure employers can continue to remain good stewards of the health care benefits they provide for their employees. Importantly, the legislation fails to specify the exact parameters of PBM responsibility. There is inadequate oversight and regulation of PBM-owned pharmacies, and inadequate limitation on so-called "spread pricing." The bill outlaws certain PBM practices, but fails to address direct payments related to drug formulary placement. This is illustrative of some missing provisions, and employers would welcome the opportunity to provide more detailed views of other critical aspects of PBM reforms missing from this bill.

We believe meaningful reforms in the PBM industry are long overdue and want to work with you to achieve them so that America's employers can ensure that their employees receive good health benefits. However, until the legislation incorporates these reforms we urge Senators to vote against the measure.

Sincerely,

Purchaser Business Group on Health

National Alliance of Healthcare Purchaser Coalitions

The Erisa Industry Committee (ERIC)

American Benefits Council

Silicon Valley Employers Forum

HR Policy Association

The Small Business Majority