



The Honorable Nancy Pelosi
Speaker of the House
1236 Longworth House Office Building
Washington, DC 20510

December 16, 2019

Dear Speaker Pelosi,

We, the undersigned consumer groups, write to express our support for H.R. 5304, the Pharmacy Benefit Manager (“PBM”) Transparency and Prescription Drug Costs Act. The Congressional Budget Office analyzed the bill and found that PBM reform will lower health care costs, specifically prescription drug costs and health insurance premiums, for consumers and save the federal government \$1.7 billion over ten years.¹

Rising prescription drug prices are a serious problem for consumers, due to many complex but addressable problems in the U.S. research and development and payor systems. Thirty percent of Americans who currently take prescription drugs say their out-of-pocket cost for a drug has increased in the past year.² And an AARP report found that in 2018, retail prices for 267 widely used brand name prescription drugs increased by 5.8 percent, more than twice the rate of inflation.³

Consumers are paying higher prices for drugs than they should be in part because PBMs are not adequately fulfilling their function in controlling costs. The PBM market lacks the essential elements for a competitive market, namely: (1) choice, (2) transparency and (3) a lack of conflicts of interest.⁴ According to the Council of Economic Advisors, three PBMs-CVS Caremark, Optum Rx, and Express Scripts-control 85% of the market, “which allows them to

¹ CBO Cost Estimate, at https://www.cbo.gov/system/files/2019-07/s1895_0.pdf#page=13.

² Lisa Gill. “The Shocking Rise of Prescription Drug Prices.” Consumer Reports, November 26, 2019. Available at <https://www.consumerreports.org/drug-prices/the-shocking-rise-of-prescription-drug-prices/>.

³ Leigh Purvis and Stephen W. Schondelmeyer. “Brand Name Drug Prices Increase More Than Twice As Fast As Inflation in 2018.” AARP Public Policy Institute. November 2019. At <https://www.aarp.org/content/dam/aarp/ppi/2019/11/brand-name-drug-prices-increase-more-than-twice-as-fast-as-inflation.doi.10.26419-2Fppi.00073.005.pdf>.

⁴ “Protecting Consumers and Promoting Health Insurance Competition,” Testimony of David Balto, Before House Judiciary Committee, Subcommittee on Courts and Competition Policy, October 8, 2009 at <http://www.dcantitrustlaw.com/assets/content/documents/CAP/protecting%20consumers.pdf>.

exercise undue market power against manufacturers and against health plans and beneficiaries.”⁵ The CEA has also observed that the PBM market lacks transparency as “[t]he size of manufacturer rebates and the percentage of the rebate passed on to health plans and patients are secret.”⁶ Here, conflicts of interest abound, and the most significant involves how rebates are shared by PBMs and payors. PBMs were formed to lower drug costs, but when PBMs share in rebates, it creates an incentive for them to want higher not lower drug list prices.

H.R. 5304 has several important provisions that will increase transparency, better regulate PBMs, and put consumers first.

First, it mandates PBMs to be fully transparent to the payors they service. They are required to provide quarterly reports on the costs, fees, and rebate information, so payors know the true costs of the services they are paying for. Instead of secret and needlessly complicated schemes, PBM contracts will be less complicated and more honest.

Second, when contracting with a group health plan, PBMs must pass all rebates and discounts they receive from drug manufacturers to the health plans and patients, instead of withholding the money for themselves. From now on, PBMs will be paid what their clients (employers and plans) contractually agree to pay them which should eliminate the perverse incentive to drive up list prices for larger rebates.

Third, spread pricing will become optional meaning that employers and plans will have complete control over these decisions. Currently, spread pricing occurs when health plans contract with PBMs to manage their drug benefits, and PBMs keep some of the money they are paid by health plans for drugs instead of passing all the payments on to pharmacies. This leads to a “spread” between the amount that the health plan pays the PBM and the amount that the PBM reimburses the pharmacy for a prescription. PBMs profit by charging health plans more than what they pay to pharmacies dispensing drugs, which drives up drug costs for patients enrolled in employer-sponsored health insurance, as well as Medicaid costs for taxpayers. In 2018, Ohio conducted a study and found that PBMs charged the state a spread of 31% for generic drugs, collecting \$208 million in fees on Medicaid prescriptions.⁷ Other states such as Kentucky, Massachusetts, and New York have launched investigations and found similar results. With this provision, a PBM will only be permitted to charge the employer or plan a greater amount than the pharmacy is paid if the payor agrees.

Skyrocketing drug prices have made prescription drugs unaffordable for many Americans and contributed to a public health crisis. The PBM Transparency and Prescription Drug Costs Act will lower prescription drug costs by requiring transparency from PBMs, ensuring that rebates and fees are passed on to employers and health plans, and making a harmful practice known as “spread pricing” never the default option.

⁵ “Reforming Biopharmaceutical Pricing at Home and Abroad.” Council of Economic Advisors, February 2018. Available at <https://www.whitehouse.gov/wp-content/uploads/2017/11/CEA-Rx-White-Paper-Final2.pdf>.

⁶ CEA White Paper.

⁷ “Auditor’s Report: Pharmacy Benefit Managers Take Fees of 31% on Generic Drugs Worth \$208M in One Year Period.” Ohio Auditor of State. August 16th, 2018. Available at <https://ohioauditor.gov/news/pressreleases/Details/5042>.

We urge Congress to approve this bill as part of the December 2019 spending package to ensure that all Americans have access to affordable prescription drugs.

Please contact David Balto at 202-577-5424 or David.balto@dcantitrustlaw.com if you have questions.

Sincerely,

Consumer Action
Consumer Federation of America
End AIDS Now
People's Action
Treatment Action Group