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To: Senator Ron Wyden, Chair, and Senate Finance Committee Staff
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Re: Recommendations for the Modernizing and Ensuring PBM Accountability Act

We commend the efforts of the Senate Finance Committee to increase transparency around pharmacy benefit managers (PBMs), prevent the use of PBM business strategies that create perverse incentives and higher costs for patients, and commission new reports. Below, we propose modifications to the bill language to promote policy changes that result in **lower patient out-of-pocket costs and to increase meaningful public and state reporting.**

Decrease Patient Out-of-Pocket Costs

One in four Medicare beneficiaries do not take medications as prescribed because of out-of-pocket costs.[1,2] PBMs design prescription drug benefits within the boundaries set by Medicare rules, set the formulary, and impact the out-of-pocket costs patients face. We recommend that the Finance Committee make changes to ensure that the PBM fee structure included in the bill will lower costs to Medicare beneficiaries who use prescription drugs.

1. Require PBMs for Part D Plan sponsors to base patient cost sharing on a drug's net price instead of its list price, as has been proposed in other recent legislation.[3] This will promote lower costs for underinsured patients at the pharmacy.
2. §2(h)(4)(B)(i) (pg. 22, line 5) – Bona fide service fee – In addition to the flat service fee provisions, require PBMs to remit 100% of rebates, fees, and discounts after the sale of the drug, including direct and indirect remuneration, to the plan sponsor for Medicare and Medicaid and for the sponsor to use this to lower Part D insurance premiums, when relevant, and to lower out-of-pocket costs.[4]

Increase Transparency in Reporting of PBM Data

While maintaining the confidentiality of proprietary data is important, sharing complete data with state Medicaid agencies and aggregate-level data with the public is valuable for coordination and accountability, respectively. It will reduce duplicative efforts by states and improve the negotiating power of state Medicaid programs. Approximately 17 states already require PBMs to report rebates and other information to states.[5]

1. §2(h)(1)(C)(iv) [pg. 17, line 6] - On the confidentiality exceptions – require confidential disclosure of data collected by the Secretary to state Medicaid programs and other state programs (e.g., Prescription Drug Affordability Boards).
2. Require the Secretary, or MedPAC, to produce an annual public report about drug-level rebates for the top 200 highest-spending drugs in Medicare and Medicaid, without identifying specific PBMs. (See Maine's Prescription Drug Transparency Report in 2022).[6]

[1] https://www.kff.org/health-costs/poll-finding/public-opinion-on-prescription-drugs-and-their-prices/
[2] https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2805012#:~:text=Cost%2Drelated%20medication%20nonadherence%20is,related%20medication%20nonadherence%20in%202016.
[3] H.R. 4822 (Page 121, line 19): https://www.documentcloud.org/documents/23885838-hr-4822-bill-text
[4] Pharmacy Benefit Manger Reform Act (Page 117, Line 7): https://www.congress.gov/118/bills/s1339/BILLS-118s1339rs.pdf
[5] https://nashp.org/state-pharmacy-benefit-manager-legislation/
[6] https://mhdo.maine.gov/_pdf/MHDO%20Rx%20Transparency%20Report_221213.pdf