Congress's PBM reforms won't end America's drug pricing woes. Here's what they would do

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By Rachel Cohrs July 26, 2023

WASHINGTON — Lawmakers in Congress generally agree that there's something very broken with the way America pays for prescription drugs. They're focused this summer on reining in pharmacy middlemen to make the system fairer — but none of their many proposals will actually tackle the core dynamic that has incentivized higher drug prices.

There are major packages on so-called PBM reform percolating in at least six different congressional committees. Most have bipartisan support, and there seems to be genuine momentum to do something. Pharmacy benefit managers are companies employed by insurers to negotiate lower drug costs with pharmaceutical companies.

But at best, experts told STAT, the bills work around the fringes. They would offer some more transparency into how the system works, ensure pharmacy middlemen aren't skimming off of money they send to insurers, prohibit middlemen from overcharging insurers, and ensure certain fees in the Medicare program aren't tied to drug's prices.

They don't, however, tackle a big, underlying dynamic: PBMs and the insurance companies that employ them take a bigger payment from the sale of expensive drugs, in part to keep monthly payments lower for everyone else. In effect, then, the patients who rely on the priciest medications are subsidizing lower costs for people whose medications aren't as expensive. Uninsured patients are stuck paying the high list prices.

Upending that structure would bring more equity to the system — but for lawmakers, it would essentially mean raising costs for most constituents — a political nonstarter.

"They want to pat themselves on the back, thinking that they brought down the cost of prescription drugs, when they really haven't touched the PBMs," said University of Pennsylvania professor of health care management Lawton Burns.

Others disagree, arguing that doing something is better than continuing to do nothing. Pharmacy benefit managers have faced little legislative oversight or policy change, even as lawmakers spent a decade fighting over insurance regulations in the Affordable Care Act and passed an ambitious package targeting pharmaceutical manufacturers.

"There is no silver bullet. Each of these proposals under consideration is a critical part of any plan to address skyrocketing drug prices," said Robin Feldman, a professor at the University of California College of the Law, San Francisco. "There are political realities, and it's difficult to get agreement on any type of change."

Pharmacy benefit managers say they are the system's only defense against pharmaceutical drug manufacturers' unilateral right to set prices. A spokesperson for the PBM lobby, the Pharmaceutical Care Management Association, said that lawmakers should focus on lowering prescription drug costs for patients.

STAT examined three of the most impactful PBM reform proposals under consideration right now, and what has been left out.

Administrative fees

Pharmacy benefit managers are supposed to be working on behalf of insurance plans, but they also get paid by drugmakers, too.

"If you rewind the tape back to the PBMs' origins, their incentives were aligned in the interest of the client. Over time as they developed conflicts, that started to shift who they are and who they serve," said Antonio Ciaccia, the president of the consulting firm 3 Axis Advisors.

Most of those payments from drugmakers come in the form of rebates — essentially, a discount that both the PBM and the medicine manufacturer agree on. A government watchdog report in 2019 found that in the Medicare program, PBMs pass more than 99% of those rebates on to insurance plans.

However, PBMs are also charging drugmakers extra for a laundry list of other services, tacking on things like clinical program fees, consulting fees, education program fees, formulary placement fees, and software licensing fees, to name some examples. Those

fees have grown as a share of PBMs' revenue in recent years. And many of those fees are tied to a drug's list price.

Nobody knows quite how big the problem is, because the contracts are kept secret.

"You can't know, I can't know, the regulators don't know, nobody knows," Feldman said.

A provision in the Senate Finance Committee package would ban PBMs from charging fees based on a drug's price in the Medicare program. And not just PBMs — any subsidiary company owned by the PBMs as well, which some experts think will do a pretty good job correcting a perverse incentive.

The bill would also prohibit PBMs from keeping any income that doesn't fall into the category of allowable service fees.

The Congressional Budget Office estimated that the policy could save the federal government $700 million over a decade.

PBMs oppose the legislation, arguing that it leaves out other entities in the supply chain, it moves away from value-based payments, and makes changes to the Medicare Part D program while other changes are happening from Democrats' drug pricing reform law, according to a spokesperson for the Pharmaceutical Care Management Association.

A separate panel in Congress, the House Education & Workforce Committee, is tackling a similar issue in the commercial market. It passed legislation that would force PBMs to disclose what income they are making from drug manufacturers to the plans that employ them.

Commercial market

The Senate Health, Education, Labor and Pensions Committee has introduced a requirement that PBMs pass the rebates they negotiate with drugmakers on to the insurance plans that employ them.

This is different from the administrative fees that Finance is tackling. Instead, it focuses directly on the rebates.

For many people, this provision might seem redundant. After all, the three major PBMs are owned by major insurance companies, CVS Health, Cigna, and UnitedHealth. But the

policy could still help protect other insurers that contract with those three dominant PBMs, and also employers that run their own insurance plans.

The panel also proposed banning a common form of gaming whereby PBMs overcharge insurers for drugs in the commercial market and in Affordable Care Act plans. A similar prohibition in Medicaid was included in the Senate Finance package. The problem is less common in Medicare, which is more heavily regulated.

Because their negotiations are secret, it's impossible to know precisely how big an impact that would have on PBMs' fee structures. PBMs have said publicly that retaining rebates and overcharging plans make up a minority of their profits.

Patient costs

Only one of the five committees that have considered health care legislation has included any measures that would actually change what patients pay for drugs at the pharmacy counter: the House Ways & Means Committee.

The panel's lead Republican introduced a bill that would ensure that if a Medicare patient pays a percentage of a drug's price, they are paying based on the lower price that includes discounts that insurers negotiate with drugmakers — not off of the original, higher sticker price.

The cutting room floor

Changes that some other health care industries hoped to advance haven't made the cut.

Employers wanted to see provisions that would require PBMs to act in the best interest of their insurer and employer clients, by having Congress create what's called a "fiduciary duty."

Generic drugmakers, meanwhile, have complained about PBMs choosing to give preference to higher-cost, brand-name medications over lower-priced generic alternatives because the plans make more money off of the higher-priced drugs. A bill introduced by Sens. Bob Menendez (D-N.J.) and James Lankford (R-Okla.) that would have forced PBMs to offer lower cost sharing for generic drugs has been left out of the committees' packages so far.

Drugmakers, for their part, have for years wanted all rebates to go to patients at the pharmacy counter instead of going to insurance plans. The Trump administration tried to

pursue the policy, but it was expensive to the federal government, and would likely have raised insurance premiums for everyone. Lawmakers aren't pursuing the policy again.

Burns said that without touching the rebate system or addressing cost controls for high-cost specialty drugs that don't have competitors, the legislation isn't doing its job.

"This will not address this issue. It's a watered-down effort that suggests doing something to change PBMs, when they're not," he said.

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