

Pharmacy Benefit Manager Transparency Act of 2022

Senators Maria Cantwell and Chuck Grassley

Section-by-Section

Section 2. Prohibition on Unfair or Deceptive Prescription Drug Pricing Practices

This section prohibits PBMs from engaging in the following conduct:

1. Spread pricing – where a PBM charges health insurance a higher amount than they reimburse pharmacies and keep the difference.
2. Clawbacks – where a PBM arbitrarily reduces or rescinds reimbursements to pharmacies.
3. Fee manipulation – where a PBM arbitrarily uses Direct and Indirect Remuneration (DIR) fees, or other form of fees, to reduce or rescind reimbursements to pharmacies.

PBMs will not be in violation of this section if they:

1. Pass along 100 percent of price concessions, including rebates, to a health insurance plan or payer; and
2. Fully disclose critical information such as the cost, price, and reimbursement of prescription drugs to health insurance plans, payers, and pharmacies; fees, markups, and discounts charged or imposed by PBMs; or the aggregate amount of rebates, discounts, administration fees, and other forms of payments received.

Section 3. Prohibition on False Information

This section makes it unlawful for any person to report false, misleading, or deceptive information about PBMs to a Federal department or agency.

Section 4. Transparency

This section requires PBMs to submit an annual report to the Federal Trade Commission on critical information such as the aggregate amount of the difference between what PBMs charge health insurance plans and the aggregate amounts that they reimburse to pharmacies, Generic Effective Rate (GER) and Direct and Indirect Remuneration (DIR) fees charged to pharmacies, payments rescinded from pharmacies, and justification for reassigning a prescription drug to a formulary tier with a higher cost, copay, or deductible for a consumer.

This section also requires the FTC to submit an annual report to Congress on the number of enforcement actions that the FTC brought against PBMS, the number of open investigations into potential violations of this Act, the number and nature of complaints against PBMs, and policy recommendations to strengthen any enforcement actions.

The FTC does not have the authority to disclose any information that is considered a trade secret or confidential information.

Section 5. Whistleblower Protection

This section provides that a PBM, health plan, pharmaceutical manufacturer, pharmacy, or any agent thereof shall not take adverse action against a current or former employee, contractor, subcontractor, service provider, or other agent because that individual provides a Federal agency, state attorney general, relevant state regulator, or law enforcement agency information relating to a violation of the Act; or provides such information to a person with supervisory authority over the individual or another individual at the PBM, plan, manufacturer, or pharmacy with the authority to address the alleged violation of the Act.

An individual who alleges an adverse action may bring an action in federal court for relief, including reinstatement. This section is enforced via a jury trial in district court for temporary relief, reinstatement, two times back pay, damages, and attorney's fees and litigation costs. This section provides that these protection cannot be waived by condition of employment and that pre-dispute arbitration agreements for claims arising under this section shall be invalid.

Section 6. Enforcement

This section declares a violation of this Act to be a violation of a rule defining an unfair or deceptive act or practice, and preserves all privileges and immunity related to such rules in the FTC Act. This section further provides that each day of a continuing violation shall be considered a separate violation and sets forth mitigating factors the court shall take into consideration when assessing civil penalties. This section authorizes an additional civil penalty of not more than \$1,000,000.

This section also provides for enforcement by state attorneys general, and requires the state attorney general to notify the FTC prior to bringing the action, unless it is unfeasible to do so. The FTC is authorized to intervene in any such action.

This section creates an affirmative defense for the defendant, by a preponderance of the evidence, that the conduct alleged to be a violation of Section 3 of this Act was nonpretextual and reasonably necessary to prevent a violation of, or comply with, Federal or State law; protect patient safety; or protect patient access.

Section 7. Effect on State Laws

This section clarifies that this Act does not preempt, supplant, or displace any state laws, rules, regulations, or requirements.

Section 8. Definitions

This section defines the terms "Commission," "covered individual," "health plan," "pharmacy benefit manager," "pharmacy benefit management services," and "prescription drug" for the purposes of the Act.