

Support the “Community Pharmacy Fairness Act of 2009”
H.R. 1204 by Congressmen Anthony Weiner (D-NY) and Jerry Moran (R-KS)
GIVES INDEPENDENTS LEVERAGE AGAINST TAKE-IT-OR-LEAVE-IT CONTRACTS

The unchecked, unregulated and abusive practices of Pharmacy Benefit Managers (PBMs) have gone on for too long. We have watched for years as **patients have lost access to prescription drugs at their local independent community pharmacies and lost choice among drugs to treat their conditions.** Ironically, these corporate middlemen are driving the costs of prescription medicines ever higher.

PBMs negotiate contracts between health care plans and pharmacies. They are neither regulated nor transparent, and they hide their large profits – which they make through steering patients to the drugs from which they make the most money on manufacturer rebates, at the expense of quality health care. Allowing independent community pharmacies to negotiate on a level playing field with PBMs will shift undeserved gains from PBMs and into the hands of patients and the pharmacies that serve them.

Independent community pharmacists can already join buying groups to negotiate the purchase price of prescription medications. Through an irony of antitrust law, powerful PBMs and even health care plans enjoy the benefits of prohibiting small independent community pharmacists from working together to negotiate fair reimbursements for their dispensed prescriptions. The intent of antitrust law is to prevent monopolies and near-monopolies, which dominate an industry by holding all the bargaining power. This intent is thwarted by the lack of an exemption in antitrust law, which, if granted, would protect the interests of small pharmacies and the patients they serve against the combined overwhelming bargaining power of PBMs and prescription drug plans.

The legislation:

- Allows independent pharmacies (defined as pharmacies representing less than 10% market share of a prescription drug plan region) to approach the leverage that much larger chain pharmacies have when negotiating their Medicare Part D and other third-party contracts. By allowing a narrow exemption to antitrust law, this bill levels the playing field and will reveal how PBMs overcharge their customers for prescription drugs.
- The legislation includes a sunset clause of 5 years and only allows independents to form negotiating entities representing no larger than 25% of all retail pharmacies in a Medicare Part D prescription drug plan region.
- Mandates a GAO study to be issued 6 months before sunset to examine the law’s impact.

A narrow exemption to antitrust law is necessary to give independent pharmacists a chance to negotiate with PBMs, whose harmful practices include:

Reducing Quality of Patient Care as PBMs focus on their own Financial Gain:

- PBMs switch patients to more expensive, inappropriate drugs (sometimes from generics to brand-name) based, not on the patients’ health care status, but on the PBMs' financial interest.
- Patient counseling minimizes medication errors and, as a result, lowers health care costs attributed to emergency room visits and nursing homes; PBMs regard pharmacists as little more than pill counters, and regard patients as statistical “lives”.

Disenfranchising Patients, Pharmacies and Employer Health Plans:

- Specially-prepared prescriptions are becoming harder to get filled by retail community pharmacists as Compounding Pharmacists are forced out of business by abusive PBM audits.
- 90-day prescriptions are more difficult to get filled as many PBMs insist patients get their 90-day supplies via mail order (Did we mention that the PBM owns the mail-order pharmacy?—a conflict of interest).
- Valuable manufacturer rebates are not passed along to consumers; PBMs have a vested interest in steering patients to drugs for which they receive the greatest manufacturer rebate.
- This hidden, unfair pocketing of profits by PBMs reduces reimbursements for pharmacies.

Engaging in Unfair Billing Practices:

- PBM mail-order facilities have bulk-purchasing power, but can also repackage drugs and name their own price, disenfranchising the local pharmacist, the patient, and the employer's health plan.
- PBMs will routinely bill the employer for more than they pay the pharmacy, pocketing the difference. Part D tried to do away with this, but it remains to be seen how effectively new regulations will address this problem.

Burdening Patients and Pharmacists with substantive and procedural problems:

- Shrinking and shifting formularies (list of drugs covered) restrict a patient's treatment options.
- Lack of uniformity and completeness of information on prescription drug cards creates aggravating delays for patients and their pharmacists.
- Redundant pre-authorization hassles generate endless red tape for patients to obtain refills or formulary-restricted prescriptions.

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