



February 16, 2023

The Honorable Maria Cantwell
Chair
Senate Committee on Commerce, Science and Transportation
United States Senate
254 Russell Senate Building
Washington DC, 20510

The Honorable Ted Cruz
Ranking Member
Senate Committee on Commerce, Science and Transportation
United States Senate
254 Russell Senate Building
Washington DC, 20510

The Honorable Charles Grassley
United States Senate
135 Hart Senate Office Building
Washington DC, 20510

Dear Senators Cantwell, Cruz, and Grassley,

The National Consumers League (NCL) is America's pioneering consumer advocacy organization, representing consumers and workers on marketplace and workplace issues since our founding in 1899. One of NCL's bedrock principles is to ensure that consumers get a fair deal. When it comes to the high out-of-pocket costs consumers face at the pharmacy counter — often for lifesaving medications — consumers today have an unfair disadvantage.

They face middlemen pharmacy benefit managers (PBMs), who operate in a complicated and opaque system. With three PBMs controlling nearly 80 percent of all prescription drug claims, it is timely that lawmakers are looking at PBMs' role in driving up the cost of drugs to consumers and patients. We are encouraged to see the committee looking into the workings of PBMs and we are supportive of your efforts to hold these entities accountable.

PBMs were originally conceived to discipline the cost of drugs and return savings to pharmacies and patients. Instead, over time, they have evolved into self-serving profit centers that add little value along the supply chain except to fill their own coffers. That is why we believe Senator Cantwell and Grassley's Pharmacy Benefit Manager Transparency Act (S. 127) is a critical step in the right direction. We are also pleased to see the Prescription Pricing for the People Act (S. 113) include language that would allow FTC to assess the regulatory barriers currently present and all too often capitalized on by the PBM industry.

With the many evolving ways PBMs too often put profit over consumer interests, it is crucial that federal consumer protection agencies like the FTC have the tools needed to address the PBM problem.

We hope you will build on this progress to help ensure consumers get a fair price at the pharmacy counter. The actions of PBMs today, demanding that drug companies provide them “rebates” or discounts in order to ensure a drug is included on a formulary, distorts the market and the availability of drugs to patients. These discounts are meant to lower the out-of-pocket costs consumers pay at the pharmacy counter, but consumers aren’t seeing the savings. Another facet of this market distortion is that PBMs steer consumers to higher-cost drugs that will give them the highest profits, regardless of patient and treatment considerations. NCL has written about this issue extensively on our website, nclnet.org/pbms.

Beyond addressing the antitrust issues and increasing transparency of PBM revenue streams, we encourage legislators to:

- Remove medication barriers: PBMs should not be allowed to limit access to the medicines doctors prescribe.
- Require PBMs to pass on savings directly to consumers: PBM rebates should be shared so that consumers can benefit from more affordable out-of-pocket costs. Additionally, patient cost-sharing should be based on the net cost of the drug, not the list price.
- Ensure simple, single administrative PBM fees: PBMs too often tack on arbitrary fees to local pharmacies, with many independent and community pharmacies struggling to stay in business, this trickles down to the consumers, resulting in increased prices and pharmacy closures, leading to many communities facing pharmacy deserts.
- Ensure PBM profits are not tied to the costs of medications: The system currently incentivizes PBMs to favor medicines with higher list prices so that they can negotiate larger rebates and/or steer patients to medicines with higher price tags to increase their own profits.

We applaud your leadership in investigating these issues related to PBM activity and we look forward to working together to help lower prescription drug costs for consumers and patients across the country.

Sincerely,



Sally Greenberg, Executive Director
National Consumers League