

## H.R. 5958 “The Phair Pricing Act of 2018”

**Background:** Currently, three pharmacy benefit managers (PBMs)—middlemen between pharmacies and insurers-- own over 80% of the market, allowing them to steer patients to their own pharmacies and operate with little transparency, even in dealings with the federal government. . In recent years, these PBMs have begun to purchase or merge with some of the largest health insurers in order to increase their market share and ensure the competition cannot access the marketplace.

Under Medicare Part D, PBMs extract price concessions from pharmacies that they are supposed to pass on to patients. They claim that they pass along 90 percent or more of these savings to the Part D program.

However, the Centers for Medicare and Medicaid Services (CMS) has noted that these price concessions are rarely used to lower patient’s costs at the point of sale and often end up padding PBMs profits.<sup>1</sup> In fact, CMS stated that under current rules PBMs may have weak incentives, and in some cases even, no incentive, to lower prices at the point of sale or to choose lower net cost alternatives.<sup>2</sup>

**Solution:** H.R. 5958, the Phair Pricing Act

This legislation ensures that the concessions PBMs negotiate are passed along to patients at the point of sale, enabling patients to see the benefits at the pharmacy counter.

The legislation accomplishes this objective by directing that all price concessions between a pharmacy and PBM, as well as all incentive payments and adjustments, be included at the point of sale to decrease patient’s costs. All pharmacy price concessions, incentive payments and adjustments, should be included at the point of sale because these arrangements are, ostensibly, designed to benefit the patient.

Under current law, PBMs can create and change the quality measures that apply to their competitors in order to benefit their own financial interests, at the expense of patients. The Phair Pricing Act directs the Secretary of Health and Human Services to establish a working group of stakeholders to create quality measures based on a pharmacy’s practice. These quality measures will better align PBMs incentives in order to prioritize patient care, rather than focusing on profit margins to the detriment of patients. In this way, the bill will help direct patients to providers who administer the best quality of care.

Additionally, this legislation promotes greater transparency and oversight of taxpayer dollars by ensuring that PBMs disclose all of the fees, price concessions, and programs to CMS. This would prevent PBMs from their current practice of calling fees by a different name in order to circumvent CMS reporting requirements.

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<sup>1</sup> *Medicare Program; Contract Year 2019 Policy and Technical Changes to the Medicare Advantage, Medicare Cost Plan, Medicare Fee-for-Service, the Medicare prescription Drug Benefit Programs, and the PACE Program* 82 Fed. Reg. 227 56420 (November 28, 2017) <https://www.gpo.gov/fdsys/pkg/FR-2017-11-28/pdf/2017-25068.pdf>

<sup>2</sup> *Id.* at 56421