



November 12, 2025

The Honorable Mike Johnson
521 Cannon House Office Building
Washington, DC 20515

The Honorable John Thune
511 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Hakeem Jeffries
2267 Rayburn House Office Building
Washington, DC 20515

The Honorable Chuck Schumer
322 Hart Senate Office Building
Washington, DC 20510

Dear Speaker Johnson, and Leaders Thune, Schumer, and Jeffries,

On behalf of Business Group on Health, we are writing to share our perspective on reforms to enhance competition, transparency and accountability within the pharmacy benefit manager (PBM) sector that may be considered as Congress weighs appropriations and any other health care legislation.

We are generally supportive of Congressional efforts to improve visibility for employer plans into health care pricing and vendor compensation. We have long supported appropriately tailored transparency provisions and believe they would drive competition and innovation, and assist patients in assessing their health care costs and choices.

In this case, the Business Group is supportive of the substantive transparency provisions of the PBM reform legislation that was initially included in the December 2024 continuing resolution. **However, we are extremely concerned with the proposed civil monetary penalty (CMP) provisions of that package which we believe would be foundationally harmful to employer health plans.** For the reasons provided below, we urge Congress to remove the CMP provisions from any PBM reform package under consideration.

As the nation's leading voice for large employers dedicated to advancing the quality and affordability of health care, the Business Group represents a [vibrant community of more than 440 of today's most forward-thinking employers and industry partners](#) including 72 Fortune 100 companies, providing health coverage for 60 million workers, retirees and their families in 200 countries. Business Group members – innovative employer plan

sponsors – are leading the way and encouraging others by providing strong health plan offerings, adopting alternative payment models, managing the total cost of care, furthering population health, and keeping people well.

I. Opposition to Civil Monetary Penalties or Excise Taxes Under ERISA, the Public Health Service Act, and/or the Internal Revenue Code

On behalf of our employer health plan sponsor members we urge Congress to remove CMP and excise tax provisions from PBM reform proposals. We understand the intent of the CMPs is to help ensure that the substantive requirements of the bill are followed by employer plans and their service providers. However, we believe this unnecessary and adequately covered under long-standing enforcement mechanisms. Moreover, adding these CMPs will fundamentally change the nature of ERISA enforcement and the role of the federal agencies in health plan design and administration. It will change ERISA from a primarily equitable statute helping to ensure that participants and beneficiaries receive the benefits to which they are entitled under the plan, to a financially punitive enforcement posture that will foreclose opportunities for compliance assistance and working with the regulators to ensure mutual agreement about plan practices.

While some may believe that focusing CMP authority on health plan vendors and “skipping over” the health plan itself is an appropriate compromise, we are extremely concerned that such direct, unilateral, and punitive authority against our members’ vendors will disintermediate employer plan sponsors thereby undermining plan fiduciary authority and plan control of design and administration. Vendors, no matter how well-behaved and compliance-partnering with the employer plan would be incentivized to act at the behest of the of the federal agencies directly rather than pursuant to their contractual and administrative agreements with the employer plan.

In instances where employers are reliant on vendor services to fulfill certain plan elements or legal responsibilities, plans with less transparent and partnering vendors may have had instances of frustration seemingly “in the middle.” The substantive transparency and other provisions of the bill provide a strong foundation of core requirements to help ensure that employer plans and their vendors know their mutual obligations and can appropriately craft contractual arrangements to deliver, enforce, and indemnify against any such future instances. Additionally, in recent years new and existing vendors have developed market-responsive offerings based in transparency – therefore employer plans not only have existing statutory remedies and contractual solutions but also market solutions to vendor compliance issues.

The CMP provisions would distort and interfere with the contractual and administrative relationship between the plan and its vendor. It will markedly stifle innovation by causing

vendors to constrain products and services under conservative precautions crafted to avoid direct federal agency enforcement prerogatives of a given administration rather than to develop and offer employers their best new ideas for consideration and adoption. This, in turn, will erode the value of employer health plans and their ability to attract and retain talent through differentiated and robust benefit offerings which, with wages, are foundational to the U.S. labor market and employee engagement.

We are further concerned that any establishment of significant CMP authority such as proposed here would serve as a precedent for ultimately attempting to use CMPs across ERISA and other health plan enforcement. At any scale, these harmful CMPs present a significant risk of rendering employer plan sponsors and fiduciaries bystanders with regard to the plan(s) for which they will remain fiduciarily responsible. This would be detrimental to the future of employer sponsored health coverage. **We urge Congress to remove any CMP and excise tax provisions from PBM reform legislation.**

II. Additional Notes and the Importance of Employer Flexibility and Control

In addition to the CMP and excise tax elements, the Business Group also urges caution on other provisions that have historically been considered in PBM reform discussions:

- Congress should avoid mandating fiduciary status to certain vendors, such as PBMs. Not all parties involved in a plan's ecosystem need be or should be fiduciaries. Employer plan sponsors and the individuals acting as the named fiduciaries of the plan(s) should continue to be empowered to determine when a partner or service provider will serve as a delegated or co-fiduciary. According to the Business Group's [2025 Employer Health Care Strategy Survey](#), a strong majority of employers clearly believe that control of whether a vendor partner serves as a fiduciary should remain with the employer as plan sponsor. Deeming PBMs or other service providers to be fiduciaries would usurp this employer control and unduly complicate plan administration, raise questions of co-fiduciary obligations, and present unnecessary legal risk to employer plans.
- While transparency around pricing structures is crucial, a broad ban on "spread pricing" as a PBM arrangement may unnecessarily limit plan sponsors' ability to manage prescription costs effectively. The final price of a prescription is determined by several market and plan design factors. For plan sponsors' flexibility, we are concerned about a one-size-fits-all ban and instead prefer the greater transparency into these arrangements that would be afforded under the proposed transparency provisions. Additional transparency for plan sponsors allows full visibility into gross and net costs, and enables additional design options.

We appreciate Congress's continued focus on this critical issue and urge policymakers to advance reforms that increase transparency and competition while ensuring large employers retain the flexibility needed to provide high-quality, affordable health coverage. Please feel free to contact me (kelsay@businessgrouphealth.org) or Garrett Hohimer, Vice President, Policy and Advocacy (hohimer@businessgrouphealth.org) to discuss further.

Sincerely,

Ellen Kelsay
President and CEO

Cc:

The Honorable Bill Cassidy, Chairman, Senate Committee on Health, Education, Labor and Pensions
The Honorable Bernie Sanders, Ranking Member, Senate Committee on Health, Education, Labor and Pensions
The Honorable Mike Crapo, Chairman, U.S. Senate Committee on Finance
The Honorable Ron Wyden, Ranking Member, U.S. Senate Committee on Finance
The Honorable Jason Smith, Chairman, U.S. House Committee on Ways and Means
The Honorable Richard Neal, Ranking Member, U.S. House Committee on Ways and Means
The Honorable Tim Walberg, Chairman, U.S. House Committee on Education and Workforce
The Honorable Bobby Scott, Ranking Member, U.S. House Committee on Education and Workforce
The Honorable Brett Guthrie, Chairman, U.S. House Committee on Energy and Commerce
The Honorable Frank Pallone, Ranking Member, U.S. House Committee on Energy and Commerce