Business Group on Health

STATEMENT FOR THE RECORD BY

BUSINESS GROUP ON HEALTH

TO THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON EDUCATION & WORKFORCE

SUBCOMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

"PROFITS OVER PATIENTS: THE PBM BUSINESS MODEL UNDER SCRUTINY"

Submitted May 6, 2026

Chairman Allen, Ranking Member DeSaulnier, and members of the Subcommittee, Business Group on Health appreciates the opportunity to submit this statement for the record on behalf of our members regarding the Subcommittee's April 22, 2026, hearing: "Profits Over Patients: The PBM Business Model Under Scrutiny."

Business Group on Health is the leading non-profit organization representing employers' perspectives on optimizing workforce strategy through innovative health, benefits and well-being solutions and on health policy issues. The Business Group keeps its membership informed of leading-edge thinking and action on health care cost and delivery, financing, affordability and experience with the health care system. Business Group members include the majority of Fortune 100 companies as well as large public-sector employers, who collectively provide health and well-being programs for more than 60 million individuals in 200 countries. For more information, visit www.businessgrouphealth.org.

Employer-sponsored coverage remains the backbone of the U.S. health care system, providing access to care for nearly 165 million Americans. Employers take this responsibility seriously and are committed to delivering comprehensive, affordable benefits to their workforce. At the same time, employers continue to face significant pressure from rising health care costs, with prescription drug spending among the most significant and persistent drivers of overall cost growth.

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The Business Group has long supported thoughtful PBM reforms that improve transparency, strengthen accountability to the plan sponsor, and provide employers with the information they need to evaluate vendor performance, assess total compensation, manage fiduciary responsibilities, and design benefits that deliver value for employees and their families. We agree that undisclosed or inadequately disclosed compensation arrangements can undermine employer decision-making and should be addressed through clear and enforceable transparency standards, such as PBM provisions of the Consolidated Appropriations Act, 2026 (CAA'26).

However, we are concerned that the PBM Kickback Prohibition Act (H.R. 7895), discussed several times throughout the hearing, would go beyond transparency and accountability by effectively prohibiting a broad category of indirect compensation arrangements that may be fully disclosed, commercially reasonable, and consistent with an employer's preferred contracting strategy.

I. The Importance of Transparency into PBM Compensation

Prescription drug costs continue to escalate, and employer plan sponsors face significant challenges in maintaining affordable and comprehensive prescription drug benefits for employees and their families. Employers often contract with PBMs, brokers, consultants, advisors, third-party administrators and other vendors to help administer complex health benefit arrangements. These relationships play an important role in supporting plan design, procurement, contracting, audit rights, performance evaluation, clinical strategy, formulary review and overall benefit administration.

Because these arrangements are complex, transparency into compensation is essential. Employer plan sponsors need to understand the full financial picture of the services being provided, including direct compensation paid by the plan sponsor and indirect compensation paid by other parties in connection with the arrangement. This includes rebates, fees, administrative payments, data-related payments, referral fees, per-claim payments, volume-based arrangements, affiliate payments and other forms of compensation that may affect the total economics of a vendor relationship.

The Business Group has consistently supported requirements that provide plan sponsors with detailed and usable information regarding PBM and vendor compensation. Such transparency allows employers to determine whether total compensation is reasonable, compare competing vendor proposals, evaluate whether incentives are aligned with the plan's interests, and make more informed decisions in

establishing and administering health plans covering employees and their families. Transparency also allows employers to identify compensation structures that may raise concerns and address those issues through contracting, procurement, audit rights, vendor replacement or other plan governance tools.

For these reasons, Business Group on Health supported statutory and regulatory efforts to strengthen PBM reporting and disclosure obligations to employer plan sponsors. Recent reforms, including the PBM transparency provisions enacted as part of CAA'26, and the Department of Labor's pending PBM transparency rulemaking, represent important steps toward ensuring that employer plan sponsors receive the information necessary to evaluate PBM and related vendor arrangements. Congress should allow these reforms to develop and work as intended before imposing broad new prohibitions that may inadvertently restrict legitimate plan sponsor contracting strategies.

II. H.R. 7895 Would Restrict Common Contracting Arrangements and Reduce Employer Flexibility

The PBM Kickback Prohibition Act would amend ERISA to provide that, in the case of a contract or arrangement between a covered plan and a covered service provider for pharmacy benefit management services, no amount of compensation may be paid, directly or indirectly, by the service provider to a brokerage firm, broker, consultant, advisor, or any other individual for the referral of the covered plan's or health insurance issuer's business to the covered service provider.

We understand the concerns motivating the bill. Employers should not be placed in a position where they believe they are receiving independent advice from a broker, consultant or advisor while material compensation arrangements affecting that advice are hidden or inadequately disclosed. Where compensation arrangements create conflicts of interest, employers should know about them and have the tools to respond.

However, H.R. 7895 appears to treat a broad category of indirect compensation as inherently improper, rather than requiring that such compensation be fully disclosed and evaluated by the employer plan sponsor as part of the total compensation arrangement. In doing so, the bill would substitute a government-mandated prohibition for employer judgment, even in cases where an employer is aware of the compensation, understands the structure, determines that the total compensation is reasonable and prefers that arrangement for legitimate plan administration reasons.

Employer plan sponsors do not all structure their PBM, broker, consultant or advisor relationships in the same way. Some employers may prefer direct-only compensation arrangements in which the plan sponsor pays all vendors directly and prohibits any third-party payments. Employers should remain free to choose that approach. Other employers, however, may determine that certain indirect compensation structures are appropriate, efficient, or preferable when fully disclosed and properly accounted for. There may be procurement, financial, liability, administrative or other health plan reasons why an employer uses a compensation structure that includes indirect payments from a PBM or related vendor to another party.

The term "kickback" also carries an understandably negative connotation. We believe an undisclosed payment made to influence a recommendation or steer business is inappropriate, but not every indirect compensation arrangement is the same, and not every indirect payment should be treated as per se improper.

In the employer plan context, the more appropriate policy focus is full transparency, employer control and reasonableness of total compensation. A payment described as a "kickback" in one context may be more accurately understood, when fully disclosed, as one component of indirect compensation that the plan sponsor should consider in assessing the total economics of a vendor relationship. The key issue is not simply whether compensation is direct or indirect, but whether the employer receives meaningful disclosure and can evaluate, accept, reject or renegotiate the arrangement.

Congress has already recognized the importance of indirect compensation disclosure in ERISA service provider arrangements. That framework reflects and validates the reality that indirect compensation exists as an option across health and welfare plan vendor relationships and supports the plan sponsor's role to evaluate whether total compensation is reasonable and whether the arrangement is appropriate for the plan. A broad prohibition on indirect PBM-related compensation would move away from that transparency-based model and toward a one-size-fits-all contracting mandate.

Recent statutory and regulatory developments provide a more appropriate path forward. The Consolidated Appropriations Act, 2026, includes significant new PBM transparency provisions that will require detailed reporting to group health plans. The Department of Labor's pending PBM transparency regulation would further strengthen plan sponsor access to information concerning PBM compensation and related arrangements under ERISA.

These reforms are directly responsive to the concerns raised during the hearing. They are intended to provide employers with better visibility into PBM compensation, pricing structures, rebates, fees, and other financial arrangements that affect prescription drug benefits. If implemented effectively, these transparency requirements can help employers assess the total compensation received by PBMs and related service providers, identify potential conflicts, and make more informed decisions about whether a particular vendor arrangement is appropriate.

III. Unnecessary Waste and Burden Parsing the Term "Referral"

As explained above, H.R. 7895 would limit employer plan sponsor flexibility to establish payment mechanisms for vendors as they see fit and as appropriate for their circumstance. While the bill on its face would ban indirect compensation for "referral" of the health plan to the service provider, we believe this is not aimed at the appropriate problem, and would trigger at least two unproductive, wasteful, and burdensome actions by some stakeholders.

In our view, the addressable problem has been **undisclosed** direct and/or indirect compensation whether it is for "referral" or otherwise. Undisclosed compensation of any type hinders the ability of the health plan fiduciaries to assess whether the total compensation to any vendor in their service is reasonable, which is their clear duty under ERISA. The CAA'21, CAA'26, and regulations, both under those laws and other authority, clearly address that all indirect compensation must be disclosed. This is important to empower employers to assess reasonable vendor compensation and structure it as is preferred for the employer's health plan.

As for waste and burden, banning indirect compensation for a "referral" in theory would not fully ban indirect compensation. It would, however, create an extremely concerning precedent for interfering with plan and vendor contractual payment terms. And, more immediately would cause: 1) the unnecessary characterization of indirect payments as not for "referral" and 2) wasteful and burdensome disputes over whether any remaining indirect payments are for "referral".

At minimum we anticipate that exploitative ERISA plaintiffs' lawyers would seize on the opportunity to sue employer plans that continued to utilize appropriate indirect payment arrangements alleging that any indirect payments are for "referral" and thus constitute a statutory violation and/or fiduciary breach for which the lawyers should be compensated in legal fees/settlements. This would be a direct cost on employers, their health plans, and their vendors, and serve absolutely no purpose to improve the

vendor selection, plan design, or the payment and provision of benefits for employees and families. It could, however, have a significant chilling effect on all indirect compensation, even when desirable for plan cost and administration purposes.

While the term "referral" here is in the bill, the specific term actually does not matter for purposes of banning some type of indirect compensation, even when disclosed and preferred. No matter how it is characterized, a ban would be exploited and waste employer health plan resources that should be spent for benefits covering employees and families.

IV. Additional Comments on Other Policy Proposals in Consideration and Raised in the Hearing

In the Subcommittee's discussion and the written testimony several other bills and policy proposals were raised. We have included brief statements here and welcome additional discussion and engagement on these issues.

- **Healthy Competition for Better Care Act (H.R. 6248)** – the Business Group supports and urges passage of this bill to help ensure that employer plan sponsors can continue to provide robust, customized, value-driven coverage and care for employees and their families. While we are generally cautious about dictating and restricting contractual terms, this policy is narrowly tailored to address well-documented anti-competitive practices that hinder the flexibility and innovation of employer health plans. We believe this policy clarifies for all stakeholders that employer plans must remain free to design and deliver customized programs that promote access, value, better health outcomes, and affordability.

- **PBM Fiduciary Accountability, Integrity, and Reform (FAIR) Act (H.R. 6837)** – the Business Group opposes enactment of this bill. There are many concerning facets of mandated co-fiduciary status for any individual, company, and/or PBM engaged in the acquisition or coverage of pharmaceuticals by an employer's health plan. Employer plan sponsors, to the greatest extent possible, must remain in control of who is a fiduciary of their health plan. Among other issues, 50-plus years of ERISA litigation and interpretation have made clear that health plan fiduciaries not only have responsibilities, but also rights with respect to interpretation and administration of the plan – we believe this must be the purview of the employer plan sponsor to determine who shall serve in this capacity. Additionally, the proposal in H.R. 6837 is extraordinarily broad and

would implicate potentially dozens of individuals who are engaged in routine, directed activities at the behest of the plan's named fiduciaries on behalf of the plan. We believe H.R. 6837 would ultimately be counterproductive and problematic for employer plan sponsors and their health plan offerings.

- **Patients Deserve Price Tags Act (H.R. 5582)** – the Business Group is extremely concerned about certain provisions of this bill being unworkable and structurally detrimental to the provision of employer health plans and programs. Additionally, we believe many of the transparency provisions applicable to employer plans may be duplicative and unduly burdensome in-light of provisions enacted in CAA'26 and regulatory actions. The Business Group supports transparency, and its members have heavily invested in ensuring that patients can find reliable pricing when inquiring with accurate information. We believe implementing the Advanced Explanation of Benefits provisions included in the No Suprises Act should continue to be the focus to improve patient cost information, and to not add additional requirements that further complicate or duplicate that effort, along with other detrimental provisions currently included in H.R. 5582.

Thank you to the Subcommittee for your consideration and attention to these important issues, and we would welcome the opportunity to discuss this submission or any other matters impacting access and affordability in employer-sponsored health care.