

December 11, 2024

[CVS, CI, UNH] PBMs: Proposed Ban on Pharmacy Ownership, New FTC Chair Nominee, Trump's Comments, Healthcare Extenders, Oh My!

Key Takeaways: While we had expected **pharmacy benefit managers [PBMs]** to remain in the legislative / regulatory crosshairs during the lame duck and into the Trump administration, recent developments confirm that the anti-PBM sentiment is just as strong as ever. While we expect that manageable legislative change *is* likely coming to the industry, we are doubtful that will include this morning's reported bipartisan / bicameral bill to force **pharmacy** divestitures by health insurers/PBMs.

The more likely outcome in the near term, as part of a healthcare extenders package in 1Q25, remains the lower-hanging fruit for PBM reforms: (1) mandatory disclosures by PBMs to their health insurer / employer customers about fees, discounts, rebates, conflicts of interest, affiliated vendors, and pharmacies, as well as dispensing rates; (2) Part D flat fee PBM compensation; and (3) a ban on Medicaid spread pricing. We could also see a few other PBM-related cats and dogs focused on the Medicare/Medicaid channels.

Ban on Health Insurers/PBMs Owning Pharmacies

Despite the headline risk invited by odd-couple Sens. Elizabeth Warren (D-MA) and Josh Hawley's (R-MO) reported Senate bill – and a companion House measure by Reps. Jake Auchincloss (D-MA) and Diana Harshberger (R-TN) – we are dubious of the enactment prospects for legislation to force health insurers or PBMs to divest their pharmacy businesses within three years.

The proposal nevertheless taps into the anti-PBM / pro-independent pharmacy sentiment that many in Congress (and the states) hold and *is* likely to gain some traction (and public hearings) in the next Congress. However, despite populist support for the concept, we see several impediments to enactment, which includes constitutional / due process considerations and likely legal challenges.

- The bill's forced divestiture would not necessarily address the behavior for which PBMs have been criticized, including: (1) price/volume-linked compensation; (2) spread pricing; (3) patient cost-sharing based on gross rather than net prices; (4) pharmacy clawbacks; and (5) lack of transparency on prices, discounts, fees, dispensing rates, and other potential conflicts of interest. It seems more designed to address another behavior – stopping health insurers/PBMs from favoring their affiliated pharmacies – and there are better tailored / less extreme ways to accomplish that goal, which suspect some lawmakers will favor, potentially including even those who are avowed supporters of the independent pharmacy community.

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CVS Health Corp (CVS)

Price:	\$52.72
52-Week High:	\$83.25
52-Week Low:	\$52.71

Cigna Corp (CI)

Price:	\$297.64
52-Week High:	\$370.83
52-Week Low:	\$288.88

UnitedHealth Group Incorporated (UNH)

Price:	\$538.14
52-Week High:	\$630.73
52-Week Low:	\$436.38

Walmart Inc (WMT)

Price:	\$95.29
52-Week High:	\$96.18
52-Week Low:	\$49.85

Walgreens Boots Alliance Inc (WBA)

Price:	\$9.73
52-Week High:	\$27.05
52-Week Low:	\$8.08

Elevance Health Inc (ELV)

Price:	\$383.30
52-Week High:	\$567.26
52-Week Low:	\$379.29

- The bill to ban ownership by a private company of a separate business may not be lawful, unless special circumstances are present. Press reports indicate that the bill authors cite past congressional measures to force divestitures (i.e. banks forbidden to engage in proprietary trading in response to the 2007-8 economic meltdown, China-owned ByteDance banned from owning TikTok to address national security issues). Were the measure to be enacted (though likely to be done independently from a reconciliation bill due to its underlying policy nature), we suspect a constitutional challenge would shortly follow from insurers/PBMs. We are not convinced that ownership of pharmacies by health insurers/PBMs is *per se* anticompetitive or invites national security concerns, and we are not aware of any court rulings on the matter. Moreover, regulation of both health insurance and pharmacies have long been the domain of the states.

Trump’s Anti-PBM Comments and FTC Commish Ferguson

PBMs still have the attention of the incoming administration, with the sector likely to be a target of Trump’s bully pulpit and ongoing FTC attention, much as it is under Biden. President Trump’s recent comments in a press interview saying that “we are going to do something on PBMs” in the context of high drug prices for consumers rekindles the anti-PBM bias his administration displayed in the first term.

Regarding Trump’s naming of current commissioner Andrew Ferguson to be FTC Chairman, this appointment – which does not need Senate confirmation – suggests to us that PBMs are still in the hot seat. We are skeptical that Ferguson would automatically withdraw the FTC complaint against PBMs that allege their rebate practices violate antitrust law, and while he recused himself from voting to issue an administrative complaint, it was done without any explanation. Rather, we think he is more likely to let the administrative action further develop to see what else the staff can drudge up and prove while agency and White House pressure bear down on the industry to make changes.

That said, Ferguson does not appear to be an outright *supporter* of PBMs either, given that he backed FTC’s ongoing 6(b) study of the industry, though he did take issue with some of the evidence (particularly the weight ascribed to anonymous comment letters) cited in the interim report released this summer.

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