NATIONAL ASSOCIATION OF Manufacturers

April 15, 2026

The Honorable Daniel Aronowitz
Assistant Secretary
Office of Regulations and Interpretations
Employee Benefits Security Administration
Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: EBSA Docket No. EBSA-2026-0001: Improving Transparency Into Pharmacy Benefit Manager Fee Disclosure (RIN 1210-AB37)

Dear Assistant Secretary Aronowitz:

The National Association of Manufacturers (NAM) appreciates the opportunity to provide comments to the Department of Labor (DOL or Department) on its proposed regulation, *Improving Transparency Into Pharmacy Benefit Manager Fee Disclosure*.

The NAM is the largest manufacturing association in the United States, representing manufacturers of every size, in every industrial sector, and in all 50 states. Small and medium-sized manufacturers make up the majority of manufacturing businesses in the United States and employ approximately 40% of the nearly 13 million manufacturing workers. Manufacturing contributes $2.94 trillion annually to the U.S. economy and accounts for nearly 53% of all private-sector research in the nation.

Manufacturers have a deep commitment to providing health benefits to their workers. These benefits are an effective tool to attract and retain employees and to maintain a healthy and productive workforce. Manufacturers know that keeping employees and their families healthy is the right thing to do for the workers who keep America and its economy strong.

However, rising health care costs remain a top challenge for the industry. Seventy percent of manufacturers cited health care and insurance costs as their primary business concern in the NAM's most recent Manufacturers' Outlook Survey.[1] Increased costs are disproportionately impacting small and midsize manufacturers, with 75% of small (fewer than 50 employees) and 78% of medium (50 to 499 employees) companies identifying health care costs as their top concern. In a separate survey conducted at the end of 2025, 94% of manufacturers responded that they expected, or had already seen, an increase in health insurance premiums for 2026. Of those, 11% saw premiums rising by more than 20%, an unsustainable increase that neither manufacturers nor manufacturing workers and their families can afford.[2] Despite this challenge, 95% of manufacturing employees are eligible for health insurance benefits, 80% of whom participate in a workplace plan, which underscores the urgent need for action to reduce health care costs for manufacturers and manufacturing workers alike.[3]

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[1] National Association of Manufacturers, Q1 2026 Manufacturers' Outlook Survey (March 12, 2026). Available at https://nam.org/wp-content/uploads/securepdfs/2026/03/NAM_Q1_2026_Outlook_Write_Up.pdf.

[2] Ibid.

[3] Kaiser Family Foundation, *2025 Employer Health Benefits Survey* (October 22, 2025). Available at https://files.kff.org/attachment/Employer-Health-Benefits-Survey-2025-Annual-Survey.pdf.

The NAM applauds the DOL for taking steps to address the affordability of health care by proposing this rule requiring pharmacy benefit managers (PBMs) to disclose fee information to employers that offer self-funded health insurance plans to their employees. Reigning in PBMs' abusive practices has long been a top priority for manufacturers. As the DOL is aware, PBMs are underregulated middlemen that design, negotiate, and administer prescription drug benefits on behalf of health insurance companies and employers that self-fund health insurance plans for their employees. Instead of helping manufacturers' health plans manage costs, there is growing evidence that PBM business practices increase them. PBMs contribute to the skyrocketing cost of health care by pocketing manufacturer rebates, tying patient cost-sharing to list prices, using spread pricing structures, and obfuscating their questionable business models.

Reforming PBMS' negative impact on employers that offer health care benefits to their employees is a crucial piece of lowering health care costs for manufacturers. PBM fees are increasingly unmoored from the value they provide to plan sponsors; instead, they reflect PBM practices that are designed to maximize their profits. For example, fees tied to a medicine's list price—rather than the fair-market value of the service provided—create incentives to favor higher cost medicines as a way to maximize revenue generation. Additionally, PBMs frequently hide such fees and other sources of compensation, making it difficult for plan sponsors to understand the value and reasonableness of the services provided.

Manufacturers strongly support the DOL's proposed rule. The proposal will require PBMs to disclose much-needed information to self-insured health plans, which will enable manufacturers with such health plans to understand and monitor PBM compensation structures and business operations— and thus empower manufacturers across the industry to make more informed decisions about their PBM contracts. Currently, health plans have insufficient information about the PBMs with which they contract to provide pharmacy benefits and are unable to determine the reasonableness of PBMs' compensation and activity. The disclosures required by this rule will compel PBMs to share critical information with plan sponsors, shining light on opaque PBM practices and providing transparency to plan sponsors. This transparency and volume of information will allow plan sponsors to make informed decisions about their PBM and pharmacy benefits contracts, as opposed to the way current decisions are made—without access to critical data needed to inform them.

The proposed rule is a critical piece of necessary broad reforms to PBM operations and compensation structures. Manufacturers appreciate the level of granularity included in the rule, which will help employers make material decisions about the health benefits they offer their workers. To further strengthen the proposal, the NAM recommends incorporating the suggestions laid out below into the final rule to institute even greater PBM transparency for plan sponsors and further enable the DOL to monitor PBM activities, which will benefit manufacturers, manufacturing workers, and their families.

I. Section-by-Section Policy Recommendations

Section (d) Pharmacy benefit management services.

Manufacturers support the definition and examples of "pharmacy benefit management services" in this section, as they comprehensively reflect how PBMs *currently* operate. However, manufacturers recommend the DOL continuously monitor PBM business models to determine if updates to section (d) are needed and promulgate additional rulemaking accordingly to ensure the definition and examples remain up-to-date. This comprehensive definition is important for

capturing the full range of PBM activities and businesses and thus ensuring manufacturers get the information they need from these entities.

Section (e) Initial disclosure requirements.

While the DOL's proposed language in section (e) requiring initial disclosures before a contract is entered and every time a PBM contract is renewed or extended will ensure manufacturers have maximum transparency into their contracts with PBMs, the NAM proposes the following recommendations to further strengthen this section:

(e)(1) Description of services.

Along with the description of each PBM service, or of the advice, recommendations, or referrals regarding the provision of PBM services, to be provided to the self-insured health plan in the initial disclosure, as required in this section, manufacturers recommend the DOL also require PBMs to specify under section (e)(1) which covered service provider, affiliate, agent, or subcontractor is providing such services. This information will give plan sponsors clear visibility into which entity is providing which services—information manufacturers may not have previously had access to, limiting their line of sight into both the provider and the costs associated—and will thus increase the transparency needed to fully understand contracts.

(e)(2) Direct compensation.

Manufacturers appreciate the comprehensiveness of paragraph (e)(2) in describing and defining direct compensation. The DOL included a request for comments in the NPRM on whether PBMs should be required to disclose direct compensation for bundled services. In response, manufacturers recommend bundled services being explicitly included in (e)(2). Requiring such disclosures will ensure that plan sponsors that enter into joint contracts with a health insurance company and their affiliated PBM are provided sufficient insight into the PBM's practices.

(e)(3) Manufacturer payments.

Manufacturers need to see the complete breakdown of remunerations PBMs extract from pharmaceutical companies to gain important insight into their PBM plan and appreciate the DOL including disclosure requirements with respect to these payments; however, more can be done under proposed paragraph (e)(3) to provide greater specificity and ensure full disclosure. Specifically, the NAM recommends requiring disclosure of specific "payments"—for example, rebates, fees, discounts, price concessions, and any other type of payment. Further, PBMs should be required to explain how they define those terms when making disclosures to employers.

This paragraph currently requires PBMs to report any payment by a pharmaceutical manufacturer to a PBM that is "in connection with the service contract or arrangement." PBMs may narrowly construe this phrase to mean only the fees that relate to services delivered to plan sponsors. Manufacturers are concerned that PBMs would exclude other fees that do not relate to services delivered yet are only collected as a result of services provided to a plan sponsor. For example, manufacturer data fees and portal fees might be interpreted as outside of the scope of reporting as currently written. Thus, we recommend expanding the requirement to also include payments "resulting from

services provided to a plan sponsor." Data and portal fees should then be captured under this requirement because without the plan there would be no need or justification for charging these fees, and therefore these types of fees are "resulting from services provided to a plan sponsor."

Additionally, the DOL should require PBMs to provide the percentage of manufacturer payments they receive that are tied to list prices or drug utilization. This will provide further transparency into PBMs' financial incentives to place drugs with higher list prices on preferred or lower tiers in the formulary.

PBMs should also be required to report any remuneration they receive, and of what type, when certain spending thresholds are reached in specific drug classes and to identify which drug classes those are. Such information will reveal incentives that PBMs may have to reach such spending thresholds and allow plan sponsors to identify potential conflicts of interest between PBMs and plan sponsors in this context.

(e)(4) Spread compensation.

In addition to reporting spread compensation in the aggregate, for each drug on the formulary, and by pharmacy channel as this paragraph requires, manufacturers recommend that the DOL require PBMs to report spread compensation amounts by pharmacy ownership status—affiliated pharmacies and non-affiliated pharmacies. This will help plan sponsors identify potential PBM designs that generate profit based on whether payments flow to an affiliate or not. PBMs should also be required to report their drug pricing methodology, including channel-specific pricing, as both can vary among different distribution channels.

This information will allow manufacturers to see how their employees are disadvantaged when they use unaffiliated pharmacies and use the data when negotiating future pharmacy benefit plans.

(e)(5) Copay claw-backs.

Manufacturers appreciate the increased transparency into co-pay claw-backs this paragraph institutes and recommend that the DOL also require PBMs to report claw-back amounts by pharmacy channel and by pharmacy ownership (affiliated and non-affiliated) status. Such disclosures would help employers identify if and how much additional PBM profit is generated from payments flowing to an affiliate and if the plan is disadvantaged if participants use unaffiliated pharmacies.

(e)(8) Other compensation.

To ensure that manufacturers have robust and complete information about PBMs' compensation practices and to empower manufacturers to make informed decisions about the PBMs with which they contract, the NAM encourages the Department to consider explicitly requiring disclosure of additional forms of compensation, including:

- PBM revenue from float on plan funds (e.g., profit from interest on funds).

- PBM compensation and/or revenue generated from steering business to affiliates.

- Any compensation associated with PBM self-preferencing and conflict of interest transactions, including compensation derived from self-preferencing transactions with PBM affiliates. Examples of this type of compensation include: PBM-affiliated pharmacies receiving higher reimbursement rates than unaffiliated pharmacies; arrangements to incentivize use of PBM-affiliated pharmacies; specialty generic drug mark-ups where PBMs reimburse affiliated pharmacies substantially more than pharmacy acquisition cost as measured by National Average Drug Acquisition Cost (NADAC); paying or reimbursing affiliated providers at higher rates (as discussed above); and medical loss ratio (MLR) manipulation where vertically-integrated insurers meet MLR requirements through expenditures to affiliated pharmacies and providers and thereby evade payments to CMS or policyholders and without providing clinical care improvements that the MLR rule intended.

- PBM compensation and/or revenue from intercompany transfers.

- Any compensation received through contract terminations.

- PBM compensation from plan beneficiaries using affiliated pharmacies, given that PBMs with affiliated mail order and specialty pharmacies strongly encourage plan sponsors to require participants to use the affiliate's mail order pharmacy for long-term (>90-day) prescriptions and specialty drugs, and prohibit participant-level savings (e.g., drug manufacturer coupons) that would be available through other pharmacy channels.

- Any compensation paid for PBM consulting services on behalf of the plan or plan sponsor, regardless of whether the consultant or broker is affiliated with the PBM and broken down by those that are affiliated and those that are not. Some large employers use consulting firms that, while not affiliated with a PBM, receive compensation from PBMs for employer placement and other services provided for the employer's group health plan. Thus, these unaffiliated consulting firms receive compensation both from the PBM and the employer for PBM-related services, which may or may not be "bundled" with other services the consultant provides to the employer on behalf of the employer's other benefit plans (e.g., medical, pension, etc.). Disclosure of this compensation will help plan sponsors and fiduciaries to identify and monitor risks associated with vendor conflicts.

- Revenue from PBM-owned Medical Benefit Management (MBM) services. The proposed rule's definition of PBM services in section (d) includes the "provision of prescription drugs through the plan's medical benefits," and the revenue PBMs receive from providing MBM services related to the provision of prescription drugs provided through said medical benefits should be disclosed.

- PBM revenue from copay maximizer or accumulator programs.

- Any revenue that PBMs receive from selling data to third parties (e.g., health analytic firms).

Additionally, instead of reporting all "other compensation" as a whole, PBMs should be required to describe and provide the amount earned from each source of compensation. All of this additional information will allow manufacturers to see where PBMs are earning

revenue and how that could be in opposition to the best interests of the plan and manufacturing workers.

(e)(9) Description of formulary placement incentives.

Paragraph (e)(9) would require PBMs and affiliates to disclose any formulary placement incentives between them and a drug manufacturer. However, the description of formulary placement incentives in the proposed text of (e)(9)(i) seemingly assumes that PBMs enter into formulary placement arrangements with pharmaceutical manufacturers that only have positive impacts on plans and their participants. Unfortunately, formulary placement incentives can lead to patients paying more for prescriptions. For example, if they need a certain drug without a formulary placement incentive and is thus on a higher, more expensive tier. Since positive impacts cannot be guaranteed, manufacturers recommend that the DOL also require PBMs to describe any negative impacts on patient access to drugs that are adversely tiered or excluded due to incentives for competing drugs. Additionally, PBMs should be required to report their rebate guarantee methodology in this section.

(e)(9)(ii) should include all therapeutically equivalent alternatives, along with an explanation for omitting each alternative from the formulary, instead of only "any reasonably available therapeutically equivalent alternatives," as the current rule requires. Comprehensive inclusion and explanation of all excluded alternatives is needed to provide complete transparency into PBMs' justifications. Sometimes patients need to take a specific brand or generic drug and such information will help plan sponsors help their employees.

Additionally, the identification and justification of excluded therapeutically equivalent alternatives should be expanded to include drugs for which the PBM expects to receive any payment by the pharmaceutical manufacturer or rebate aggregator that may be passed through to the health plan. PBMs should also describe the payment (dollar amount, percentage based on list price, etc.) and how much will be passed through to the health plan.

(e)(9)(iii) addresses PBMs that retain the authority to modify formularies during the contract period. Manufacturers recommend that the DOL define "notified reasonably in advance" as "60 days in advance of any changes restricting access to a drug" to proactively provide a time frame in which PBMs must provide such notifications. The DOL should also include a requirement for communication with the health plan a minimum of 45 days in advance, as is the typical industry standard.

While the information required under (e)(9) could be helpful on its own, the DOL should provide additional information on how it expects plan sponsors to utilize this information. Guidance is needed to detail how a health plan can and should use this information to assess the reasonableness of their PBM's compensation. The DOL should consider providing guidance to plan sponsors on which types of PBM compensation or arrangements are reasonable. Once a final rule that includes such guidance is promulgated, the DOL should host information sessions and webinars to assist plan sponsors by sharing best practices on how to use this information. The information disclosed and any guidance from the DOL will help manufacturers better understand formulary design and how to negotiate more preferable formularies when renewing their PBM plan or choosing a new PBM.

(e)(10) Drug pricing methodology.

Manufacturers appreciate the required disclosure of the net cost (as a dollar amount) to the health plan of each drug on the formulary, for each pharmacy channel, and recommend that the DOL also require PBMs to report the net cost to the health plan of each drug on the formulary, for each pharmacy channel, and by pharmacy ownership status (i.e., affiliated pharmacies and non-affiliated pharmacies). This will further shed light on the issue of patient steering and its impact on plan sponsors and beneficiaries.

(e)(11) Statement of fiduciary status.

This paragraph requires PBMs to state whether they will provide services to the plan in a fiduciary capacity. Manufacturers recommend that the DOL includes a robust list of concrete examples of instances when PBMs may function as fiduciaries, as they do for conflicts of interest in this section. Such examples include:

- Within formulary design and management:
    - Benefit design consultation (including designing cost-sharing structures, formulary tiers, utilization management, and specialty drug programs); and
    - Mid-year formulary changes.
- Within access determinations:
    - Development or administration of utilization management criteria (i.e., prior authorization or step therapy requirements);
    - Coverage determinations;
    - Designing or operating copay accumulator adjustment programs, copay maximizers, or alternative funding programs; and
    - Applying clinical criteria or making medical necessity determinations.
- Within pharmacy design and management:
    - Designing and operating pharmacy networks, including negotiating reimbursement rates; and
    - Requiring specialty pharmaceutical dispensing models (e.g., “white bagging,” “brown bagging”).
- Within plan management:
    - Claims adjudication; and
    - Interpretation of plan terms (even if the fiduciary retains nominal oversight).

The DOL should also require PBMs that function as fiduciaries to submit additional statements affirming, with evidence, that their compensation is reasonable under ERISA definitions. This will be useful for manufacturers to have should they have proof that their PBMs’ compensation is unreasonable.

Section (g) Semiannual disclosure requirements.

Manufacturers support the DOL requiring semiannual disclosures. To ensure the semiannual disclosures are as useful as possible for plan sponsors, the NAM encourages the DOL to require PBMs to report semiannually all information which they are required to report in the initial disclosures. Particularly crucial to include in semiannual disclosures are the fiduciary status and conflict of interest statements. In addition to being included in semiannual disclosures, the DOL should require PBMs to update their statements whenever there are material changes to them.

Some PBMs retain a unilateral right to adjust fees (typically only increases) during the term of the contract, in the event of circumstances such as formulary and plan design changes, increases in onsite pharmacy use, availability of new generic drugs, and similar developments that impact their compensation and other financial terms relevant to their contract with plan sponsors. The DOL should require PBMs to disclose the specific factor(s) and rationale they have determined necessitate a fee adjustment mid contract term. Should their PBMs retain such a right, this will give manufacturers information on what the parameters are that can be used to determine if PBMs are following their own guidelines.

Section (j) Right to audit.

This section lays out the parameters for plan sponsors to audit their PBMs to determine accuracy of the disclosures provided under this rule. Manufacturers recommend that the DOL explicitly include plan-level and claims-level data reporting to auditors where relevant to ensure correct specificity of data is provided during an audit. The DOL should make clear that PBMs may not use confidentiality agreements with and between affiliates, agents, and subcontractors to withhold information from plan sponsors. The DOL should ensure that PBMs cannot use group purchasing organizations (GPOs) or other arrangements to shield information from disclosure to plan sponsors, including fees and rebates that GPOs negotiate with manufacturers.

The provision of the proposed regulation giving the self-insured group health plan the sole authority to select an auditor is appropriate, and the DOL should further clarify that this means that the plan sponsor may use its own personnel to complete an audit.

Should an audit reveal a certain level of inaccurate disclosures, the cost should be borne by the PBM. There will need to be multiple thresholds for the shift of the cost burden, including aggregate cost of the inaccuracies, an individual inaccurate disclosure of a certain dollar amount, and a set number of inaccurate disclosures above a certain dollar amount.

Giving manufacturers the right to audit and to choose their auditor will give them a method of oversight to ensure they are receiving the information they are entitled to, per this proposed rule.

Section (m) Definitions.

(m)(1) Affiliate.

The definition of “affiliate” in this section requires additional clarification that “control” of affiliates means ownership and/or contractual control to capture instances when affiliates are not formally owned by PBMs, but are effectively controlled by them. Additionally, this section should explicitly include group purchasing organizations (GPOs), which PBMs use to generate significant additional revenue and extract value out of the health care system at the expense of payers and patients. Requiring GPO activity be disclosed will further ensure plan sponsors receive complete information in the disclosure statements.

II. Broad Recommendations to Strengthen the PBM Disclosure Rule

In addition to these section-by-section recommendations, manufacturers offer these additional proposals to further strengthen the rule and DOL’s intent to hold PBMs accountable:

- Manufacturers appreciate the DOL's efforts to institute PBM reforms for employers providing benefits via self-funded health plans. However, the NAM suggests that the rule be expanded to apply to fully-insured group health plans, as well, to help fully-insured plans receive the benefits of this disclosure rule. Further, expanding the rule would create consistency between self-funded and fully-insured group health plans and ensure that all plan sponsors have access to the information needed to make informed decisions.

- The increased transparency into PBM operations generated by this rule will have impacts beyond additional insight and clarity for plan sponsors. Improved transparency will give plans a better understanding of when PBMs are acting as fiduciaries on behalf of plans, to help them identify when PBMs misrepresent themselves as not being fiduciaries. With this improved understanding of when PBMs are acting as fiduciaries, manufacturers recommend that the DOL work with plan sponsors to authoritatively deem certain PBM functions as fiduciary in nature.

- In the NPRM, the DOL states that it expects the rule to reduce conflicts of interest that currently influence PBMs' key decisions regarding rebates, formulary design, and prescription drug pricing. The disclosures required by the rule will certainly identify such conflicts of interest, but more should be done to sufficiently reduce these conflicts of interest. Thus, manufacturers recommend that the DOL provide additional guidance to plan sponsors on how to use the disclosed data to better design contracts.

- Manufacturers recommended that the DOL also require PBMs to report aggregate data, including summaries of fiduciary duty, conflicts of interest, and reasonableness, to the Department. This could be effectuated by including new schedules in the Form 5500. The DOL should use the information received to monitor PBM compensation and conflicts of interest. Monitoring this data will help the DOL to enforce the rule, as well as identify potential abuses and trends to inform future regulations and policymaking to restrict PBMs' abusive business practices, which would continually benefit manufacturing plan sponsors and their employees who are harmed by such practices. The disclosures required by this rule, if shared with the DOL, will set the stage and provide the foundation for the future prohibition of unreasonable PBM compensation and compensation structures.

III. Interaction Between the Proposed Rule and the Consolidated Appropriations Act of 2026

The DOL has requested more information on how this rule would interact with the commercial market PBM provisions contained in the Consolidated Appropriations Act of 2026 (CAA). The NAM has long supported the PBM reform provisions that were included in the CAA and celebrated their enactment into law. However, the CAA's passage does not diminish the urgent need for the DOL to finalize this rule to help plan sponsors fulfill their duty to monitor PBM compensation. If anything, it reinforces it. PBMs have systematically denied employers access to compensation data, leaving them exposed to significant litigation risk. Manufacturers urge the DOL to act swiftly to finalize this rule so that plan sponsors can better monitor PBM compensation and to further regulate PBM activities in the commercial market that continue to harm manufacturers.

The CAA creates a floor, not a ceiling, on PBM regulation. Further, the provisions in the proposed rule and CAA are broadly complementary and manufacturers believe that the rule can serve as an important step toward the effective implementation and enforcement of the CAA provisions. To the extent that certain technical changes may need to be considered to align the proposed rule and CAA requirements, manufacturers urge the DOL to do so when finalizing the rule, without any need for delay.

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Given the impact that rising health costs continue to have on manufacturers of all sizes, the NAM respectfully urges the Department to work expeditiously to finalize the proposed rule. To maximize the benefits of the rule, manufacturers encourage the DOL to incorporate these targeted improvements, which will institute further PBM transparency for plan sponsors and for the DOL so the agency can monitor PBM activities, including the detrimental impact of PBM self-pricing arrangements and conflicts of interest.

The NAM looks forward to working with the DOL to finalize and implement this important rule. As the Department works toward implementation, manufacturers support additional steps to build on the foundation of this landmark rule. Specifically, the reporting and collection of information laid out in this rule should lead to future DOL activity, including oversight, guidance, enforcement, and rulemaking. It is critical that health plan sponsors can access and use the data and information they need to continue to provide important health benefits to their employees.

Sincerely,

Jess Wysocky
Director, Health Care Policy

Jake Kuhns
Vice President, Domestic Policy