



November 8, 2023

The Honorable Ron Wyden  
Chair  
U.S. Senate Committee on Finance  
219 Dirksen SOB  
Washington, DC 20510

The Honorable Mike Crapo  
Ranking Member  
U.S. Senate Committee on Finance  
219 Dirksen SOB  
Washington, DC 20510

**RE: SUPPORT FROM OUR NATION’S PHARMACISTS FOR AMENDMENTS AND MODIFICATIONS TO THE BETTER MENTAL HEALTH CARE, LOWER-COST DRUGS, AND EXTENDERS ACT**

Dear Chair Wyden, Ranking Member Crapo, and Members of the Senate Finance Committee:

The American Pharmacists Association writes on behalf of the nation’s over 330,000 pharmacists across the country to thank you for your continuing leadership and offers our strong support for the following amendments (listed below) to be added to the **Better Mental Health Care, Lower-Cost Drugs, and Extenders Act**. This legislation, combined with the Modernizing and Ensuring PBM Accountability Act (MEPA), will begin to address pharmacy benefit managers’ (PBMs) harmful business practices that are increasing drug costs at the expense of patients and creating ‘pharmacy deserts’ in minority, rural, and underserved communities, where the neighborhood pharmacy may be the only health care provider for miles.

In addition to these proposed amendments, additional modifications, not currently included in the legislation, are necessary to keep our nation’s pharmacy doors open including:

- Addressing the Direct and Indirect Remuneration or “DIR” cliff by offering payment plans or alternate payment arrangements to pharmacies **in advance of the January 1, 2024, effective date**. As you know, under the Centers for Medicare and Medicaid Services’ (CMS) final rule (CMS-4192-F), which takes effect January 1, 2024, “changes in cash flow may cause some already struggling pharmacies to decrease services or medication availability, and/or be unable to remain in business, which may impact pharmacy networks.” CMS restated in a November 6 memorandum to all Part D plan sponsors that “[w]e are continuing to strongly encourage Part D plan sponsors to provide payment plans or alternate payment arrangements to pharmacies in advance of the January 1, 2024, effective date. If such an arrangement is offered, Part D sponsors and their PBMs should provide pharmacies with a straightforward means of requesting it...and CMS will closely monitor plan compliance with pharmacy access standards at §

423.120 to ensure that all Medicare Part D beneficiaries continue to have access to pharmacies and medications.” Yet, no current legislative solution to this “DIR” cliff has been offered.

- Moving up the implementation date for Section 201, Assuring Pharmacy Access and Choice for Medicare Beneficiaries, **from 2028 to a minimum of 2025**. CMS can request information now, even without a change to the statute, utilizing authority under §423.120 and § 423.505(b)(18). Rural pharmacies will not likely be open in 2028 when these changes are currently set to be proposed to be implemented. A similar mechanism CMS used during the pandemic was interim final rules with comment periods.
- Adding a professional dispensing fee in addition to the National Average Drug Acquisition Cost (NADAC).
- Making pharmacies whole for (“discount-eligible drugs”) on their net prices (Section 203, Protecting Seniors from Excessive Cost-Sharing for Certain Medicines).

### **APhA-supported amendments:**

#### **Grassley Amendment #5 to the Chairman’s Mark of the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act Cosponsors: Casey and Brown**

Short Title: To encourage pharmacists to serve older Americans in communities that lack easy access to doctors or where pharmacists are able to provide certain basic medical services

Description of the Amendment: The amendment encourages pharmacists to offer health care services such as health and wellness screenings, immunizations and diabetes management by authorizing Medicare payments for those services where pharmacists are already licensed under state law to provide them. Many states already allow pharmacists to provide these services, but there is currently no way for pharmacists to receive Medicare reimbursement for providing them.

#### **Thune/Warner/Daines/Brown Amendment #3 to the Chairman’s Mark of the Better Mental Health Care, Lower-Cost Drugs and Extenders Act**

Short Title: Equitable Community Access to Pharmacist Services Act

Description of the Amendment: This amendment would ensure continued patient access to essential pharmacist services by allowing pharmacists to bill Medicare for testing, treatment, and vaccinations for COVID-19, influenza, respiratory syncytial virus (RSV), and strep throat according to state scope of practice laws.

#### **Lankford/Brown Amendment #3 to the Chairman’s Mark of the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act**

Short Title: Clarification of Independent Community Pharmacy Definition

Description of the Amendment: This amendment would amend Section 201 of the Chairman’s Mark to clarify that pharmacies that are associated with franchises or pharmacy services administrative organizations can qualify as independent community pharmacies.

**Lankford/Brown Amendment #4 to the Chairman’s Mark of the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act**

Short Title: Submission of Allegations of Reasonable & Relevant Violations Following Contract Changes

Description of the Amendment: This amendment would amend Section 201 of the Chairman’s Mark to allow pharmacies to submit additional allegations of violations of reasonable and relevant standards when Part D plans/PBMs change contracts after the pharmacy’s initial submission.

**Blackburn/ Warner/ Lankford Amendment #1 to the Chairman’s Mark of the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act**

Short Title: To ensure network long-term care pharmacies are included under Section 201 of the Chairman’s Mark

Description of the Amendment: This amendment would amend Section 201 of the Chairman’s Mark to ensure a PDP sponsor offering a prescription drug plan shall permit any long-term care pharmacy that meets the standard contracting terms and conditions under such plan to participate as a network long-term care pharmacy of such plan.

**Warner-Scott (SC) Amendment #1 to the Chairman’s Mark of the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act**

Short Title: Long-Term Care Pharmacy Definition Act

Description of the Amendment: Amends Section 202 to add a definition of long-term care pharmacy.

**Grassley Amendment #1 to the Chairman’s Mark of the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act Cosponsors: Brown, Thune, and Lankford**

Short Title: To require Congressional briefings and periodic reporting by HHS on activities related to monitoring, enforcing relevant requirements, and addressing challenges related to, consistent with existing authorities, pharmacy access under this Part.

**Blackburn/ Brown/ Lankford Amendment #5 to the Chairman’s Mark of the Better Mental Health Care, Lower-Cost Drugs, and Extenders Act**

Short Title: Consideration of Pharmacy Reimbursement and Dispensing Fees in Reasonable & Relevant RFI

Description of the Amendment: This amendment would amend Section 201 of the Chairman’s Mark to include in the Request for Information (RFI) related to the reasonable and relevant rulemaking consideration of whether pharmacy reimbursement and dispensing fees cover pharmacy ingredient and operational costs

Losing a pharmacy is a traumatic experience for a community. Once lost, those communities never get that local pharmacy back. It’s way past time to put patients over PBM profits, and APhA stands with you to protect patients’ access to their trusted, local community pharmacists.

Please contact Doug Huynh, JD, APhA Director of Congressional Affairs, at [dhuynh@aphanet.org](mailto:dhuynh@aphanet.org) if you have any additional questions.

Sincerely,



Michael Baxter  
Vice President, Federal Government Affairs

cc: The Honorable Charles Grassley  
The Honorable Sherrod Brown  
The Honorable John Thune  
The Honorable Mark Warner  
The Honorable Steve Daines  
The Honorable James Lankford  
The Honorable Marsha Blackburn

**Appendix: # of state licensed pharmacists for Members of the Senate Finance Committee**

**Majority:**

Oregon: 9,006  
Michigan: 16,867  
Washington: 10,969  
New Jersey: 18,019  
Delaware: 2,415  
Maryland: 12,228  
Ohio: 21,906  
Colorado: 9,064  
Pennsylvania: 23,473  
Virginia: 16,159  
Rhode Island: 2,185  
New Hampshire: 2,827  
Nevada: 7,721  
Massachusetts: 14,029

**Minority:**

Idaho: 3,624  
Iowa: 6,581  
Texas: 36,154  
South Dakota: 2,085  
South Carolina: 9,184

Louisiana: 9,317  
Oklahoma: 8,150  
Montana: 2,200  
Indiana: 11,497  
Wyoming: 1,437  
Wisconsin: 8,942  
North Carolina: 17,284  
Tennessee: 12,556