

## Transparency in Pharmacy Benefits

*Brad Young, Rx Plus Pharmacies*

## Brief History of PBMs

- The role of the PBM has evolved from simply administering prescription drug and device benefits for plan sponsors.
- When PBMs first came to the market place their core function was claims processing and administration. Currently, PBMs act as middlemen for and between plan sponsors, consumers and retail pharmacy outlets.
- Today, they negotiate rebates, discounts and other fees, switch plan members to drugs that provide the highest profit for the PBM, not necessarily to the drugs that provide the greatest savings to the covered entities.

## What Is a PBM?

- In December, 1999, a National Association of Boards of Pharmacies Task Force defined a PBM as:
- [A] person that administers the prescription drug/device portion of health insurance plans on behalf of plan sponsors, such as self-insured employers, insurance companies, and health maintenance organizations, and that engages in, or directs, the practice of pharmacy.

## Certain Practices of PBMs Are Unregulated

- PBMs are the only unregulated player in the prescription drug benefit chain. As a result of this lack of oversight PBMs have had dozens of lawsuits filed by the federal government, state governments, private corporations, HMOs, unions and individuals.
- PBMs have had to respond to litigation alleging breach of contract, breach of fiduciary duty, fraud, fraudulent inducement and violations under the Uniform Deceptive Acts and Practices Statutes. [1]
- The defendants to these lawsuits have been the "big three" PBMs, Caremark, Medco, and Express Scripts. These PBMs retain the majority of the national market share for prescription drug management services for covered entities.

[1] Litigation Against PBMs, Presentation by Linda Cole, Esq., Principal, The Cole Law Firm.

## The Nation's Response to PBMs

## Legislative

- So great is the problem of rising drug costs a non-partisan alliance of state legislators from 10 states and the District of Columbia have come together and formed the National Legislative Association on Prescription Drug Prices. In a letter they wrote to the Federal Trade Commission they stated:
- *"PBMs often direct individuals to drugs that provide the PBM with the highest rebates, and the greatest margins, while failing to pass these savings on to purchasers. ...The operations of the PBMs are often not transparent, which enables them to engage in these practices without regulation from market forces. There have been numerous state and federal investigations and enforcement actions that have uncovered a variety of deceptive and fraudulent practices by PBMs."* [1]

[1]Letter to the Federal Trade Commission from the case of the National Alliance, dated May 11, 2005

## Industry

- Health care benefit digests for employers are suggesting that "true transparency" is the only way to keep drug costs down.
- "Dale Brown a senior vice president for MedImpact has a broad range of health care industry experience including pharmacy benefit management experience at both Medco and Caremark." He advises in Benefits & Compensation Digest, January 2006:
- "True transparency is about full disclosure. True transparency means you know what revenues the PBM receives and where those revenues come from." ...be sure the PBM provides full disclosure of contract terms and all revenue it receives from pharmaceutical manufacturers." The best way to ensure true transparency is by having the right to audit. This allows you and your professional auditor the ability to audit a PBMs contracts at any time to ensure what you are sold is what is being delivered." [1]

[1] Finding True Transparency: Maintaining Your Plan's Pharmacy Benefit, January 2006, Benefits and Compensation Digest

## Employers

- "University of Michigan discovered an amazing fact: The companies that tens of thousands of employers have hired to help them hold down the ever-rising cost of prescription drugs can actually drive them up."
- "The Ann Arbor University dropped the five benefit managers it had been working with, hired a single new manager that has less control over how the drug plan is administered and imposed strict new rules. These changes enabled U-M to hold its drug spending to \$43 million in 2003, or \$8.6 million less than it would have paid and held down costs for employees." [1]
- A coalition of 52 employers...endorse a new purchasing model for pharmacy benefit managers that would require greater disclosure...the group including Caterpillar, IBM, Starbucks and Verizon Communications—said that it would collectively reduce by 9% its \$3.7 billion in annual prescription drug spending by contracting with PBMs that agree to the plan." [2]

[1]U-M's Charges Cut Drug Expenses, Detroit Free Press, May 18, 2005

[2]Kaiser Daily Health Policy Report, Wednesday, August 10, 2005

## Judicial Branch

- In April, 2004, 20 state Attorneys General announced a settlement with Medco Health solutions...the 20 state attorneys generals allege that drug switches actually resulted in increased costs to health plans and patients...[1]
- September 8, 2005 the United State Attorney Patrick Meehan issued a press release announcing the settlement agreement with Advance PCS, a Caremark subsidiary for \$137.5 million to resolve civil fraud and kickback allegations. "The settlement resolves claims under the False Claims Act and the Public Contract Anti-Kickback Act arising from (1) payments made by pharmaceutical manufacturers to Advance PCS in the form of excessive administrative fees and over-priced products and services agreements as an improper reward for favorable treatment of the manufacturers' drugs..."[2]

[1] Press Release, Office of the Attorney General, dated April 20, 2004  
[2] Press Release, United States Attorney's Office Eastern District, dated September 8, 2005

## Attempts at PBM Transparency and Regulation

### 2005 Health Care Task Force

- National perspective, Dick Cauchi, health program director, National Conference of State Legislatures
- Overview of 2004 Sunrise Report, Julie Hoerner, deputy director, Department of Regulatory Agencies
- Need for regulation of PBMs, Mark Kinney, executive director, RxPlus Pharmacies, Mike Feeley, attorney, Mark Riley, executive director, Arkansas Pharmacy Association
- PBM perspective, Peter Harty, vice president government affairs, Medco, Allen Horne, vice president government affairs, Caremark Rx
- Health Plans perspective, Anthem Blue Cross and Blue Shield
- Business perspective, Ralph Pollock, chairman, Business Council on Health Care Competition, Colorado Association of Commerce and Industry
- Consumer perspective, AARP, CoPIRG, Colorado For Health Care/SEIU

## What Has Colorado Done ?

### Legislative Attempts

### SB06-164 Concerning the Business Practices of Pharmacy Benefit Managers

#### Bill Summary:

- Requires PBMs to disclose to a covered entity any direct or indirect ownership interests.
- Requires the PBM to perform its duties with care and in good faith and with fair dealings.
- Defines "Payments received by the PBM" as any administrative fees, pharmacy network fees, revenues received by the PBM from drug switching, manufacturers rebates or discounts, the difference between what the PBM paid the pharmacist and what they charged the covered entity, and the sale of health data.
- Requires any contract between covered entities and the PBMs to contain an audit provision allowing the covered entity access to "Payments received by the PBM."
- Makes a violation of the requirements of this section a civil action between the covered entity and the PBM.

## What Does the State Need to Do?

>Audit state PBM Contracts

>Pass Transparency for State PBM Contracts