How Pharmacy Benefit Managers Help Employers Provide Safer, More Affordable Prescription Drug Benefits

PCMA

Contents

Executive Summary

Pharmacy Benefit Managers (PBMs) have developed an impressive array of tools and techniques to help employers and other plan sponsors offer high quality, cost-effective prescription drug benefits to their enrollees. PBMs typically offer employers a set of core services that promote quality, improve outcomes, and help drive down the cost of prescription drugs. PBMs also provide employers with clinically based services designed to improve the appropriateness, safety, and quality of pharmacy benefits. Taken together, these tools provide market-centered solutions to meet employers' pharmacy benefit management needs.

In fact, PBMs are the only entities in the pharmaceutical benefit delivery chain with a mission fully aligned with the benefit needs of employers. Vigorous competition among PBMs ensures that employers have a wide range of benefit options to meet their goals. Marketplace competition also enables employers to structure their contractual relationships with PBMs to receive maximum value for their benefit dollar and to verify and measure performance.

> *"On average, pharmacy benefit management reduces prescription drug costs by 25 percent compared to retail purchases with no pharmacy benefit support."*
>
> —PricewaterhouseCoopers, July 2004

How PBMs Help Employers Manage Costs and Improve Quality

Studies by independent government agencies—including the Government Accountability Office (GAO), Congressional Budget Office, and Federal Trade Commission, as well as private-sector experts such as PricewaterhouseCoopers (PwC)—suggest that the tools and techniques pioneered by PBMs typically reduce costs by about 25 percent and also help expand access, promote quality, and improve outcomes for some 200 million Americans. PBMs offer employers proven services to achieve savings:

- **Pharmacy Network Discounts:** Through pharmacy networks, PBMs can negotiate drug discounts as much as 18 percent below the average cash price for brand-name drugs and 47 percent below the average cash price for generic drugs.
- **Real-time Claims Adjudication and DUR:** Prescription drug savings from PBM drug utilization review (DUR) programs can range from 6 percent to 9 percent.
- **High Quality Formularies:** Drug formularies administered by the PBMs generally include drugs in most major therapeutic categories and have mechanisms to allow enrollees to obtain nonformulary drugs when prescribed by a physician.
- **Generic Substitution:** Generic drug strategies currently being used by PBMs can propel a new generic equivalent drug to more than half of new prescriptions dispensed after just 2 weeks.
- **Therapeutic Interchange:** PBM therapeutic interchange programs can result in savings on drug spending ranging from 1 percent to 4.5 percent.

- **Coverage Management:** Savings from PBM prior authorization programs can range from 1 percent to 6 percent of drug spending.
- **Manufacturer Rebates:** Manufacturer rebates can reduce total annual drug spending by 3 percent to 9 percent.

PBMs provide these services at low administrative costs, accounting for as little as 1.5 percent of each plan's total drug benefit spending. Many PBMs also provide additional highly innovative services that further expand the potential for employers to achieve savings:

- **Mail-Service Pharmacies:** PBMs have reduced dispensing costs by developing high-volume, automated mail-service facilities, cutting drug costs an average 27 percent below retail pharmacy cash prices on brand-name drugs and 53 percent on generic drugs.
- **Specialty Pharmacy:** PBMs are at the vanguard of developing clinical and cost management techniques for high-cost specialty pharmaceuticals to bring down annual treatment costs that can range as high as $250,000 per patient.
- **Disease Management:** About 75 percent of PBMs offer disease management programs to their clients to reduce overall medical costs for patients with chronic illnesses such as asthma, diabetes, depression, and hypertension.
- **E-Prescribing:** PBMs are at the forefront of electronic prescribing, currently used in about 16 percent of medical practices and associated with a decrease in prescription-related phone calls.

The complete array of tools and techniques developed by PBMs give employers a range of market-centered options from which to decide how to best meet the drug benefit needs of their employees while also containing costs.

Medicare, FEHBP, and Congress Rely on PBM Tools

The Medicare Modernization Act—signed into law in December 2003—is but the latest confirmation of the government's increasing reliance on PBM tools and techniques. The Federal Employees Health Benefits Plan (FEHBP) has had much success partnering with PBMs as have many state employee health plans.

- PBM tools and techniques feature prominently in the funded Medicare prescription drug benefit scheduled to take effect in 2006.
- PBMs have the potential to reduce Medicare drug expenditures up to 30 percent below unmanaged expenditures, according to CBO.
- Most federal employees, retirees, and Members of Congress participating in the FEHBP—the largest employer-sponsored health insurance program in the United States—are enrolled in plans that contract with PBMs to manage their prescription drug benefits.
- Many state employee health plans rely on PBMs. A vast majority of states use PBM clinical and cost management tools such as tiered formularies.

Employers: The Real Target of Anti-PBM Legislation

Employers should be wary of attempts to restrict the tools used by PBMs—such measures would limit their ability to manage costs. Special interests favoring anti-PBM legislation—including the retail pharmacy industry and personal injury lawyers—have an agenda directly at odds with employers. They want:

- Employers to spend more, not less, on prescription drugs
- Government to micromanage how employers provide drug benefits
- Expanded ability to sue employers over how they structure health benefits

Restrictions on PBM tools—if allowed to proceed—***could add more than a trillion dollars to the nation's drug bill over the next 10 years,*** according to PwC. Employers can ill afford these added costs, especially since they would add no value to their employee benefit programs.

How PBMs Help Employers Manage Costs and Quality

Pharmacy Benefit Managers (PBMs) have developed an impressive array of tools and techniques to help employers and other plan sponsors offer high quality, cost-effective prescription drug benefits to their enrollees. PBMs typically offer employers a set of core services that promote quality, improve outcomes, and help drive down the cost of prescription drugs. PBMs also provide employers with clinically based services designed to improve the appropriateness, safety, and quality of pharmacy benefits. Taken together, these tools provide market-centered solutions to meet employers' pharmacy benefit management needs:

PBMs Reduce Costs Through Pharmacy Network Discounts: PBMs lower costs and encourage quality care by developing networks of pharmacies that meet plan needs. While the majority of pharmacies nationwide are in PBM networks, employers willing to accept more limited pharmacy networks usually receive the greatest value in terms of discounts and dispensing fees. According to a January 2003 study by the Government Accountability Office (GAO), PBMs obtain discounted pharmacy prices significantly below those paid by cash-paying consumers. Specifically, GAO found that PBM pharmacy networks offered substantial discounts and wide access:

- The average price PBMs negotiated for drugs from retail pharmacies was about 18 percent below the average cash price customers would pay at retail pharmacies for 14 selected brand-name drugs and 47 percent below the average cash price for 4 selected generic drugs.
- PBMs maintained retail pharmacy networks for the Federal Employees Health Benefits Program (FEHBP) plans that included most retail pharmacies—typically 90 percent to nearly 100 percent.

> *"Enrollees in the plans had wide access to retail pharmacies, coverage of most drugs, and benefited from cost savings generated by the PBMs."*
>
> **— U.S. Government Accountability Office, January 2003**

PBMs Add Efficiency and Safety through Rapid Claims Adjudication and DUR: Consumers generally can use any pharmacy in the PBM network and have their claim processed nearly instantaneously. As the claim is adjudicated, PBMs also perform drug utilization review (DUR) to alert the pharmacist to any harmful drug interactions.

- PBMs are often the only entity with complete information on a patient's medications—particularly when enrollees are prescribed medication by more than one physician or fill prescriptions at different pharmacies.
- GAO found that prescription drug savings from DUR can range from 6 percent to 9 percent.

PBMs Recommend High Quality Formularies: PBMs encourage clinically appropriate and cost-effective prescribing by assembling Pharmacy and Therapeutics (P&T) committees to recommend the plan's formulary based on safety, efficacy, and clinical appropriateness. Once a drug is evaluated and classified by the P&T committee, it can be placed on a reimbursement tier based on clinical and cost considerations.

- Plan sponsors often assign generic drugs the lowest level of cost-sharing, followed by preferred brand drugs and, finally, nonpreferred brand drugs.
- In plans reviewed by GAO, drug formularies administered by the PBMs were generally not overly restrictive, included drugs in most major therapeutic categories, and had mechanisms that allowed enrollees to obtain nonformulary drugs when prescribed by a physician, although sometimes at a higher out-of-pocket cost.

PBMs Encourage Generic Drug Use: PBMs continually develop innovative programs to encourage the use of generic drugs whenever clinically appropriate. The huge potential of generics to reduce costs is apparent in that, today, generic drugs account for 44 percent of dispensed prescriptions but just 7 percent of prescription dollars, according to IMS Health. The generic drug strategies currently being used by PBMs include:

- Advising plan sponsors on formulary and cost sharing strategies that encourage the use of generic alternatives.
- Encouraging generic substitution through the use of mail-service pharmacies: Mail-service pharmacies generally have more time than retail pharmacies to contact physicians when their approval of a generic substitution is necessary. This helps to explain why mail pharmacies have somewhat more success with this intervention, according to researchers at Harvard University.
- Patient education programs to alert patients to the value of generics and potential savings.
- Coupon and voucher programs that encourage patients to try generic alternatives by waiving copays or providing samples of the generic product.
- Physician-based generic sampling programs.

These strategies have resulted in the rapid adoption of generics once they become available. According to IMS Health, the most effective strategies can propel a new generic equivalent drug to more than half of new prescriptions dispensed after just 2 weeks from their introduction to the market and up to 90 percent of the new prescriptions dispensed after just 8 weeks from introduction.

PBMs Recommend Clinically Appropriate Therapeutic Alternatives: PBMs lower costs and enhance quality by contacting prescribers when they write prescriptions for nonpreferred formulary drugs that could be interchanged with the preferred drug.

- Therapeutic interchange always requires the approval of the prescriber as well as a new prescription.
- GAO found that therapeutic interchange resulted in savings on drug spending ranging from 1 percent to 4.5 percent.

PBMs Lower Costs through Coverage Management: PBMs use techniques such as prior authorization and clinical step-therapy to help ensure that utilization remains consistent with the provisions of the plan's drug benefit.

- Coverage management techniques seek to identify excess use, duplicative therapies, or the availability of effective, low-cost drug alternatives.
- GAO found that savings from prior authorization ranged from 1 percent to 6 percent of plan spending for drugs that either were not dispensed or were substituted with less costly alternatives.

> *"PBMs achieved savings through price discounts, rebate payments, and managing drug use."*
>
> **— U.S. Government Accountability Office, January 2003**

PBMs Cut Drug Costs through Manufacturer Rebates: PBMs generally secure price concessions from pharmaceutical manufacturers in the form of rebates. Rebates are generally provided by manufacturers on patented medicines that face competition from products evaluated as therapeutically equivalent by a P&T committee. In these cases, PBMs typically recommend preferred status for those products that offer the most competitive pricing and rebates. According to GAO:

- Rebates reduced total annual drug spending by 3 percent to 9 percent from 1998 through 2001 in plans serving federal employees.
- PBM savings in the form of rebates passed on to these plans translated into about a 1 percent decrease in the plans' future premiums.
- Estimated rebates retained by PBMs represented less than half of one percent of total plan drug spending.

PBMs Keep Administrative Costs Low: PBMs must pay for administrative services such as call centers, clinical staff, and information technology. In some cases, these costs are reimbursed through a direct fee, while in other instances, clients prefer that the PBMs subtract administrative costs from the rebates they receive from pharmaceutical manufacturers.

Administrative fees collected by PBMs for plans serving federal employees accounted for an average of 1.5 percent of each plan's total drug benefit spending in 2001.

Consumers Enjoy Wide Access and Coverage through Plans Managed by PBMs: Enrollees in plans reviewed by GAO benefited from wide access to retail pharmacies, coverage of most drugs, and cost savings generated by the PBMs.

- PBM reductions in plan claims costs for prescription drugs translate into lower premiums for enrollees in later years.
- PBM savings in the form of premium savings accrued to all enrollees, regardless of whether they used prescription drugs.

The Retail Pharmacy Lobby's Real Goal: End Employer Access to Mail-Service Pharmacies

The retail pharmacy lobby has been trying for years to hobble the ability of employers to access mail-service pharmacies, which typically provide drug discounts 11 percentage points higher than retail pharmacies, according to PricewaterhouseCoopers (PwC).

PBM mail-service pharmacies reduce costs thanks to automation and workflow techniques that allow the most advanced facilities to process millions of prescription each year with greater than 99.999% accuracy.

Mail-service dispensing also helps to make other PBM tools such as DUR and therapeutic interchange easier and more effective than if the consumer is standing at the pharmacy counter waiting for the drug to be dispensed.

- GAO found that the average mail-service price was about 27 percent below the average cash price customers would pay at a retail pharmacy for brand name medicines and 53 percent below cash prices for generic drugs.
- Plans often opt to encourage the use of mail service by allowing enrollees to fill 90-day rather than 30-day prescriptions and providing cost-sharing incentives. Some plans also require enrollees to use mail service to obtain refill prescriptions for chronic conditions.
- A 2004 study by Harvard University researchers published in Health Affairs found that PBM-owned mail-service pharmacies dispense and substitute generics at a rate equivalent to retail pharmacies when differences in the types of drugs dispensed through the two channels are taken into account.
- While mail service is growing rapidly, as of June 2004 it still accounted for just 5.7 percent of prescriptions, according to IMS Health.
- Nine out of ten consumers using mail-service pharmacies are satisfied with the service (see sidebar on page 6).

PBMs Continually Innovate to Bring Down Costs for Employers

Building on the market-based solutions PBMs use to make drug benefits safer and more affordable, many PBMs provide highly innovative services that have expanded the frontier of pharmacy—and the potential for employers to achieve savings. These include innovations like specialty pharmacies, disease management, and e-prescribing initiatives.

CONSUMERS HIGHLY SATISFIED WITH MAIL-SERVICE PHARMACIES

Consumers are highly satisfied with mail service pharmacies, according to a Fall 2004 survey of nearly 12,000 mail-service pharmacy users nationwide sponsored by PCMA. From the professionalism in customer service to outstanding accuracy in the drugs received by consumers, mail service pharmacies receive high marks.

Key findings on the satisfaction of mail service pharmacy users:

- 97 percent were satisfied or very satisfied about the correct drugs being delivered and the condition of the drugs they received
- 94 percent were neutral, satisfied, or very satisfied with the timeliness of their drug delivery
- 97 percent were neutral, satisfied, or very satisfied with the professionalism of their service representatives
- 95 percent of survey respondents would recommend their mail service pharmacy to a friend or family member.
- When survey respondents were required to use mail-service pharmacies, their willingness to recommend the service dropped only slightly, to 89 percent.

Older consumers as well as those who have used mail service for longer periods of time are more likely than other users to be very satisfied with the service.

PBMs Focus on Specialty Pharmacy: PBMs have long been at the vanguard of developing clinical and cost management techniques for prescription medicines and play an increasingly important role in the growing area of specialty pharmacy. Expenditures on specialty pharmaceuticals—high-cost, often biological, and usually injectable products—range from 15 to 35 billion dollars. Those expenditures are increasing at double the rate of spending for conventional products.

- Annual treatment costs for patients requiring specialty pharmaceuticals are as high as $250,000, compared with an average of just $550 for those on traditional medications.
- A Fall 2004 survey sponsored by PCMA found that 94 percent of specialty pharmacy users—individuals with chronic conditions such as multiple sclerosis, rheumatoid arthritis, and Hepatitis C—were either satisfied or very satisfied with their specialty pharmacy.

PBMs Manage Disease and Improve Prescription Compliance: About 75 percent of PBMs offer disease management programs to their clients. In these programs, the PBM manages the cost and treatment of enrollees with specific chronic illnesses such as asthma, diabetes, depression, and hypertension and seek to reduce overall medical costs. Many PBMs also have programs to enhance patient compliance with their prescription regimen and reduce the prescribing of inappropriate, duplicative, or contrarily indicated products.

PBMs Lead In E-Prescribing: PBMs are at the forefront of the electronic prescribing movement, which promises to greatly reduce prescription errors and associated costs. Today, e-prescribing is currently used in about 16 percent of medical practices and has been associated with a decrease in prescription-related phone calls. PBM-based e-prescribing systems allow physicians to access a patient's prescription history information, together with formulary information, claims information, and mail-order options. According to e-Health Initiatives, the potential cost-savings resulting from broad adoption of e-prescribing will be huge:

- $29 billion annually through reduction in medical errors
- $2 billion saved from reduced hospital and doctor visits
- $27 billion saved from less duplication and physician awareness of generics

E-prescribing would save employers $39-$74 per member per year—the majority of which is achieved by identifying the overuse of medications, according to e-Health Initiatives.

Overall Savings from PBMs Average 25 Percent

A July 2004 joint study by the U.S. Federal Trade Commission (FTC) and U.S. Department of Justice (DOJ) finds that "to date, most empirical evidence suggests that PBMs have lowered costs for health plan sponsors."

Total savings from pharmacy benefit management varies depending on the level of PBM services selected by the employer. Some clients contract with PBMs only for administrative services, such as claims and benefit administration. Others adopt a range of PBM services, including clinical and cost management.

> *"To date, most empirical evidence suggests that PBMs have lowered costs for health plan sponsors."*
>
> **— U.S. Federal Trade Commission and U.S. Department of Justice, July 2004**

"PBMs appear to compete on price and non-price dimensions," according to the FTC-DOJ study. Key determinants used by plan sponsors to select their PBM through the competitive bidding process include financial terms such as the reimbursement rate and dispensing fee paid to pharmacies, the rebates paid to plan sponsors based on formulary drugs utilized, mail order pricing, and administrative fees. Non-price dimensions of service, such as plan design, the extent of the retail network, and mail order components are also the basis of competition," notes the FTC-DOJ study.

According to the U.S. Congressional Budget Office (CBO), "aggressive use of formularies, preferred-drug systems, generic-pricing systems, pharmacy networks, mail-order pharmacies… disease management, and physician and patient education can alter the number and kinds of drugs used and lower the price at which they are acquired from manufacturers and pharmacies. All of those tools, to one degree or another, work by influencing physicians' or consumers' choices about what drug to prescribe or where to fill a prescription."

Health plans that agree to the narrowest retail networks, tighter formularies, and most aggressive management techniques are able to reduce prescription drug costs by 40 percent or more, according to a 2004 study by PwC. Alternatively, plans that have broad networks, completely open formularies, and little management intervention probably save only 15 percent or less, compared to retail purchases with no management.

PwC estimates that, on average, pharmacy benefit management reduces prescription drug costs by 25 percent compared to retail purchases with no pharmacy benefit management support. In addition, PwC estimates that:

- Pharmacy benefit management activities in 2005 will reduce costs by $268 per enrollee in private plans, or about $53 billion in total.
- The total savings in drug costs from pharmacy benefit management are $53 billion in 2005 and $1.3 trillion dollars over the decade 2005–2014.

> ***"Pharmacy benefit management activities in 2005 will reduce costs by $268 per enrollee in private plans, or about $53 billion in total."***
>
> **— PricewaterhouseCoopers, July 2004**

The savings generated by PBMs are not only large relative to prescription drug spending, they are also an important element of managing private insurance costs overall. According to the official forecasts by the Centers for Medicare and Medicaid Services (CMS), total spending by private insurance companies will total $25 trillion over the 2005 to 2014 period. Without the savings from PBMs, those total overall health care costs would rise throughout the entire system by about 4 percent and premiums would have to rise correspondingly to cover that increase.

> ***"PricewaterhouseCoopers estimates that the total savings in drug costs from pharmacy benefit management are $53 billion in 2005 and $1.3 trillion dollars over the decade 2005–2014."***
>
> **— PricewaterhouseCoopers, July 2004**

PBM Tools Take Hold as Drug Spending Growth Declines

Recent data on prescription drug expenditures released by CMS suggests that PBMs' tools and techniques have helped reduce the rate of growth in prescription drug spending by nearly 40 percent from a peak in 1999. Multi-tier formularies and expanded access to cost-effective generics are among the chief causes cited by researchers for the marked decline in the rate of growth in US drug spending.

The CMS findings echo a December 2004 analysis of health-care cost trends released by the Center for Studying Health System Change (HSC) that finds that, while "prescription drugs continue to receive much of the blame for rising health care costs in the popular media," "the reality is that prescription drug spending trends have slowed considerably from the high rates of growth in the late 1990s and early part of this decade." Among the key findings from the HSC study:

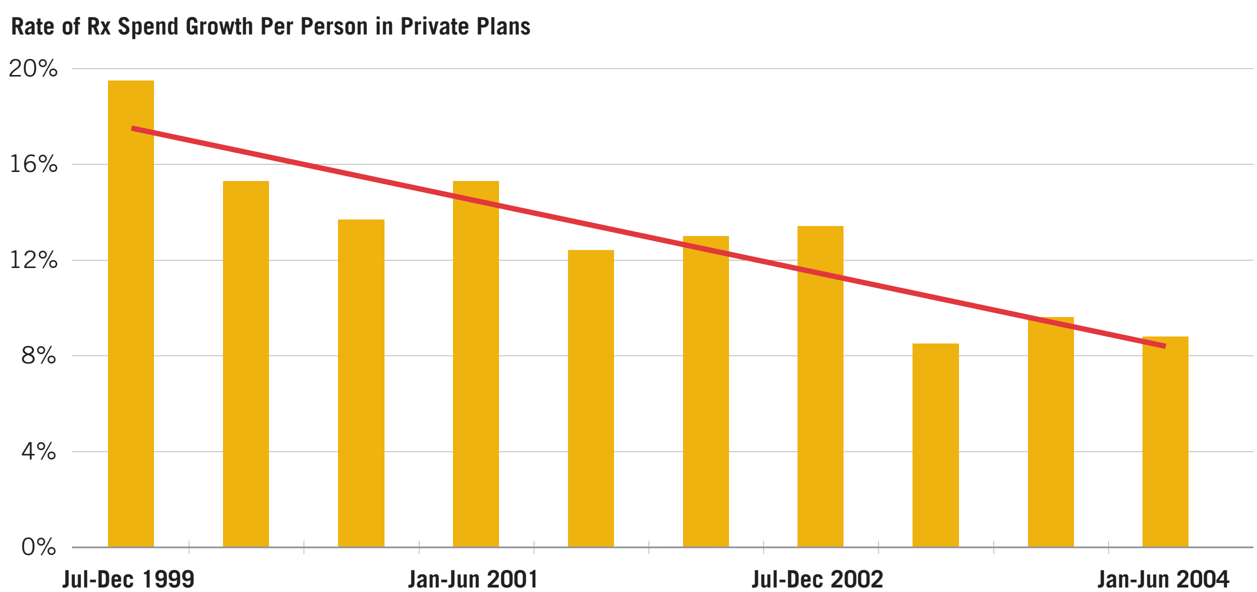
- PBM cost-containment tools are effective at reducing the rate of growth in prescription drug spending. The analysis suggests that the reduction in the rate of growth in prescription-drug spending over the past 5 years reflects the increased use of generic drugs, three-tier pharmacy benefit structures, and employers' and other purchasers' use of increased copayments and coinsurance.
- From a peak growth rate of 19.5 percent in the latter half of 1999, the rate of growth in prescription drug spending has fallen dramatically over the past 5 years. In the first half of 2004, the rate of growth in prescription drug spending stood at 8.8 percent—a reduction of 55 percent since December 1999.
- The rate of growth in prescription drug prices has been cut almost in half from a peak of 6 percent in July to December 2001. For the first half of 2004, the rate of growth in prescription drug prices stands at 3.1 percent.

Large Employers Rely on PBMs for Retiree Benefits

According to a survey conducted by Hewitt Associates for the Kaiser Family Foundation, 65 percent of America's large employers rely on PBMs to administer prescription drug plans for their retirees 65 years of age and older. The vast majority—98 percent—of employer-sponsored retiree benefit plans offer prescription drug coverage and increasingly opt for a wide range of proven PBM tools and techniques, including multi-tier formularies, step therapy, therapeutic interchange, and prior authorization. With respect to mail-service pharmacy, 94 percent of large employers offer their retirees an integrated mail-order and retail pharmacy benefit. Just 6 percent of surveyed employers offer a retail-only pharmacy benefit.

These activities will reduce prescription drug costs by $937 per Medicare beneficiary in private plans in 2005, or about $18 billion, according to PwC. PwC estimates that, from 2005 to 2014, pharmacy benefit management will save $693 billion on Medicare-related spending in private plans. These data apply to beneficiaries with prescription drug coverage provided through private plans, including Medicare Advantage health plans, Medicare supplemental policies, and employer-sponsored retiree coverage.

SLOWING TREND IN PRESCRIPTION DRUG EXPENDITURES



Source: Center for Studying Health System Change, December 2004.

Medicare, FEHBP, and Congress Rely on PBM Tools

The Medicare Modernization Act—signed into law in December 2003—is but the latest confirmation of the government's increasing reliance on PBM tools and techniques. The FEHBP has had much success partnering with PBMs, as documented by GAO. Likewise, many state employee health plans rely on PBMs.

Medicare Prescription Drug Plans Are Envisioned as Using PBM Tools

PBM tools and techniques feature prominently in the funded Medicare prescription drug benefit scheduled to take effect in 2006. PBMs have already been very active in bringing seniors the benefit of marketplace competition through Medicare-endorsed prescription drug discount cards. PBMs will help expand health plan options and benefits available to all Medicare beneficiaries as likely partners with Medicare Advantage plans and possibly as stand-alone prescription drug plans.

CBO Estimates Strong Cost Management Potential for PBMs

In evaluating the best design approaches for a Medicare prescription drug benefit, CBO assigned "cost management factors" to various proposals. The cost management factor is the "net effect of an amalgam of price discounts and rebates, utilization controls, and other tools that a PBM might use to hold down spending." CBO attributed a cost management factor of 30 percent to a major proposal relying on PBMs. This indicates that PBMs have the potential to reduce Medicare drug expenditures up to 30 percent below unmanaged expenditures, according to CBO. CBO notes that "the degree to which PBMs could effectively control Medicare drug costs would depend on their being allowed and encouraged to aggressively use various tools at their disposal."

> *"The degree to which PBMs could effectively control Medicare drug costs would depend on their being allowed and encouraged to aggressively use the various tools at their disposal."*
>
> **—Congressional Budget Office**
> **October 2002**

PBM Model Serves Federal Employees and Members of Congress

Most federal employees, retirees, and Members of Congress participating in the FEHBP—the largest employer-sponsored health insurance program in the United States—are enrolled in plans that contract with PBMs to manage their prescription drug benefits.

Many state employee health plans rely on PBMs. A vast majority of states use PBM clinical and cost management tools such as tiered formularies.

Employers: The Real Target of Anti-PBM Legislation

Employers concerned about rising drug costs should also be concerned about legislation that would restrict PBM tools. Special interests favoring anti-PBM legislation—including the retail pharmacy lobby and personal injury lawyers—have an agenda directly at odds with employers. They want:

- Employers to spend more, not less, on prescription drugs
- Government to micromanage how employers provide drug benefits
- Expanded ability to sue employers over how they structure health benefits

In fact, the independent retail pharmacy lobby recently passed a series of resolutions that not only advocate anti-PBM legislation but also call on pharmacists to oppose retail drug price posting, lobby for collective bargaining of insurance contracts, and support costly amendments to the new Medicare prescription drug benefit—including legislated payment criteria.

Together with PBMs, employers would be hurt by legislation aimed at limiting mail-service pharmacy, restricting drug management techniques, mandating disclosure of contractual information, and branding PBMs as fiduciary. Such bills would radically undermine the ability of PBMs to use effective cost management strategies, undermine the competitive marketplace, and open employers to a floodgate of personal injury litigation from the trial bar.

Retail Pharmacy Agenda Means Higher Drug Costs for Employers

Anti-PBM legislation has a direct impact on benefit costs for employers. For example, legislative restrictions on mail-service pharmacies "would almost surely reduce consumer welfare, because mail-order pharmacies often offer lower prices than other retail outlets," according to the FTC. Such restrictions would drastically undercut the ability of employers to choose the most cost-effective benefit options for their employees. According to PwC, mail-service pharmacy restrictions would increase managed drug costs by $97 billion over the next 10 years.

Anti-PBM Legislation Would Mean Government Micromanagement of Employee Health Benefits

Anti-PBM legislation means government micromanagement of employers' benefit decisions. Such micromanagement would target drug management techniques such as formularies, prior authorization, and therapeutic interchange programs that encourage safety and provide consumers with incentives to try lower-cost alternatives before moving onto more expensive medicines. Therapeutic interchange alone can cut drug spending for employers by 15 percent or more in drug classes where it is utilized, according to PwC. Laws that restrict drug management techniques strike at the heart of PBMs' ability to implement safe, effective, and affordable plan design options for employers. If drug management techniques were restricted nationally, managed drug spending would balloon by more than $300 billion during the next 10 years.

Anti-PBM Agenda: Expose Employers to New Lawsuits and Liability Costs

In the guise of consumer protection, much anti-PBM legislation would mandate one-size-fits-all contracts that would curtail cost-cutting innovation and expose employers to new lawsuits. So called "transparency" laws would limit the ability of employers to choose PBM contracts based on rebate sharing versus straight administrative fees.

Public Disclosure Laws Open the Door for Litigation Against Employers: PBM disclosure laws would allow personal injury trial lawyers to "leap-frog" normal litigation processes because they will no longer be hampered by the rules of discovery that protect trade secrets, according to a legal analysis by nationally recognized ERISA expert William Schiffbauer, Esq. Trial lawyers could readily use the disclosed information to invent claims and bring novel suits against PBMs—and their clients. Schiffbauer notes that "the personal injury bar is likely to bring suit not just against PBMs, but also against employer-plan sponsors. For example, litigants will be armed with information to compare the rebates and incentives that other purchasers have obtained. Litigants will claim that an employer-plan sponsor did not prudently or expertly select the PBM service provider because it did not appropriately assess and compare the financial arrangements of the others who were not selected." He concludes that "PBM clients like employers, unions, and insurance companies do not need and in fact should fear government imposition into the private contracting process for the purchase of PBM services."

Proposed "fiduciary" laws would transform PBMs into fiduciaries of their health plan clients, effectively giving the PBM discretionary authority over health plan assets used to fund pharmaceutical benefits. Imposing this additional and unnecessary layer of liability will require PBMs to insure themselves against potential lawsuits—with the increased cost of this risk eventually passed on to health plan clients and their enrollees through higher costs for prescription drugs.

HOW "ONE-SIZE-FITS-ALL" PUBLIC DISCLOSURE OF PBM CONTRACT INFORMATION WOULD INCREASE COSTS

Legislation advocated by critics of PBMs would mandate the public disclosure of financial terms and agreements of PBM contracts with prescription drug manufacturers. PwC estimates that such public disclosure laws would cause network discounts and manufacturer rebates to "decline significantly," resulting in increased costs for plan sponsors:

- Drug costs for individuals in PBM-managed plans would rise by 5.2 percent or about $8.2 billion in 2005.
- Over the 2005 to 2014 period, this increase would translate into additional costs of $225 billion, a 7.0 percent increase.
- PwC estimates that the 5.2 percent increase in prescription drug costs would increase health insurance premiums by about 0.5 percent in 2005.

CBO also developed estimates on the cost of government-mandated disclosure in the context of a Medicare prescription drug benefit. CBO concluded that a "transparency" mandate would have increased the 10-year cost of the Medicare drug benefit by nearly 10 percent and increased Medicare part D premiums by 5 percent in 2006 alone.

FTC-DOJ Advises Against Transparency Legislation: "Vigorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms," according to the FTC-DOJ study. Vigorous competition is also more likely to help ensure that gains from cost savings are passed on to consumers of health care services, either as lower premiums for health insurance, lower out-of-pocket costs (for that portion of health care expenditures borne directly by consumers through deductibles and co-payments), or improved services, the agencies believe.

CONCLUSION

Today, PBMs are valuable partners for employers seeking to design and implement innovative programs to hold down drug costs. Proven in the marketplace, PBM tools and techniques enhance the quality, safety, and cost-efficiency of prescription drug benefits. In considering how to best provide prescription drug benefits to their employees, employers should take into account the empirical evidence on PBMs cost saving tools as well as the likely consequences of anti-PBM government measures. Ultimately, the extent to which PBMs deploy effective drug management tools and techniques should appropriately remain the decision of the employer/plan sponsor rather than being dictated by government mandates. Clearly, when empowered to do so, PBMs are effective at driving down the cost of prescription drugs and improving quality for beneficiaries.

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