

## **Mandated PBM Disclosure Increases Prescription Drug Costs for Consumers and Employers**

(January 2015)

### **Mandated PBM Disclosure Would Increase Drug Costs**

- Legislation requiring public disclosure of private PBM contract terms would increase managed drug spending by \$127 billion over the next decade—an increase of 4.1 percent, according to a 2007 study by PricewaterhouseCoopers.<sup>1</sup>
- Congress rejected the inclusion of a PBM disclosure mandate as part of the Medicare Modernization Act when the Congressional Budget Office determined such a mandate would cost taxpayers \$40 billion over 10 years.<sup>2</sup>

### **PBM Disclosure Mandates Have No Benefit to Consumers**

- The Federal Trade Commission (FTC) has warned several states that legislation requiring PBM disclosure could increase costs and “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford.”<sup>3</sup>
- In California, the Governor vetoed PBM disclosure legislation citing the FTC’s warnings against such an approach.<sup>4</sup>
- “Consumers make purchasing decisions based on the price and value of goods and services, without regard to a vendor’s cost of production,” according to the FTC.<sup>5</sup> Basically, consumers want the best price and value for their prescription drugs and do not need the details of a PBM’s complicated cost structure in order to make smart purchasing decisions.
- The FTC also warns that mandated disclosure would make it more difficult for PBMs to generate cost savings and may actually cause a decrease in cost savings. Such requirements would lead to an increase in healthcare costs that would ultimately fall on the shoulders of American consumers.

### **Too Much Disclosure Chills Competition**

- The Department of Justice and the FTC issued a July 2004 report noting that “states should consider the potential costs and benefits of regulating pharmacy benefit transparency” while pointing out that “vigorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms.”<sup>6</sup>
- “Just as competitive forces encourage PBMs to offer their best price and service combination to health plan sponsors to gain access to subscribers, competition should also encourage disclosure of the information health plan sponsors require to decide with which PBM to contract,” according to the FTC.<sup>7</sup>
- Mandating public disclosure of price negotiation strategies and contract terms will damage competition by giving drug companies and retail pharmacies the upper hand in negotiations, thereby driving up drug costs for PBM clients and ultimately consumers.

### **Forced Disclosure Tramples Intellectual Property Rights and Contracts**

- Forcing PBMs to publicly disclose the terms of business contracts violates the Takings Clause of the U.S. Constitution – effectively taking PBM property for public use without just compensation or legal protection.
- PBMs already appropriately address disclosure of financial arrangements in their contractual agreements with their clients. Clients also contract for audit rights to verify the accuracy of the disclosed information.

### **The Bottom Line**

- PBMs are working everyday to make medicines more affordable for consumers. Any legislation that removes or dilutes the power of PBMs to negotiate deep discounts will only result in higher prices for consumers and higher profits for drug companies and retail pharmacies.

<sup>1</sup> PricewaterhouseCoopers, “Pharmacy Benefit Management Savings In Medicare and the Commercial Marketplace & the Cost of Proposed PBM Legislation 2008-2017,” March 2007.

<sup>2</sup> Congressional Budget Office, “Cost Estimate: S 1, Prescription Drug and Medicare Improvement Act of 2003,” page 15. July 22, 2003.

<sup>3</sup> Letter from FTC to Rep. Patrick T McHenry, U.S. Congress, (July 15, 2005); Letter from FTC to Assemblyman Greg Aghazarian, California State Assembly, (September 3, 2004).

<sup>4</sup> Letter from Governor Arnold Schwarzenegger to Members of the California State Assembly, Veto Message for A.B. 1960 (September 29, 2004).

<sup>5</sup> Letter from FTC to Assemblyman Greg Aghazarian, California State Assembly, (September 3, 2004).

<sup>6</sup> US Federal Trade Commission & US Department of Justice Antitrust Division, “Improving Health Care: A Dose of Competition,” July 2004.

<sup>7</sup> See *id.*