

## Why Employers Should Oppose PBM Disclosure Legislation

Pharmacy benefit managers (PBMs) have developed an 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 the pharmacy benefit. Taken together, these tools provide market-centered solutions to meet employers' pharmacy benefit management needs.

*Employers concerned about rising drug costs should also be very concerned with PBM Disclosure Legislation.*

This legislation would:

- *Require PBMs to disclose highly confidential and proprietary information about the contracts they negotiate with drug companies and retail pharmacies to an employer client.*
  - PBMs aggregate the buying clout of millions of enrollees through their clients, enabling plan sponsors and individuals to obtain lower prices for their prescription drugs through price discounts from retail pharmacies, rebates from pharmaceutical manufacturers, and the efficiencies of mail-service pharmacies.
  - 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 employers and ultimately consumers.
  - The disclosure of manufacturer rebates would make it more difficult for PBMs to obtain significant rebates and price concessions in the future that can be passed on to employers.
  - With the rising costs of health care, employers rely on PBMs to help keep prescription drug costs down....this legislation would greatly impede this effort.
- *Mandate certain contractual provisions between PBMs and their employer clients, thereby limiting their ability to tailor a contract that best suits the client's interests and goals.*
  - Based on a client's Request for Proposals (RFPs), a PBM may offer the client multiple variations of models from the more basic plan to the most comprehensive plan relying on multi-tiered co-payments, formularies developed with physicians and pharmacists, pharmacy networks, mail-service pharmacy, and other similar tools that make drugs more affordable and accessible.
  - This legislation takes away the ability of employers to create a pharmacy benefit plan that best suits their needs by requiring certain disclosure terms be in all contracts. If an employer wants transparency or complete pass through of all rebates -- they make this a requirement of their bid and negotiate the terms in their contract.
  - It should be up to employers to decide to what extent certain disclosures are needed to make informed purchasing decisions. State-mandated contract terms on private market agreements would impede the employers' ability to dictate favorable terms through bid and contract negotiations.
  - According to the Federal Trade Commission and the Department of Justice, "vigorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms."<sup>1</sup>
  - Transparency is already available in today's competitive marketplace. Each PBM client is uniquely situated and some have elected to not request disclosure for business reasons of their own.
  - Bottom line: this legislation would discourage pricing innovation by mandating a specific, state-prescribed business model. This type of burdensome regulation would stifle price and product competition and hurt all parties, including employers, who want to provide access to high quality, affordable prescription drug benefits to their employees.

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<sup>1</sup> US Federal Trade Commission & US Department of Justice Antitrust Division, "Improving Health Care: A Dose of Competition," July 2004