

PBM Disclosure Mandates Increase Prescription Drug Costs for Consumers and Payers

PBMs help lower the cost of prescription drugs for payers by negotiating deep discounts with drug manufacturers and pharmacies. Private negotiation drives competition among manufacturers, yielding savings that benefit consumers and payers. If health plans and PBMs were required to publicly disclose these negotiations, the cost savings generated for consumers and payers would be at risk.

National Impact of PBM Disclosure Mandates

- Legislation requiring public disclosure of PBM price concessions with manufacturers and pharmacies would increase commercial plan drug spending by 4.3 percent, or \$53 billion, over the next 10 years.¹
- Mandatory disclosure of proprietary information would likely lead to a compression in rebates, weakening the power of large program sponsors to extract large discounts for beneficiaries.²
- In the current marketplace, contract negotiations between PBMs, manufacturers, and pharmacies are like sealed-bid auctions: manufacturers and pharmacies are encouraged to offer aggressive price concessions since they don't know what's being offered by their competitors.

Public Disclosure Mandates Will Curb Competition Among Manufacturers

- The Federal Trade Commission (FTC) has warned that “whenever competitors know the actual prices charged by other firms, tacit collusion—and thus higher prices—may be more likely. The FTC concluded that PBM disclosure mandates could “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford.”³
- The Congressional Budget Office, in analyzing the potential effect of potential transparency rules in Medicare, said that “[f]or a range of medical conditions, drugs appropriate for treatment are available from only a few manufacturers; [and thus] disclosure of drug-by-drug rebate data in those cases would facilitate tacit collusion among those manufacturers, which would tend to raise drug prices.”⁴

PBM Disclosure Mandates Will Not Benefit Consumers or Plan Sponsors

- PBM clients—large employers, health plans, and government programs—are sophisticated purchasers. When negotiating with PBMs, clients determine the level of disclosure and reporting they desire from their PBM and whether rebates will be part of the compensation structure.
- Today, almost half of all commercial plans elect to pass through 100 percent of manufacturer rebates, while some choose to retain a certain portion in exchange for lowered administration fees.⁵ On average, PBMs pass through about 90 percent of rebates to their clients.⁶ PBM clients always have the final say over both the plan benefit design and compensation structure for their PBM.

¹ Visante. (2018). “Increased Costs Associated with Proposed State Legislation Impacting PBM Tools.” Available at: <https://www.pcmnet.org/increased-costs-associated-with-proposed-state-legislation-impacting-pbm-tools/>.

² The Moran Company. (2017). “Assessing the Budgetary Implications of Increasing Transparency of Prices in the Pharmaceutical Sector.” Available at: <https://www.pcmnet.org/wp-content/uploads/2017/04/Assessing-the-Budgetary-Implications-of-Increasing-Transparency-of-Prices-in-the-Pharmaceutical-Sector-04142017.pdf>.

³ 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.

⁴ Letter from Peter Orszag, Director, Congressional Budget Office, to Reps. Joe Barton and Jim McCrery (March 12, 2007).

⁵ Pharmacy Benefit Management Institute. (2017). “PBMI Research Report: 2017 Trends in Drug Benefit Design.”

⁶ Adam Fein. (January 14, 2016). “Solving the Mystery of Employer-PBM Rebate Pass-Through.” Available at: <http://www.drugchannels.net/2016/01/solving-mystery-of-employer-pbm-rebate.html>.