Vote NO on SB 236

Increasing Prescription Drug Costs at the Expense of Patients and Payers

SB 236 inappropriately interferes with private contracts and greatly restricts the tools pharmacy benefit managers (PBMs) use to reduce prescription drugs costs and maintain high-quality patient care, which will result in higher costs for Alabama patients and payers of healthcare. **This bill does nothing to reduce prescription drug costs and is protectionist legislation meant to pad the profits of Alabama independent pharmacies, which have grown by 12% over the last 10 years.**

A Solution in Search of a Problem with Affiliated Lines of Business

- This legislation proposes unprecedented, wide-ranging changes to the Alabama pharmacy market by prohibiting health plans and PBMs from offering or implementing plan designs that require patients to utilize affiliated pharmacies and proscribing health plans and PBMs from patient or prospective patient specific advertising, marketing, or promoting an affiliated pharmacy.
- This legislation eliminates the ability of plan sponsors to elect plan designs with pharmacy programs that demonstrably lower costs for their members and restricts communications to members that would inform them about lower cost pharmacies.
- As consumers and payers search for ways to reduce out of pocket costs and the overall cost of healthcare, this legislation runs contrary to these goals and does not help Alabama plan sponsors who are trying to control costs for their members and removes several tools they elect to use to design a robust and cost effective pharmacy benefit.
- In September 2018, when the U.S. Department of Justice approved the merger of health care corporations that operate in the PBM and insurance markets, the Antitrust Division said that one merger "is unlikely to result in harm to competition or consumers."[1] In October 2018, the Antitrust Division said that another merger would "allow for the creation of an integrated pharmacy and health benefits company that has the potential to generate benefits by improving the quality and lowering the costs of the healthcare services that American consumers can obtain."[2]
- In the run-up to the implementation of Medicare Part D, Congress asked the Federal Trade Commission (FTC) to study if PBM-owned mail order pharmacies would pose a conflict of interest.[3]The FTC produced a voluminous study concluding that no such conflict existed. The 2005 study still reflects the current views of the FTC.

Mail Service Pharmacy Provide Convenient Access and Significant Savings for Patients and Payers

- One of the many tools that employers and other PBM clients use to provide significant cost savings and convenience for their enrollees are mail-service pharmacies. Mail-service pharmacies can contain the increasing cost of prescription drugs due to their unmatched efficiency and lower over head costs compared to retail pharmacies.

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[1]U.S. Department of Justice. "Statement of the Department of Justice Antitrust Division on the Closing of Its Investigation of the Cigna–Express Scripts Merger." September 17, 2018. Available at: https://www.justice.gov/atr/closing-statement.
[2]U.S. Department of Justice. "Justice Department Requires CVS and Aetna to Divest Aetna's Medicare Individual Part D Prescription Drug Plan
[3]Federal Trade Commission. (August 2005). Pharmacy Benefit Managers: Ownership of Mail order Pharmacies.

- **Between 2015-2024, mail-service pharmacies are expected to save Alabama employers and other payers $1.12 Billion.[4]**
- Health plans and PBMs often incentivize patients to use mail-service pharmacies by providing lower copayment options for 90-day supplies of maintenance medications, like those prescribed for asthma, for example.
- This legislation will eliminate a health plan's ability to use mail-order programs removes the lowest cost pharmacy option available. Employers and health plans should have access to tools that manage prescription drug costs, without government intervention.
- When an employer or health plan contracts with a PBM to administer their pharmacy benefit, the employer maintains authority over the terms and benefit plan design. **The employer or plan – not the PBM – makes decisions regarding cost-sharing requirements, mail-service, formulary, etc.** This bill removes the option for the employer or health plan to use mail order and specialty pharmacy mail-order as cost savings tools.
- **Between 2015-2024, mail-service pharmacies are expected to save Alabama employers and other payers $1.12 Billion.[5]**
- The Centers for Medicare and Medicaid Services (CMS) studied drug costs and mail-service pharmacies. **The CMS study showed that drug costs were 16% lower at mail-service pharmacies compared to brick-and-mortar drug stores.[6]**
- Mail-service pharmacies not only deliver monetary savings, but actually increase adherence to a prescription's regimen, resulting in improved health outcomes for patients who are able to lead healthier lives.[7]

Generic Effective Rate Contracting Provides Predictability for Pharmacies

- PSAOs pool the purchasing power of many independent pharmacies. These large purchasers, the largest of which are owned by drug wholesalers, negotiate contracts on behalf of groups of independent pharmacies. Approximately 80% of independent pharmacies contract with PBMs through a PSAO. Independent pharmacies rely on their PSAO to communicate the contracted rates and reconciliation procedures with them.
- The market for generic drugs can be dynamic, and GER helps manage this environment. A GER reimbursement is an aggregate annual reimbursement level that a PBM and a PSAO, on behalf of individual independent pharmacies, may negotiate. A PSAO will only agree to GER if it believes that it will be financially advantageous for its member pharmacies.
- GER is an overall guaranteed discount for all generic drugs that provides reimbursement predictability for all participating pharmacies during the contracting period, which is generally on an annual basis. PSAOs have up to date information regarding market pricing for drugs and agree

[4] Visante. Mail Service and Specialty Pharmacies to Save More than $300 Billion over 10 years. (2014)
[5] Visante. Mail Service and Specialty Pharmacies to Save More than $300 Billion over 10 years. (2014)
[6]Centers for Medicare & Medicaid Services. (December 2013). "Part D Claims Analysis: Negotiated Pricing Between General Mail Order and Retail Pharmacies," available at: https://www.cms.gov/Medicare/Prescription-
[7] OK Duru et al. (2010). *The American Journal of Managed Care*. "Mail-Order Pharmacy Use and Adherence to Diabetes-Related Medications."

on behalf of their participating members to the GER guarantee outlined in the PBM contract based on their expert knowledge.

- GER is not used to disadvantage independent community pharmacies. In fact, chain pharmacies have long contracted reimbursements using GER because it provides several advantages such as:
    - Overall reimbursement predictability and forecasting throughout the year.
    - Less administrative burden, enabling assessment of reimbursement on an aggregate basis rather than on a claim by claim basis
    - Price protection in the event of marketplace generic acquisition price erosion.

Performance Based Contracting Promotes Affordable, High-Quality Care

- Performance based contracting is commonly used for **all** providers in **all** parts of the health care system and incentivize high quality care that results in lower premiums and cost sharing for patients. SB 236 takes healthcare in Alabama a step back by prohibiting performance-based arrangements.
- Pharmacies, who utilize PSAOs (Pharmacy Services Administrative Organizations) to contract with PBMs on their behalf, enter into contracts with PBMs that include performance standards. These standards include, but are not limited to:
    - Generic Dispensing Rate
    - Patient Adherence Rate
    - Opioid dispensing oversight
    - Prescription Refill Rate
- Government interference in private contracts outlined in SB 236 is antithetical to the progress of the healthcare system and is a significant departure from the trend of payment for value.

SB 236 Eliminates Long Standing Network Fees That Provide a Great Value to Pharmacies

- PBMs maintain robust IT systems that allow them to administer benefits for employers, health plans, and government programs across the country serving more than 200 million people.
- At the same time, PBMs instantaneously connect pharmacies to enable patients to fill their prescriptions through their chosen benefit plan.
- To help maintain these systems, PBMs charge pharmacies a small fee. Used commonly throughout the drug benefit industry, pharmacy transaction fees are contractually agreed upon fees that not only simplify, but help facilitate pharmacy reimbursement for any insured business.
- Pharmacies agree to transaction fees in their contractual arrangements with PBMs. These fees are not unlike those retailers pay to credit card companies in exchange for taking the risk of consumer fraud and for immediate payment for purchases.
- Without access to these systems, pharmacies would be burdened with maintaining separate contracts with a myriad of employers and other benefit plans to match the customer base that PBMs deliver.

Any Willing Pharmacy Policies Undermine Competition and Raise Costs

- Health Plans and PBMs contract with independent, chain, mail-order, and specialty pharmacies to provide patients with access to a wide range of high-quality pharmacies, while simultaneously balancing savings for patients and payers.
- PBMs require pharmacies to compete on service, price, convenience, and quality to be included in preferred networks. Pharmacies that agree to participate in such arrangements are designated as “preferred” and become members of a preferred pharmacy network.
- Preferred pharmacy networks provide value to patients and payers in a few different ways:
    - Exclusivity: pharmacies participating in a preferred network can count on a higher volume of sales. Increased sales effectively translates to savings that the pharmacy can pass on to patients by setting lower prices and/or lower dispensing fees.
    - Enhanced Services: Plan sponsors usually require preferred pharmacies to provide enhanced services such as clinical review and management, leading to improved health outcomes for patients.
    - Value Based Innovation: Preferred pharmacy networks are likely to participate in value-based care activities, such as those with accountable care organizations and preferred provider organizations where services are rated on quality, cost, and efficiency factors.
- Preferred Networks are growing in popularity among employer sponsored plans. In 2013, only 18% of these plans were utilizing these network arrangements. By 2017, over half of all employer sponsored plans were using these exclusive networks. [8]

[8] Adam Fein. (2018). *The 2018 Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers.*