Senate Committee on Commerce, Science, & Transportation: Bringing Transparency And Accountability To Pharmacy Benefit Managers

February 16, 2023

https://www.commerce.senate.gov/2023/2/bringing-transparency-and-accountability-to-pharmacy-benefit-managers

The camera feed didn't begin until about 15 mins or so into the hearing. We did not see any opening remarks from Senators. The video began towards the end of Brian Oftebro's statement.

Witness	**Opening Remarks**
Brian Oftebro	• Had to close one of his pharmacies because of PBMs • PBM abuses
Debra Patt	• Patients must be able to get oral cancer meds. • PBM steering to PBM-affiliated mail pharmacies leads to patient problems, such as delays and waste • DIR fees charged to integrated pharmacy, benchmarks of Stars ratings not relevant to her cancer patients • Need PBM transparency and accountability
Erin Trish	• Historically PBMs played an important role • Consolidation has distorted PBM activities, now taking excess profits • Rebates have grown and increase prices. Rebates increase OOP costs while decreasing premiums, transferring the costs from the healthy to the sick. • Net costs of insulin have been flat, manufacturers getting less, PBMs getting more • In 2018, copay clawbacks made some patient OOP larger than PBM expenses • Spread: Ohio Medicaid • Costco had lower prices than Medicaid
Casey Mulligan	• Benefit management is an economic activity that requires active management • Group purchasing is important when manufacturers are monopolistic. They enhance small amounts of competition • Costco has invested heavily in PBMs • Benefit management expands economic pie, adding value • Manufacturer and pharmacies push for regulations that help themselves but hurt everyone else. Would also hurt competition between PBMs, disadvantaging small PBMs

Senator	Comment/Question	Answer
Cantwell	• Loves the Costco model, should expand, when buy in bulk should get a discount. But who gets the discount? • Dr Trish: what has changed because of consolidation? Why aren't the discounts being passed down? Why are the pharmacies being squeezed? • Dr. Trish: Some PBMs want to do all mail-order, believes in retail pharmacy. But who is getting the discounts, employers don't believe it is them. What percentage discounts are being driven?	• Trish: PBMs are no longer free-standing, the largest 3 are integrated with insurers and some in pharmacy and provider markets. Creates entrenched incentives that steer funds to themselves. We need to better study these incentives. • Trish: Over time in insulin market PBMs have been effective at driving rebates, but share of those dollars are not going to consumers.
Cruz	• Dr Mulligan: With all actions must consider tradeoffs of govt regulations. One argument is there is too much market consolidation. In your analysis of the bill, will it lead to more or less consolidation? • Mulligan: how would bill impact drug prices? • Mulligan: explain for people at home what the negative consequences of the bill are? • Mulligan: If consumers will lose money, who will gain money? • Mulligan: additional costs to federal govt?	• Mulligan: regulations don't have exemptions for small business. Better to not have the bill, but an exemption for small PBMs would be helpful. • Mulligan: Consumers and payers want better prices and utilization. This bill would increase drug prices and premiums by $10B/yr. • Mulligan: This undermines the one tool consumers have 1 tool that creates competition and lower prices • Mulligan: not zero-sum losers will lose more than winners get, winners are manufactures • Mulligan: 10-40B per year cost to federal govt and taxpayers
Welch	• Have a crisis in VT with local pharmacies. Healthcare system is crushing primary delivery systems. PBMs are inflicting clawbacks on pharmacies. • For all: How do we end clawbacks? For or against?	• Oftebro: Against, causing real harm because unpredictable. • Patt: DIR fees are not meaningful measures of quality. True quality-based clawbacks would make sense. WAC would react if DIR was eliminated • Trish: PBMs do need tools to effectively negotiate, but PBMs initiate fees opaquely and after the fact that are without value • Mulligan: Talk about tradeoffs not policy, regulating contracts have tradeoffs and consequences, one could be more consolidation.

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Budd	• Families can't afford prescriptions. PBMs were created to address costs, concerns that patients aren't seeing the savings. • Oftebro: PBMs clawback fees, how does this impact ability to provide care? • Oftebro: Vertical integration creates conflict of interest? • Trish: PBMs may be preferring high rebate drugs, what data would we need to prove this and is it proprietary? • Mulligan: yes or no, would adding rebate data to analysis be tapping into proprietary information?	• Oftebro: we have to close our pharmacies. Have no say or negotiation about these fees. Impacts operating budget and can't hire staff. • Oftero: PBM said they were going to move all HIV meds into a specialty category, his pharmacy would need to get accreditation and leave their PSAO to continue prescribing HIV meds. Resulting contract was much lower than expected. PBM specialty pharmacies are charging more per 3Axis Advisors study in Florida • Trish: PBM reimbursement rates are secret • Mulligan: yes
Tester	• Why do PBMs even exist? Can't find value because zero transparency in PBM industry combined with anti-competitive practices. Only the PBMs are winners. • Oftebro: talk about anti-competitive practices that squeeze small businesses? • Oftebro: Do you have any metrics on how many drugs are impacted by PBMs? • Oftebro: are you being squeezed to the point you will close if govt doesn't do something? • O: With spread pricing, if the pharmacy gets $10 for a generic drug, how much would insurer be charged? • O: would PBM transparency regs put some sort of burden on you? Would more transparency make drugs less costly for patients? • PBMS are drying up rural America	• Oftebro: Patient steering to affiliated pharmacies or mail pharmacies. Take it or leave it contracts with PBMs. DIR and DER fees. • Oftebro: virtually all of them • O: had to close a pharmacy in 2022 because of PBMs • O: don't know • O: less costly for patients
Capito	• I voted for bill last year. Would have been helpful to bring flowchart from development of drug through patient – it would be difficult to read, leading to confusion because of lack of PBM transparency.	• O: unsuccessful at negotiating better contracts. • O: it's happening with many contracts and many drugs • O: Existing legislation has exempted ERISA plans • T: Consolidation and integration, CVS and UHG are very big companies. Market has become increasingly complex and harder to understand

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	• O: have you tried to negotiate better contracts? • O: Is this unique to you or true everywhere? • O: Has WA state passed laws on this? • Trish: You talked about historic role of PBMs in lowering costs, what has caused the shift? • Shouldn't lose sight of how great manufacturers are. How is anyone to know about costs and where the money is going	
Sullivan	• Alaska pharmacies are going out of business. Anchorage only has 1 independent pharmacy; Sitka has 1 independent pharmacy. 2020 NAIC report: 66 PBMs but 3 control over 80% of market • All: What is the right amount of transparency? What other transparency things should we do? • All: Is the FTC the correct avenue to address the transparency issue? Has concerns about FTC leadership.	• O: Don't know if this bill is right/enough, but current system is not working. No view on FTC, believe there are anticompetitive business practices which should be FTC • P: Most important piece of legislation to bring light to these issues. Transparency is most comprehensive way to create change. No view on FTC • T: Also role of benefits consultants, they are not fiduciaries but are compensated by PBMs. There are other agencies that could also be involved • M: FTC and DOJ are concerned about granularity of disclosure; need clarity of terms within the bill; current FTC would "reinvent the lexicon"
Blackburn	• P and O: how do PBMs affect access to specific drugs for patients? • P and O: PBMs get in the way and prohibit proper care. Would you eliminate PBMs? • Haven't found a patient that has said a PBM has saved them money.	• P: PBMs determine which therapies can be given first, she can't make choices based on what is best for patient. PBMs make preferential choices like formulary decisions that are more expensive for patients. • O: See patients and providers restricted in formulary choices. Mandatory mail order for some specialty drugs. • O: just want PBMs regulated like other actors in healthcare system • P: Don't think that [eliminating PBMs] is the right answer. Costco analogy not the right one because there is no choice in healthcare. Where are the discounts going, not to patients and employers
Hickenlooper	• T: For every $1 on insulin, much of the dollar goes to middle. Where is the money	• T: What degree has integration changed incentives

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	going? What other areas need to be investigated? • P: Consumers don't have necessary information about how much their drugs cost, or about the other actors in the system. Need to make sure the additional information reaches patients. Do patients struggle to navigate the system, how to get them the right information?	• P: Need to give more information to patients because cost keeps them from being compliant. Pharmacy and provider need to be able to talk to patients to help them navigate the system.
Warnock, 1:24	• Patient with T1D, even with insurance insulin was too expensive. • T: are drug prices including insulin too high? • T: How are PBMs contributing to high list price especially insulin? • O: Is it uncommon for pharmacists to see patients who can't afford the drugs especially insulin? • O: insulin prices have increased 600% what effects does this have on patients' health?	• T: example of high list prices that harm patients. Net prices are going down and manufacturers receive less money, while PBMs keep more. • T: PBMs make more money as list prices go up through percentage of rebate or other type of fee. Insulin is competitive and rebates are very large, but PBMs won't put lower priced versions on formularies. Problem when patients pay cost sharing based on list price. • O: we see those patients every day • O: when patients aren't taking prescriptions as prescribed there are negative effects
Klobuchar	• Has a bill that limits pay-for-delay settlements. Would this be helpful? Should we include biosimilars? • Senate Finance found that manufacturers suppress competition by contracting with PBMs through placement. What effect do these contracts have? • O: Do we need more transparency? • T: Drug shortages, what are PBMs and manufacturers doing to anticipate shortages and what should Congress do?	• T: It's important that we keep ensuring that the generic drugs are coming to market. Need to make sure that PBMs are standing in the way of generic drugs. • T: Goal of PBMs is to extract discounts for moving volume. This can drive value when it works, the problem is when the benefits don't reach consumers. • O: yes we need more transparency • T: new entrants into market (like Cuban Cost+) increase supply. We need more insight into supply chain.
Rosen	• Impact of PBMs on rural and independent pharmacies. 1200 rural pharmacies have closed. Generic drugs are more expensive at chains. • O: current dispensing reimbursement policies effect on rural pharmacies?	• O: Need to make sure rural pharmacies are viable • T: rebates aren't shared enough at POS. there are other new things such as rebate aggregators.

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	• T: Limited federal transparency, how can we ensure that rebates are passed to consumers to lower costs at pharmacy counter?	