

Lower Costs, More Transparency

Summary of PBM-Related Proposals:

- Transparency in coverage of PBM services (§ 105).
- Oversight and reporting on PBM services provided to group health plans and health insurance issuers (e.g., finances, plan design, common ownership) (§ 106).
- Triennial reporting on integration in Medicare by drug plans and by MedPAC (§ 108).
- PBM reform in Medicaid including anti-spread pricing, rebate pass-through, delinking, and anti-steering policies (§ 202).
- ERISA-specific plan fiduciary requirement to increase access to health data and to require disclosures of certain fees (§§ 401, 402).
- A gag clause prohibition for group health plans, health insurance issuers, and PBMs (§ 403).
- Various governmental reporting requirements including GAO reporting on price transparency, HHS reporting on provider and payer consolidation, and the creation of an advisory committee to determine the utility of current-law PBM service reporting (§§ 106, 107, 108, 109, 110).

Concerns:

1. Public reporting of detailed drug data, including drug-by-drug rebates.
2. Attempts to regulate PBM affiliates. Major overreach that would spill into areas that have nothing to do with PBM services.
3. Stripping states of the option to choose spread pricing contracts. Given their unique budgetary constraints, price predictability and savings seem especially pertinent for these PBM clients.

Public Positioning:

- These proposals are misguided, doing nothing to address patient affordability or drug prices.
- Sharing the wrong kinds of drug data will lead to higher prices. Transparency needs to be targeted at enabling patients, physicians, and health plan sponsors to make informed decisions about how to best manage rising drug costs. Patients and providers benefit from real time benefits tools that provide shoppability data at the point of prescribing and plan sponsors currently use the bidding process to request the transparency they desire. PBMs have to meet their requirements to win business and their mutually agreed-to terms are captured in enforceable contracts. Additionally, several federal agencies require PBMs to routinely report financial information.

Transparency requirements should extend only to parties related to the contract. Government overreach extending to affiliates that are in no way involved with PBM services sets a bad precedent.

PBMs support the recommendation for GAO to study federal and state requirements for health plans and PBMs regarding the burden and duplication associated with transparency requirements for prescription drug costs and prices. We believe the study results will reduce costs and administrative burden.

- Spread pricing contracts are arrangements that plan sponsors select in order to shift risk to PBMs, reduce uncertainty, and often to save money. Spread pricing contracts allow a plan sponsor the

ability to have a pre-determined contractual price for drug reimbursement that is not dependent on whether a patient fills a prescription at an expensive pharmacy. Many state Medicaid programs use spread pricing arrangements for budgetary reasons – given the predictability, and studies have shown that spread arrangements provide financial savings beyond those of other pharmacy reimbursement models. PCMA supports states' continued ability to choose whether to enter spread pricing contracts.

Issue Specific TPs:

- Public disclosure of detailed drug cost data will raise drug costs for patients and employers. Recently, the U.S. Department of Justice Antitrust Division withdrew three outdated antitrust policy statements related to enforcement in health care markets noting that courts have long recognized that the exchange of competitively sensitive information can subvert the competitive process and harm competition. They were particularly concerned about a court opinion that “[p]rice exchanges that identify particular parties, transactions, and prices are seen as potentially anticompetitive because they may be used to police a secret or tacit conspiracy to stabilize prices.” ...Where competitors adopt the same pricing algorithms, our concern is only heightened. Several studies have shown that these algorithms can lead to tacit or express collusion in the marketplace, potentially resulting in higher prices, or at a minimum, a softening of competition.”
- Transparency to clients should be between the PBM and the client, not other unrelated entities.
- Given the budget constraints states are facing, prohibiting the use of a tool that minimizes risk, provides cost predictability, and has the ability to save them money seems counterproductive. When Ohio chose to move away from spread pricing, it spent more and later reversed its decision. Every state should have the ability to make those choices.