Modernizing and Ensuring PBM Accountability (includes Medicare PBM Accountability Act, Drug Price Transparency in Medicaid Act, and PBM Act)

Summary:

- Includes "delinking," which restricts PBMs to compensation in the form of bona fide service fees for Medicare Part D business.
- Requires granular data reporting to Part D plan sponsors and requires PBMs to share contract details between the PBM and drug manufacturers with plan sponsors while prohibiting PBMs from charging fees for any of this data production.
- Includes a GAO report on the burden of transparency requirements and an OIG study on vertically integrated pharmacies.
- Standardizes Part D pharmacy performance metrics and requires PBMs to report detailed payment information related to the plan sponsor/PBM relationship to pharmacies.
- Bans spread pricing in Medicaid.
- Requires pharmacies to participate in the NADAC survey and report more detailed acquisition cost data than what is currently required.

Concerns:

1. Delinking severely limits PBM business practices (bans rebate retention, spread, pay for performance, and as written, PMPM and volume-based fees). Grave concern if this spills over to commercial.
2. Attempts to regulate all PBM affiliates. Major overreach – spills into areas of the economy that have nothing to do with PBMs.
3. Burdensome (and likely very costly) data reporting requirements for which the PBM must bear all costs.

Adopted Amendments

Amendment 4: PBM Reporting Enhancements Under 1150A (Cantwell/Grassley/Menendez/Daines #1) – Adopted 7/26

Concerns:

- Affiliate language broadens the focus far beyond PBM reporting requirements.
- "Fees" too broad and includes administrative fees for services that are not on behalf of the plan.

Amendment 14: Relevance Determinations related to Pharmacy Quality Measures (Warner/Lankford #1)- Adopted 7/26

Concerns:

- Requires pharmacy "type" to be defined, creating significant issues in the ongoing debate on how to define terms like "specialty", "retail" and "mail-order".
- Provision is unnecessary and problematic.

Amendment 47 Biosimilar and Generic Access under Part D (Lankford/Menendez #3) – Adopted 7/26

Concern:

- OIG does not have the applicable expertise to prepare this report. GAO or CRS or CMS would be more appropriate.

Public Positioning:

- Using a drug's list price to create payment models is a standard practice in the entire drug supply chain, not just specific to pharmacy benefit companies. Plan sponsors and health plans use a drug's list price when developing contracting terms as a method to compensate pharmacy benefit companies for the savings they provide. PCMA opposes legislation that dictates private contractual terms and does nothing to address the larger issue, which is drug companies charging higher prices for drugs year over year.

- Transparency should be actionable by enabling patients, physicians, and health plan sponsors to make informed decisions about how to best manage rising drug costs. Contracts between a pharmacy benefit company and plan sponsor clearly define financial data required by both parties to provide prescription benefits. Several federal agencies, including the Center for Medicare and Medicaid Services (CMS), Departments of Treasury, Health and Human Services, and Labor, and Securities and Exchange Commission all require pharmacy benefit companies to routinely report financial information. PCMA supports 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 pharmacy benefit managers, reduce uncertainty, and often to save money. Spread pricing contracts put the risk on the pharmacy benefit company and 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

- "Delinking" is a shift away from paying for value. For more than 10 years, there has been an effort to move away from fee for service compensation models in favor of value-based models. This does the opposite. Further, almost every entity in the supply chain is compensated based on list price. Singling out one entity amounts to picking winners and losers.
- These extremely granular data sharing mandates are burdensome and complicated and may have unintended consequences. To mitigate risks, every data sharing requirement must go through rulemaking.
- The requirement for PBMs to produce massive amounts of data on a continuous basis, uncompensated, amounts to a hidden tax that will have devastating consequences, especially for smaller PBMs, thus potentially reducing the competitiveness of the PBM market.
- Detailed drug price reporting to pharmacies will raise drug costs for taxpayers and Medicare beneficiaries.