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PHARMACY BENEFIT MANAGERS (PBMS) -- UNACCOUNTABLE DRUG INDUSTRY MIDDLEMEN

Pharmacy Benefit Managers (PBMs) serve as administrators of prescription drug plans (PDPs). PBMs are responsible for developing and maintaining clinically appropriate drug formularies, negotiating contracts with pharmaceutical manufacturers, wholesalers and pharmacies -- often represented through group negotiating entities like pharmacy services administrative organizations (PSAOs).

PBMs process prescription drug claims for PDPs, including Medicare and Medicaid plans, employer-sponsored plans, and plans in the individual market. PBMs typically generate income from drug manufacturers through two primary payment mechanisms -- generally known as "rebates:" formulary payments to earn preferred formulary standing, and market-share payments designed to foster utilization of their pharmaceutical products relative to their competition.

PBMs also extract various administrative fees and charges from pharmacies, which generally are buried in lengthy contractual language. **In some cases, these contracts actually prevent the pharmacy or pharmacist from informing consumers that it would be less expensive to pay for a prescription entirely out-of-pocket** instead of going through the PBM and paying a co-pay or deductible.

In most long term care pharmacy (LTCP) agreements, pharmacies must pay a fee per prescription, usually ranging from $.025/claim to $1.25/claim. LTCPs appear to be the only providers of any type ultimately paid by Medicare or Medicaid which must pay a fee to third party intermediaries -- simply to get paid. This is but one example of rapacious post point-of-sale fees and clawbacks PBMs impose on LTCPs.

With greater demand from consumers, Congress, regulators and the media about the need for more competition and pricing transparency in our increasingly complex and tumultuous pharmaceutical marketplace, PBMs -- long content to remain out of the public eye -- are increasingly viewed as unaccountable, opaque middlemen. Due to substantial marketplace consolidation, three PBMs now process over 80% of prescriptions dispensed by the nation's roughly 1,300 LTCPs. Still worse, each of the three major PBMs is owned by, or has a shared parent, with an insurer, large retail, specialty or LTC pharmacy chain, or mail-order pharmacy. Such arrangements are rife with possible conflicts of interest in what has become an oligopolistic market.

Maximum Allowable Cost (MAC) Pricing

Under Medicare Part D, PBMs use so-called Maximum Allowable Cost (MAC) pricing to set reimbursement rates for most generic drugs LTCPs dispense to Medicare beneficiaries. Nearly 90% of all medications dispensed by LTC pharmacies to seniors are generics. MAC prices may vary during the year, but any changes in price must be justified by changes in market conditions.

Recent research from *Avalere Health* with SCPC sponsorship found that prices vary wildly for the same prescription medication from day-to-day -- both between PBMs and within the PBMs themselves. Given that these PBMs all are major companies with simultaneous access to the same market data, MAC pricing simply cannot reflect true changes in the marketplace since all PBMs should respond to the same market changes. But they clearly do not. Thus, more than 60% of generics LTCPs dispense to LTC patients are "underwater:" LTCPs' cost to acquire the medication, process the claim, prepare the medication in compliance with Medicare and Medicaid rules, deliver the medications to facilities, and fulfill ongoing consulting responsibilities, costs more than the reimbursement they receive from the major PBMs.

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Due to veiled pricing practices, it remains a mystery to consumers and pharmacies alike how PBMs determine prices and covered pharmaceutical product lists under this MAC pricing formula – despite a recent regulatory change designed to make these pricing practices more transparent.

January 2017 -- CMS Finds PBMs Keeping "Rebates" at Expense of Consumers, Taxpayers

A January 2017 Centers for Medicare & Medicaid Services (CMS) report finds that drug companies and pharmacies are paying larger rebates to PBMs and insurers, but that these **PBMs are keeping the money rather than translating it into lower costs for government health care programs or beneficiaries**. CMS data show that since 2010, the growth in rebates or concessions paid by drug companies or pharmacies to PBMs or managed care plans (in addition to the lump sum payment plans received from Medicare) after the point of sale (called Direct and Indirect Remuneration or DIR) has far outpaced the growth in Part D drug costs. The DIR that plans report to CMS increased from $31 billion in 2012 to $50 billion in 2015.

Bipartisan MAC Transparency Act to be Reintroduced in 2017

Saying "the PBM industry is one of the most detrimental pieces of healthcare," *Axios* reported U.S. Rep. Doug Collins (R-GA) intends to reintroduce and add items to his 2015 bill (H.R. 244 -- MAC Transparency Act, cosponsored by Rep. Dave Loebsack (D-IA), which would require "greater transparency of the rebates, fees and costs" tied to PBMs. "A lot of people assumed the big drug companies were just jacking up prices and manipulating the system. But you must look at this other issue of the PBMs. It was sort of a hidden issue because they want to stay hidden," says Collins.

Improving Transparency and Accuracy in Medicare Part D Drug Spending Act Introduced

S. 413, introduced by Sens. Shelley Moore Capito (R-WV) and Jon Tester (D-MT), and House companion bill, H.R. 1038, introduced by Reps. Morgan Griffith (R-VA) and Peter Welch (D-VT), prohibits pharmacy DIR fees from being applied after the point of sale for prescription medications dispensed to Medicare patients. Passage of the bills into law will begin to address DIR fee abuses that negatively affect patients, LTCPs and the Medicare program itself.

Avalere Health LTC Pharmacy/PBM Transaction Data Spotlights Anti-Competitive PBM Pricing Policies

Independent *Avalere Health* pricing data analysis between PBMs and LTC pharmacies find increasing reimbursement inequities driven by nontransparent MAC pricing methodologies. The data clearly show MAC prices paid for the same generic drugs, on the same day, by different payers, can vary considerably. SCPC maintains this raises questions about PBMs' claim that market conditions determine reimbursement rates. In effect, MAC pricing is not really market pricing at all – and is inconsistent with the free market principles underlying the Part D program.

PBM MAC pricing and administrative abuses undermine the ability of LTCPs to appropriately serve the patients under their care, and these practices also increase out-of-pocket expenses for consumers and add unnecessarily to Medicare's prescription drug expenditures -- not only under Part D but also under Part B. The time has come for a thorough, searching investigation into PBM pricing and other predatory practices, particularly as they impact LTCPs and their patients. SCPC seeks to work with lawmakers on a constructive, bipartisan basis to bring about more transparency and restrict anti-competitive behavior by the de facto oligopolies that have come to dominate the LTC pharmacy sector, as well as the entire pharmaceutical marketplace.