A PRESCRIPTION FOR THE DRUG PRICE EPIDEMIC

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Pharmacy Supply Chain

How Drug Distribution Works
A complex supply chain determines how prescription drugs are paid for in the U.S.

1. **Wholesaler or drugmaker** negotiates price with pharmacy.
2. Pharmacy dispenses to consumer and collects copay.
3. Consumers pay premiums to their health insurer or employer.
4. **Drugmaker** sells to wholesaler at small discount to list price.
5. **Pharmacy** receives reimbursement for drugs and dispensing fees.
6. **PBM** negotiates to receive rebates from drugmaker.
7. Insurer or employer pays PBM to manage drug costs, and the PBM passes back some or all of the rebates to the health insurer or employer.

Sources: Avalere Health
Broken Mechanisms

**THE FORMULARY SYSTEM**
- PBMs negotiate for rebates in exchange for placing a manufacturer’s drug on a formulary
- Larger rebate = better formulary placement
- Pay to play system
- Financial incentives may be placed before therapeutic value to consumer

**The Rebate System**
- Rebates artificially increase the list price of prescription drugs
- To accommodate for ever increasing rebates, manufacturers increase the list price of drugs
- Health insurers are disincentivized from receiving 100% of rebates because the rebate will be applied to offset the minimum loss ratio under the ACA

**THE SPREAD PRICING MODEL**
- PBM reimbursement to pharmacy is less than payment made by insurer
- PBM retains the “spread”
- Spread pricing is a contractual agreement to overpay for drugs
- This overpayment is made with consumer money
• Gobielle v. Liberty Mutual, 2016
  • Section 514(a) of ERISA broadly preempts “any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.”

• PCMA v. Gerhart, 2017
  • 8th Circuit Court of Appeals concluded Iowa law regulating PBMs was preempted by ERISA.

• PCMA v. Rutledge, 2018
  • 8th Circuit Court of Appeals concluded Arkansas law intended to regulate PBMs was preempted by ERISA and Medicare Part D.
How do we address the broken system?
Comprised of a list of best practices for insurers:

- Prohibit Spread Pricing
- Require all rebates to be passed through to Insurer
- Utilize rebate savings to directly lower premiums

Fairness and Transparency
State of Montana Employee Group Benefit Plan implemented Transparent, Pass-Through Pharmacy Benefit in January 2017:

- Directly contracted with PBM
- Eliminated Spread Pricing
- Achieved 100% pass-through of Manufacturer Rebates
- Paid Lower Administrative Fee
- Data is accessible with full audit ability

What was the result?

- Plan saved $7.4 million the first year – 28% savings
How does this benefit everyone?

Pharmacies
• Competitive Playing Field with PBM owned Pharmacies
• Price Transparency

Drug Manufacturers
• Price stability, as “rebate game” removed

Insurer
• Cost savings passed on to consumers in premium reductions and out of pocket savings
• Price Transparency and Fiduciary Role enhanced
• Montana State Employee Plan example

PBM
• Competition based on service and admin fees

Consumers
• Affordability
• Access

Fairness and Transparency
Opposition to SB 71

Marketplace health insurers and Large Pharmacy Benefit Managers:
• Claimed that SB 71 would prohibit mail order pharmacies
• Claimed that SB 71 would increase administrative costs and manufacturer drug prices
• Claimed any regulation of the pharmacy benefit should be directed at pharmacy benefit managers
• Claimed that SB 71 would cause insurers to violate the minimum loss ratio (80/20) under the Affordable Care Act
Result

- Senate Bill 71 passed in the Senate 37-13
- Passed in the house 71-27
- Vetoed by Governor Bullock (citing the reasoning from PBM spokesperson testimony)
- Veto override failed 91-30
Montana isn’t done fighting

- The National Academy of State Health Policy (NASHP) adopted SB 71 as model legislation
- Maine unanimously passed LD 1504 (based on SB 71)
  - Unique approach to spread pricing. An insurer may contract to allow spread pricing, but must account for the “spread” as administrative cost for purposes of the MLR
  - Requires pass-through of all manufacturer rebates
- The U.S. Senate HELP Committee adopted provisions of SB 71 in the Lower Health Care Cost Act
  - Section 306 of the LHCC is based on the provisions of SB 71
  - Eliminates spread pricing
  - Requires full pass-through of all manufacturer rebates
- Continued legal and regulatory actions
  - PCMA has filed suit in Montana against CSI
  - Seeks automatic PBM licensure after $100 fee is paid
  - Seeks to prevent disclosure of contracts which may harm consumers
Questions?

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