

A PRESCRIPTION FOR THE DRUG PRICE EPIDEMIC

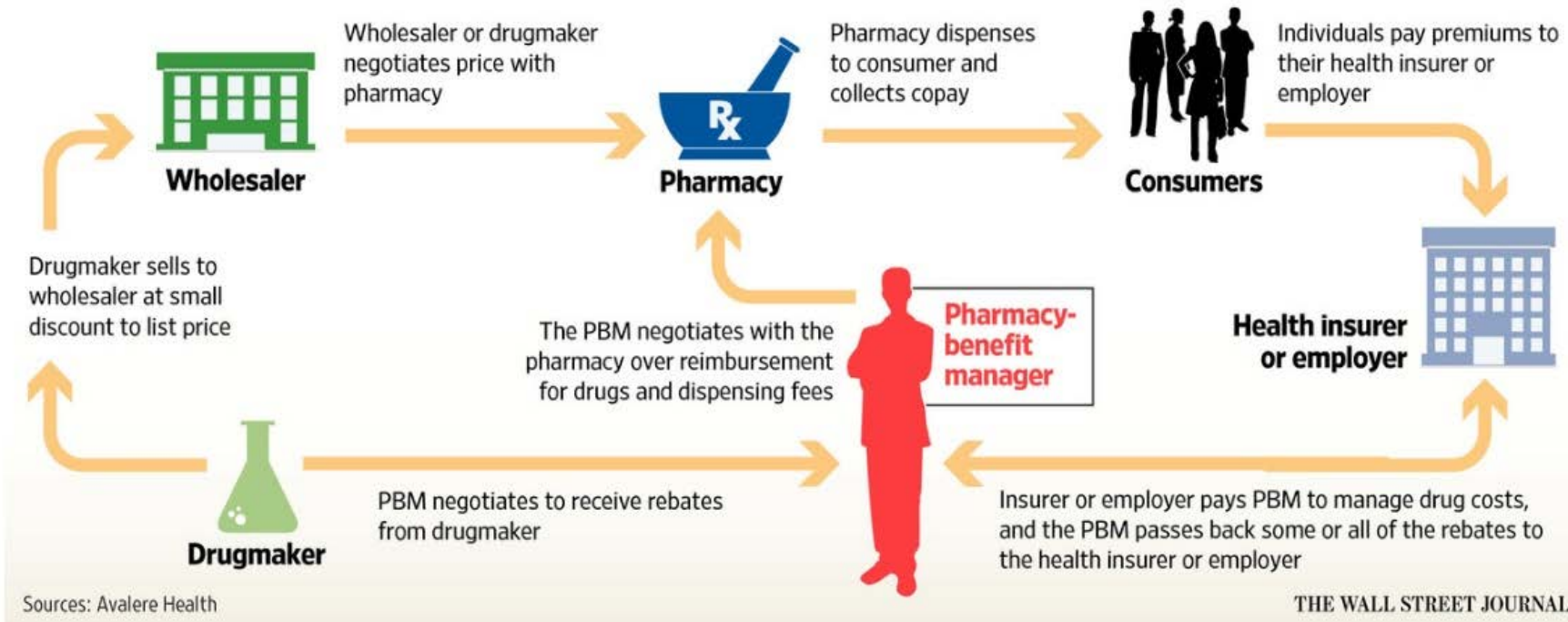
Derek Oestreicher, Attorney
Office of the Montana State Auditor,
Commissioner of Securities and Insurance



Pharmacy Supply Chain

How Drug Distribution Works

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



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



PBM Regulation Roadblocks



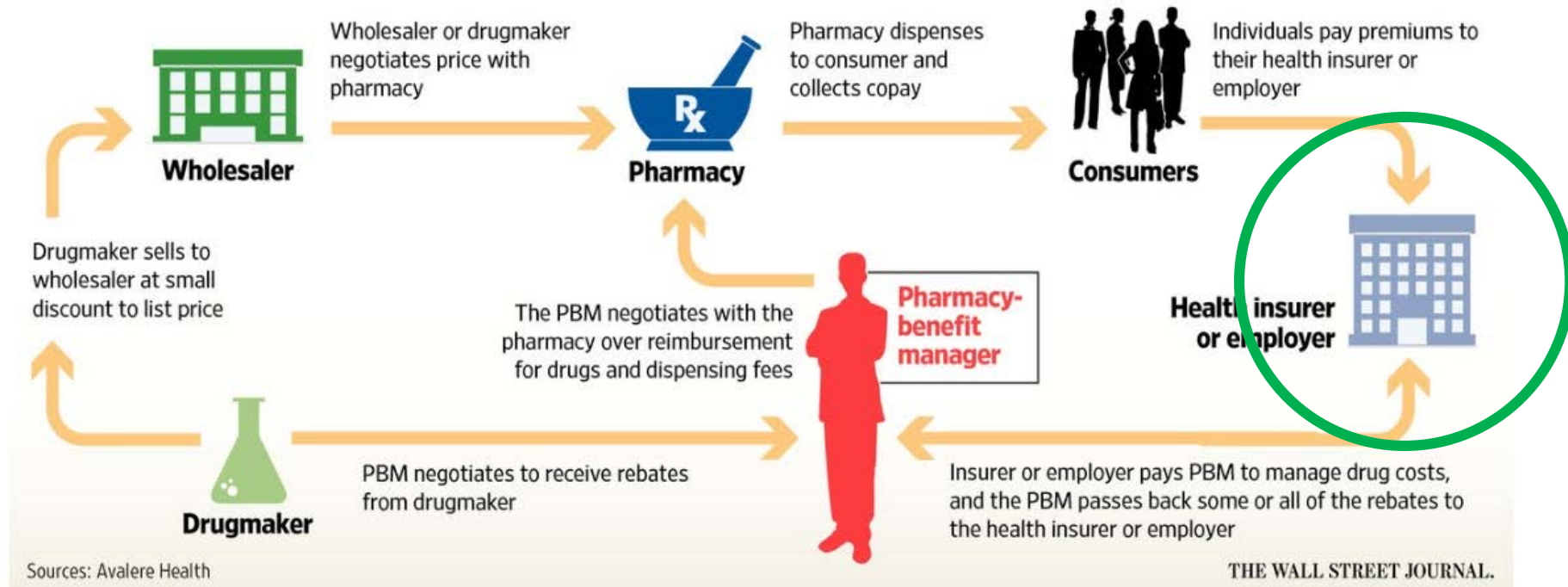
**ERISA
PREEMPTION**

- 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?

How Drug Distribution Works

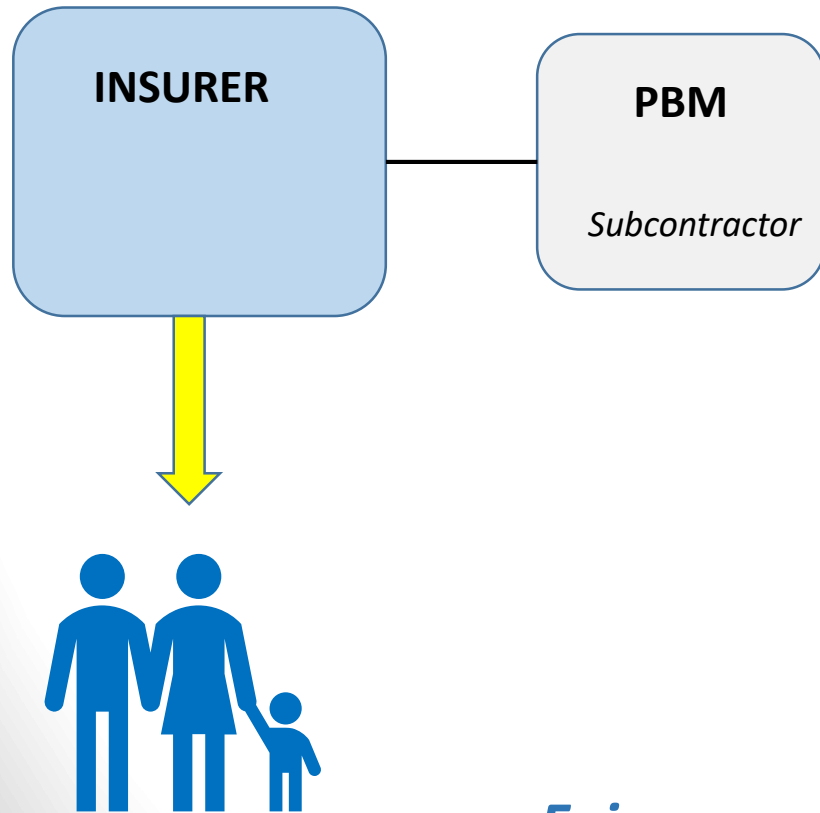
A complex supply chain determines how prescription drugs are paid for in the U.S.



Sources: Avalere Health

THE WALL STREET JOURNAL.

Montana Senate Bill 71



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

EXHIBIT A

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*

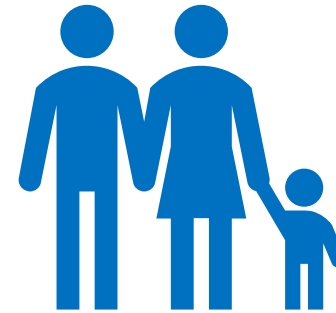
Insurer

- *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?

- Derek J. Oestreicher
- Email: derek.oestreicher@mt.gov
- Telephone: (406) 444-4328

