Rx in Reach Georgia Calls for Legislation to End Our PBM Problem

There is a problem with the modern Pharmacy Benefit Managers (PBMs) industry.

Every day, in Georgia health plans, pharmacies, physicians and patients encounter PBM policies that are harmful to patients and the doctor/patient relationship. Every day PBMs skirt transparency and accountability leaving our healthcare delivery system plagued with disparity and discrimination. They also jeopardize the affordable access to healthcare that Georgians need to reach their maximum wellness and remain productive to their employers, families and communities.

PBMs are companies hired by insurers to manage drug benefit programs. They negotiate discounts and rebates with pharmaceutical companies in exchange for preferred placement of drugs on the insurer's drug list or formulary. They are supposed to pass on these negotiated savings to patients; however, they take these rebates and fees with patients never receiving any savings. In many cases, PBMs act as a triple-dipping middleman – taking payment from insurers, manufacturers, and pharmacies – driving up patient costs while making tens of billions of dollars in profits.

Rx in Reach GA hears stories daily about patients struggling to afford the medications they need while drug companies, PBMs and health plans are profiting. We know drug prices continue to rise, reaching unaffordable levels for too many Georgians. Patients and physicians continue to be left in the dark on why prescription drugs cost what they do. Patients and physicians are baffled trying to figure out which treatment options are on the constantly changing formularies and what a patient's copay will be. This prohibits patients from receiving the vital care they need, especially for those battling chronic illnesses.

Hearings can be held, legislation can be introduced, but Georgia legislators needs to act now and pass laws to provide robust oversight of PBMs, transparency in drug pricing and protections for patients from harmful healthcare practices that reduce their access to quality healthcare while enormously increasing their overall healthcare costs.

PBMs are one of the most problematic, least regulated and least understood aspects of the healthcare delivery system. Over 80% of pharmaceuticals in the United States are purchased through PBM networks. PBMs serve as intermediaries between health plans, pharmaceutical manufacturers and pharmacies, and PBMs establish networks for consumers to receive reimbursement for drugs.

Although the primary function of a PBM initially was simply to create networks and process pharmaceutical claims, these entities have exploited the lack of transparency and created conflicts of interest which have significantly distorted competition, reduced choices for consumers and ultimately increased the cost of drugs.

Georgia HB 323

The Rx in Reach GA Coalition applauds the passing of Georgia House Bill 323, sponsored by Rep. David Knight, R-Griffin. HB 323 requires PBM's to report to the State Department of Insurance on how much they're getting in rebates from pharmaceutical manufacturers and how much of the rebates are not passed on to patients. However, it doesn't require that information to be public. Without disclosure, there is no transparency. And for patients, HB 232 does not go far enough. (See below, **Advocate's Goals**, for legislation details).

Georgia SB 313; 2020

The Rx in Reach GA Coalition supports new PBM legislation in our 2020 session. Georgia Senate Bill 313, sponsored by Senator Dean Burke, R-Bainbridge has introduced extension revisions regarding the prohibition on the practice of medicine by PBMs, Insurance Commission regulation, including licensing and filing fees with revised and extended provisions relating to reimbursements, rebates, administration of claims and prohibitive activities surcharges for PBMs.

We are awaiting further PBM legislation to be introduced that will increase patient protections.

Problem in the Markets

The anti-competitive nature of mergers

The Federal Trade Commission (FTC) describes the market as competitively healthy. We would counter that statement by suggesting that three PBMs dominating 85 percent of their market tier is hardly diverse competition.
Furthermore, the absence of strong competing forces allows PBMs to pocket rebates, lacking the incentive to cut costs for patients by passing along those savings. In fact, rebates have tripled to over $170 billion between 2012 and 2018, with increasingly smaller portions of rebates being passed on to patients. Express Scripts and CVS Health have acquired or driven out rival specialty pharmacies, expelling them from their networks, and targeting their consumers.

The PBM market is highly concentrated. The recent merger of Express-Scripts and Medco resulted in an industry that is dominated by two major companies: Express Scripts-Medco and CVS Caremark. Other PBM companies operating in Georgia with harmful policies are United Health Care, which merged with OptumRx and CatamaranRx, and Walgreens which merged with Centene Corp. to create RxAdvance, a cloud-based PBM.

We can find no evidence of patient benefit from these market- monopolizing mergers. In fact they have created the danger of leaving patients with higher prices and fewer choices.

Driving Up Costs

While the PBMs market themselves are well-positioned to bring savings to healthcare plans and patients, a lack of transparency in their practices enables them to wield their power to increase their profits, often at the expense of patients.

One of the dangerous practices of PBMs prevents co-pay assistance programs and discounts to count toward the patient's deductible or the maximum out of pocket costs for prescription drugs. By doing this, insurance companies are creating an environment that will lead to poorer health outcomes such as increased rates of new infections, and higher costs for health plans.

This practice is particularly concerning when applied to medications for which there is no generic alternative, which is the case for the vast majority of drugs used to treat chronic illnesses. In these cases, failing to count co-pay assistance cards toward a patient's deductible and out-of-pocket maximum leaves the patient with no affordable coverage option.

Deceptive Tactics:
The National Community Pharmacists Association prepared a presentation (available here) detailing many common PBM practices that drive up health care costs. Some of the more prominent examples are:

- Classifying certain generic drugs as brand drugs and charging brand prices
- Promoting drugs based on the rebate the PBM obtains, is not in the patient's best interest. (PBMs will prefer brands from which they get the highest rebate, even if there is an equally-well or better suited drug that is cheaper for the patient. Sometimes PBMs will even switch patients' prescriptions without the knowledge of the patient, just so that the PBM can receive the rebate!).
- Utilizing spread pricing by charging health plans more than they reimburse pharmacies, and pocketing the difference. (For more information on spread pricing click here).
- Preventing co-pay assistance contributions from counting towards a beneficiary's deductible and maximum out of pocket spending limits leaves patients at risk.
- Using abusive audit practices and penalizing pharmacies for minor, typographical errors on claims, forcing them to forego reimbursement due to small errors that posed no consequence to the claim.
- Mail-order pharmacies-disclose their pricing data to employees and therefore don't attempt such deceptive behavior.

Conflict of Interest

The lack of regulation in the PBM market has allowed the major PBMs to form plans to use the PBMs' own mail-order and specialty pharmacies. Substantial conflicts of interest arise when a PBM owns its own pharmacy operations. Its incentives shift from negotiating the lowest cost method of drug distribution to driving profits from its own pharmacy operations, and thereby effectively forcing payers and patients into using the PBM-owned mail order, specialty, or retail pharmacies.

Patients strongly prefer dealing with a community pharmacist, especially for specialty pharmaceuticals, so they can take advantage of the pharmacist's invaluable counseling and patient monitoring.

In addition, PBM owned mail order pharmacies often increase utilization and costs by dispensing unnecessary drugs.

The conflict of interest denies patients access to quality health care and increases the cost of overall health care to plans and consumers.

Advocate's Call for Comprehensive Georgia Legislation

1. **Increase regulatory attention with robust oversight to end harmful policies of PBMs**: While the recent CVS-Aetna merger did bring the PBM market under regulatory scrutiny, there is still not enough oversight of the industry. We want to make the PBM market a high priority for regulators by accomplishing the following goals in Georgia:

    - **Encourage legislators to take action and pass comprehensive PBM oversight legislation that protects patients**. Currently, dozens of states have passed legislation regulating various aspects of PBM operations, actions that need to be reflected and implemented in Georgia and at the national level. Some of the legislative provisions we deem important are:
        - Disclosure of drug pricing information by drug manufacturers and insurers.
        - Disclosure of PBMs information on fees (dollar amounts), rebates, price protection payments and other payments from pharmaceutical manufacturers and any passed onto insurers and any passed onto enrollees.
        - Disclosure of health insurer spending including all medical care, pharmaceutical , patient care, risk pool data and income reductions and executive compensations.
        - Insurance plans should be required to post their co-pay policies clearly in plan documents and formularies, including a list of health benefits plans administered by PBMs in Georgia, and to notify their beneficiaries and health care providers explicitly and directly of changes to their policies.
        - These disclosures should be in terms that are easy to understand and that demonstrate exact cost differences based on a beneficiary's medical history and previous explanations of benefits.
        - Insurance plans must post on their website: all PBM information, including direct contact call number, drug costs, copay policies and discounts, rebates, reimbursements clearly in plan documents and formularies and notify their beneficiaries and health

care providers explicitly and directly of changes to their policies.

- These disclosures should be in terms that are easy to understand and that demonstrate exact cost differences based on a beneficiary's medical history and previous explanations of benefits.

2. **Educate Health Plans about the importance of using a transparent PBM**: We want to encourage health plans to be informed about the deceptive practices many PBMs employ so that they decide to contract with healthy, transparent PBMs. By educating patients and health plans we can increase pressure on PBMs to stop their deplorable, dangerous tactics and act competitively, responsibly and within the law.

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