SB 121/HB 226
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Terms and Acronyms

1. PBM (Pharmacy Benefits Manager): Holds contractual relationships with pharmacies, insurances, and drug manufacturers and acts as a "middleman" between the three. Over 80% of the PBM market is held by the "big three" – Express Scripts/Cigna, CVS health, and Optum/United Health.
2. PCMA (Pharmaceutical Care Management Company): A national organization that represents PBMs and commonly opposes proposed PBM reforms.
3. PhRMA (Pharmaceutical Research and Manufacturers of America): A group of member companies that represent the nation's biopharmaceutical research companies that advocate for public policies that encourage discovery of new medications.
4. NCPA (National Community Pharmacy Association): An national association of pharmacists dedicated to advocating for the growth and prosperity of independent community pharmacies and promoting the health and well-being of the public.
5. FTC (Federal Trade Commission): An agency of the United States government with the goal of protecting the public from deceptive business practices and unfair methods of competition with law enforcement, advocacy, research, and education.
6. Plan Sponsor: The payers of insurance such as the state for Medicaid or an employer for private insurances.
7. Specialty Pharmacy: Pharmacies that dispense high-cost medications not always found in other retail settings. These medications, including oral, injectable, and infused, are typically used to treat complex diseases.
8. Network Pharmacy: Pharmacies that are contracted with an insurance plan and/or a PBM.
9. Formulary: An insurance plan's list of covered drugs, including tiers of preference. Drugs on a higher tier are more preferred and therefore have better coverage.
10. NADAC (National Average Drug Acquisition Cost):
11. AWP (Average Wholesale Price):
12. Clawbacks: Post point-of-sale fees charged to the pharmacies by the PBMs.
13. DIR (direct and indirect remuneration): A type of clawback, usually on behalf of Medicare, based on unknown performance or quality measures of the pharmacy getting charged.
14. Spread Pricing: PBMs charge plan sponsors more for medications than what is being paid to the dispensing pharmacy, creating a spread in the price that increases the BPM's revenue from that medication.

How PBMs Work and Their Impact

How the secrecy of middlemen inflates drug prices -- October 2023

There is currently no standard to pricing medications or transparency within the drug supply chain. This article discusses why there is a need for a price benchmark, such as the National Average Drug Acquisition Cost (NADAC), which is used by Medicaid. It also discusses the need for PBM transparency because the current opaqueness has allowed drug prices to increase at a quicker rate than the reimbursements to the manufacturers.

Pharmacy Benefit Managers -- History, Business Practices, Economics, and Policy -- November 2023

This article in the Journal by the American Medical Association (JAMA) provides a systemic overview of the PBM industry that includes history and evolution, as well as the current policies and how proposed policies will affect PBMs and patient care.

Legislation in Other States

National Academy for State Health Policy Legislation Tracker

This site allows you to track legislation in other states. Click on the link below and choose "Pharmacy Benefit Managers" to see what is happening in 40 states:

https://nashp.org/state-tracker/2024-state-legislation-to-lower-pharmaceutical-costs/

New York -- Department of Financial Services superintendent Adrienne A. Harris announces proposed nation-leading regulations for Pharmacy Benefit Managers -- August 2023

The Superintendent of New York proposes regulations around PBMs to establish protection for consumers and small pharmacy businesses. These protections included prohibiting deceptive marketing practices, banning abusive contract terms, prohibiting preferential treatment to PBM-affiliated pharmacies, and requiring department approval for any mergers or acquisition activity. This article was published asking for feedback during the 60-day comment period.

To follow-up: In October 2023, new licensing regulations were put in place for PBMs. For PBMs to operate in the state of New York, the new license must be completed by January 1st, 2024. Read more about it here.

Drug middlemen say Ohio law raises prices. Then they admit they don't know. -- August 2023

The Pharmaceutical Care Management Association (PCMA) is a national association that represents PBMs and is a common opponent against reforms that restrict PBMs overreach. Trying to discredit the positive impact of increased PBM regulation, PCMA published a blog post that states the cost of insurance increased after Ohio's PBM reform, but that isn't what actually happened. The Ohio Department of Medicaid gained access to the PBMs data and found that taxpayers were up-charged $224 million over a one-year period – CVS Caremark and OptumRx alone cost taxpayers an extra $150-186 million by charging 3 to 6 times the normal rates. In this same period, many small pharmacies complained about low reimbursement rates – many being forced to close and being bought by PBM-affiliated pharmacies. After Ohio legislation outlawed spread pricing, pharmacy reimbursement increased by $38 million.

2023 PBM State Legislative Tracking -- September 2023

A compilation of bills associated with PBM reforms across the United States and a summary of each.

Federal Attention on PBMs

Fierce Healthcare – PBM reform advocates preach optimism as Congress delays action:

Click on this link below for the story:

https://www.fiercehealthcare.com/payers/pbm-reform-advocates-preach-optimism-congress-delays-action

PBMs face scrutiny as House committee opens investigation -- March 2023

The House committee, Oversight and Accountability Committee, sent letters to the big three PBMs (CVS Caremark, Express Scripts, and OptumRx) asking for their drug price rebates and fees.

FTC expands probe into pharmacy benefit managers to GPOs -- May 2023

The Federal Trade Commission (FTC) issued orders to Zinc Health Services and Ascent Health Services (purchasing groups that negotiate rebates on behalf of PBMs) to release key details and information about their business practices. This is in follow-up to similar orders being sent to the 6 largest PBMs in the country, CVS Caremark, Express Scripts, OptumRx, Humana, Prime, and Med Impact. The FTC shares that their goal is to shed light onto the PBM practices including "clawbacks", steering toward PBM-affiliated pharmacies, and rebates and fees that skew formulary incentives.

PBMs under fire again as Senate introduces new bill -- September 2023

The Senate Finance Committee voted in favor of the Modernizing and Ensuring PBM Accountability (MEPA) Act. One senator said, "this commonsense, bipartisan legislation takes crucial steps toward driving down prescription costs…" and another said this bill "marks the next step toward taking on health care middlemen that are driving up costs for seniors and taxpayers." Among provisions in this bill, some of the bill members desire to include banning spread pricing and stopping PBMs from receiving payments from Medicaid Part D. This bill was introduced to the Senate September 28, 2024.

FTC Votes to Issue Statement Withdrawing Prior Pharmacy Benefit Manager Advocacy -- July 2023

The Federal Trade Commission (FTC) voted to withdraw prior PBM advocacy until previously issued material can be reviewed and current research can be completed.

PhRMA and PBMs

New analysis shows PBMs use fees as a profit center -- September 2023

This PhRMA article explains the findings of a Nephron Research report that shows PBMs have increased fees dramatically over the past decade without adequate policies. The article concludes with a call to action to lawmakers for "an opportunity to help strengthen market competition and provide meaningful relief to patients".

Insurance Related

A Guide to Understanding Pharmacy Benefit Manager and Associated Stakeholder Regulation -- September 2023

White paper on impacts of Pharmacy Benefit Managers, adopted by the National Association of Insurance Commission November 2, 2023.

News Stories on PBMs

Who profits most from America's baffling health-care system? Not Big Pharma. -- October 2023

The blame for overinflated healthcare costs often lands on big pharma companies and hospitals. This article demonstrates why that blame is misplaced by giving many examples of how PBMs make a large percentage of healthcare revenue, have monopolized the market, and are vertically integrating with the purchases of insurance companies, pharmacies, and healthcare providers. These vertically integrated “Big Health” companies make up 8 of the top 25 companies by revenue, compared to 4 from Big Tech and none from Big Pharma.

Alaska's pharmacist shortage has meant reduced hours and longer waits for prescriptions -- October 2023

Pharmacist shortages and temporary pharmacy closures are being seen across the state of Alaska, including Anchorage, Fairbanks, Valdez, Homer, Bethel and Juneau. This article comments that this may be attributed to the less-than-ideal work conditions that come with working in a retail or community pharmacy. These bad working conditions can be traced back to low reimbursements from PBMs. Pharmacies’ biggest cost is staff, so pharmacists are asked to work harder and longer hours (usually as the sole pharmacist) to make up for the lower reimbursements. Pharmacists that work in the retail setting are retiring early or moving on to a different area of pharmacy such as hospitals, clinics, or tribal health, leaving vacancies in their place that no one wants to fill.

Independent drugstores are opening up a new front in their battle against pharmacy benefit managers -- October 2023

The National Community Pharmacists Association, which represents more than 19,400 pharmacies, has formed a limited liability company that aims to recover direct and indirect remuneration fees from PBMs. Called TRUST, the LLC will investigate and, possibly, litigate or arbitrate on behalf of community pharmacies to recover price concessions, otherwise known as pharmacy direct and indirect remuneration fees. NCPA believes these fees were assessed by the PBMs and insurance plans in violation of federal antitrust law and state contract laws.

Alaskans insured through certain providers may soon be unable to send their prescriptions to Fred Meyer -- December 2022

Express Scripts, a large PBM that works with insurance companies such as TRICARE, Cigna, and Blue Cross/Blue Shield, terminated their contract with Kroger/Fred Meyer pharmacies, effective January 1st, 2023. This means that at the beginning of last year, thousands of Alaskans with Express Scripts had to find a new pharmacy because their insurance would no longer pay for those medications if they filled at Fred Meyers. Having to switch pharmacies can cause decreased access to care, worse patient outcomes, and increased workload for non-Fred Meyer pharmacies. Express Scripts does have a mail order pharmacy. This will be the only option for many Alaskans. Mail order medications, specifically in Alaska, can have long transit times and be exposed to extreme temperatures which can lead to questionable integrity of the medication when it gets to the patient.

Closure of Ron's Apothecary Shoppe reflects nationwide battle over prescription drug prices -- December 2023

After nearly 50 years of service, co-owners have made the hard decision to close the doors of Ron’s Apothecary at the beginning of December 2023. One co-owner mentions that reimbursements from PBMs were unfair and created a challenging environment to run a pharmacy. With this closure, Juneau is left with only one remaining independent pharmacy, and no pharmacies that can perform the same compounding services that Ron’s apothecary did. A co-owner of the sole remaining independent pharmacy and an Alaskan representative, Justin Ruffridge, mentions that due to low

PBM reimbursements, no pharmacy can rely on only dispensing mediation. This article also discusses the shortcomings of mail-order pharmacies delivering to Alaska residents and how the proposed SB121 can help independent pharmacies.

Why is the Fortune 100 company swapped from Caremark to a start-up PBM

Tyson Foods drops Caremark, one of the "big three", after having a contract with the PBM since 2017. The fortune 100 company switched to a PBM called Righway, which focuses on transparency and helping its members have a good healthcare experience. To aid this process, Rightway pairs each member with a pharmacist to answer questions, explain medications, and advocate on their behalf. This is an example of how PBMs can be helpful to the healthcare system, but transparency and accountability are needed. The article also mentions that other plan sponsor employers and insurance companies are making the switch away from big PBMs to those that value more transparency.

Lawsuits

PBMs and Insulin manufacturers artificially inflating prices – May 2023

LPR filed a lawsuit on behalf of Lake County, Illinois. According to the Complaint, drug manufacturers and pharmacy benefit managers (PBMS) orchestrated an insulin pricing scheme that benefited defendants—boosting the prices of life-saving insulin during a diabetes epidemic. The case was filed in the U.S. District Court Northern District of Illinois Eastern Division.

Express Scripts sued by 4 independent pharmacies, alleging price fixing -- October 2023

Two pharmacies in Wisconsin, one in Minnesota, and one in New Jersey sued Express Scripts for allegedly colluding with Prime Therapeutics to charge higher fees and lower reimbursements to pharmacies. The article also mentions that other independent pharmacies are standing up to PBMs through the National Community Pharmacy Association (NCPA) which just launched an LLC to investigate DIR fees.

Independent Pharmacies sue Express Scripts, allege price-fixing -- September 2023

This is the same lawsuit as the previous article. The lawsuit states that the partnership between Express Scripts and Prime Therapeutics "serves as a price-fixing mechanism" that will increase fees and lower reimbursement rates. The spokesperson for Express Scripts states that this suit is baseless and they play to defend their practices. This article also mentions all the examination and scrutiny PBMs have been under with policymakers and the Federal Trade Commission recently.

Pharmaceutical Care Management Association vs Nizar Wehbi et al.

The 2021 trial that helped catalyze PBM reform across the country. Alaska Attorney General, Treg Taylor, is listed as counsel in this case against PCMA and PBMs. This includes ERISA and how preemption applies to PBM reform.

Insulin, PBM Lawsuits Seen as Alternative to Pricing Legislation -- December 2023

State attorney generals from multiple states have filed lawsuits against insulin companies and PBMs alleging that those companies are engaging in illegal practices that increase the prices of insulin. The goal of these lawsuits is to bring more attention to the problem, give incentives for companies to not involve in misconduct, and hope to expose reimbursement and payment amounts. State officials hope that these lawsuits will lead to changes that happen quicker than waiting for laws around PBMs and medication pricing to be changed.

Iowa pharmacy slaps Caremark with lawsuit over DIR fees -- September 2023

Osterhaus Pharmacy filed a lawsuit against CVS Caremark alleging that the PBM violated antitrust laws by charging huge fees to dispense Medicare Part D prescriptions. The Iowa-based pharmacy states that CVS forces pharmacies into one sided contract that pharmacies have no choice but to comply with because if they don't, they would lose too many patients. This is the one of the main problems with only 3 PBMs holding 80% of the market. The National Community of Pharmacists Association (NCPA) supports this lawsuit and hopes that this case will bring the PBM's unlawful actions into public view.

An Anecdotal Story from an Alaska Pharmacist

We have a patient with Von Hippel Lindau Syndrome who has been through the ringer medically for the last 10+ years. She has had kidney cancer resulting in the surgical removal of one of her entire kidneys and part of the other. She has had many other complications and is at the point where she can no longer have surgery to treat her condition. She is receiving care in Fairbanks, Anchorage and from a sub-specialist in Seattle. The only treatment is an extremely expensive oral medication called Welireg® (belzutifan) that can only be provided through one of two "specialty" pharmacies in the entire country. The cost of this drug is literally criminal at $33,900 per month. She will need to take this drug for the rest of her life. It is the one and only treatment option. It has taken almost 3 months to get her prescription prior authorized. She finally received the rx via FedEx today. The patient did receive a telephonic counseling from the "specialty" pharmacy pharmacist that inappropriately and unnecessarily scared the patient. That is, the patient was explicitly counseled by the "specialty" pharmacist as if this drug was an alkylating chemotherapeutic agent (cyclophosphamide, etc.) with instructions to never touch the pills with her hands, double-flush the toilet – or preferably to use a completely separate bathroom if possible, wash her clothes separately from other household members, if she vomits (which is not a common side effect of this drug) to clean up with rubber gloves, etc. All of this was totally inaccurate and scared the crap out of the patient. To the point that she was questioning whether or not she should even take the drug. None of this was correct counseling advice. I find it unconscionable that a licensed pharmacist would provide this sort of "fear-mongering" advice to a patient. It is almost as if the "specialty" pharmacist somehow just thought that the drug was for an oncologic-related condition, so it "must be chemo" and that they should counsel accordingly. I've been able to reassure the patient that the counseling that she received from the "specialty" pharmacy pharmacist was FLAT OUT wrong and reassured her of what she does (and does not) need to look out for as far as side effects go. Anyway, it just infuriates me that we (her local pharmacy/ pharmacist) are the ones who spent innumerable time and effort with phone calls/ emails/ filling out forms to get this approved and then WE have to give her the legit scoop about the side effects of a ridiculously expensive drug, but get reimbursed zero for that service while the "specialty" out of state, mail order pharmacy just likely made a profit of ten thousand dollars only to give terribly inaccurate, uninformed and illogical advice with no repercussions.

STAT NEWS 10-24-23 -- INDUSTRY LOBBYING

What the latest lobbying tells us

Drug companies and their major lobbies aren't spending as much on congressional lawmakers as they did during last year's IRA frenzy, but pharmacy benefit managers — under the spotlight with legislation this session — are picking up the slack. PhRMA's spending dropped from $7.3 million in last year's third quarter to $6.4 million in the same period this year. Similarly, BIO's lobbying went from roughly $3.2 million to $2.2 million. Individual drug companies also pulled back, though that was expected after several exited PhRMA (and with that, its dues) in the past year. One of the most dramatic drops came from AbbVIe, which spent $2.4 million in third-quarter 2022 and just $750,000 in the same window this year. Meanwhile PBMs, feeling the heat from congressional hearings and proposed reforms, significantly ramped up spending. Their lobby, PCMA, doled out $4 million in the past three months compared to $1.9 million in the same period in 2022. Also of note: Despite Juul's recent setbacks, including significant layoffs, the company seemingly hasn't surrendered entirely to FDA policy: The popular e-cigarette brand hired a new lobby on "issues related to the regulation of electronic nicotine delivery system products, and the enforcement of illicit tobacco products" including counterfeit and illegally marketed disposable products.

Videos

White House Listening Session on PBMs from March 4, 2024

Video link below includes community pharmacists, Lina Khan, Chair of the Federal Trade Commission, Xavier Becerra, Secretary of the US Department of Health and Social Services, Mark Cuban of Cost-Plus Drug Company, and others giving compelling testimony on PBMs. Cuban is blunt and to the point saying PBMs have zero transparency, debunks "magical, specialty" pharmacies; claims all rebates should go to plan sponsors, but most do not understand they are getting screwed; drug formularies should not even exist, and their overall "pooping on the community pharmacist." He says one way to solve this problem: "Stop using the services of the Big 3. There isn't a single thing they do that can't be done by a transparent PBM." His remarks begin at about the 35-minute mark.

https://www.youtube.com/live/DiA6hAslOFg?app=desktop

How Drug Prices Work -- Wall Street Journal (7 minutes)
This video explains the complexity and secrecy of the pharmaceutical supply chain and reimbursement with examples to help make this opaque system as clear as possible. The complexity of the system may be one of the reasons why drug prices are rising so much. It also gives a great breakdown of each player in the systems as well as describing what a formulary is and how it affects drug prices. It also describes the difference in list price vs net price and how when the PBM bases reimbursement off list price, it hurts the patients. Of course, all these exact numbers are listed as proprietary by the PBM.

PhRMA COO Lori Reilly Testifies of PBM Abuses at House Oversight Committee -- 4 months ago (about 5 minutes)
Pharmaceutical Research and Manufacturers of America (PhRMA) Chief Operating Officer testified in front of the United States House of Representatives during a hearing that focused on the abusive practices of PBMs that has led to higher health care costs. Lori Reilly states that the increased cost of health care is not caused by the new (and expensive) brand name drugs due to the competition and rebate negotiation that happens with these medications. These medications are associated with 7 cents of every health care dollar spent. However, PBMs, accounting for 42 cents of every healthcare dollar spent, lack competition due to market monopolization and vertical integration. She states that PBMs are using this "leverage to enrich themselves often at detriment to the patients that they are supposed to be serving". Ms. Reilly also calls congress to action, saying they are in a unique situation to be able to help mitigate this problem by holding PBMs accountable, lower health care costs, and restoring competition by ensuring PBMs delink costs from the list price, share rebates, and increase their transparency.

Pharmacy Benefit Manager (PBM) Games (4.5 minutes)
This video gives a quick summary and history of what PBMs are and what they were meant to be. It also describes the "games" that PBMs play that increase costs of medications, decrease reimbursements to pharmacies, and increase the revenue for PBMs.

Pharmacy Benefit Managers: Companies In The Thick of Prescription Drug Pricing (4 minutes)
A whimsical cartoon that simply describes the pros and cons of what PBMs do.

Pharmaceutical Benefits Manager -- The Multi-billion-dollar industry (43 minutes)
PBMs from the prescriber's point of view. This is a valuable video from the Southern Medical Association that shows the impact that PBMs have on another part of the healthcare system. Madelaine Feldman, MD, talks through how PBMs are infringing on her doctor-patient relationships and why she feels like prescriptions are now really "just suggestions". PBMs ultimately determine what medications, when patients can get them, what pharmacies they can use, and how

much is paid for the medication. Dr. Feldman digs deep into how formularies work and breaks down the “bidding wars” that happen to build formularies. It is not the safest, most efficacious, or the cheapest medication for the patient that is preferred on a formulary, but what manufacturer can give the PBMs the biggest “kickback”. This typically leads to the patient paying a larger co-pay off the higher list price that has the top spot on the formulary. Overall, BPMs are failing on accountability, conflict of interests, fiduciary responsibility, and transparency. (It is important to note that this video is from 3.5 years ago, so some of the problems that are mentioned have been resolved with PBM reform.)

The Health Wonk Shop: Probing the Power and Practices of Pharmacy Benefit Managers (44 minutes)
Kaiser Family Foundation interviews the Director of the Center on Drug Pricing at the National Academy for State Health Policy, and the Executive Director of the Value of Life Sciences Innovation Program and Senior Fellow at the University of Southern California. A quick history of PBMs is given to start this discussion. PBMs started as “back-office” help in pharmacies that grew to these huge vertically and horizontally integrated companies that negotiate drug prices. It is also described how spread prices, fees, and rebates all influence the PBMs revenue. Additionally, it is discussed how PBMs pit similar drug manufacturers against each other to gain a better spot on the PBM’s formulary and how this affects list vs rebate prices. Patients and pharmacies are charged based on list price, while PBMs pay the manufacturers the rebate price. Insulin was mentioned as a specific example, the research paper mentioned can be found here. The discussion then turned to state PBM reforms and how states are making changes quicker than the federal government. Most bills are bipartisan, and provisions are mostly around providing different protections for payers, patients, and pharmacies. It was briefly discussed how PBMs may contribute to pharmacy desserts, how Mark Cuban’s pharmacy may disrupt the current reimbursement model, and what value the role PBMs bring to the industry.