Pharmacy Cost Mitigation Strategies Work Group
August 17, 2023

"We collaborate, out of a shared concern and responsibility for all Connecticut residents, to develop consensus models that advance equity and consumer affordability of healthcare in our state."

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Meeting Agenda

Time	Topic
10:00 a.m.	I. Welcome
10:05 a.m.	II. State and Federal PBM Landscape
10:45 a.m.	III. Recommendations for PBM Legislation in Connecticut
11:15 a.m.	III. Multi-State Work Group Update
11:25 a.m.	IV. Wrap-up and Next Steps
11:30 a.m.	V. Adjournment

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Workplan

Meeting	Content
Meeting #1: June 15, 2023	• Review workplan • Overview of recommended strategies • Update on Cross-State Pharmacy Workgroup

Meeting #2: July 6, 2023	• Reference-based pricing
	  • International, Medicare, other
	  • Combination of multiple benchmarks

Meeting #3: July 27, 2023	• Reference-based pricing (continued) • State-contracted production of generic drugs
Meeting #4: August 17, 2023	• Pharmacy Benefit Manager (PBM) strategies
Meeting #5: September 7, 2023	• Inclusion of pharmacy expense in Total Cost of Care contracts

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State and Federal PBM Landscape

What is the Role of PBMs?

- **Design health plan formularies**
  - Negotiate manufacturer rebates based on formulary placement
  - Decide pharmacy utilization management strategies
  - Establish how much health plan members pay out-of-pocket for Rx drugs
- **Create health plan pharmacy networks**
  - Can include "preferred" pharmacies
  - Negotiate pharmacy dispensing fees
  - Set drug reimbursement amounts
  - Pay pharmacy claims, bill insurers for amounts paid to pharmacies
- **Reimburse pharmacies and providers** for drugs dispensed or administered to enrollees

National PBM Landscape

Market consolidation

- While 66 PBM companies exist nationwide, three PBMs control approximately 80% of the market.
  - Express Scripts (independent publicly-traded company)
  - CVS Caremark (pharmacy service segment of CVS Health and a subsidiary of the CVS drugstore chain)
  - OptumRx (pharmacy service segment of UnitedHealth Group Insurance)

Vertical integration

- PBMs and their business affiliates control the drug supply chain from the initial sale by the manufacturer through the final sale to a consumer.

Vertical Integration of Insurers, PBMs, Specialty Pharmacies, and Providers

Drug Channels: https://www.drugchannels.net/2023/05/mapping-vertical-integration-of.html

PBM Business Practice Concerns (1 of 2)

- **Lack of transparency** regarding rebates and reimbursements
  - Typically, it is unknown how much is retained by the PBM vs. passed on the plan/employer
  - Drug-specific rebate information is deemed confidential unless disclosure is required by law
- **PBM preference for higher cost drugs**
  - Rebates received from manufacturers are often based on a percentage of the drug's price, so higher price → higher rebate for PBM
  - Calculation of PBM fees as a share of drug costs creates incentives for PBMs to prefer higher-cost drugs
  - Drug formulary design favors higher-priced drugs

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PBM Business Practice Concerns (2 of 2)

- **Direct impact on patient affordability and access**
  - PBMs require pharmacies to collect elevated copayment (i.e., more than the cost of the Rx to the pharmacy), and subsequently recoup the excess amount from the pharmacy
  - PBMs restrict how much price info pharmacies can share with consumers
- **Vertical integration** contributes to anti-competitive behavior and higher costs
  - Requirements for consumers to purchase drugs only from PBM-controlled pharmacies
  - Discriminatory pharmacy reimbursement policies for independent pharmacies compared to PBM-affiliated pharmacies
  - PBM-controlled contract pharmacies are benefiting from significant 340B savings, diverting those savings from patients in need

Federal Trade Commission Investigation

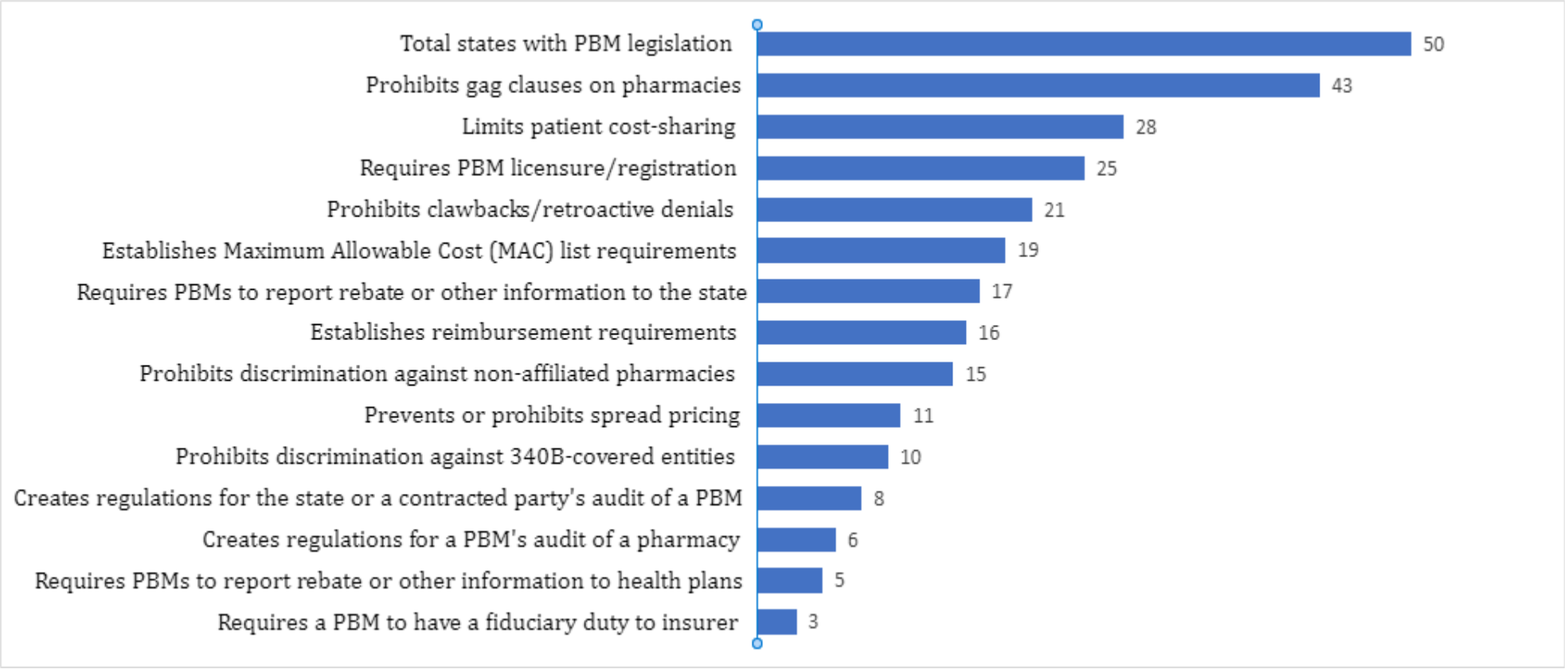
- In June 2022, the FTC launched an investigation into PBMs to provide information and records regarding their business practices, including:
  - charging fees and clawbacks to unaffiliated pharmacies;
  - steering patients towards PBM-owned pharmacies;
  - potentially unfair auditing of unaffiliated pharmacies;
  - use of complicated and opaque pharmacy reimbursement methods, and
  - negotiating rebates and fees with drug manufacturers that may skew the formulary incentives and impact the costs of prescription drugs to payers and patients.

Federal Proposals for PBM Reform

- Pharmacy Benefit Manager Reform Act (S. 1339), led by Chairman Sanders (I-VT) and Ranking Member Cassidy (R-LA)
  - Prohibits use of spread pricing
  - Bans certain PBM clawbacks, including direct & indirect remuneration fees incurred by pharmacies that dispense Medicare Part D drugs
  - Requires PBMs to disclose all fees, rebates and other payments received from manufacturers and pass through to plan sponsors
    - Removed provision to delink PBM compensation from the drugs' list prices
- In May 2023, the Senate HELP Committee voted 18-3 to advance an amended version of the PBM Reform Act to the full Senate.
- S. 1339 is one of several pending federal proposals.

State PBM Laws

Number of States with Common Provisions in State PBM Laws: 2017-2022



Adapted from NASHP: https://nashp.org/state-pharmacy-benefit-manager-legislation/

Connecticut PBM and Carrier Reporting Requirements (PA 19-41)

PBM Reporting (PA 19-41 §2)

- PBMs are required to report to the insurance commissioner the *aggregate amount* of drug formulary rebates the PBM collected from manufacturers and all rebates paid to health carriers, which CID makes publicly available.

Carrier Reporting (PA 19-41 §§ 4 and 6)

- Health carriers are required to certify to the commissioner that they account for all rebates when calculating plan premiums.
- CID then publicly reports health carrier rebate practices.

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Connecticut PBM Study (PA 23-171 §7)

- **The Office of Health Strategy, in consultation with the Insurance Department, shall conduct an analysis of PBM prescription drug distribution practices**, including, but not limited to:
  - spread pricing arrangements,
  - manufacturing rebates and transparency,
  - fees charged,
  - financial incentives for adding drugs to health plan formularies, and
  - an evaluation of prescription drug distribution practices conducted by pharmacy benefits managers in other states.
- Such report shall provide recommendations (1) to reduce prescription drug costs for consumers, and (2) for the regulation of pharmacy benefits managers in the state.
- Analysis and report to be completed no later than January 1, 2025.

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PBM Study: Scope of Recommendations

The RFP contains further details on the PBM practices to be analyzed, and further specifies the recommendations the study shall consider:

- Restricting rebate contracting and the impact on the overall cost of the prescription drugs to consumers, if any
- Requiring formulary tier placement of generics to reflect total cost to the health system
- Requiring transparent PBM reporting
- Requiring PBM contracts to use fixed fees per transaction
- Examining the PBM market from an antitrust perspective
- Imposing fiduciary requirements on PBMs and insurers
- Providing audit rights for employer and government purchasers
- PBM transparent pass-through models with cost transparency
- A transparent, competitive cash market model for low-cost generics

Recommendations for PBM Legislation in Connecticut

Recommended PBM Strategy Proposals

- As a reminder, the Work Group previously recommended further developing PBM legislative and non-legislative strategies that would:
  1) Create transparency regarding rebates
  2) Prohibit of spread pricing
  3) Promote fee-based pricing by employers
- Given that the PBM study and corresponding recommendations will not be completed until January 1, 2025, the co-chairs and OHS recommend delaying further development of the legislative strategies to regulate PBM activities (1 & 2 above)

Does the Work Group agree with this recommendation?

Fee-Based PBM Pricing

- **Summary**: Under current payment structures, PBMs are typically paid as a percentage share of the drug's cost, which creates incentives for PBMs to prefer higher-cost drugs. With pass-through pricing, PBMs are paid administrative fees as their only source of revenue under the contract, charging straightforward administrative fees to the carrier or employer, often structured as a flat fee per prescription.
- **Proposed solution**: The State could promote fee-based pricing by self-funded employers via educational efforts. Future legislation could also require and/or encourage PBM contracts to include fixed fee-based compensation.
- **State level action**: While states have not legislatively required fee-based pricing, the elimination of spread pricing will likely lead to PBMs charging administrative fees instead.

Potential Legislation to Require PBM State Licensure

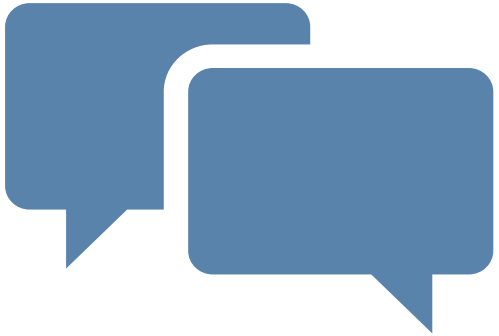
- CT could introduce legislation in the interim that would require state licensure of PBMs in order to facilitate further state regulation pending the recommendations in the PBM Practices Report.
- At least 25 states require state licensure of PBMs.
- *Why should PBMs be state-licensed*?
  - States have a long history of licensing other parts of the drug supply chain, such as pharmacies, wholesalers, and similar entities, which allows greater oversight and accountability.
  - State licensure is a first step to further increasing transparency and oversight of the PBM industry.

Major Components of PBM Licensure

- Requires a PBM to be licensed with the state in order to operate or conducting business as a PBM.
- A state agency, such as DIR, would have authority to promulgate rules and regulations pertaining to licensure, including authority to establish and assess fines, impose civil penalties, and suspend or revoke a license of a PBM that is found to be noncompliant.
- Typically requires renewal of licensing every one to three years.

Discussion

- Should Connecticut introduce legislation in the upcoming session that requires all PBMs operating in the state to be required to be licensed by the state?



Multi-State Pharmaceutical Pricing Strategy Workgroup

Multi-State Rx Pricing Strategy Workgroup

- As a reminder, CT is participating in the Multi-State Pharmaceutical Pricing Strategy Workgroup, with the goal identifying aligned strategies to bring down pharmaceutical price growth that states can jointly champion in the 2024 legislative session.
- To date, the Multi-State Workgroup participants have conveyed interest in pursuing both reference-based payments *and penalizing excessive price increases.*
- In order to maximize alignment across states, we recommend adding this strategy to the pharmaceutical strategies that this Work Group recommends to the Healthcare Cost Growth Benchmark Steering Committee.

Penalizing Excessive Price Increases Overview (1 of 2)

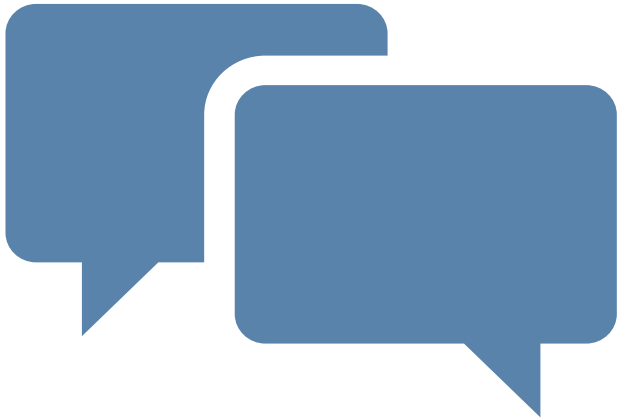
- All pharmaceutical manufacturers would be subject to the price increase benchmark, provided that the manufacturer had at least $250,000 in total annual sales in the state for the calendar year for which the penalty would otherwise be imposed.
- The annual price growth benchmark would be set at inflation.
- Under the state's taxing authority, Connecticut would penalize drug manufacturers that increase the Wholesale Acquisition Cost of the drugs above the benchmark rate increase.

Penalizing Excessive Price Increases Overview (2 of 2)

- The tax would be set at 80% of the difference between revenue generated under the manufacturer's price increase and the revenue that would have been generated using the benchmark rate increase.
- In order to calculate the amount of the financial penalty, any manufacturer subject to a penalty would be required to report information on the total unit of sales from the manufacturer to an in-state wholesaler, provider, or pharmacy.

Discussion

- Do you support adding this strategy to the pharmaceutical strategies that the Work Group recommends to the Healthcare Cost Growth Benchmark Steering Committee?
- What additional information do you need to make this determination?



Wrap-up and Next Steps

- The next Pharmacy Cost Mitigation Strategies Work Group meeting is scheduled for Thursday, **September 7th** from 10 – 11:30 a.m.

Appendix

Rebate Transparency

- **Summary**: The amount of rebates paid by manufacturers to PBMs, and the amount of rebates retained by the PBM vs. how much is passed on the health plan or employer, are typically kept confidential. While CT state law currently requires rebates reported in the aggregate, CT doesn't have access to drug-specific rebate information.
- **Proposed solution**: Require PBMs to disclose certain pricing and cost information, such as drug-specific data on rebates, and payments and fees collected from drug manufacturers, insurers, and pharmacies.
- **State level action**: 17 states have passed laws requiring PBMs to report information, including aggregate rebates, to certain state departments. However, only Delaware requires specific drug costs net of rebates.

Spread Pricing

- **Summary**: Spread pricing occurs when a PBM charges a health plan or employer a higher price for a prescription drug than what the PBM actually pays the pharmacy for that prescription, and the PBM retains the difference as profit.
- **Proposed solution**: Prohibit PBMs from engaging in the practice of spread pricing. Instead, PBMs would use a pass-through pricing model, where the PBM passes through the amount charged by the pharmacy to the health insurer.
- **State level action**: 12 states have passed laws to prohibit spread pricing models in PBM and health plan contracts.