Connecticut Association of Health Plans

Quality is Our Bottom Line

Health Care Cabinet
Workgroup Recommendations

Connecticut Association of Health Plans
Comments

December 12, 2017

The Connecticut Association of Health Plans (CTAHP) supports the Cabinet's efforts to rein in drug costs. However, we urge caution as to how the group proposes to accomplish that goal. Recommendations that address drug pricing at its origination point should be primary as opposed to those that focus on the delivery system. Newspapers are filled with daily stories of price gouging by pharmaceutical companies and the state, municipalities, payers and most importantly, consumers, have all borne the brunt of such tactics. Resulting litigation is likely to yield public policy change but, in the meantime, we must be wary of proposals that have the unintended consequence of increasing costs instead.

Insurance carriers have long been at the forefront in the battle to provide appropriate clinically based coverage that takes into account both cost and quality. Premiums, co-pays, coinsurance, and formularies are all indicative of the underlying price of service. Various cost-containment mechanisms and quality initiatives have been employed over the years with varied success. But, until the fundamental unit cost is addressed prices will continue to rise. New policies that undermine the ability of insurers and PBMs (pharmacy benefit managers) to use management tools will only further exacerbate the problem. While not always popular, insurers and PBMs provide one of the few checks and balances on the current system which is why they are often the target of PhRMA legislative initiatives.

We also urge the Cabinet and other policy makers to recognize the limitations of state government in terms of regulating the insurance market at-large. Although percentages vary from year to year, it's estimated that less than 40% of the state's insured are subject to Connecticut law. The other 60% are self-insured and therefore governed by federal ERISA (Employee Retirement Income Security Act) regulation instead. In fact, many employers move to self-insured status in order to escape the burden of state mandates. As a result, overly burdensome regulation falls disproportionately on small employers who are least able to afford the risk of going self-insured. Likewise, those who purchase insurance on the individual market, whether on or off Exchange, face the same hardship. As such, any new policies enacted upon recommendation of the Cabinet will apply only to a small segment of Connecticut's market~ and those that are most price sensitive ~ so it's imperative that any new proposed policies first do no harm.

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In an effort to draw the Cabinet's attention to some of the more problematic recommendations put forth by the workgroups, we ask that you give strong consideration to the following points.

1. **Net Pricing and Cost Sharing: Cost-Sharing Lowers Prescription Drug Prices for Patients and Payers**

Key Points:

- Without cost-sharing incentives, doctors and patients will have little encouragement to choose lower cost generic drugs and will instead choose more expensive brand drugs. This will lead to increases in drug pricing, specifically on the brand side, and to overall increased costs for the plans and consumers.

- The National Bureau of Economic Research found that, 'Insurers can offer to set a lower copay for a given drug within a therapeutic category, thereby steering volume to that drug, in exchange for an attractive price from the drug manufacturer.' The insurer's ability, 'to steer patients with copays toward specific branded drugs also plays a meaningful role in the insurer-manufacturer negotiations.'

- PBMs promote lower cost generic drugs and clinically effective, lower-cost alternative brand-name medicines through formulary management and utilization tools, such as prior authorization and step therapy.

2. **Fiduciary Duty: PBM Fiduciary Mandates Are Preempted By ERISA**

Key Points:

- PBMs have no "discretionary authority" over plan assets, as defined by the U.S. Department of Labor, which is an essential threshold requirement for fiduciary status under federal law.

- Federal courts across the country have struck down such fiduciary mandates as preempted by ERISA. The District of Columbia attempted to impose fiduciary responsibilities on PBMs, but the law was struck down by the D.C. Circuit in 2010. In 2011, the only remaining fiduciary mandate in the country was repealed in Maine. It is important to note Maine decided to overturn its own law after seeing the negative impact their fiduciary duty saw on the market, including increased costs on prescription drugs.

- Such a provision would limit the ability of PBMs and their clients (such as health plans) to design and implement cost-savings practices for distributing pharmaceuticals, for instance utilizing mail-order pharmacies or establishing preferred pharmacy networks.

3. Transparency: Prescription Drug Transparency Will Raise Costs for Consumers and Plan Sponsors

PBMs have every reason to reduce drug costs for their plan sponsors by eliminating excessive fees and passing rebate savings along to their plan sponsors and their beneficiaries. PBMs are transparent to their plan sponsors on the services they receive in accordance with contractual requirements. Negotiated rebates from drug manufacturers are passed on to the plan sponsor, which is then used to lower overall health spending.

Key Points:

- PBMs **do not set drug prices**—rather, PBMs lower the cost of drug benefits by negotiating price concessions with manufacturers and pharmacies on behalf of plan sponsors. PBMs are hired by plan sponsors such as large employers, government programs, unions and insurers, to maximize the value of prescription drug benefits, helping patients and payers save an estimated $941 per enrollee per year in prescription drug costs, and equaling an estimated $654 billion over the next 10 years.

- Plan sponsors use these savings to benefit patients by lowering overall healthcare expenditures.

PBMs Employ Rebates to Lower Costs to Consumers

According to a recent Visante study, there is no correlation between the prices drug manufacturers set and the rebates they negotiate with PBMs. The findings contradict claims asserted by manufacturers and others, that the prices that drug manufacturers set are contingent on the level of rebates and discounts manufacturers negotiate with PBMs. The study analyzed data on gross and net sales for the top 200 self-administered, patent-protected, brand-name drugs and found no correlation between the prices drug manufacturers set for those drugs and negotiated rebates. A follow-up analysis also noted that: "[t]op brand drugs that offered little to no commercial-sector rebates during the 2011-2016 time-period still increased their prices."

Key Points:

- The Federal Trade Commission has stated that, "[i]f pharmaceutical manufacturers learn the exact amount of rebates offered by their competitors [...] then tacit collusion among manufacturers is more feasible [...] Whenever competitors know the actual prices charged by other firms, tacit collusion — and thus higher prices — may be more likely."

- The FTC has also warned several states that legislation requiring PBM disclosure of negotiated terms could increase costs and "undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford."

- Additionally, the Department of Justice and the FTC issued a report noting that "states should consider the potential costs and benefits of regulating pharmacy benefit transparency" while pointing out that "vigorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms."

- Researchers at the University of Pennsylvania found that, "[t]ransparency requirements that attempt to set actual reimbursement for drugs at the pharmacy's or PBM's actual cost or acquisition price may have unintended consequences, leading to higher real costs and/or manipulated prices."

In closing, these key concepts are essentially part of beneficial business practices used by PBMs to ensure the lowest cost prescription drugs for payers and patients. Any legislative interference may have unintended consequences that raise the price of drugs or limit the ability of a competitive market place to flourish.

Thank you for your consideration.