

## Dealing with PBMs:

*"Can I have an aspirin?"*



**DAVID BALTO**  
Law Offices of David A. Balto  
[David.Balto@dcantitrustlaw.com](mailto:David.Balto@dcantitrustlaw.com)  
202-789-5424

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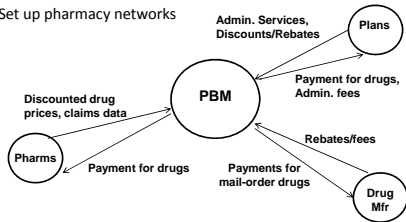
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## Role of PBM: The Honest Broker?

- PBMs are intended to serve as "honest brokers" between drug manufacturers and plans
  - Handle pharmaceutical claims for health plans
  - Seek lowest cost from manufacturers and reimbursement from pharmacies
  - Set up pharmacy networks



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## COMPETITION LESSON 1

3 Elements Necessary:

- Choice
- Transparency
- Lack of Conflict of Interest



"What conflict of interest?!  
I work here in my spare time."

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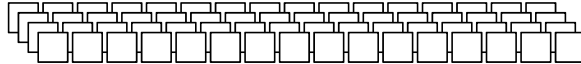
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### PBM Industry

- “The Big Three” control over 80% national PBM market.
- Profits climb nearly threefold from 2003 to 2010, from over \$900 million to over \$3.6 billion



--Hospitals and Pharmacies--




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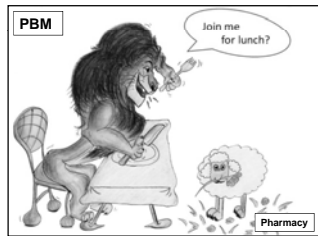
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### PBM-Pharmacy Relationship

*“Retail pharmacies are generally offered a ‘take it or leave it’ deal to be included in the network, with only the largest pharmacy chains having any ability to negotiate with the PBMs.”*

Allison Dabbs Garrett & Robert Garis, *Leveling the Playing Field in the Pharmacy Benefit Management Industry.*



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### The Reimbursement Problem

- PBMs make money “playing the spread”
  - Pocketing savings achieved on behalf of plan
- New Area for PBM profits: **340b Rebates**
  - *Whose rebate is it?*



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### Potential Responses

- Information sharing
- Collective negotiations
- Public awareness
- Advocacy



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### Past PBM Enforcement Actions

- Multistate enforcement actions resulting in over \$371.9 million in damages:
  - **United States v. Merck & Co., Inc., et.al** – \$184.1 million in damages for government fraud, secret rebates, drug switching, and failure to meet state quality of care standards.
  - **United States v. AdvancePCS** (now part of CVS/Caremark) – \$137.5 million in damages for kickbacks, submission of false claims, and other rebate issues.
  - **United States v. Caremark, Inc.** – pending suit alleging submission of reverse false claims to government-funded programs.
  - **State Attorneys General v. Caremark, Inc.** – \$41 million in damages for deceptive trade practices, drug switching, and repackaging.
  - **State Attorneys General v. Express Scripts** – \$9.5 million for drug switching and illegally retaining rebates and spread profits and discounts from plans.

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### PBM REFORM

- States: Reform legislation proposed in over 20 states
- Focus: Transparency and fiduciary duty
- Enacted in D.C., Iowa, South Dakota, Maryland, Vermont, Arkansas
- Patient Protection and Affordable Care Act
- Department of Labor Regs

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**PPACA Health Reform:  
PBM Transparency**

- Applies to plans in the state-operated exchanges (private and FEHBP administered plans) and Part D plans
- PBMs to report to the Secretary and contracting plans on:
  - Retail vs mail; generic dispensing rates;
  - Aggregate manufacturer rebates earned and passed through to the plan
  - Aggregate payments from plans to PBMs and subsequent payments to pharmacies

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**Pending PBM Legislation**

**HR 1971/S 1058: Pharmacy Competition and Consumer Choice Act**

- Introduced in the House by McMorris Rogers and Weiner and in the Senate by Pryor and Moran
- Any Willing Provider, protecting patient choice
- Protecting privacy: data could not be traded as a commodity by PBMs without the health plan being notified first. Plus, patients would no longer receive solicitations from PBMs unless the patient and health plan opted in to such solicitations.
- Protection from audits: no longer than 2 years, no more stringent than required by law, typographical errors not subject to recoupment

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**Pending PBM Legislation**

**HR 1839: Community Pharmacy Fairness Act**

- Introduced by Weiner
- Antitrust exemption for pharmacies but not applicable under specified federal programs.
- Entitles independent pharmacies negotiating contract with health plans to the same treatment under the antitrust laws as the treatment to which bargaining units recognized under the National Labor Relations Act are entitled.
- Treats a pharmacy as an employee engaged in concerted activities in connection with such negotiations.

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### Pending PBM Legislation

**HR 1946: Preserving Our Hometown Independent Pharmacies Act of 2011**

- Introduced by Marino
- Treats independent pharmacies negotiating a health plans the same under the antitrust laws as an employee engaged in concerted activities, and not as an employer, independent contractor, managerial employee, or supervisor, only in connection with such negotiations.
- Exempts actions taken in good faith reliance on this Act from being subject to criminal sanctions or civil penalties beyond actual damages incurred.

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### CE Question

- True or False? PBM industry profits climbed nearly threefold from 2003 to 2010, from over \$900 million to over \$3.6 billion.

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### CE Question

- True.

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**Questions?**

**David A. Balto**  
Attorney at Law  
1350 Eye Street NW  
Suite 850  
Washington, DC 20005  
(202) 789-5424  
David.Balto@dcantitrustlaw.com



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