

From Pharmacy Benefit Consultants & The National Prescription Coverage Coalition

We add a few Postscripts to the *Pharmalot* story (The 'gouge factor': Big companies want transparency in drug price negotiations

By ED SILVERMAN):

First, PBMs' forecast that they will save consumers \$654 million in the next decade is dubious, at best. Given that PBMs insist that brand drug manufacturers pay PBMs rebates (and immense amounts of other monies) in order for the manufacturers to gain access to PBMs' Formularies and be favored in PBMs' programs - and manufacturers then raise their prices, undoubtedly as much (or more) than the rebates that are being paid - how can PBMs possibly claim they are bringing about consumer savings? In fact, it's rather obvious that rather than forcing manufacturers to lower their drugs' net costs, PBMs are colluding with manufacturers to relentlessly increase those costs.

Second, while we have nothing but the greatest respect for Adam Fein's remarkable expertise, his comment that PBMs pass back more than 90% of all rebates misses the mark. Similarly, Garen Sarafian's observation that Medco provided rebate metrics - and Express Scripts should do the same - is irrelevant.

Why do we take issue with these otherwise astute commentators? The answer is simple:

PBMs simultaneously negotiate two different sets of contracts. With their health plan clients, PBMs agree to pass through "rebates." And yes - typically, PBMs agree to pass through 100% of all "rebates" that PBMs collect from manufacturers.

However, PBMs also negotiate an entirely separate set of contracts with manufacturers. And in those contracts, PBMs not only label the money they will collect as "rebates", PBMs also invent numerous other labels as well: administrative fees, purchase money discounts, prompt payment discounts, health management fees, data sales fees, etc. There's no limit to the imaginative labels PBMs invent.

Manufacturers don't care which labels PBMs use in PBM/manufacturer contracts. After all, money is money, and what matters to the manufacturers is the total dollar amount that must be paid. But PBMs *do* care which label is used: If PBMs label the manufacturers' payments as "rebates" - ultimately, given PBMs' contracts with their clients, PBMs will be required to pass through the monies to their clients. But if PBMs label the manufacturers' payments with a different name, PBMs can retain all such monies entirely for their own accounts.

Tellingly, of the hundreds and hundreds of PBM/client contracts our firm has reviewed, other than those written by our firm, we've never seen a contract that requires a PBM to pass through **all financial benefits regardless of label**. Also of significance: Other than the contracts our firm has put in place, we've never seen a contract that requires PBMs to **disclose** all PBM/manufacturer contracts (not just those related to "rebates").

Thus, when Express Scripts' Tim Wentworth insists that his company passes through 100% of rebates - and claims Express Scripts' rebates are "completely audible" - our response is to laugh out loud - or to be more accurate, to weep - at the obvious deception.

Our other response is to urge every Express Scripts client - as well as the clients of all other PBMs - to rise up and insist that Express Scripts - and every other PBM - provide

accurate information (in writing) about all the other monies that each PBM is collecting from manufacturers and failing to pass through or disclose to clients.

And when Express Scripts and other PBMs refuse to provide clients with the requested information, we urge every client (i) to terminate its contract as soon as possible; and (ii) conduct a contract-focused RFP that requires PBM contestants to execute - *during the RFP* - binding "contract offers" that require the pass-through - and disclosure - of **all financial benefits, however labeled**. Clients can then evaluate all PBM contestants' "binding contract offers" - select the "offer" with the best pricing terms and guarantees - and execute that "offer" at the end of their RFPs.

Based on our own firm's experience over many years - including when we recently negotiated our Coalition contract during a RFP with 25 PBMs invited to participate - there *are* PBMs that will want to win your business and that will agree to provide you with all financial benefits, regardless of label (as well as with numerous other contract terms that will decrease your costs).

Finally, we agree with Ed Silverman's astute comment concerning the Health Transformation Alliance: If this group of Fortune 500 companies bands together - and they all insist on an entirely different form of PBM contract - free of the dozens of loopholes that exist in all PBM/client contracts - and filled with terms like the "financial benefit" terms described above - the HTA members will not only significantly decrease their own costs, they will entirely change the marketplace.

Let's hope and pray they do so, since the prescription coverage marketplace is certainly in desperate need of change.

In the meantime, every health plan should seize its own destiny, and insist on an entirely different PBM contract as soon as it can terminate its contract. Because in the end, if you don't entirely change your PBM contract, you'll never decrease or control your prescription coverage costs.