

Jon R. Roth, CAE
California Pharmacists Association
PBM 101 - Testimony – March 20th
Senate Business and Professions Committee

Good afternoon Mr. Chairman and members of the committee. I am Jon Roth, chief executive officer of the California Pharmacists Association. The California Pharmacists Association represents pharmacists working in all practice settings throughout California. Our members work every day to serve the needs of patients who see pharmacies as the face of neighborhood healthcare.

We appreciate the opportunity to participate in this hearing, particularly during a time where there are many questions being asked throughout the health care delivery system with respect to pricing and transparency. As California and the rest of the country prepare for a fundamental shift in the state/federal relationship relating to health care services, we support an open and detailed discussion into the supply chain of getting consumers the medicine that they so desperately need.

We were asked here today to talk about one specific aspect of the prescription drug benefit program that, ironically, many consumers know very little about yet has the single most influential role in the drug supply chain –that of pharmacy benefit managers (PBMs).

PBMs largely operate in the background, out of sight from consumers, however they play a crucial role in establishing the ultimate cost of prescription drugs paid by consumers. As you've heard here today already, the role of PBMs has evolved significantly over the years. Initially PBMs were just claims adjudication companies that would liaison the flow of dollars between a health plan and a provider for the benefit of a patient. However, PBMs have grown substantially into a ubiquitous role and are involved in everything from price negotiations with pharmaceutical manufacturers, to drug placement onto formularies, to contracts with health plans for administering the prescription drug benefit, to directing consumers where, and how, they can get their medicine.

The challenge in having a detailed discussion about the role of PBMs is that the relationship and business dealings of PBMs have become very complex and are out of sight of regulators, consumers, and providers. They are arguably involved either directly, or indirectly, in every aspect of the prescription drug selection process, and do so utilizing a web of contracts, agreements, and negotiations which are heavily intertwined. Add to this complexity the fact that PBMs largely operate in the shadows and are nearly unregulated, and you can begin to see why hearings like this are so important when legislators, regulators, and consumers begin to ask for transparency regarding the prescription drug system.

Time does not allow us here today to unravel every aspect of this complicated process, however I would like to note that the background materials for this hearing presented a detailed and compelling set of facts with regards to the PBM industry, its relationships with other entities, and ultimately a call for the legislature to, and I quote, “address potential market failures in this system that could harm consumers.” This potential for market failure was in fact demonstrated with the state of California’s own CalPERS retirement program. In 2011 CalPERS dropped a multimillion dollar contract with their PBM amid lawsuits and investigations over alleged bribery and inappropriate influence that involved the U.S. Securities and Exchange Commission (SEC) and the California State Attorney.

In any market where a few companies control a majority of the market share, as is the case with PBMs where the three largest companies control 78%, or 180 million lives, we are concerned about potential negative impacts on consumers. That concern and protection of consumers is magnified in health care where consumers need regulators to ensure that the care and fiduciary oversight of the market is in the best interest of patients.

As the statewide association for pharmacists, the number one complaint we receive from our members is in regards to PBM practices. And to be clear, our members routinely call and complain on behalf of patients, not on behalf of themselves. The situation typically begins with the patient having received a communication from a PBM that has some adverse impact on their ability to receive their medications. The community pharmacist is on the front line of receiving

these complaints and yet has little ability to provide any advice to resolve the concern of the patient. In fact, many PBM contracts with pharmacies contain confidentiality and gag clauses which bar the pharmacist from discussing certain aspects of the PBM's agreement with the patient directly. This eliminates the pharmacists' ability to be the patient's advocate and renders that patient frustrated.

The problems that consumer bring to our members span a spectrum of concerns. While the array of concerns from patients are broad, I would suggest that there are two primary themes that emerge. Either, 1) the patient is being told that can no longer receive the medication their doctor has prescribed in the same quantity or for the same cost, or 2) that the patient is being directed out of a relationship with their neighborhood pharmacist and forced into a PBM-owned mail order or subsidiary-controlled pharmacy.

If I may, I would like to get very practical for a moment, and share a story that demonstrates the types of consumer concerns that come to our members. A case in point is an example that one of our members brought to our attention, and since then, my staff has validated by several additional pharmacies as occurring to their patients as well. The patient "David" received a letter from a PBM that was entitled "Notice of Denial for a Medical Judgment". The letter goes on to state that the PBM had received a request from David's physician for coverage of a medication called Coreg CR, it is used to treat high blood pressure and heart failure. It is also used after a heart attack to improve the chance of survival.

In this letter, the PBM informed the patient that it was denying this medicine because, and I quote, "you did not meet the established medication-specific criteria of guidelines for Coreg CR at this time. Coreg CR is denied for medical necessity."

Now understandably, there are times that a patient must meet specific medical thresholds for certain procedures or medications. These utilization controls are one way in which costs can be contained.

But what is very concerning, and candidly suspicious, is what occurred next. The patient then handed a second letter to the pharmacist they had received just days after the first. It too was from the same PBM. In this letter, the PBM notified the patient is was “making it easy for you to get your maintenance medications,” by making the choice of filling a 90-day supply through the PBMs mail-order program, or a 90-day supply at a designated pharmacy chain with which the PBM had a relationship. And as you might guess, one of the medications approved through the PBM’s program was Coreg CR. I would ask, how can the patient be medically-denied for the medication their physician prescribed in one letter only to be approved for that same medication in a second letter, but only if they choose to use the PBMs own subsidiary pharmacy operations?

The patient, distraught and confused as you might imagine, was not only unsure whether they would receive their heart medication period, but was completely flustered as to why they could no longer come to the pharmacist that has cared for them for the past 10 years.

Now perhaps, for the benefit of the argument, there was an error made in this case and the denial for medical necessity was incorrect despite the fact that we validated this same tactic was used in other pharmacies for other patients around this timeframe. But the point being is just that, without oversight and a regulatory framework to shed light on PBM practices, there is no method for determining the difference between a legitimate processing error and egregious policies that harm consumers in lieu of the self-interested bottom line of the PBM.

There are countless other stories where patients are disadvantaged by PBM practices. While PBMs will testify that they save the health care system money, my litmus test is that my phone has never rung with a pharmacist telling me heart-warming stories about PBM letters their patients received where the PBM made a financial and/or coverage decision that was beneficial to the patient. That simply never happens.

Because PBMs directly impact consumers, our association believes a critical first step in bringing light to how PBMs operate is to establish regulatory oversight of these entities doing business in California. We believe the most appropriate agency to oversee this regulatory process is the California Board of Pharmacy. The Board of Pharmacy, by statutory definition, is a

consumer protection agency, and as such, currently regulates all aspects of the pharmacy supply chain and related activities in California. This includes the licensing of pharmacists, pharmacies, wholesalers, third-party logistics companies, reverse distributors, waste haulers, medical device companies, and out-of-state companies who provide medication-related goods and services in the state. The entire supply chain, except PBMs. Given the direct relationship between PBMs and consumer access to coverage and medication benefits it is not only appropriate but a necessity for the Board of Pharmacy regulate these entities.

Mr. Chairman, in the interest of time I want to again thank you for conducting this hearing today and would be happy to answer any questions.