PBM Anti-Competitive Practices & "The Big 3"

Senate Bill Requires FTC Study & Centene Pharmacy News

Today, the Senate Subcommittee on Consumer Protection, Product Safety, and Data Security (Chairman Blumenthal, D-CT) held a hearing focused on how Congress can address anticompetitive practices and transparency in the PBM market (here). Witnesses included David Balto (antitrust attorney), Robin Feldman (researcher, UC Hastings), Craig Garthwaite (applied economist, Northwestern professor), and JC Scott (CEO, PCMA).

- **Committee leadership attributed rising consumer drug costs to PBMs' financial practices.** They called out the impact of PBMs on rebates and high list pricing, and how they affect access for plan beneficiaries, and patients at large.

- **Leadership named four issues of concern**. Chair of the full committee on commerce, Senator Cantwell (D-WA) called out PBMs "skimmed off" $1.3 B of the $4.2 B that Medicaid insurers spent in 2017.

    - PBM control over formularies (exclusionary policies impact oncology, specifically)
    - Pressure on independent pharmacies,
    - Lack of negotiation transparency, and
    - Spread pricing.

- **There was nothing we haven't heard before today.** Witnesses were split on PBM & business practices. Testimony from Balto and Feldman aligned: the two agree that PBMs act in an anti-competitive manner to increase compensation and as a result contribute to rising drug costs for consumers. Garthwaite and Scott disagreed on the singular blaming of PBMs, noting that PBMs are an important part of the healthcare ecosystem and rising drug costs can be attributed to health plans and drug manufacturers. Garthwaite's testimony was unique in calling out health plans (CVS, CI, UHH) for using rebates to engage in a form of medical underwriting (low premiums only benefitting healthy beneficiaries) and pressuring PBMs for bigger rebates.

- **Anticompetitive practices of the Big 3 -- Optum (UNH), Express (CI) and Caremark (CVS) -- and a consolidated system highlighted.**. Witnesses and the committee agreed on the outsized control the 3 companies exert on plans and pharmacies. Sen Blumenthal (D-CT) called out how vertical integration of PBMs, plans, and specialty pharmacies has led to conflict of interests for PBMs. However, Scott remarked that there are 70 PBMs in the market (+10% in new entrants). He also noted the market continues to attract new entrants (AMZN), indicating a level of competition.

- **Lack of transparency was agreed upon by all (including PCMA).** All the witnesses, excluding Scott, agreed that there continues to be a lack of transparency in how PBMs operate. Garthwaite stated that it's difficult to determine if PBM benefits are worth the cost as there is little knowledge on the flow of money. Negotiations are closely guarded as trade secrets, but Scott noted that PBMs do report some information to CMS for Part D, and they plan to follow the Consolidated Appropriations Act's cost reporting rules.

- ***Prescription Pricing for the People Act* requires the FTC to study pricing and potentially abusive behaviors in the PBM industry**. PCMA's JC Scott only went as far as not opposing such legislation. The bill:

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  - requires the Federal Trade Commission (FTC) to study whether anticompetitive practices exist, especially as carried out by PBMs
  - has 8 co-sponsors and was reported out favorably from the Committee on the Judiciary in July 2021. No House companion exists.
  - CBO report estimates it would cost $2 M over the next two years to implement (report here)

- **340B program continues to draw industry and Congressional attention as 16 manufacturers pull out, plans/PBMs note the hit to profits from the 340B backlash.** We note that CVS yesterday noted that pharma is "writing its own regulations" for 340B, reducing volumes with CVS expecting flat growth. Scott remarked that while PCMA does not have a position on 340Bs, there is a need for claims modifiers to provide clarity on which drugs are 340B to prevent inappropriate PBM compensation.

- **In tandem today Centene divested two pharmacy businesses.** The divestitures of Magellan Rx and PANTHERx were expected as part of CNC's asset review. Still, we note the announcement today, and the hearing on pharmacy/PBM.

- **OUR TAKE / NEXT STEPS*:*** There was no new news here. We await to see if FTC decides to investigate PBM practices on their own or if they will be compelled to by legislative action. We note that even if a study is completed, the FTC cannot enforce consumer compensation under 13B (see FTC case against Abbvie). We also note that (1) CMS punted on DIR until 2024 (good news for PBMs as a delay given industry time to delay further or kill a policy) (2) Rebate Rule repeal was a part of the bigger 2021 version of BBBA, which has little to no shot in 2022, unless it is trimmed to ACA subsidies + drug reforms.

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