CVS CAREMARK

Testimony in Opposition to House Bill 4122

Submitted by

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To

Oregon House of Representatives
House Committee on Health Care

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Committee Co-Chairs Thompson and Greenlick, Co-Vice Chairs Hoyle and Kennemer, Honorable members of the Oregon House Committee on Health Care; CVS Caremark submits this testimony in opposition to House Bill 4122 ("HB4122"). Respectfully, it is our view that although HB4122 is held forth as an effort to regulate Pharmacy Benefit Managers ("PBMs") and to increase transparency, this bill in fact serves to weaken PBMs' ability to drive down health care costs for clients and consumers as well as interferes with private contracts. Therefore, we ask that you reject HB4122.

CVS Caremark is the leading pharmacy health care provider in the country. Through our integrated offerings across the entire spectrum of pharmacy care, we are uniquely positioned to provide greater access to care, engage plan members in behaviors that improve their health, and lower overall health care costs for health plans and their members. CVS Caremark provides multiple points of care to patients though our retail, mail, specialty pharmacies and MinuteClinics. As one of the country's top PBMs, we also provide access to a network of more than 65,000 pharmacies, including over 7,300 CVS pharmacies. In 2011, CVS Caremark filled over 500,000 retail and mail prescriptions and processed in excess of 9,000,000 prescriptions in the State of Oregon.

Introduction to PBMs

PBMs provide pharmacy benefit management services to health plan clients, employers, unions and federal, state and local government bodies. We help design prescription drug benefit options to fit the sponsor's beneficiary population and needs and then administer

the benefit on the sponsor's behalf. PBMs make prescription drugs more affordable for clients with such tools as:

- **Plan Design:** PBMs advise their clients on ways to structure their drug benefit in an innovative and cost-effective manner to ensure appropriate use of resources. A PBM's role is advisory only; the decision to select the features of the benefit rests with the client.
- **Network Management:** PBMs negotiate with thousands of pharmacies to create provider networks for beneficiaries to obtain prescription drugs, monitor safety issues across the network and ensure appropriate spending through audits and other efforts that promote network integrity.
- **Formulary Management:** PBMs use panels of independent physicians, pharmacists and other experts to develop lists of drugs approved for reimbursement by the client, and administer cost-sharing and utilization management (e.g., step therapy) as directed by the client.
- **Mail-Service Pharmacy:** PBMs provide highly efficient mail-service pharmacies that offer safe, cost-effective and convenient home delivery of medications.
- **Manufacturer Rebates and Discounts:** PBMs negotiate substantial discounts from drug manufacturers to lower benefit costs for sponsors and beneficiaries.

PBM tools and services are expected to save plan sponsors and consumers in Oregon more than $13.5 billion over the next 10 years.[i]

PBMs are Well-Regulated

Proponents of HB4122 assert the need for PBM regulation despite the fact that PBMs already are well regulated, and also despite the fact that the intended beneficiaries of these proposals, i.e., health plans and consumers, will be worse-off as a result and have not requested this legislation. In fact, many health plans oppose it. PBMs already comply with numerous existing regulatory requirements as third party administrators, preferred provider organizations, utilization review organizations and resident and non-resident pharmacies, where required by law. Through contracts with health plans and insurers, PBMs also are required to comply with consumer protection laws and regulations governing utilization reviews and prior approvals, timely claims payment and dispute resolution systems, among others. In addition, state boards of pharmacy regulate PBM activities in several different areas of pharmacy services, including prescription drug dispensing and labeling, patient counseling, generic substitutions and controlled substances.

PBMs also are subject to rigorous review and evaluation by their clients throughout the term of their contract. For example, plans use multiple types of audits and reviews, often utilizing expert third parties, to ensure appropriate utilization of plan resources. In addition, contracts typically include performance guarantees requiring the PBM to make specified dollar payments to the plan sponsor if the PBM fails to meet the guarantees on terms such as generic dispensing rate, member satisfaction, dispensing accuracy rates, turn-around time at mail pharmacies, wait time for customer service calls, distance to a network retail pharmacy and timeliness of management reports.

Government Mandates on Contracting Terms are Harmful to Consumers

HB4122 would mandate by statute a one-size-fits-all approach to key contract terms such as disclosure, audit, and formulary management without any consideration as to its necessity or consequence. State-mandated terms of private PBM agreements could impede plans' ability to seek favorable terms during contract negotiations. PBMs' clients are sophisticated purchasers of health care that rely on PBMs to manage their drug benefit. In fact, many clients consistently oppose unnecessary PBM regulation because compliance with varying and potentially conflicting state and federal laws would unnecessarily raise costs for PBMs and would diminish their ability to pass on savings to their clients and consumers.

A PBM may offer its client multiple variations of plan options based on a client's Request for Proposals ("RFP"), culminating into a contract after aggressive negotiations where members' access to prescription drugs, economic efficiency and quality are key considerations on both sides. Clients choose pricing arrangements that consider impact on their overall costs and cash flow as well as the level of risk they wish to assume. This flexibility affords plans the ability to choose from the most efficient PBM plan options that meet the needs of their members, which ultimately fosters competition among PBMs and allows both sides to preserve incentives that reduce overall health care costs. By dictating the key terms of a contract between health plans and PBMs and by interfering in these contracts, HB4122 handcuffs PBMs and plans from engaging in aggressive negotiations that would otherwise reduce costs while increasing health care quality.

Interference in private PBM contracting as proposed by HB4122 is contrary to sound public policy. A March 2007 report from the tax, audit and advisory firm PricewaterhouseCoopers ("PwC") concluded that restricting PBM activities would result in increased costs for prescription drugs, higher insurance premiums and an increase in the number of uninsured individuals. PwC determined that PBMs save consumers and plan sponsors, on average, 29 percent on the cost of prescription drugs compared to retail purchases with no pharmacy benefit management support.[ii]

Inappropriate Disclosure of Proprietary Information Will Reduce Competition

HB4122 would require disclosure of sensitive and proprietary PBM information that will weaken PBMs' ability to seek concessions valuable to consumers through negotiations with health plans, network pharmacies and manufacturers. Appropriate transparency is already available in today's competitive PBM marketplace, and is governed by the contract between a PBM and its client. PBMs are fully transparent as required by client contracts that generally spell out our obligations on such terms as drug discounts, pharmacy dispensing fees, administrative fees, formularies, pharmacy networks, benefit design options, other contracted services, disclosure and audits.

HB4122 would inappropriately subject PBMs to regulatory oversight by a body that is not designed or intended to regulate PBMs (the Oregon Board of Pharmacy), and whose members likely include pharmacist who are in direct competition with, and/or have interests directly adverse to, PBMs. This presents a clear and significant conflict of interest which should be rejected. HB4122 requires disclosure of extremely sensitive financial and competitive information (such as, but not limited to, rebates, spread, pharmacy reimbursement, MAC pricing—algorithms used by PBMs to determine such metrics—and revenue from substitutions) to the Board of Pharmacy, with no apparent protection for this sensitive and proprietary data.

Most egregiously, HB4122 permits the Board of Pharmacy to provide all of this aforementioned information to the very parties with which PBMs negotiate drug prices and rebates. Such disclosure would be critically damaging to the PBM's ability to operate as a going concern in Oregon as this law will severely and negatively impact a PBM's ability to negotiate favorable terms with these parties as well as with manufacturers (to whom this information will inevitably flow).

Each PBM client is uniquely situated and decides upon the appropriate level of disclosure based on its business needs. Clients should continue to have the discretion to decide what disclosures are necessary to make informed purchasing decisions. In fact, several independent government agencies have studied PBMs' role and support the market-based solution to transparency:

- **The Federal Trade Commission ("FTC")** has advised several states that legislation requiring PBM disclosure 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."[iii] The FTC also has stated that a mandate by law of the disclosure of such proprietary financial information would "hold PBMs to a standard that does not apply to other industries."[iv]

- **The Government Accountability Office ("GAO")** and the **Office of Personnel Management** agree that PBMs produced savings for health plans participating in the federal employees' health benefit program while providing beneficiaries with wide access to retail pharmacies, coverage for most drugs, and cost savings.[v]
- **The Congressional Budget Office** estimated that public disclosure of drug price rebates would cost roughly $10 billion over 10 years for Medicare Part D alone.[vi]
- **The Department of Justice and the FTC** have noted that "vigorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms" and has cautioned states to "consider the potential costs and benefits of regulating [PBM] transparency."[vii]

Plan Sponsors Already Have Adequate Audit Rights Through PBM Contracts

Contract terms related to plans' ability to audit PBMs are part of the standard negotiations during the RFP and contracting process. Thus, both parties know the standards for client audits at the time of contracting, making regulation of those terms unnecessary and counterproductive.

Conclusion

We sincerely appreciate the opportunity to submit our testimony on this legislation. HB4122 is unfortunately misguided and rests on logic that is unsupported by market realities and private research findings as well as multiple federal agencies and would, in fact, reduce competition and raise health care costs for Oregon consumers and payors. We ask that you reject HB4122.

I will be pleased to answer any questions the Committee members may ask.

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[i] Visante, *Pharmacy Benefit Managers (PBMs):Generating Savings for Plan Sponsors and Consumers,* September 2011.

[ii] PricewaterhouseCoopers, *Pharmacy Benefit Management Savings in Medicare and the Commercial Marketplace & the Cost of Proposed PBM Legislation, 2008-2017* (March, 2007).

[iii] Letter from Federal Trade Commission to Rep. Patrick T. McHenry, U.S. Congress, (July 15, 2005); Letter from FTC to Assemblyman Greg Aghazarian, California State Assembly, (September 3, 2004); Letter from FTC to Rep. Mark Formby, Mississippi House of Representatives, (March 22, 2011).

[iv] FTC letter to Assemblyman Greg Aghazarian, California State Assembly, (September 3, 2004).

[v] United States General Accounting Office, Report to the Sen. Byron L. Dorgan, *Effects of Using Pharmacy Benefit Managers on Health Plans, Enrollees, and Pharmacies,* GAO-03-196, January 2003.

[vi] Letter from the Congressional Budget Office to Rep. Joe Barton and Rep. Jim McCrery, U.S. Congress, (March 12, 2007).

[vii] Federal Trade Commission & US Department of Justice Antitrust Division, *Improving Health Care: A Dose of Competition*, July 2004.