



# PBM Transparency – what plan sponsors need to know now

May 21, 2024



# Today's Speakers:

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Keith Weaver, USI

Pharmacy Consultant

**With 24 years of pharmacy benefit consulting experience, Keith has a proven track record of providing strategic consulting services and delivering solutions that navigate and solve complex and dynamic challenges pertaining to pharmacy benefit programs.**

**Prior to joining USI, Keith held leadership roles within National Pharmacy Practices at several consulting firms. Direct responsibilities included strategic and operational oversight over pharmacy benefit programs and the delivery of services to help clients manage their drug spend.**

**Keith has three years of experience as a PBM insider and is based out of Bloomington, MN office.**

Kat Lacy-Wilson, USI

Regional Employee Benefits Compliance Attorney

**As an attorney with USI's Employee Benefits team, Kat regularly discusses issues related to employee benefits, including retirement and health and welfare plans with consultants and employers.**

**Kat has more than 15 years of experience in employee benefits, including working with the Department of Labor, Employee Benefits Security Administration in the Chicago Regional Office as an investigator, trainer, and the Voluntary Fiduciary Compliance Program Coordinator.**

**Kat is a Co-Chair of the Twin Cities ISCEBS Education Committee.**



# Identifying PBM Transparency Challenges

# Key Challenges/Cost Drivers



## MARKET CONSOLIDATION

Vendor consolidation and vertical integration has adversely impacted competition and transparency



## CARRIER/PBM PROFITS

Pharmacy represents a significant revenue stream for Health Plans/TPAs/PBMs



## MISALIGNMENT OF GOALS

PBM profit is often tied to drug spend and contracts are aligned with the needs of the vendor, not the client



## LACK OF TRANSPARENCY

Pharmacy contracts are often vague with weak definitions, undisclosed revenue streams, undefined terms and limited audit rights



## PRICING OPTICS

What you see may not be what you get. Due to conflicting goals, many PBMs use optics to retain and win business



## MEDICAL ADVANCEMENTS

People live longer due to advancements in medical care and earlier diagnosis of chronic conditions requiring lifelong medication

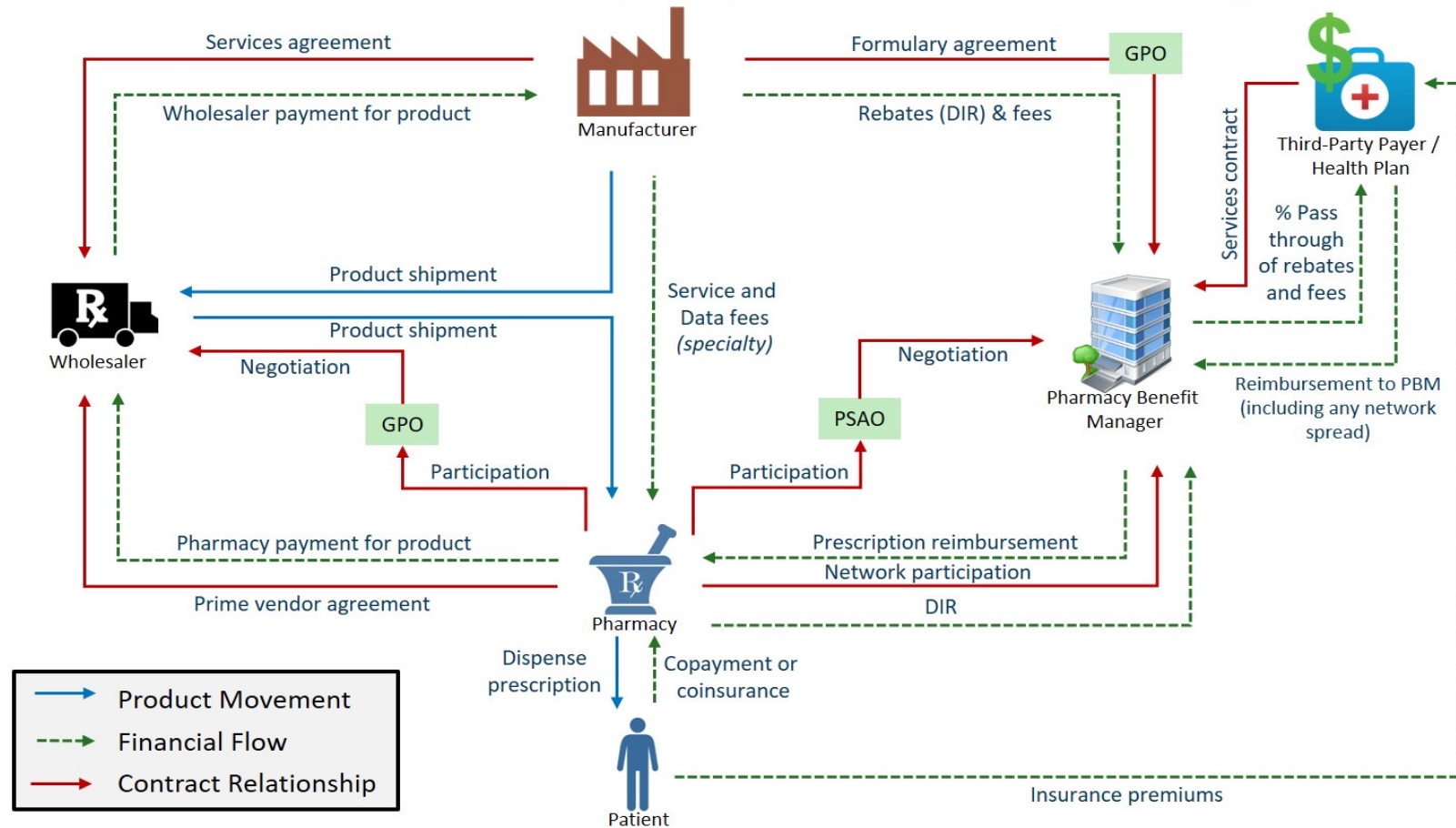


## SPECIALTY DRUGS

Expensive specialty drugs are replacing older less effective/lower cost medications; breakthrough gene and cell therapies (2% of scripts drive 50% of drug spend)

# Flow of Money

## The U.S. Pharmacy Distribution and Reimbursement System for Patient-Administered, Outpatient Brand-Name Drugs



GPO = group purchasing organization; PSAO = pharmacy services administrative organization; DIR = direct and indirect remuneration  
 Source: *Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers*, Drug Channels Institute (<https://drugch.nl/pharmacy>). Chart illustrates flows for Patient-Administered, Outpatient Drugs. Please note that this chart is illustrative. It is not intended to be a complete representation of every type of product movement, financial flow, or contractual relationship in the marketplace.

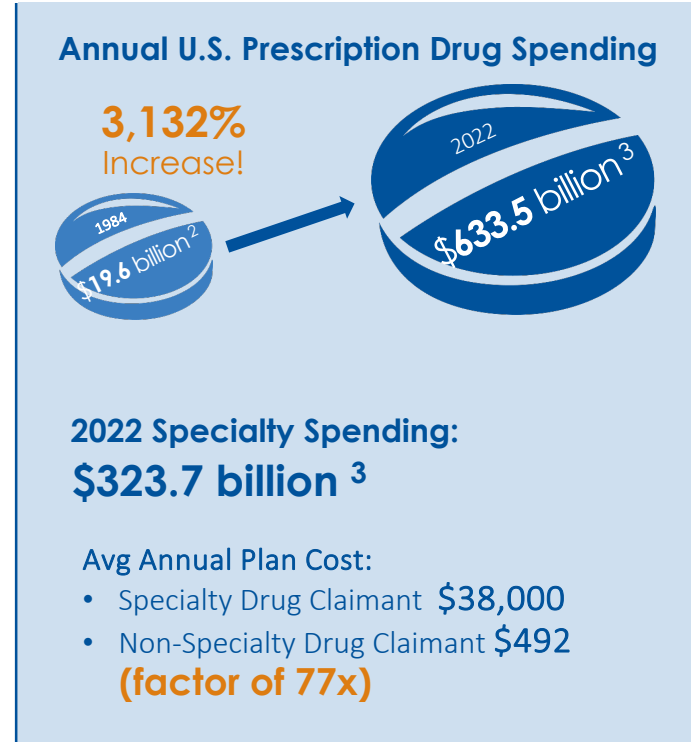
# Market Update

Prescription drug costs are growing at three times the rate of inflation and represent an area of increasing concern by most employer sponsored benefit plans.

## Vertical Business Relationships Among Insurers, PBMs, Specialty Pharmacies, and Providers, 2023



1. Since 2021, Prime's Blue Cross and Blue Shield plans have had the option to use Express Scripts or AllianceRx/Walgreens Pharmacy for mail/specialty pharmacy services. In Dec. 2021, Walgreens purchased Prime Therapeutics' 45% ownership interest, so this business had no PBM ownership as of 2022. Effective June 2022, the company was rebranded as AllianceRx Walgreens Pharmacy.  
 2. Centene has announced that it would outsource its PBM operations to Express Scripts in 2024. In 2023, Centene rebranded its pharmacy benefit subsidiary as Centene Pharmacy Services.  
 3. In 2021, Centene sold a majority stake in its U.S. Medical Management to a group of private equity firms.  
 4. Since 2020, Prime has sourced formulary rebates via Accent Health Services. In 2021, Humana began sourcing formulary rebates via Accent Health Services for its commercial plans.  
 5. Previously known as Evernorth Care Group and Cigna Medical Group.  
 6. In 2021, Cigna's Evernorth business acquired MDLIVE.  
 7. In 2022, Cigna invested \$2.7 billion for an estimated 14% ownership stake in VillageMD. Walgreens owns a majority of VillageMD.  
 8. In September 2022, CVS Health announced its acquisition of Signify Health. In February 2023, CVS announced its acquisition of Oak Street Health. Both transactions closed in 2023.  
 9. Previously known as IngeniaRx.  
 10. In 2021, Partners in Primary Care and Family Physicians Group businesses were rebranded as CenterWell Senior Primary Care.  
 11. In 2022, Kindred at Home was rebranded as CenterWell Home Health. In 2022, Humana announced an agreement to divest its majority interest in Kindred at Home's Hospice and Personal Care Divisions to Clayton, Dubilier & Rice. Humana also announced plans to close a majority of its SeniorBridge home care locations.  
 Source: The 2023 Economic Report on U.S. Pharmaceutical and Pharmacy Benefit Management, Exhibit 234. Companies are listed alphabetically by corporate name.



**Sources:**

- Vertical Integration - Drug Channels Institute
- Kaiser Family Health Spending Explorer, U.S. Health Expenditures from 1984-2014;
- American Journal of Health System Pharmacy (AJHP)

# What do Pharmacy Benefit Managers (PBMs) DO?

- Claim Adjudication (coordinating, processing, and payment)
- Retail Network Management
- Rebate Contracting and Formulary Management
- Clinical Program Management
- Mail Order Pharmacy
- Specialty Pharmacy
- Member Service (call center, website, mobile apps, etc.)
- Client Service (account management)
- Ancillary (data analysis/reporting, product management, research)

# PBM Revenue Streams

- Spread Pricing – PBM reimburses pharmacy an amount that's less than the amount they bill the plan sponsor, and keep the difference
  - Ingredient cost discounts and dispensing fees
  - Brand and generic drugs through retail, mail and specialty pharmacy channels
- Revenue from Pharma
  - Rebates (may be retained or shared with plan sponsor in part or whole)
  - Formulary Administration Fees
  - Inflation protection penalties
  - Clinical program funding
  - Data sale revenue
  - Market steerage incentives
- Direct and Indirect Remuneration (DIR) fees; aka “Clawbacks” are collected from participating network pharmacies
- Fixed administration and program fees paid by plan sponsor
- Exclusions to discount and rebate guarantees
- Pricing optics by aligning contract language with the needs of the PBM to drive revenue



# Pricing Optics

“Gamesmanship in creative PBM contracts allows for the illusion of big discounts and rebates.”

There are many ways in which PBMs incorporate pricing optics into contracts:

- Absent, Vague or Weak Definitions (AWP, generic drugs, specialty drugs)
- How claims are allocated to the various “buckets” for pricing and reconciliation
- How discounts are applied and reconciled
- How pricing benchmarks (AWP, MAC) are determined and frequency of updates
- “Lowest of logic” for the plan and the member
- Exclusions to discount and rebate guarantees (e.g. biosimilars, LDD, etc.)
- Assumptions around formulary, drug mix, member cost share, changes in enrollment
- **Do not accept boiler plate PBM contractual provisions. Review pricing and contractual terms with the right Subject Matter Expert.....**

# Carve-in versus Carve-out Prescription Drug Programs

	CARVE-IN	CARVE-OUT
	Pharmacy benefits administered through health plan/TPA, which holds/owns PBM contract	Pharmacy is administered under a direct PBM contract
Advantages	o Simplicity of administration and communication	o Direct contract held by plan sponsor - greater control and flexibility over how program is administered
	o Value of integration	o Increased transparency, accountability and alignment with plan sponsor's needs
	o Combined reporting	o Pricing guarantees are more competitive
Disadvantages	o Pharmacy is a revenue stream; contractual language and pricing guarantees are less competitive	o Added complexity of an additional vendor relationship
	o Health plan/TPA holds the contract and maintains control over how pharmacy is administered	o Value of integration
	o Pharmacy reporting is not as robust	o Pharmacy reporting is not combined with medical
	o Contract alignment supports needs of Health plan/TPA	o Health plan/TPA often charge carve-out and data integration fees which represent an added expense
	o Limited transparency, flexibility and accountability	o Potential stop-loss implications



# Legislative and Legal Attempts to Clear the Air

# WHY is there so much issue/controversy around PBMs?

No real federal definition for PBMs

- Most states have definition but each is different

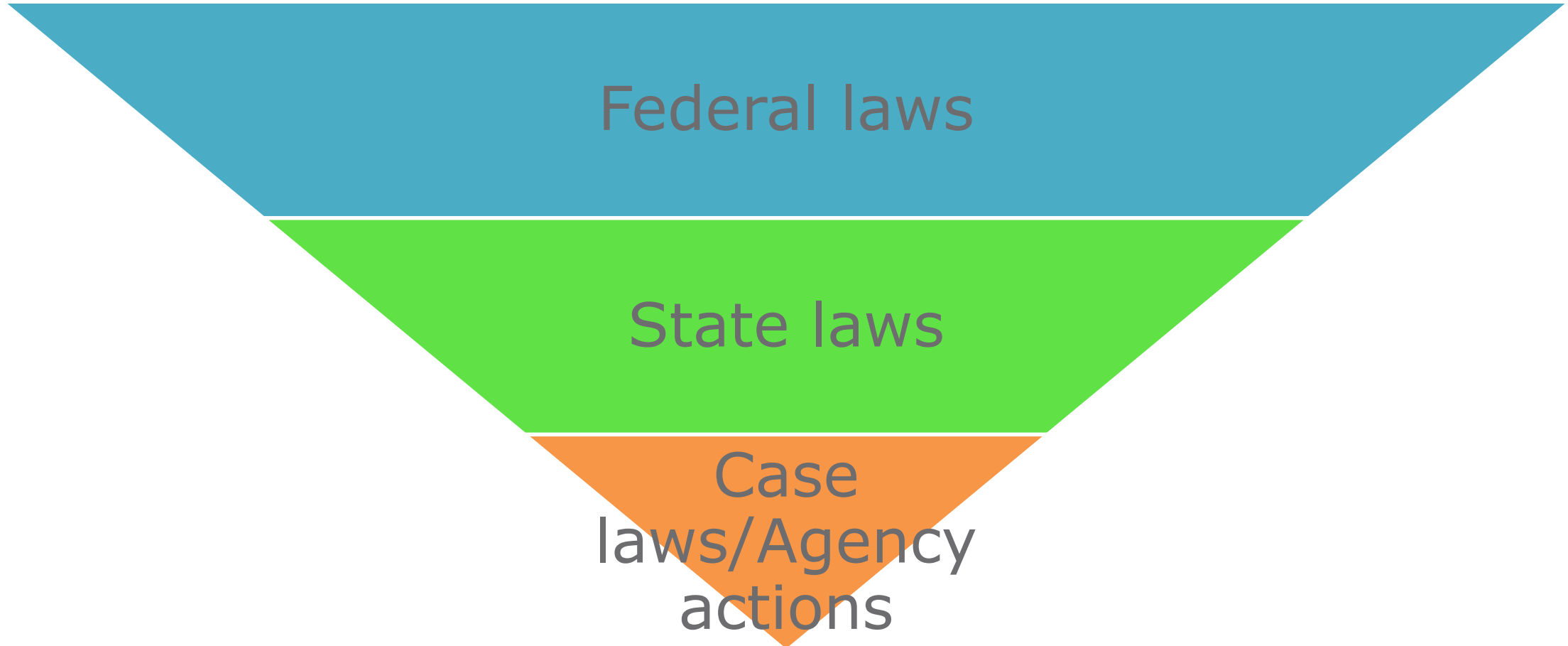
In general, a third party that is used to regulate pharmacy

Without definition, it's hard to create regulation

New PBMs and GPOs every day

Lack of clarity/oversight causes greater need for regulation

# Three ways that laws are “made”



# Four main areas of concern for federal legislation

## Compensation

- How is the PBM getting paid?
- Are there set rules and who knows them?

## Rebating

- How can rebates and coupons be used/not used by participants?

## PBM Transparency

## Reporting/Oversight

- Who is making sure that the PBM is doing what it says it does?

## Fiduciary Concerns

- Fiduciary responsibility is retained by the employer
- Due diligence/oversight/reasonableness

# Examples of Federal Legislation

- **House Energy and Commerce, Ways and Means, and Education and the Workforce Committees**
  - H.R. 5378, the Lower Costs, More Transparency Act, passed by the House on December 11, 2023
    - Requires PBM Pharmacy Ownership Disclosures
    - Requires various PBM reporting of compensation, fee, rebates and formularies
    - Prohibits spread pricing
    - Addresses pharmacy performance and payment issues and requires NADAC Survey participation
    - Confirms 2018 Act regarding prohibition of gag clauses applies to private plan
  
- **Senate Finance Committee**
  - S. 2973, Modernizing and Ensuring PBM Accountability Act, passed by the full committee on July 26, 2023
    - Wyden D-OR
    - Requires PBM Pharmacy Ownership Disclosures
    - Requires various PBM reporting of compensation, fee, rebates and formularies
    - Prohibits spread pricing
    - Addresses rebate pass-throughs
    - Delinks price and utilization from being used as part of the PBM administrative fee
    - Addresses pharmacy performance and payment issues and requires NADAC Survey participation

# State Legislation

## Pricing

- Is there an unbiased resource that can help set prices?

## Prohibited Business Practice

- e.g, spread pricing, claw backs, gag clauses, etc.

## Reporting

- What governmental entity is watching the “store”?

## Fiduciary Responsibility

- Regular process of reviewing the arrangement



# Examples of State Legislation

- **Florida**

- SB 1550 (Enacted)

- PBM required to identify and disclose any ownership affiliation with any pharmacies
    - Requires pass-through pricing model and prohibit spread pricing unless pass differences onto plan or program
    - 100% of manufacturer rebates pass through to the plan or program to offset cost-sharing and reduce premiums for participants
    - Prohibition on gag clauses

- **Arkansas**

- HB 1481 (Enacted)

- Requires PBMs to share benefits of rebates with participants.

- **Indiana**

- HB 1004 (Enacted)

- Requires PBMs submit annual report (including aggregate rebate and administrative fee information) to the Health Care Cost Oversight Task Force

# Examples of State Legislation (Minnesota)

- **HB 1711 (Introduced)**

- PBM or health carrier required to forward compensation from drug manufacturer to participants at point of sale to reduce out-of-pocket (OOP) amounts
  - If no OOP due, compensation must be applied to offset future premiums or costs for covered persons.

- **SB 2889 (Introduced)**

- PBM or health carrier required to forward compensation from drug manufacturer to participants at point of sale to reduce out-of-pocket (OOP) amounts
  - If no OOP due, compensation must be applied to offset future premiums or costs for covered persons.

# Examples of State Legislation (Minnesota)

- **SB 246 (Introduced)**

- Before entering contract, PBM is required to provide each pharmacy with maximum allowable cost price list and information on source utilized to set maximum allowable cost list price.

- **SB 1319 (Introduced)**

- PBM required to calculate participant's cost sharing amount for each prescription drug at point of sale based on price reduced by 100% of all rebates related with dispensing of a prescription drug

# Case Laws and Agency Actions

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## Case Laws

- Case holdings create precedence for other cases and judges
- Problem is that over 95% of cases settle (no precedence created)
- But can still look to cases to see common concerns rearing their head and alleged harm (helps promote ability to make federal and state laws)

## Agency Actions

- Pursuant to investigation, creation of orders or required action
- Creates predictability of future action in similar situations
- Can influence courts and legislation on what issues should be addressed

# *Lewandowski v. J&J*

Plaintiffs allege that J&J mismanaged its drug program, costing its employees millions of dollars in the form of higher payments for prescription drugs, higher premiums, higher deductibles, higher coinsurance, higher copays, and lower wages or limited wage growth, most evident in the prices it agreed to its PBM for generic-specialty drugs

Example: Someone with a 90-pill prescription for the generic drug teriflunomide (the generic form of Aubagio, used to treat multiple sclerosis) could fill that prescription, without even using their insurance, at Wegmans for \$40.55, ShopRite for \$41.05, Walmart for \$76.41, Rite Aid for \$77.41, or from Cost Plus Drugs online pharmacy for \$28.40. Defendants, however, agreed to make their ERISA plans and their beneficiaries pay \$10,239.69 for each 90-pill teriflunomide prescription.

Lead plaintiff is healthcare policy and advocacy director for Wisconsin and Minnesota

Litigation ongoing.

Primary issues: Fiduciary responsibility, Plan design, PBM and Broker monitoring

# FTC: Zinc Health Services, LLC and Ascent Health Services, LLC

Compulsory orders on two GPOs to provide information and records on business practices

- 6 PBMs under similar orders:
  - CVS Caremark
  - Express Scripts, Inc.
  - Optum, Rx, Inc.
  - Humana Pharmacy Solutions, Inc.
  - Prime Therapeutics LLC
  - MedImpact Healthcare Systems, Inc.

## Goal:

- Define process of charging fees and claw backs for unaffiliated pharmacies,
- Patient steering towards PBM owned pharmacies;
- Unfair auditing of unaffiliated pharmacies,
- Complicated pharmacy reimbursements methods
- Skewing formulary incentives when negotiating rebates and fees with drug manufacturers

# Takeaways

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## Keith's Takeaways

- Pharmacy represents a significant revenue stream for Health Plans, TPAs and PBMs.
- Contract language is often misaligned:
  - Lack of transparency
  - Vague or uncompetitive definitions, terms, provisions and pricing optics
  - Limited audit rights and accountability
- Solutions exist to drive greater transparency, 'best-in-class' contract language, contract alignment and accountability

## Kat's Takeaways

- Laws are coming...eventually.
- In the interim, pay attention to what you have in place:
  - Review claims reports occasionally
  - Check in on PBM's formulary management
  - PBM, claims and pricing audits
  - Review PBM performance guarantees
- Ask questions if it doesn't make sense.



Questions?

Information accurate as of May 21, 2024.



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