

## Appendix A The Demonstrated Savings from PBM Transparency

**Below is just a sample of the many examples of the cost savings that transparent PBMs offer plan sponsors, from small employers to large corporations, state governments and TRICARE.**

- **TRICARE anticipates savings of \$1.67 billion by negotiating its own drug prices, including rebates, rather than going through a PBM.** Following the National Defense Authorization Act of 2008, TRICARE, which provides health care coverage to over 9 million Uniformed Services members, dependents and retirees, will administer its own pharmacy benefit through the Department of Defense. This process began in 2004 by negotiating a contract over which TRICARE had greater administrative power, even though they did not have access to federal discounts. In 2007 alone, TRICARE saved \$976 million by using one uniform formulary and centralized management to negotiate drug prices and rebates with manufacturers.
- **Texas estimates savings of \$265 million by switching to a transparent PBM contract.** Texas decided to enact transparency legislation after an audit of all the state's PBM plans found huge discrepancies between spending on enrollees. While the state's Teacher Retirement System plan administered by Medco Health Solutions, Inc. cost only \$994 per member in 2007, the same plan administered by Caremark cost fully \$2,737 per member, nearly three times the cost under Medco's plan.<sup>1</sup> The Employee Retirement System anticipated savings of \$265 million by enacting transparency in their contract with CVS Caremark.<sup>2</sup> Based on these findings, Texas enacted legislation in 2009 to make all state PBM contracts transparent. This demonstrates that the only way to ensure that PBMs work within the interests of the plan is by mandating transparency, as the \$265 million represents a substantial amount of savings that would have been kept by CVS Caremark.
- **The University of Michigan has saved nearly \$55 million by administering its own plan for the past six years.** The University of Michigan chose to cancel its five contracts with major PBMs in 2005, citing the lack of transparency in their plans. The University has since hired a single new PBM, InformedRx, which offers transparency and allows the University administrative control over the plan and spending.<sup>3</sup> In the program's Annual Report, the University announces that their per member per year total drug costs are decreasing at a rate of 2.22% annually, and program initiatives have saved nearly \$1.5 million in plan costs. Overall, by comparing their spending with national drug trend surveys, the University estimates it has saved nearly \$55 million through its self-administered drug plan in just six years.<sup>4</sup>

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<sup>1</sup> State Auditor's Office. "Pharmacy Benefit Manager Contracts at Selected State Agencies and Higher Education Institutions." August 2008.

<sup>2</sup> Letter from Ann S. Fuelberg, Executive Director, Employees Retirement System of Texas, to Representative Hopson, Texas House of Representatives. April 8, 2008.

<sup>3</sup> <http://www.reuters.com/article/pressRelease/idUS213844+03-Mar-2009+BW20090303>.

<sup>4</sup> University of Michigan Benefits Office. 2008 Prescription Drug Plan Annual Report. Executive Summary. January 16, 2009. Accessed at [http://benefits.umich.edu/forms/2008drug\\_plan\\_annual\\_report.pdf](http://benefits.umich.edu/forms/2008drug_plan_annual_report.pdf).

- **The State of New Jersey projects savings of \$558.9 million over six years when it switches to a transparent contract for its 600,000 covered employees, dependents and retirees.** The state ended its contract with CVS Caremark and required that their next PBM implement a transparent, pass-through pricing contract. Medco Health Solutions, Inc. agreed to a transparent contract that eliminates spread pricing and requires that all rebates be passed onto the state of New Jersey, leading to \$558.9 million in savings that would not have occurred without a contract mandating transparency.<sup>5</sup>
- **DC-37, New York City’s largest public employee union, signed a contract in 2006 with Innoviant, a transparent PBM, and saved \$50 million.** Their new contract, which allows patients to use whichever pharmacy they choose and is transparent, saved this amount on their 274,000 enrollees.
- **The State of Wisconsin saved over \$30 million by switching to Navitus, a transparent PBM.** For nearly a decade, Wisconsin had experienced annual increases of 15% on its prescription drug spending. After switching to Navitus, they actually saved money, despite rising drug costs across the country. Navitus charges a flat fee for its management services and is transparent to plan sponsors.<sup>6</sup>
- **Successful transparency legislation saved over \$800,000 in a single year in South Dakota.** South Dakota passed PBM transparency legislation in 2004. In a single year, the state saved over \$800,000.<sup>7</sup>
- **Maryland switched to a transparent PBM after finding it had overpaid \$10 million to CVS Caremark.** The State of Maryland conducted an audit and discovered that it had paid Caremark over \$10 million in potential rebates and other savings. In 2007, Maryland canceled its contract with CVS Caremark and started a transparent plan with Catalyst Rx.<sup>8</sup>
- **The California Health Care Coalition found that Catalyst Rx, a transparent PBM, could save members between \$3 and \$6 per prescription, and chose Catalyst Rx as its recommended PBM.**<sup>9</sup> These savings come from the fact that Catalyst’s revenues are based solely on customer service fees, not from “undisclosed deals with drug companies.” In addition, “Catalyst passes 100 percent of the price discounts and rebates it negotiates with suppliers... on to clients.”
- **Privately-run Medicare Part D plans do not save as much on prescription drug costs as do Medicaid or VA plans.** A July 2008 report to the House Committee on Oversight and Government Reform compared the prescription drug spending on dual eligible beneficiaries, each of whom transferred their drug coverage from Medicaid to Medicare Part D when the program started in 2006. On average, Medicare Part D plans received rebates and discounts that reduced these enrollees’ drug costs by 14% in 2006 and 2007. Had they remained under Medicaid coverage, however, Medicaid would have cut their

<sup>5</sup> State of New Jersey. Department of the Treasury. Purchase Bureau. Award Recommendation. Reference Number 10-X-20899, T2679. August 4, 2009.

<sup>6</sup> Guy Boulton. “State gets prescription for savings.” Milwaukee Journal Sentinel. June 7, 2005.

<sup>7</sup> Prescription Policy Choices. “PBM Fiduciary Duty and Transparency.” Accessed at [http://policychoices.org/documents/PBMTransparency\\_FastFacts.pdf](http://policychoices.org/documents/PBMTransparency_FastFacts.pdf).

<sup>8</sup> Reuters. “State of Maryland’s CVS Caremark Contract Audit Reveals More than \$10 Million in Potential Overpayments, Undisclosed Rebates, Improper Drug Switching, According to CtW.” March 6, 2009. Accessed at <http://www.reuters.com/article/pressRelease/idUS179408+06-Mar-2009+BW20090306>.

<sup>9</sup> California Health Care Coalition. “CHCC Develops New Pharmacy Program.” Accessed at [http://www.chccnet.org/files/CHCC\\_Pharmacy\\_Program\\_1018.pdf](http://www.chccnet.org/files/CHCC_Pharmacy_Program_1018.pdf).

drug costs for those same drugs another 30%. Those PBMs which manage Medicare Part D plans clearly do not pass all their potential savings on to consumers or plan sponsors.<sup>10</sup>

- **The Lear Corporation saved over \$1.1 million on a \$3.6 million budget by switching to a transparent PBM.** The Lear Corporation's switch to CatalystRx, a transparent PBM, led to a 4% increase in generic utilization paired with a drop in average price for generics, from over \$36 each to under \$30. Together, these led to annual savings of \$1.1 million on a \$3.6 million budget.
- **Local Funds of the Sheet Metal Workers' International Association saved up to 30% in their first year after switching to a transparent PBM.** Local affiliates of the union who chose to switch their contracts experienced savings in a year when prescription drug prices were going up 12% across the country.<sup>11</sup>
- **The HR Policy Association estimates that use of a transparent PBM contract saves employers up to 9% annually.** The HR Policy Association Pharmaceutical Purchasing Coalition has laid out guidelines for PBM transparency. Manufacturer rebates must be passed on to the plan sponsor in full, and the PBM cannot charge a plan sponsor more than the amount they are reimbursing a pharmacist for a given claim. The coalition, which is made up of some of the country's largest companies, announced that using PBMs certified as transparent under these guidelines could save plan sponsors up to nine percent of their prescription drug costs annually.<sup>12</sup>

### How does transparency make such a huge impact on savings?

- **PBMs make enormous amounts off of rebates and fees without plan sponsors even being aware.** Susan Hayes of Pharmacy Outcomes Specialists, a pharmacy benefits consulting firm, testified on the Federal Employees Health Benefits Plan before the House Oversight Committee in June 2009. In her experiences overseeing contracts and conducting audits for plan sponsors, she has witnessed alarming industry trends, of which the vast majority of plan sponsors are never aware. Indeed, she noted that most contracts between PBMs and plan sponsors limit the plan sponsor's ability to conduct audits and verify that contract terms are being met. As much as 50% of drug manufacturer rebate payments are retained by a PBM rather than passed on to the plan sponsor, for example. There is an additional margin, known as "the spread," between what the PBM charges a plan sponsor and what it reimburses a pharmacy for the same claim. This amounts to "as much as 5% of drug spend... [that is] retained by PBMs."<sup>13</sup>
- **PBMs charge plan sponsors \$23 more for a generic drug prescription than what they reimburse the pharmacist, on average.** A 2003 study from Creighton University

<sup>10</sup> U.S. House of Representatives Committee on Oversight and Government Reform. Majority Staff. "Medicare Part D: Drug Pricing and Manufacturer Windfalls." July 2008. Accessed at <http://oversight.house.gov/documents/20080724101850.pdf>.

<sup>11</sup> Business Wire. "Envision Pharmaceutical Services 'Lives Up to the Promise' at Sheet Metal Workers' International Association 2006 Business Managers Conference." August 31, 2006.

<sup>12</sup> redOrbit. "Aetna Pharmacy Management Selected by the HR Policy Association for Meeting Transparency Guidelines." August 10, 2005. Accessed at [http://www.redorbit.com/news/health/203682/aetna\\_pharmacy\\_management\\_selected\\_by\\_the\\_hr\\_policy\\_association\\_for/](http://www.redorbit.com/news/health/203682/aetna_pharmacy_management_selected_by_the_hr_policy_association_for/).

<sup>13</sup> Susan A. Hayes. Testimony before the Committee on Oversight and Government Reform, Subcommittee on Federal Workforce on "FEHBP's Prescription Drug Benefits: Deal or No Deal?" June 24, 2009.

documents the “spread” between what a PBM charges a plan sponsor and what they reimburse a pharmacist for the same claim. The dollar amount of the spread varies widely, though examples show plan sponsors being charged up to \$200 more than what the drug cost the pharmacist.<sup>14</sup>

- **PBMs are able to artificially inflate the price of prescription drugs dispensed through mail order pharmacies through prescription drug repackaging.** Prices for prescription drugs are often set to be a percentage of Average Wholesale Price (AWP), but there are several AWP’s for each national dispensing code (NDC) for a prescription drug. According to Hewitt Associates, mail order pharmacies are able to repackage prescription drugs so that the PBM can create a new NDC,<sup>15</sup> thereby allowing the PBM to also create its own AWP to be used for setting the price. One study has shown that PBMs were able to artificially inflate the AWP’s charged via mail order pharmacies by 2 to 77 percent compared against the AWP’s charged at retail pharmacies for the drug Celebrex, through PBM prescription drug repackaging.<sup>16</sup>
- **PBMs have a financial incentive to encourage the use of more expensive brand name drugs over less expensive generic drugs.** PBMs gain substantial revenue from pharmaceutical manufacturers for promoting certain brand name drugs. Consistently, PBM owned mail order pharmacies have had lower generic fill rates than retail pharmacies, with one study estimating that this PBM conflict of interest would lead to an additional \$30 billion in costs to Medicare beneficiaries and to the government over 10 years.<sup>17</sup>
- **Without transparent plans, the rebates PBMs negotiate are not necessarily passed on to the plan sponsor in the form of savings.** Maine passed transparency legislation in 2003, and the Pharmaceutical Care Management Association (PCMA), a PBM industry trade group, promptly challenged the law in federal court. Not only did the First Circuit Court of Appeals uphold the law, but a judge gave this resounding affirmation of the cost-saving benefits of transparency:

*This lack of transparency also has a tendency to undermine a benefits provider’s ability to determine which is the best proposal among competing proposals from PBMs. For example, if a benefits provider had proposals from three different PBMs for pharmacy benefits management services, each guaranteeing a particular dollar amount of rebate per prescription, the PBM proposal offering the highest rebate for each prescription filled could actually be the worst proposal as far as net savings are concerned, because that PBM might have a deal with the manufacturer that gives it an incentive to sell, or restrict its formulary, to the most expensive drugs. In other words, although PBMs afford a valuable bundle of services to benefits providers, they*

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<sup>14</sup> Robert I. Garis and Bartholomew E. Clark. “The Spread: Pilot Study of an Undocumented Source of Pharmacy Benefit Manager Revenue.” *Journal of the American Pharmacists Association*. Vol. 44, No. 1. January/February 2004.

<sup>15</sup> Hewitt Associates. “Pharmacy Benefits Purchasing: What Every Employer Should Know.” Prepared for the HR Policy Association, January 2005.

<sup>16</sup> James Langenfeld, and Robert Maness. “The Cost of PBM “Self-Dealing” Under a Medicare Prescription Drug Benefit.” September 9, 2003.

<sup>17</sup> James Langenfeld, and Robert Maness. “The Cost of PBM “Self-Dealing” Under a Medicare Prescription Drug Benefit.” September 9, 2003.

*also introduce a layer of fog to the market that prevents benefits providers from fully understanding how to best minimize their net prescription drug costs.*<sup>18</sup>

- **PBMs regularly engage in fraud and deception, and have paid over \$370 million in damages in six major court cases.** Without the accountability that comes with transparency, PBMs are able to deceive enrollees and plan sponsors and overcharge them. Between 2004 and 2008, the three major PBMs have been the subject of six major federal or multidistrict cases over allegations of fraud; misrepresentation to plan sponsors, patients, and providers; unjust enrichment through secret kickback schemes; and failure to meet ethical and safety standards. These cases have resulted in over \$371.9 million in damages to states, plans, and patients so far.

**Congress has already recognized that PBMs' pricing practices must be made transparent to plan sponsors to allow for meaningful negotiation between a plan sponsor and the PBM.**

- The new CMS regulations, set to take effect in January of 2010, require transparency in a crucial part of Medicare Part D plans. The amount that the PBM reimburses a pharmacy for a given claim must be disclosed to CMS. Under many Part D plans, the amount paid to the PBM by Medicare is predetermined for a given drug. If the PBM reimburses a pharmacy a lower amount for that drug, though, the PBM simply keeps the difference—a practice known as “playing the spread.” Under the new regulations, Medicare will be aware when this is happening and be able to negotiate lower drug prices with the various PBMs which administer Medicare Part D plans.<sup>19</sup>

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<sup>18</sup> Pharm. Care Mgmt. Ass'n v. Rowe, 2005 U.S. Dist. LEXIS 2339, at \*7-8 (D. Me. Feb. 2, 2005), aff'd, 429 F.3d 294 (1st Cir. 2005).

<sup>19</sup> CMS Office of Public Affairs. “Medicare Clarifies ‘Negotiated Prices’ Under Part D.” January 6, 2009.