



Insight

Why is DOL Trying to Increase the Cost of Health Insurance?

BEN GITIS | JUNE 26, 2014

INTRODUCTION

One of the largest forms of health insurance in the country is ESI or Employer Sponsored Insurance. Almost 150 million Americans are provided health insurance benefits through their place of employment,^[1] and the Department of Labor (DOL) is looking at a change in policy that would devastate hard working employees. Specifically, DOL's Employee Benefits Security Administration (EBSA) is considering issuing rules that would require a Pharmacy Benefit Manager (PBM) to disclose competitively sensitive information to health plan administrators. PBMs, which are primarily responsible for lowering drug prices for health plan participants, would have to disclose information like the rebates they receive from manufacturers and the rates they pay to pharmacies to ensure low drug prices. While this may be an honest attempt to guarantee plan administrators have enough information to make good decisions, it is based on misguided assumptions about the PBM industry and will only raise drug prices, increase insurance premiums, lower wages, and stymie a successful cost saving arm of the health insurance industry.

WHAT ARE PBMS?

PBMs were created in the 1990s to improve the efficiency between health plans, pharmacies, and drug manufacturers^[2] and today health insurance plan administrators frequently utilize PBMs to specifically manage the plan's prescription drug benefits. PBMs manage the out-patient prescription drug portion of the health insurance plans by working with plans, drug manufacturers, and pharmacies to create pharmacy networks, develop drug formularies, administer the pharmacy claims for a plan, and most importantly, lower drug prices.^[3]

Negotiating lower drug prices is the central service PBMs offer to health plans. A PBM can lower the price of a prescription drug by negotiating discounts with the drug manufacturer and the pharmacy. This process often involves getting a rebate from the manufacturer for agreeing to place their drug on the formulary and agreeing to reimburse pharmacies a certain rate for each drug to sell the drug at a discounted price. In addition to negotiating discounts from pharmacies and drug manufacturers, PBMs save consumers money by providing the option of mail order pharmacy delivery, encouraging the use of generic drugs and the use of technological tools to improve drug adherence.^[4] The result? PBM-administered prescription drugs cost 15 to 50 percent less than drugs not administered by PBMs, saving consumers billions of dollars each year.^[5] Further, PBMs are projected to save health plans and consumers \$2 trillion from 2012-2021.^[6]

DOL'S PROPOSED REGULATION

So if PBMs have been so helpful, what is DOL seeking to change? Under the Employee Retirement Income Security Act (ERISA), health plan administrators have fiduciary responsibility to act in the best interest of plan

beneficiaries and must provide PBMs no more than reasonable compensation for the services they provide. DOL's EBSA, however, believes that plan administrators do not receive enough information to make this determination because PBMs are not required to disclose the costs going into creating the pharmacy benefits (i.e. the negotiated rates with pharmacies and manufacturers). Therefore, under ERISA authority, EBSA is looking at issuing new regulation requiring PBMs to disclose their proprietary cost level data – including both indirect and direct forms of compensation – and negotiated drug prices to all health plans negotiating contracts for PBM services.[7]

DOL'S RULE IS BOTH UNNECESSARY AND HARMFUL

The evidence is clear that not only is such rulemaking unnecessary, it would devastate PBMs and their ability to generate low drug prices. PBMs already disclose desired cost information to most health plan administrators during a highly competitive PBM selection process. PBMs compete for health plans through the request for proposal (RFP) process.[8] This bidding process allows for a contract lasting one to five years, designating the use of a PBM's services for the set amount of time and gives plan sponsors the opportunity to change PBMs at the end of the contract terms. The RFP process creates extreme competition among PBMs, and plan sponsors often request PBM cost information during this process, as well as any other significant disclosures deemed necessary by the plan sponsor.[9] Further, these contracts contain audit provisions where the plan sponsor can confirm that the contractual arrangement is being preserved.[10]

However, PBMs only provide their sensitive cost information with strong confidentiality clauses that prohibit plan administrators from sharing the information. EBSA, on the other hand, would require PBMs to disclose this highly sensitive information to plan administrators without any enforceable requirement that the plan administrators keep the information confidential. Therefore nothing would prevent a plan administrator from sharing that information with pharmacies, drug manufacturers, or other PBMs.

Just as with any other product, the cost to the PBM of creating the service is not disclosed to the purchaser, simply the price of receiving the service.[11] In order for a PBM to negotiate low drug costs with pharmacies and manufacturers, it is essential for it to maintain bargaining power. It does so by keeping all the costs associated with its negotiations highly confidential. According to Emory University's Dr. Joanna Shepherd during a June 19th ERISA advisory council meeting, if regulations requiring financial disclosure from PBMs go into effect it "will likely enable pharmacies and pharmaceutical manufacturers to obtain PBMs' competitively sensitive cost information. This will reduce PBMs ability to negotiate discounts with pharmacies and rebates with drug manufacturers, thus increasing drug prices for consumers." [12]

PBM's disclosing their negotiated discounts is also problematic because the Department of Justice anti-trust division considers the PBM market to be a "concentrated market" – meaning that disclosure of sensitive price information has a higher risk of creating price collusion than in a normal industry.[13] If manufacturers know the prices and discounts they are each giving to certain PBMs, then they are under less pressure to compete for PBM business and will have incentive to provide fewer discounts.[14]

CONCLUSION

Requiring PBMs to disclose sensitive cost information would impose a significant burden on workers and consumers without achieving any significant benefits to plan administrators. Between PBMs having a weakened negotiating position and the risk of collusion between manufacturers, PBMs would no longer be able to successfully negotiate for discounts. As a result, prescription drug prices would significantly rise for all

consumers, and workers would face higher health insurance premiums. Increasing premiums would also make it more difficult for employers to increase employee wages. And for what benefit? Plan administrators would receive information they are not seeking that would be superfluous to the information they already have. At a time when fostering wage growth and mobility are seen as national priorities, this type of regulation is the last thing workers need.

[1] <http://www.ahip.org/Issues/Employer-Sponsored-Coverage.aspx>