

Pharmacy Reimbursement Task Force

Wednesday, October 9th, 2019
10:00am- 12:00pm
Legislative Hall, Senate Hearing Room

Meeting Attendees:

Task Force Members

Present

Rep. Andria Bennett
Sen. David Sokola
Rep. Michael Smith
Sen. Anthony Delcollo
Stephen Groff
Faith Rentz
Michael Morton
Judi Schock
Hooshang Shanehsaz
Kim Robbins
Vincent Madaline
Kevin Musto
Pam Price
Kim Robinson
Leslie Ledogar
Terri Corbo
Christine Schiltz

Title/Organization

Chair, House of Representatives
Co-Chair, State Senate
Speaker Appointment, State Representative
Pro-Temp Appointment, State Senator
Designee, DHSS Secretary Walker
Statewide Benefits Office
Controller General
Designee, OMB Director Jackson
Board of Pharmacy
Delaware Pharmacists Society
Speaker Appointment, Chain Pharmacy Rep
Speaker Appointment, Indep. Pharmacy Rep
Pro-Temp Appointment, MCO (Highmark)
Pro-Temp Appointment, PBM Rep
Designee, Insurance Commissioner Navarro
Pro-Temp Appointment, Hospital Pharmacy
Speaker Appointment, Health Insurer Rep

Attendees:

Rep. Ray Seigfried
Kiki Evinger
Chris DiPietro
Elizabeth Lewis
Paul Speidell

State Representative
DHSS
EPIC Pharmacies
Hamilton-Goodman Partners, LLC
CVS Health Aetna

Staff:

Lauren Barkachy

House of Representatives

Chair Representative Andria Bennett called the meeting to order at 10:05 am.

After introductions, Senator Sokola asked the group if they have any comments on the minutes from the first meeting. Seeing none, he declared the previous meeting's minutes approved.

Chair Bennett discussed the materials enclosed in the members' folders, explaining that they include bills from Arkansas, Iowa, and Colorado dealing with regulating Pharmacy Benefit Managers (PBMs) and prescription drug costs as examples for Delaware to learn from. She also mentioned the New York State Senate report on their PBM investigation that was handed out and discussed at the last meeting. She asked if anyone has any comments or questions on the New York State Senate report.

Hooshang Shanehsaz, the Chair of Delaware Board of Pharmacy, stated that the New York State Senate report provided a good understanding of how PBMs came about and how their role has changed over the years. He emphasized that oversight of PBMs is needed and that Delaware is moving in that direction with the role the Delaware Department of Insurance (DOI) is playing.

Kevin Musto, a pharmacist and owner of Atlantic Apothecary, explained that pharmacy reimbursement rates do not equal what people think they are, since a medication with an average wholesale price (AWP) of \$52 a tube is reimbursed by his pharmacy's PBM at nine dollars a tube. He emphasized that there is no transparency on how PBMs decide these reimbursement rates. Mr. Musto stated pharmacies want to be reimbursed fairly and in accordance with the Mid-Atlantic market, not based on drug prices on the West Coast or in Puerto Rico.

Senator Sokola referenced the United States Declaration of Independence in regards to the many parallels between what PBMs are doing today to pharmacies and consumers and what happened during Independence Era. He stated that in both examples, people are being mistreated and taken advantage of by bodies of authority that are supposed to protect them. He emphasized that access to pharmaceuticals can be a life or death situation for so many people, and that in no other country economically similar to the United States do people spend what Americans spend on prescription drugs.

Mr. Musto stated that while PBMs play a vital role in the pharmaceutical industry with managing drug costs, issues start to arise when they cause erosion in the pricing on some drugs that have not had a change in costs in years.

Chair Bennett referenced the first paragraph on page 56 of the New York State Senate report where the Committee makes several legislative recommendations for the State Legislature to enact that regulate PBMs and mandate transparency for all health plan sponsors in New York. She also referenced the bills from Arkansas and Iowa and how they regulate PBMs by requiring them to register with their state insurance commissioner. She mentioned Colorado's House Bill 19-1216 mandates a price cap of \$100 for consumers to pay for insulin after the claim goes through insurance.

Senator Delcollo mentioned that Chair Bennett's House Bill 194 creates a process of oversight for PBMs in Delaware by requiring them to register with the Insurance Commissioner's Office.

He proposed also requiring a process to provide clarity on where the excess money goes that PBMs collect from providing higher reimbursement rates for select pharmacies. He stated that this practice is not fair.

Representative Ray Seigfried asked Senator Delcollo how he would operationalize what he is proposing.

Senator Delcollo responded that there are mechanisms in place to use subject matter experts.

Mr. Shanehsaz stated that PBMs require pharmacists to be accredited in order to disburse certain medications. Referencing Arkansas' Senate Bill 520 as an example for Delaware to follow, he said Arkansas was able to figure out which medications were being targeted by PBMs.

Chair Bennett stated that Delaware needs to pass regulatory legislation like Colorado, Iowa, and Arkansas.

Kim Robinson, a PBM for Cigna, stated that 67 percent of Delaware residents are covered by some type of health insurance and 33 percent of Delawareans are within reach of the General Assembly through potential legislation. She emphasized that it is important to keep in mind that if employers are satisfied with the reimbursement rates set forth in their PBM contracts, then it is their choice to allow their PBMs to manage the reimbursement rates.

Senator Delcollo asked where Delawareans who get their health insurance from the individual marketplace or through their employer go to fill their prescriptions.

Terri Corbo, a pharmacist at Christiana Care Hospital, explained that it depends on which insurance provider the employer or individual has chosen to get their health care plan through. She said Christiana Care is very interested in knowing which providers are in the network of a health care plan chosen by an employer or individual.

Mr. Shanehsaz stated that Christiana Care chooses their PBM, while Express Scripts does not allow pharmacies to choose them as their PBM, but it chooses their pharmacies to manage.

Ms. Robinson responded that is not true. She said plan sponsors choose and hire their PBM, not the other way around.

Mr. Shanehsaz explained that if a plan sponsor contracts with its PBM, then there is a dispensing fee of \$0.30 and the pharmacy does not have a choice in who their PBM is. He stated the PBM has been assigned to the pharmacy based on the contract.

Stephen Groff, Director of the Division of Medicaid and Medical Assistance and Designee for DHSS Secretary Walker, stated Delawareans who enroll through DHSS sometimes have both Medicaid and Medicare health coverage.

Representative Seigfried said that in the business chain with PBMs and insurance companies, consumers do not get the full the extent of rebates and discounts. He emphasized that creating transparency through this task force is important so that consumers know what they are getting.

Mr. Groff proposed the idea of requiring all PBMs to allow a view into what their contract practices look like.

Leslie Ledogar, Designee for Delaware Insurance Commissioner Navarro, said that currently 36 states require PBMs to obtain a license from the state in order to practice, and that 11 of those states require PBMs to register with their state's Department of Insurance to practice. She stated that Delaware is moving along with what other states are doing in passing laws that regulate PBM practices.

Senator Delcollo asked if the federal Employee Retirement Income Security Act (ERISA) established a baseline for states to follow with regulating PBMs. He discussed how this federal law sets minimum standards for most retirement and health plans in private industry in order to protect individuals under these plans.

Ms. Ledogar responded that ERISA is not about establishing a floor or a ceiling for how PBMs are regulated but is a federal law that mandates PBMs must register with their state Department of Insurance in order to practice. She explained that no state has jurisdiction over ERISA based health care plans.

Ms. Robinson explained that some states have stricter registration laws for PBMs than other states do.

Representative Michael Smith said he would like to see more research from DOI on PBM licensure practices in other states in order to figure out the best regulation practices for PBMs in Delaware.

Mr. Shanehsaz explained that licensure and regulation are different concepts. He said licensure encompasses requirements that an entity has to meet, and these requirements cannot be changed. He said regulations are guidelines for an entity to follow and these can be changed.

Chair Bennett said that one of House Bill 194's PBM licensure requirements is to allow DOI to look over their financial practices.

Ms. Ledogar said DOI is monitoring what is happening nationally with regulating PBMs.

Senator Sokola asked Ms. Ledogar if she is aware of a federal bill that was recently introduced to regulate PBMs at the national level.

Ms. Ledogar responded that she has not read this bill yet.

Mr. Shanehsaz stated that all stakeholders must be at the table contributing to this conversation.

Mr. Shanehsaz continued to say that all plan sponsors and employers must have included in their contracts with their PBMs the authority to receive all the information they ask for, such as what their plan is being charged for and why the reimbursement rebates are what they are. He emphasized this authority must be included in PBM contracts in order to establish more transparency.

Ms. Robinson asked Mr. Shanehsaz if employers are saying the answers to those questions are not already included in their PBM contracts.

Mr. Shanehsaz responded that many employers who ask these questions are told that their PBM does not have to disclose any information per their contracts.

Representative Seigfried asked if the PBM is allowed to disclose the information if an employer wants full disclosure of all the claims and rebates.

Ms. Robinson responded that there is no simple yes or no answer to this question.

Ms. Corbo stated that as an employer at Christiana Care, the employer can ask its PBM for full disclosure, but the PBM can also deny the request. She explained that the PBM does pressure employers to have their employees select PBM-preferred pharmacies, even when employees want to use their original or local pharmacy.

Mr. Shanehsaz emphasized that 85 percent of the pharmaceutical market is controlled by the three big PBMs, which drives people to use a pharmacy that may not be the best one for them.

Chair Bennett asked if PBMs would really leave Delaware if the state insurance market pulls out, citing that 36 states currently regulate PBMs and did not experience a flux of PBMs leaving.

Senator Sokola stated that children are covered under their parents' insurance until they are 26 years old, and so if they choose to go college out-of-state they will still have health care.

Mr. Shanehsaz explained that independent pharmacies are receiving letters from their PBMs informing them that if they go out of business then a PBM will buy them out.

Senator Delcollo stated that if things keep going this way, federal law makers and lawyers will be handling all this. He emphasized that anti-trust laws were created for this very purpose in order to maximize transparency and promote fair market conduct.

Ms. Corbo stated that by asking questions about the quality of health care access, it becomes very clear how unfair health care access truly is.

Chair Bennett asked Ms. Robinson to discuss the report on pharmacy reimbursement and spread pricing in Medicaid managed care organizations (MCOs) she brought to share with the group.

Ms. Robinson stated that pharmacy reimbursement and spread pricing in MCOs are complex issues, in addition to pharmaceutical costs. She referenced Colorado's House Bill 19-1216,

where the out-of-pocket price for insulin was capped at \$100 and stated that if costs continue to rise while the price of drugs are capped, then the state would need to address the issue of those rising costs. She explained that PBMs were created to advocate for the best drug prices from pharmaceutical companies and that drug prices decreased because of their work. She concluded her remarks by stating that stakeholders need to understand PBM business practices in order to regulate them efficiently and encouraged the group to ask her any questions.

Representative Smith emphasized that the General Assembly's priority is to protect their constituents. He asked which state policy would protect Delaware's residents the best.

Ms. Robinson said she cannot say which state has done the best job since each state has different needs and does what is best to address those specific needs.

Representative Smith said doctors cannot seem to inform him or any caregiver why the price for a surgery changes from month to month, even though the quality is the same.

Chair Bennett referenced the insulin out-of-pocket price cap in Colorado's House Bill 19-1216 and how she would like to look into implementing out-of-pocket price caps in Delaware as well.

Ms. Robinson emphasized that the drug manufacturer will have to be reimbursed somehow for rising production costs of insulin, but the purchasing price after insurance is capped at \$100, for example. She stated that pharmaceutical companies are for-profit entities that will not hesitate to make a profit on a drug that people need.

Senator Sokola stated that there is no need for drug prices to be increasing so significantly to the point where people cannot afford the medications they need to survive.

Mr. Shanehsaz stated that when three PBMs are in control of 85 percent of the market, employers and consumers should be saving a lot of money, but the average wholesale price (AWP) for generic brand medications can be significantly higher than the average cost of production. He added that the task force should also discuss audits conducted by PBMs: Currently, a PBM sends a pharmacy a list of prescription numbers that they want information on from the last five years. The auditor comes in to scan all the information, and then about a week later, the PBM will send a bill for about \$100,000 to \$128,000 owed to them because they were not able to read the doctors' signatures on certain prescriptions. He asked what difference can be made in the audit process from the Insurance Commissioner's Office.

Ms. Robbins mentioned a PBM audit example where a pharmacy lost \$3,000 because their PBM audit discovered a prescription for psoriasis cream that failed to specify where the cream needed to be applied, even though the consumer received their cream and got better.

Representative Smith mentioned that legislation should establish a regulatory environment for the Insurance Commissioner to be able to effectively assess how PBMs work.

Chair Bennett opened the floor for public comment.

Chris DiPietro from EPIC Pharmacies reminded the legislators present that protecting their constituents also means protecting the independent pharmacy owners who are going out of business due to decreasing reimbursement rates that prevent them from covering the costs of drugs. He thanked Ms. Robinson for discussing the PBM perspective.

Senator Delcollo suggested that creating concrete recommendations for how the state can regulate PBMs should be an agenda item for the next meeting.

It was decided the next meeting would take place on **Wednesday, November 13th** from **10:00am- 12:00pm.**

Chair Bennett passed out more copies of the New York State Senate's report on their PBM investigation to all the members who were absent from the first meeting.

Chair Bennett adjourned the meeting at 11:51 am.