The PBM Industry Needs Oversight... And They Just Might Get It

They’re the most well-known secret in health care industry, and pharmacists and patients have been working to bring attention to the lack of Pharmacy Benefits Manager (PBM) transparency and oversight for years. PBMs originally entered the pharmacy space as prescription claims processors but now occupy a significantly larger space within our health care system. TPA and its members have relentlessly advocated for greater PBM transparency and accountability at the state and federal levels, to tighten the reins on this virtually unregulated industry. In fact, the lack of PBM regulation has allowed PBMs to climb up near the top of the Fortune 500 list. However, changes are coming...

During the 2018 legislative session, TPA has worked with legislators and pharmacy stakeholders to introduce Senate Bill 1852 (Senator Haile) [bit.ly/2F11rQN] and House Bill 1857 (Representative Powers) [bit.ly/28vmRNs]. This legislation would require all PBMs operating in Tennessee to obtain a license with the Tennessee Department of Commerce and Insurance (TDCI). Requiring mandatory licensure of PBMs provides TDCI with the information necessary to ensure oversight and to take regulatory action against PBMs for non-compliance with state PBM laws. TPA urges all members to communicate with your state Representative and state Senator NOW, using the Tennessee Pharmacists Legislative Action Network (T-PLAN) [bit.ly/2CiwrMo]. T-PLAN will identify your legislators and email them a message prepared by TPA, which you may edit as you see fit.

Just a few days ago, the Office of the President of the United States released a White House White Paper entitled "Reforming Biopharmaceutical Pricing at Home and Abroad" [bit.ly/2BVdZ29b], highlighting the need for reform within the PBM industry. This white paper reads: "Pharmacy benefit managers (PBMs) act as buying intermediaries between drug manufacturers and health insurance plans and their beneficiaries. They negotiate rebates off manufacturers’ list prices and then pass on some of the benefit to health insurance plans and beneficiaries. However, the PBM market is highly concentrated. Three PBMs account for 85 percent of the market, which allows them to exercise undue market power against manufacturers and against the health plans and beneficiaries they are supposed to be representing, thus generating outsized profits for themselves." TPA applauds the White House for acknowledging and highlighting the concentration within the PBM industry and the need for reform.

Last week, Arkansas Attorney General Leslie Rutledge issued a statement indicating that her office would demand information from CVS/Caremark [bit.ly/2nWk1dE] regarding plummeting medication reimbursement rates reported by local pharmacies. AG Rutledge stated that “local pharmacists are critical members of Arkansas’s communities. Due to these changes, pharmacists are facing tough decisions because the reimbursements do not cover the actual cost of the medications. When public health is threatened, all Arkansans suffer.” TPA commends Arkansas AG Rutledge on her commitment to investigating these claims and urges Tennessee Attorney General Herbert Slattery to do the same.

PBM reform is greatly needed at the federal level. TPA continues to work with the National Community Pharmacists Association (NCPA) [www.ncpanet.org/advocacy/pbm-resources] and other national pharmacy associations to highlight the need for a federal “any willing pharmacy” statute, national standards for MAC appeals, and a ban on retroactive Direct and Indirect Remuneration (DIR) fees. Over the past few months, TPA has submitted comments to the Centers for Medicare and Medicaid Services (CMS) [tnpharm.org/1.16.18.-CMS-Comments] and Federal Trade Commission (FTC) [tnpharm.org/ftc-comments_12082017], and signed on to a joint letter to CMS [bit.ly/2HaZr27] along with nearly 120 pharmacy organizations urging PBM reform. TPA urges all members to communicate with your US Representative and US Senators requesting support for these three federal legislative initiatives, using the T-PLAN system [tnpharm.org/advocacy-in-action].

The grassroots advocacy efforts of TPA members are vital to the future of pharmacy practice. TPA urges members to continue to educate your elected officials and advocate for increased regulation and oversight of the PBM industry at both the state and federal levels. Thanks to members’ support of TPA’s efforts, the Tennessee General Assembly has enacted many PBM-focused state laws, including, among others:
- Prompt pay requirements
- Audit and recoupment restrictions for pharmacy services and pharmacy claims
- Pharmacy audit bill of rights
- Restrictions on MAC Lists
- Pharmacy’s right to disclose costs to patients

Tennessee is also one of only a handful of states with an “any willing pharmacy” statute currently in place, which has been challenged and upheld through the court system.

More information about state efforts to regulate PBMs can be found in TPA’s recently-released Practice-Based PBM Resource Page [tnpharm.org/pbm-laws-resource] for members.

TPA greatly appreciates the ongoing support and advocacy of each of our pharmacists and pharmacy team members. As your state pharmacists association, TPA remains firmly committed to its mission of advancing, protecting, and promoting high-quality pharmacist-provided patient care in Tennessee.