



At the intersection of business and health

The Collective - June/July Newsletter

NEXT EVENT
Save the Date: September 10, 2024
11:30-1:00pm
OBESITY: Is BMI A Vital Sign?



ARE EMPLOYERS ADDICTED TO REBATES?

Question: Why would an employer or health plan place a drug with a \$6600 list price on its formulary and omit its biosimilar with a list of \$995?

Answer: To use rebates to keep premiums low.

The FDA says: A biosimilar and its original biologic are made from the same types of sources and have the same treatment risks and benefits. Biosimilars have no clinically meaningful differences from the reference (original) product.

Drug Formulary Exclusions Explained

A formulary is a list of prescription drugs covered by an insurance provider - originally intended to ensure the use of cost-effective medications. Over the last decade, there has been a significant increase in the number of drugs excluded from formularies. Today, formulary exclusions are effectively used by Pharmacy Benefit Managers (PBMs) to leverage drug manufacturers. (i.e., rebates, discounts, fees, etc.). Exclusions enhance their ability to drive profits through rebate contracting. As subsidiaries of insurance companies or as a Third Party, PBMs generally decide what drugs are on the formulary, which drugs are excluded, and often determine medication reimbursement, out-of-pocket costs, and access.

Health plans that adopt the higher-priced drugs will generally get bigger rebates, but due to opaque contracts, it's a 'trust me' on what actually flows back to plan sponsors. (This creates an opening for breach of fiduciary responsibility). Employees with coinsurance and deductibles may also end up paying more out-of-pocket. Research suggests that employers typically use

rebates to offset *overall* healthcare costs and reduce general premiums, rather than reduce the out-of-pocket prices paid by the employees whose prescriptions generated the rebate funds. (Are the unhealthy funding the healthy?)

The three biggest PBMs are part of complex vertically integrated health care conglomerates - the industry is highly concentrated, and again, opaque. On July 9, 2024, The Federal Trade Commission issued an interim report on PBM practices. They found PBMs wield enormous power over patients' ability to access and afford their prescription drugs. It goes on to say PBMs are significantly influencing what drugs are available and at what price, which can have dire consequences. Nearly 30 percent of Americans surveyed reported rationing or even skipping doses of their prescribed medicines due to high costs.

The report also finds that PBMs hold substantial influence over independent pharmacies by imposing unfair, arbitrary, and harmful contractual terms that can impact their ability to stay in business and serve their communities. The FTC continues to gather and analyze PBM data. There will be more information to aid in industry review and regulation when the full report is released.

What's next? Acknowledge the impact PBMs have on your formulary - the recommendations, the exclusions and the rebates. As this industry is scrutinized, expect shifts. Procure your data and review it carefully, and check out the *2023 Trends in Drug Benefit Design Report* below.

Inserts from Adam Fein's 'Drug Channels' - Publication Date: August 15, 2023

[FDA on Biosimilars](#)

[AmerisourceBergen Research - Implications of Exclusions](#)

[2023 Trends in Drug Benefit Design Report](#)

[July FTC Report on PBMs](#)

News You Can Use

Senator's Condemn Healthcare's Resistance to Price Transparency

July 12, 2024

If businesses or consumers saw a big charge on their monthly statement with nothing itemized, no breakdown of pricing, and no details on goods or services, they would probably demand more information and withhold payment until they got it.

Why is this different for healthcare? Here we get vague references and little or no detail on what we're expected to pay for. There are unexpected fees and multiplicative markups, and many come way after the fact with little explanation.

"I don't know of one other industry where we've had to bring, at the federal government level, a transparency bill. Every other industry out there engages with an informed

consumer,” Senator and Special Committee Ranking Member Mike Braun said Thursday. “The industry better take note that it isn’t normal to operate the way they do.”

This was the message senators heard loud and clear during a Thursday morning (7/11/24) hearing of policy researchers and purchasers of commercial insurance for employees and union members. Read the rest of the story below.

This is a transparency and access problem in several places. Recent legislation which prohibits claims data restrictions in new contracts, has provided a crack in the ice for employers. They have been able to litigate for access to their data when restricted, although none of these cases have yet reached their conclusion or have been settled out of court. It’s a different matter for consumers, who have to figure out what they’re paying for and how much they may owe.

Fierce Healthcare Report

Senator Braun's Report - Findings and Recommendations

Medical Minute



HPV Vaccination Guide for Employers

[Human papillomavirus \(HPV\)](#) is a very common virus that can cause cancers later in life. Nearly 42 million people are currently infected with HPV in the United States. About 13 million more people, including teens, become infected with HPV each year.

In the U.S., nearly 36,000 people are estimated to be affected by a cancer caused by an HPV infection annually. While there is screening for cervical cancer, there is no recommended screening for the other cancers caused by HPV infection, like cancers of the head and neck and others 'below the belt.'

HPV vaccination provides safe, effective, and lasting protection against the HPV infections that most commonly cause cancer. It's available and effective for children starting at age 9 up through adults, age 45. Availability, along with education helps provide parents/adults with tools for good decision making.

Supporting the HPV vaccine as part of your health plan objectives is a no-brainer. Not sure how to start a conversation with employees? It's all here for you - a complete action plan - many thanks to our sister business coalition, the **Pittsburgh Business Group on Health**. This employer guide has the plan and all the communication downloads needed to increase knowledge and increase employee/family HPV vaccination rates. *Access the guide below.* August is [National Immunization Awareness Month](#) - perfect timing!

MD Anderson on HPV Cancers

CDC Guidance on HPV

HPV Guide for Employer Action

Advocacy



The Supreme Court Just Limited Federal Power - Health Care Is Feeling the Shockwaves

The Supreme Court's 6-3 decision overturned *Chevron U.S.A. v. Natural Resources Defense Council*, which held that courts should generally back a federal agency's statutory interpretation as long as it was reasonable. *Chevron* greatly expanded the power of unelected administrative agencies as it required judges to defer to the federal agencies' interpretation of statutes when the statute language was ambiguous. *Chevron* protected many federal regulations from legal challenge.

In addition to impeding the ability of executive agencies to implement laws passed by Congress, this decision could have seismic ramifications for health policy. No law passed by Congress can include every possible nuance needed to implement it. Limitation on the ability of regulators to fill in those gaps could result in impacts to health care consumer and patient protections. Technical requirements for how plans and providers bill and code for patient service, for example, are important in executing new health care standards. Without regulations to fill in technical gaps, it will be more difficult to operationalize requirements to carry out the intent of Congress.

While agency final rules will still have the force of law, there may be more of an incentive to challenge rules in court. Litigation challenging regulations could leave the country with a patchwork of disparate health regulations varying by location and by state.

Healthcare Finance on Chevron



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