August 19, 2022

New York State Department of Financial Services
Pharmacy Benefits Bureau
1 State Street
New York, NY 10004-1511

Dear Sir or Madam,

On behalf of Patients Rising Now, thank you for allowing comments on a critically important issue area: Pharmacy Benefit Managers (PBMs) and the vertical integration taking place in the pharmacy space. With this series of comment periods, and the recently passed A1741A in the State Legislature that prohibits copay accumulators/maximizers, it is evident that New York is committed to strengthening and increasing patient access and affordability by addressing PBMs. We applaud the work of the state on this important issue.

Formed in 2015, Patients Rising Now has developed a significant following of over 110,000 patients and caregivers and has guided them on their journeys to advocate for themselves and their loved ones to get the care and treatments they need to live a fulfilling life. As a patient advocacy organization, we support reforms and legislation aimed at advancing patient access to affordable, quality healthcare.

Vertical Integration, PBM Oligopoly, and Patient-Steering

The vertical integration occurring between PBMs, pharmacies, and insurers is a problem that affects the entire country as well as New York. The top three PBMs: CVS Caremark, Express Scripts, and OptumRx oversee 80% of all prescriptions filled in the United States. In addition to being PBMs, each of the aforementioned companies is vertically integrated in the drug supply chain. CVS Caremark is a subsidiary of CVS Health and their pharmacies. Express Scripts owns pharmacies, dispenses prescriptions themselves, and was recently purchased by Cigna. OptumRx is wholly owned by UnitedHealth Group and has a large-scale partnership with Walgreens.

Under the normal PBM structure, PBMs purchase drugs from manufacturers at a negotiated rate and then sell those same drugs to pharmacies. What can result is a practice known as ‘spread pricing’ where the PBM sells the drug to the pharmacy at a higher price than what they paid to the manufacturer. While spread pricing is generally viewed as unscrupulous, it is allowed to occur due to the lack of transparency in these negotiations and gag orders placed on pharmacies. In the case of vertically integrated PBMs, however, the drugs are purchased from manufacturers and then sold at the PBM’s in-house pharmacy. A vertically integrated drug supply chain encourages spread pricing and patient-steering to in-house pharmacies for maximum profits.

PATIENTS RISING NOW

PBMs Determining Patient Treatment, not Doctors

The increasing leverage PBMs possess extends to other areas beyond directing patients to an in-house or otherwise financially aligned pharmacy. They also have final say over what kinds of drugs a patient has access to and at what quantity, regardless of a physician's direction. Drug utilization management tools are in place to cut costs for insurers and PBMs and don't benefit the patient. The scales are inherently tipped in their favor since, because of these tools, treatment for patients switch from a matter of what the patients should be taking to what the insurer is willing to cover. Prior authorization acts as a barrier to entry for patients since the insurer decides whether the treatment will be covered. What results is a 'guilty until proven innocent' relationship where it must be definitively stated that the patient requires this specific treatment, despite the fact that the doctor's prescription for that treatment should have been treated as such. And even then, there's no guarantee.

Another utilization management tool, step therapy, is unequivocally a cost saving measure for the insurers since it requires patients to take cheaper treatments before they can try what was prescribed to them. A patient endures each of the 'steps' of treatment and it must be determined that the effects were ineffective in treating the patient's condition. During which time, the patient's condition doesn't improve and at best stagnates or at worst declines. Time is a valuable commodity for a patient; step therapy treats time as a frivolity. Quantity limits are a utilization management tool as well but are a bit trickier to discern. Quantity limits are argued as a way to prevent waste by not prescribing an unnecessary amount and to prevent abuse of drugs that have a possibility for abuse, such as opioids. However, a concern that needs to be addressed is whether the utilization of quantity limits falls within the parameters of best practices or medical guidelines, or as a way for insurers to limit the amount of drugs for which they are willing to pay, regardless of doctor recommendations.

PBMs are long overdue to be reined in. What utility they may have once offered has long since shifted to a middleman position designed only to enrich themselves at the expense of patients. We at Patients Rising Now are greatly appreciative of the work New York has done and will continue to do on this issue. However, there remains much to be done across the country on PBMs. We urge corrective action be taken as soon as possible to ensure affordability and access for patients. Thank you for allowing us the opportunity to comment.

Sincerely

Terry Wilcox

Terry Wilcox
CEO and Co-Founder