HANDOUT 1

DRUG PRICING

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West Virginia

- Saved $59 million by stopping PBM pricing abuse
- Increased payments to pharmacists and put the care back in healthcare with $10.50 dispensing fees to the pharmacies
- Arkansas also implemented this in 2016 and it produced $50 million per year plus in savings in the Arkansas Medicaid program

PBM revenue ("It's complicated"):

- PBMs have recently been compensated in 4 main ways:
  1) **Administrative fees**
  2) Rebates / Kick Backs
     - $ paid by pharmaceutical manufacturers
  3) Pharmacy Spread
  4) Steer provider services (prescriptions) to themselves

PBM, Drug Pricing and profits?

- **White House**
  - Reforming Biopharmaceutical Pricing at Home and Abroad: White House Council of Economic Advisors – Feb 2018
    - The overall Medicare Part D benefit structure creates perverse incentives for plan sponsors and **pharmacy benefit managers (PBMs) to generate formularies that favor high-price, high-rebate drugs**
    - Pricing in the pharmaceutical drug market suffers from high market concentration in the pharmaceutical distribution system and **a lack of transparency**.
    - **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**

White House: PBMs and Drug Pricing

- **President Donald J. Trump's Blueprint To Lower Drug Prices, May 11, 2018**
  - Lack of transparency in drug pricing benefits special interests and prevents patients from being able to make fully informed decisions about their care
  - Excessively high drug prices, foreign freeloading, and a system rigged to reward list price increases, are burdening the American people
    - challenges in the market include a business model built on opaque rebates and discounts that favor high list prices

President Donald J. Trump's Blueprint To Lower Drug Prices, May 11, 2018

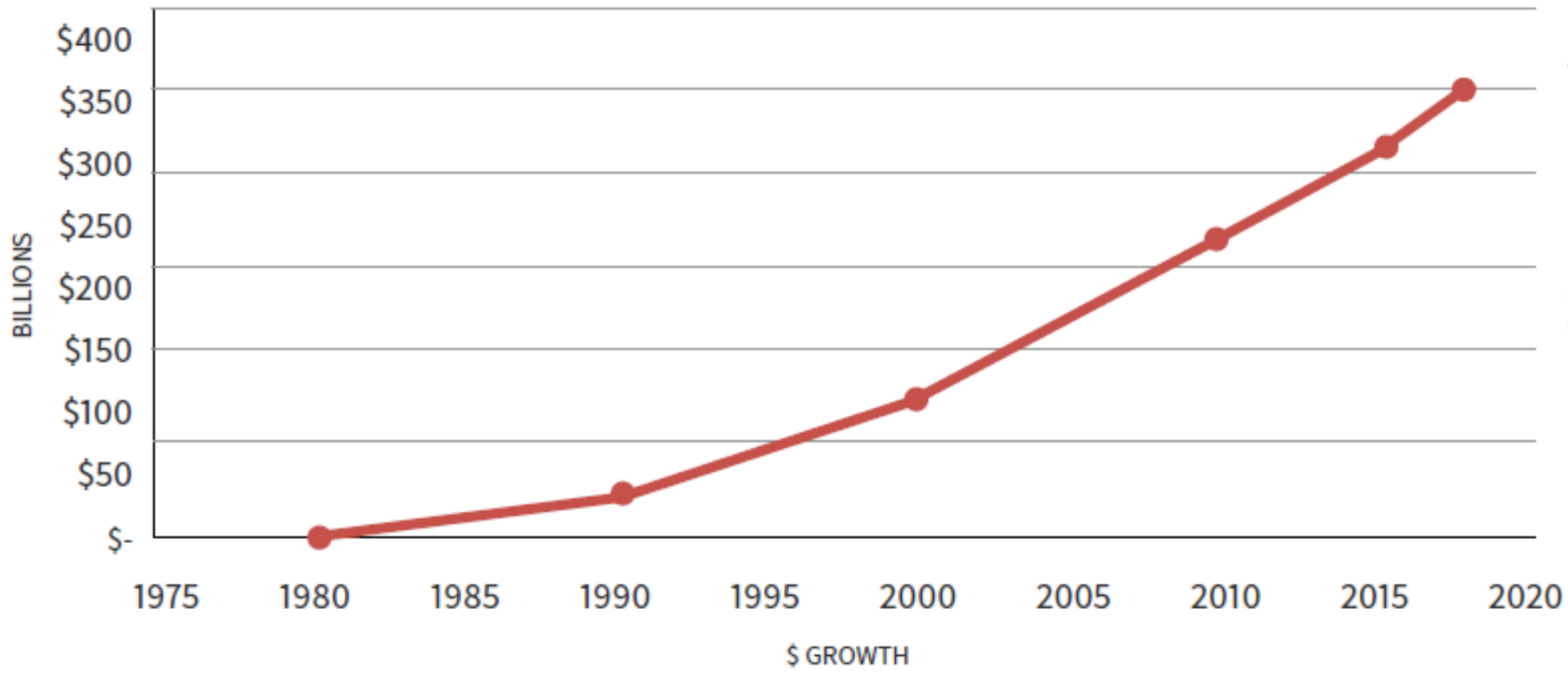

FIGURE 2

Retail Prescription Drug Spend

SOURCE
CMS Office of the Actuary

Highest Prices in the World and Only Country that uses PBMs – Coincidence?

Threats:

- Narrow network design that forces patients where they don't want to go
- Frequent audits of claims where thousands of dollars are attempted to be stolen from pharmacists on technicalities rather than the true purpose of an audit – fraud prevention
- Commoditization of drug product without regard to pharmacist professional services patient safety, patient outcomes or health value to the patient or plan– "Race to the bottom on reimbursement for a product"
- Take it or leave it contracts – with no industry standard for MAC (generic drug) pricing
- Paying community pharmacies below cost on medications "just because they can"
  - "Broken market", "not a fair playing field", "anticompetitive", "self-dealing"

Threats (page 2 of 2):

- Gag clauses in pharmacy contracts
- Anticompetitive behavior where the PBM pays itself higher rates and competing pharmacies (especially independent pharmacies) at much lower rates
- “Steering” patients and prescribers into transferring prescriptions to mail order facilities
- Rebate game driving up prices rather than lowering price of brand name drugs
- Mountains of paperwork in prescribers offices denying coverage of drugs
  - Evidence based decisions vs profit based decisions on formulary coverage

Regulatory oversight?

- States have attempted with very little success
- PBMs are subcontracted services and historically have not been understood by insurance commissioners (lack of transparency in contracts)
- Very little federal oversight other than the Medicare D / CMS rules making process
- $300 to 500 billion dollar industry

Act 900 of 2015

- **Arkansas Law:** Arkansas's law is directed at the PBMs' relationship with pharmacies:
  - Restricts so-called "negative reimbursements" by requiring PBMs to demonstrate that a drug could have been purchased at a lower price through the primary wholesaler of the pharmacy, and if the PBM fails to meet this burden, mandating that the PBM reimburse the pharmacy at least at the cost of acquisition;
  - Requires PBMs to update their MAC price lists based on changes in average wholesale prices; and
  - Permits pharmacies to decline to dispense in face of a negative reimbursement.

Act 900 of 2015 – PBMs respond

- **Bullies don't listen to authority figures and when they don't get their way they do what they do best, they bully.**
- **PCMA Files a Lawsuit in the U.S. District Court for the Eastern District of Arkansas Claiming that Arkansas's Law is Preempted by ERISA:**
  - **PCMA's "Reference To" Argument:** The law references "plans," which, by definition, would include ERISA plans.
  - **PCMA's "Connection With" Argument:** The law interferes with how PBMs administer benefits on behalf of plans.
- **District Court Ruling (2017):** The District Court rules Arkansas's law is preempted by ERISA—though it admits that, but for a prior decision of the U.S. Court of Appeals for the Eighth Circuit, it would have ruled in Arkansas's favor.
- **Arkansas Appeals to the U.S. Court of Appeals for the Eighth Circuit**

Rutledge vs PCMA (pharmacy benefit managers)

- Jan 10, 2020, petition granted
- What's at stake? **States Rights vs Federal Rights on regulating a fair market for contracting / reimbursement between pharmacists and pharmacy benefit managers**
- April 27, 2020 Oral Arguments were schedule
- Covid -19 pandemic hit in March and postponed the case
- Tuesday October 6, 2020 at 10 am was new date
  - Argued Live through a conference line and telephone
- 12.10.2020 – Arkansas won the case #8-0
  - What does this mean?

Arkansas State Employees and Public Schools

Yes to PBMs

- Process Claims
- Maintain a Call Center
- Sign Contacts with Pharmacies

No to PBMs:

- Rebates
- Formulary Management
- Plan Design
- Mail Order / Self Deal
- Spread Pricing
- Claw Backs
- Rate Setting / Self Deal

Arkansas State Employees and Public Schools

Last 2 years – Adopted this program design

Arkansas State University
Arkansas State Troopers
Arkansas municipal League (Jan 1 2021)

Arkansas Works

Yes to PBMs

- Process Claims
- Maintain a Call Center
- Enroll or sign Pharmacies into the program
- **Take it or leave it Rate Setting**
- Rebates / Kick Backs
- Mail Order / Self Deal
- Spread Pricing * (illegal 2019)
- Clawbacks * (illegal 2019)

- Formulary Management
- Plan Design

Arkansas PBM Exam by the Arkansas Insurance Department 2020 (Based on March 2019)

LIMITED SCOPE EXAMINATION OF PHARMACY BENEFIT MANAGERS

July 27, 2020

Prepared for the:

ARKANSAS
Insurance Department

Arkansas PBM Exam by the Arkansas Insurance Department 2020 (Based on March 2019)

- Market Conduct Exam: In 2019 the Commissioner engaged Lewis & Ellis, Inc. ("L&E") and its subcontractors, Ideal Health Strategies ("IHS") and Regulatory Insurance Advisors, LLC, ("RIA"), (collectively the "auditors" or "examiners")
- Arkansas Works and PASSEs
- **PBMS: CVS Caremark, OptumRx and Express Scripts**

Arkansas PBM Exam: Findings

- National Chain Pharmacies were paid significantly higher than Arkansas based independent pharmacies
  - This is no surprise because PBMs want to eliminate independent pharmacies from Earth
- Express Scripts was engaging in spread pricing at the point of sale at 15.26% over an estimated 6 month period
- OptumRx wouldn't cooperate with data
- CVS and Express Scripts were engaging in "spread pricing" across the aggregate claims, otherwise known as Effective Rate Contracting / Clawbacks / DIR

Express Scripts Spread Example – The Math

- **Table 6**
- $1,799,632 in spread over 106,637 claims
- **What is this per prescription? $16.87 per prescription**

West Virginia

- Fire PBM
- Save $59 million
- Increase pharmacy professional dispensing fees from 50 cents to $10.50 per prescription
- Put the Care back into Healthcare

Questions

Arkansas Pharmacists Association