Federal Judge Rejects Challenge to Maine’s PBM Disclosure Law

What happened?

On April 13, 2005, a federal district court judge rejected Pharmaceutical Care Management Association’s challenge to a Maine law that would require PBMs to make significant financial disclosures to their health plan clients.

What does it mean?

Absent a successful appeal by Pharmaceutical Care Management Association, PBMs operating in Maine will be required to disclose to their health plan clients conflicts of interest and various financial information, including pricing negotiations with prescription drug companies.

Learn more.

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The debate over rising prescription drug costs, who is responsible for them, and what can be done to lower these costs, rages on. In recent years, some states, including Maine, have become increasingly proactive, enacting legislation aimed at lowering prescription drug prices. On April 13, 2005, a federal district court rejected a challenge to a Maine law that seeks to increase the “transparency” in the relationship between pharmaceutical benefits management companies (PBMs) and the health plans they serve.

PBMs act as intermediaries between prescription drug manufacturers and pharmacies, on the one hand, and benefits providers, on the other hand. PBMs are able to use the purchasing power of multiple benefits providers to negotiate significant discounts from pharmaceutical companies and pharmacies. Maine views PBMs as an unregulated industry that is able to unfairly reap large profits due to a lack of competition. In 2003, the Maine legislature enacted the Unfair Prescription Drug Practices Act (“UPDPA” or “Act”) in an effort to lower prescription drug prices for the customers of PBMs and, in turn, for the ultimate consumer. UPDPA provides that PBMs owe a “fiduciary duty” to each of their health plan members who the Act terms “covered entities”. As part of this fiduciary duty, the UPDPA imposes extensive disclosure requirements on PBMs. They must disclose:

1. information relating to conflicts of interest;
2. financial and utilization information requested by covered entities relating to the provision of benefits as well as information relating to the services;
3. the comparative costs of a prescribed drug and a PBM’s proposed substitute;
4. any benefit or payment accruing to the PBM as a result of using a substitute drug;
5. information relating to drug pricing negotiations.

Thus, UPDPA would require PBMs to disclose the contract terms they have been able to negotiate with pharmaceutical companies. All of these disclosures, however, are confidential.

The Pharmaceutical Care Management Association (“PCMA”), a trade association representing PBMs, sued the State in 2003 to prevent the Act from taking effect. PCMA alleged that:

1. **UPDPA is preempted by ERISA and the Federal Employees Health Benefits Act (“FEHBA”).** PCMA argued that UPDPA “attempts to dictate the terms under which . . . ERISA plans and their sponsors may contract with PBMs.”

PCMA immediately appealed the decision to the United States Court of Appeals. PCMA’s President Mark Merritt, who believes the Act will raise drug costs instead of lower them, said that the decision is “disturbing” and “significantly undermines PBMs’ incentives to generate savings for consumers.” The outcome of this appeal has important ramifications for PBMs, drug companies, and health plans, and will likely shape future state law efforts to reduce prescription drug prices.

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