PBM Skeptics Surfing in the Senate

by Stephen Barlas

Stephen Barlas is a freelance writer based in Washington D.C., who covers issues inside the Beltway. Send ideas for topics and your comments to sbarlas@bellsouth.net

All of the Medicare bills that Congress seriously considered this past year—be they Republican; Democrat; or, in the case of the Senate, tripartisan (accounting for Independent Jim Jeffords of Vermont)—relied on pharmacy benefit management (PBM) companies to one extent or another. Part of the reason why a Medicare drug bill did not pass was growing discomfort, especially among Democrats, with certain aspects of the PBM model.

Senator Byron Dorgan (D-N.D.), for example, sent out invitations to a PBM hearing on July 23 in the Commerce consumer affairs, foreign commerce, and tourism subcommittee that he chairs. The hearing was cancelled when two of the PBMs that had been invited declined to attend because of board meetings that had previously been scheduled for July 23. Congress was on vacation in August. As of this writing, Barry Piatt, spokesman for Senator Dorgan, says that the Senator is trying to schedule the hearing for this fall.

Senator Dorgan has not publicly outlined his concerns about PBMs. But John Rector, senior vice president of the National Community Pharmacists Association (NCPA), a group that for competitive reasons is encouraging the political assault on PBMs, says that a hearing would encompass topics from PBM accounting errors to overhead charges to Medicare.

In August, for example, Express Scripts, Inc., confirmed that it had received two federal subpoenas related to two different investigations. One related to stock options, warrants, shares, or “other items of value” given to former board member Richard Norling, who is also the chief executive of Premier, Inc., a major buyer of supplies for hospitals that had done business with Express Scripts. Express Scripts said that Mr. Norling, who had served as a director from 1992 through 2001, collected an equal number of options and annual retainer fees as other “similarly situated” independent directors. In addition, the Justice Department is investigating AdvancePCS for rebate deals with drug manufacturers and their impact on AdvancePCS’s formulary.

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Although these are some of the things that have been weighing on Senator Dorgan, he remained quiet prior to his hearings. Senator Robert Torricelli (D-N.J.) piped up plenty, though. Prior to his late September exit from the race, Torricelli pummeled his 2002 Republican opponent Douglas Forrester, the Chief Executive Officer of a PBM called BeneCard, on BeneCard’s handling of rebates from drug manufacturers. Senator Torricelli said that BeneCard does not use the rebates to lower drug prices for consumers, a fault shared by all PBMs, he alleged. According to a U.S. News & World Report article in early August, a former BeneCard employee was quoted as saying that the BeneCard formulary includes numerous drugs whose prices are higher than alternatives that the formulary could offer.

A press release issued by the Forrester campaign after an unfavorable article appeared in the Philadelphia Inquirer stated, “First off, Doug’s company does not receive rebates from drug companies and does not pay pharmacies a different price than is billed to clients. Period.” Senator Torricelli’s criticism of BeneCard and Senator Dorgan’s intention to have oversight hearings were indications that “PBM” is no longer an acronym mindlessly tossed around on Capitol Hill.

“We really have flown under the radar screen in the past,” admits Sharon Cannon, Vice President for government relations and policy for the Pharmaceutical Care Management Association (PCMA), the PBM trade group.

The Medicare drug benefit debate on Capitol Hill has encouraged legislators to examine PBMs more closely. The NCPA and the National Association of Chain Drug Stores (NACDS) worked overtime to ensure that this was done with a jaundiced eye. They continued to tar PBMs with a bilious brush as the Bush administration resuscitated its Medicare prescription card program in September.

“Community retail pharmacy will oppose any legislation that gives PBMs unrestrained power to decide which drugs are covered in Medicare, shift our patients to mail order, determine how much pharmacies will be reimbursed, and to determine the amount of discounts that they will retain rather than pass along to seniors,” says Craig Fuller, NACDS President and CEO.

There has been little evidence of PBMs returning the fire on Capitol Hill. Some PBM admirers think that the industry is being made the “fall guy” for the Senate’s failure to pass a drug bill. On the issue of drug company rebates pocketed by PBMs, for example, that revenue amounts to about two tenths of 1% for Express Scripts, and the amount is declining, according to Chief Executive Barrett Toan.