Overview of Pharmacy Benefit Managers (PBMs)

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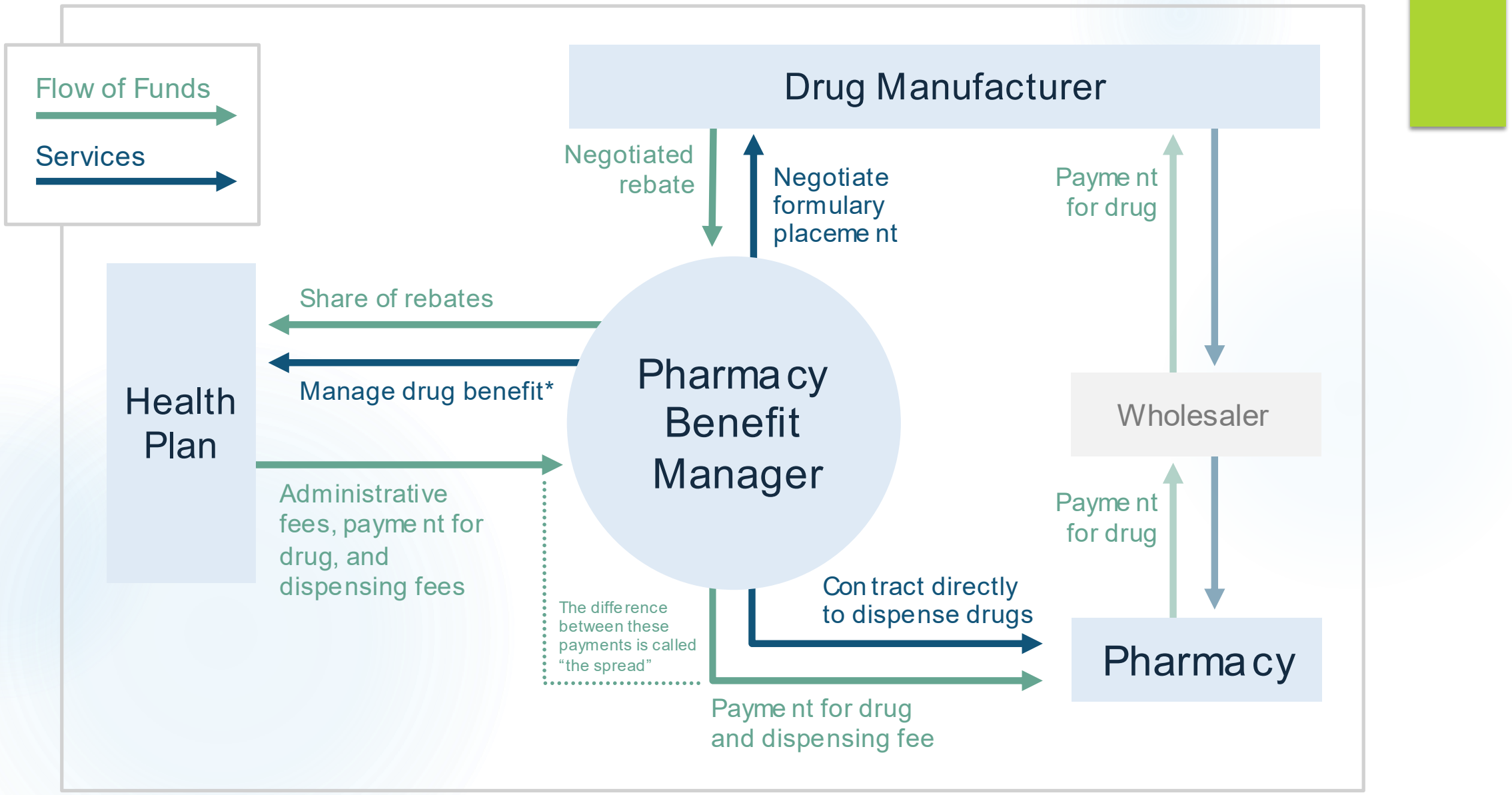
What is a PBM?

- A pharmacy benefit manager (PBM) is a company that manages prescription drug benefits on behalf of health insurers, self-funded employer plans, Medicaid, Medicare Part D, and other payers
  - Serves as intermediary between payers and prescription drug manufacturers
- Three biggest PBMs in U.S. are Express Scripts, CVS Caremark, and OptumRx (division of UnitedHealthcare), with more than three-quarters of market share (some sources put as high as 89% in recent years)

What does a PBM do?

- Administers prescription drug benefit for health plans, including claims processing and member support
- Develops and maintains prescription drug formulary
  - Formulary is list of drugs covered under health plan
- Negotiates rebates and discounts from prescription drug manufacturers in exchange for including their drugs on formulary
- Implements utilization management tools, such as prior authorization, step therapy, and quantity limits
- Contracts directly with pharmacies to reimburse them for drugs dispensed to plan beneficiaries
  - PBM establishes "maximum allowable cost" (MAC) for each drug



Source: Commonwealth Fund, "Pharmacy Benefit Managers and Their Role in Drug Spending," April 2019, which was adapted from Congressional Budget Office, "Prescription Drug Pricing in the Private Sector," January 2007

How are PBMs regulated?

- Vermont currently requires PBMs to register with DFR
  - H.353 would establish licensure requirement
- It had been unclear extent to which states could regulate PBMs, but in 2020, SCOTUS held in *Rutledge v. Pharmaceutical Care Management Association* that Arkansas law effectively requiring PBMs to reimburse pharmacies at least pharmacy's wholesale cost was not preempted by ERISA
  - No impermissible connection with ERISA plans because cost regulation does not dictate specific coverage requirements
  - Does not "refer to" ERISA because Arkansas law not dependent on existence of ERISA plans
- Many states have created or revised, or are considering creating or revising, licensure/registration requirements and/or looking to increase regulation of PBMs
  - see, e.g., resources from NCSL and NASHP

Past and present PBM policy issues

- Spread pricing – PBM is reimbursed by health plans and employers at higher price than what PBM reimburses pharmacies for the drugs, PBM keeps the "spread" – i.e., the difference
- Rebates – depending on terms of contract, PBM may "pass through" to payers some, all, or none of rebates from manufacturers
- Clawback – if patient co-pay is higher than amount PBM reimburses pharmacy for drug, PBM can "claw back" difference from pharmacy
- Gag clauses – PBM prohibits pharmacies from telling patients when cash price of drug would be less than co-pay amount, telling patients about lower-cost options, etc.
  - In 2018, Congress passed law prohibiting gag clauses re cash price being less than using insurance (co-pay/coinsurance/other out-of-pocket)

Questions?