

Overview of Pharmacy Benefit Managers (PBMs)

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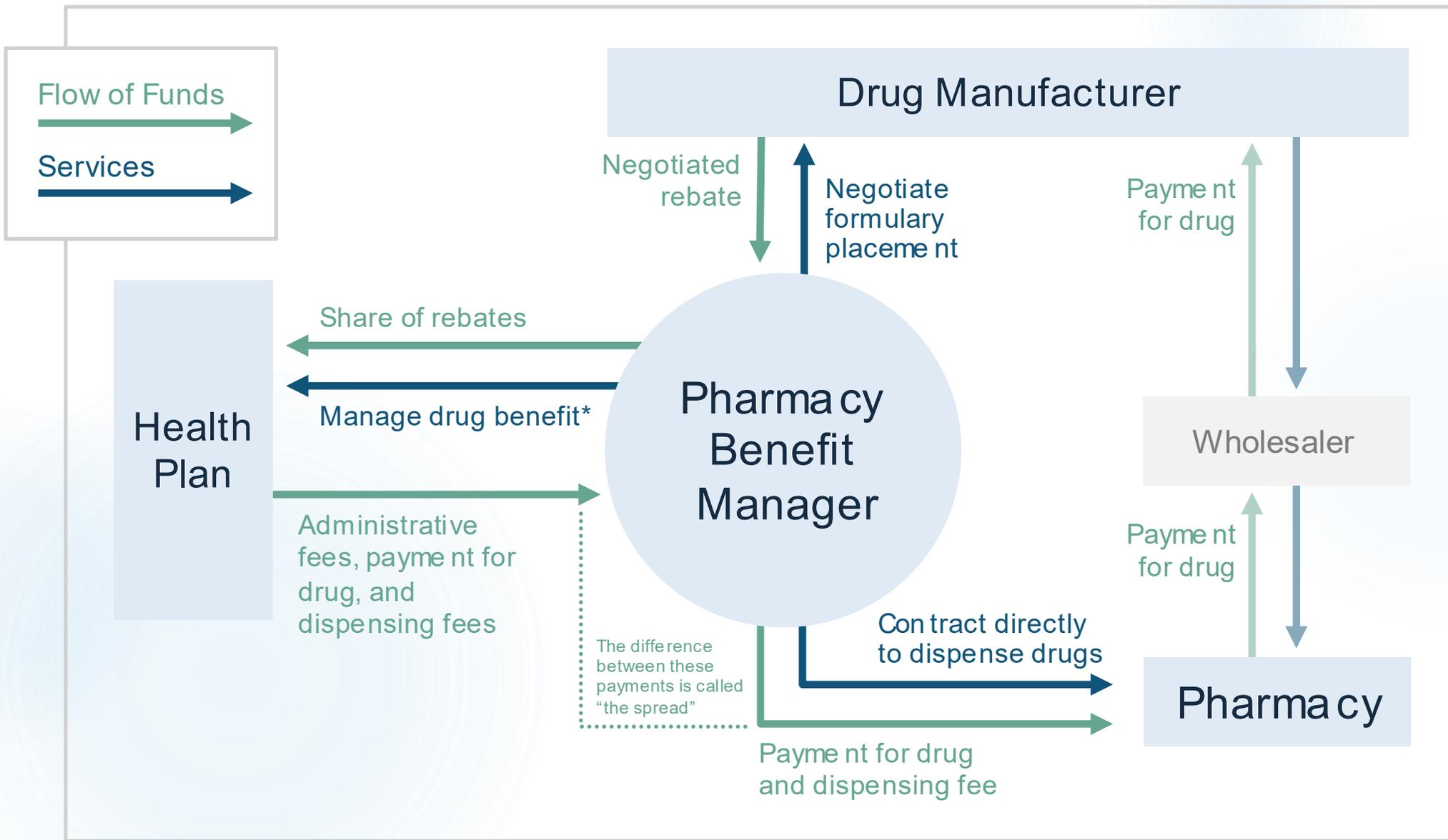
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What is a PBM?

- ▶ 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?