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More Disclosure for Drug Plans

Legislation May Alter the Ways of Benefit Managers

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The movement in Congress to add prescription drug coverage to Medicare could produce a bonanza for pharmacy benefit managers, the companies whose drug plans cover most working Americans. But the Medicare legislation also poses a powerful threat to the way many of the largest such companies do business.

Both the Senate and House bills now in conference committee would force the companies to disclose details of the deals they make with drug manufacturers to promote the sales of expensive new drugs.

The pharmacy benefit managers, or P.B.M.'s, have closely guarded this information, arguing that fully disclosing their financial arrangements would weaken their ability to negotiate discounts and rebates that, they contend, result in lower drug prices over all. Investigators at the Government Accounting Office, in a report to Congress this year, said that even they were unable to uncover all the details of such deals.

Critics argue that the arrangements — which are the subject of federal and state investigations and numerous private lawsuits — add to overall spending by employers and health plans by favoring expensive products over less-costly drugs that are equally effective.

"It has been nearly impossible to find out whether P.B.M.'s are fairly sharing rebates and other savings with patients or simply using it to boost the bottom line,'' said Senator Maria Cantwell, Democrat of Washington, who proposed the disclosures in the Senate bill. Profits for the companies, she said, have been "soaring in tandem with prescription drug prices.''

Some Republicans are calling for more disclosure of the companies' operations, as well. "With more transparency in the drug-purchasing system, consumers will have the ability to shop around for the best value,'' said Representative Paul D. Ryan, a Republican of Wisconsin who serves on the House Ways and Means Committee, which has authority over Medicare.

Under the Medicare bills passed by Congress last month, pharmacy benefit managers would administer drug benefits for people on Medicare, starting in 2006, and they could also issue drug discount cards for Medicare beneficiaries in 2004 and 2005. The companies would either provide pharmacy services under policies sold by private insurers or offer such policies themselves.

Larry Marsh, a health care analyst at Lehman Brothers, estimates that a Medicare drug benefit could add at least 25 percent, or $30 billion, to the companies' revenues in 2006. The size of the profits would depend on how much of the new business went to the benefit managers' mail-order pharmacies, a main income source for them, he said.

The companies say that they are willing to share data with the Medicare program about their deals with drug makers, as the House bill requires. But they do not want to open their books to the Justice Department, as the Senate bill demands. The department recently joined a civil lawsuit accusing one of the biggest benefit managers, Medco Health Solutions, of cheating the federal employees health program. Medco has said the charges were false or reflected practices changed years ago.

The pharmacy benefit managers are trying to kill Senator Cantwell's amendment. Mark Merritt, president of the Pharmaceutical Care Management Association, the industry's trade group, said the provision would drive up the cost of a Medicare drug benefit by denying the companies "the proven tools and techniques'' they normally use.

Companies are hesitant to open their books to the Justice Department.

But the pharmacy benefit managers are already losing ground on that front. Last month, Maine required companies doing business in the state to disclose all their financial arrangements with drug manufacturers; 19 other states, concerned about the growing drug costs of their Medicaid and employee health plans, have been considering various regulations on the industry.

"When the government pays, there has to be a lot of transparency,'' said Tom Gallucci, a health care analyst at Merrill Lynch. He nonetheless predicts strong profit growth for the companies, whether or not a Medicare drug benefit is enacted.

Last month, the New York attorney general's office said it had subpoenaed records of Express Scripts, one of the big benefit managers, after an audit by the state comptroller found that it had repeatedly overcharged a state employees' drug plan. Express Scripts said it had repaid $613,000 and changed its systems to prevent future errors.

Meanwhile, the attorneys general of 21 states are investigating the business practices of Medco Health Solutions, which Merck & Company is in the process of spinning off, under consumer protection laws and pharmacy professional standards.

At the federal level, the inspector general of the Department of Health and Human services has warned that rebates collected by benefit managers working for state Medicaid programs might violate federal anti-kickback laws, unless all amounts paid to the companies are disclosed in writing. And the Office of Personnel Management has ordered its inspector general to audit benefit managers' work for federal employee drug plans, the nation's largest.

Private employers, health plans and consumers also are challenging the benefit managers' practices.

Some big employers and health plans, for example, have taken to hiring outside auditors to review the transactions. "Buyers are coming up the learning curve pretty quickly,'' said Dr. Alan Sokolow, chief medical officer of Empire Blue Cross and Blue Shield in New York.

Even so, a big purchaser like Empire has been unable to get all the information it seeks. "There are a lot of ins and outs to pharmacy purchasing and marketing,'' said Dr. Sokolow, "and I'm not sure that we've fully illuminated all of them.''

Some small benefit managers have begun selling "transparent'' drug plans, promising to inform customers about all their dealings with manufacturers, rather than base their business on a web of complex rebates, discounts and incentive arrangements with drug makers.

"We charge the payer a flat monthly fee for each member for all services,'' said Kevin Nagle, chief executive of Envision Pharmaceutical, a benefit manager in Folsom, Calif., that was established last year.

The drug industry's trade group, the Pharmaceutical Research and Manufacturing Association, has not yet taken a stand on Senator Cantwell's amendment. But some of the largest drug makers have been pointing out conflicts of interest that could arise if the companies are granted a big role in Medicare.

In a letter to Republican leaders, Hank McKinnell, the chief executive of Pfizer, said that because the benefit managers rely for income on rebates from manufacturers, "they have strong incentives to encourage the use of certain drugs that may not always be the best medicines for patients.'' He added, "Because rebates may not be passed through to payers, the system can encourage P.B.M.'s to promote the use of more costly medicines.''

Similarly, Patricia Molino, a spokeswoman for Johnson & Johnson, said it supported legislation to "mitigate or eliminate such conflicts.''

Whatever happens in Congress, some customers are getting more demanding in their dealings with the benefit managers.

The Inland Truck Parts Company, an Overland Park, Kan.-based company with 475 employees, is switching to a new drug plan from Innoviant, a small benefit manager based in Wausau, Wis.

Greg Klein, Inland's chief financial officer, said that he was troubled to learn about what he called "hidden pricing'' devices used by some benefit managers. Innoviant, by contrast, says that it does not accept rebates tied to marketing from drug makers.

"Before, I didn't know what I was paying,'' Mr. Klein said.

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