

PBM Auditing Increases as Prescription Drug Costs Rise, but Critics Allege That PBMs Are Foiling Audits

Drug Benefit News

October 2, 2008

Faced with rapidly rising pharmaceutical costs, health plans and employers increasingly are turning to audits to ensure that their PBMs are delivering on contractual promises. While some PBMs willingly open their books, industry critics allege that the auditing process is stymied by PBM gamesmanship, and that clients are losing money as a result. If PBMs would allow better access to their documents, one veteran PBM auditor tells DBN, pharmaceutical payers could save up to 10% on their drug spend in some cases.

For their part, PBMs say they recognize the importance of audits and point to an auditing provision that was included by URAC in last year's PBM accreditation standards. And one PBM observer contends that the sheer complexity of the PBM business — with its multiple rebates, fees, discounts and varying pricing formulas — can raise red flags with pharmaceutical payers, even when no wrongdoing exists.

But others involved in the PBM auditing process see a pernicious attempt by many PBMs to ensure that full sunshine does not fall on their books. PBMs, they assert, place undue restrictions on the auditing process that skews the audit in favor of the PBM, and can block recoveries of funds due a client. Such practices are enabled by poorly drafted PBM/client contracts and include the following requirements:

- The PBM has a right to "mutually approve" any auditor selected by a client, and can veto any auditor that the PBM doesn't find satisfactory;
- The auditor must sign a PBM-drafted "confidentiality agreement" that limits the type of data the auditor may audit, and requires the auditor to provide a draft audit report to the PBM before providing it to the client;
- The auditor cannot disclose certain PBM "proprietary" information to the client, such as types of drug manufacturer rebates and amounts of individual rebates;
- The auditor cannot copy any confidential information in the PBM

offices, and may take notes only on broad findings rather than on detailed underlying data; and

- The auditor must pledge not to be involved in any litigation against the PBM, should there be any, nor talk to any news reporters.

Restrictions, such as the "mutual approval" language, give PBMs undue influence on audits, says Linda Cahn, president of Pharmacy Benefit Consultants and an attorney who has reviewed hundreds of PBM contracts and litigated against PBMs.

"Auditors have to walk a tightrope" she tells DBN. "Aware they have obligations to their clients, auditors know they should look for all PBM wrongdoing and disclose all such wrongdoing to their clients. However, aware that PBMs have an almost-universal contract right to 'mutually approve' auditors, many auditors avoid tasks that are likely to result in findings of PBM wrongdoing, and instead conduct audits that are less informative than they should be."

For example, Cahn says, auditors rarely audit "rebate agreements." And even if they do, PBMs generally restrict the number of rebate agreements that can be audited and redact critical information from the agreements, she adds. "As a result, auditors almost never detect, let alone disclose to their clients, the extent to which PBMs are depriving their clients of rebates by calling rebates some other name, such as 'administrative fees' or 'health management fees,'" Cahn asserts.

Cahn also blasts PBMs' frequently applied restrictions on note taking and copying of documents. Audits done in virtually every other industry yield boxes of information that auditors thereafter keep confidential, she contends. "But PBMs force auditors to take such slim notes during PBM audits that when PBMs dispute auditors' final reports, auditors are not in a position to demonstrate the accuracy of their findings," Cahn says.

Audit restrictions are costing clients money, asserts Susan Hayes, principal of Pharmacy Outcomes Specialists. "Clients are losing money because they end up hiring auditors that don't press for all of the documents and end up never getting recoveries," she tells DBN.

Hayes, who has been blocked by the "mutual approval" provision from auditing certain large PBMs, says that every one of the more than 500 PBM audits her firm has done has uncovered money that was due back to

the client. This figure generally ranges from 2% to 3% of drug spending, but can total up to 10% of a client's overall costs, she says.

Examples of audit findings include a PBM that agreed to prior-authorize the expensive rheumatoid arthritis drug Enbrel (etanercept), but never did, she asserts. Or a PBM that agreed to give the client a better price on drugs by increasing the discount on average wholesale price from AWP minus 14% to AWP minus 15%, but never implemented the change. "The client never knows this because they don't know what AWP minus 15% is," Hayes says of the example.

The lack of access to PBM documents often prevents auditors from finding such recoverable monies in the first place, Hayes says. "But once we find it, it is really the clients' desire to pursue the findings that tends to get them recoveries," she adds.

About half of clients get something back, explains Hayes, who estimates the recovery is about 50 cents on the dollar. "Some clients don't fight to get their money back....some take it in a better renewal rate going forward, some change PBMs," she explains. "Then there are those clients that litigate, on the opposite end of the spectrum."

PBMs Cite Need to Protect Information

Still, even highly transparent PBMs contend that some of their actions are designed to facilitate a smooth auditing process and ensure that information is not improperly used.

Innoviant, Inc., for example, has used the mutual-approval language not to weed out auditors who take a particularly tough line but to make sure it's dealing with someone who is up to the process, says Mark Campbell, Pharm.D., president and CEO of the pharmacy benefit administrator, which was recently acquired by UnitedHealth Group.

"Because there is a cost to both organizations to doing an audit, you'd like to know it is someone who has done audits before and understands the scope and breadth of what needs to be done, and can do it in an efficient and orderly manner," he says in an interview with DBN.

Regarding confidentiality agreements, Campbell says customers should have access to "whatever they need," but at the same time the PBM must ensure it's protecting information to the best of its ability. There is always

the danger that information could be used for alternative purposes that would be unsuitable, he says.

"I'm an auditor," Campbell explains as an example. "I'm looking at somebody's contract with a particular pharmacy, and I go, 'Wow, that's a really great rate. I'm going to go back and make sure that when I'm working on the other side of the house, and doing an RFP [i.e., request for proposal] for somebody, I'm going to try and get that rate for everybody.' That would be an unfortunate use of the information, because it's taken out of context."

Similarly, Innoviant makes efforts to control its manufacturer and pharmacy information. "Sharing it with people so they can verify what's going on — triangulate that information against what's actually occurring — that's our purpose and mission here," he says. "But allowing people to reproduce information would make it difficult if not impossible to control where that information goes, so we do restrict that."

Audit Procedures Are Established in Contract

How can both sides ensure the audit is fair? Procedures for client audits are part of the negotiations that take place during the RFP and contracting process, according to a PBM trade group spokesman.

"Provisions may include mutual agreement on an auditor, scope, timing and confidentiality," says Charles Coté, spokesman for the Pharmaceutical Care Management Association (PCMA). "The standards for client audits are known to both parties at the time of contracting and are part of the client-PBM relationship during the term of the contract," he says.

Audit standards are included in URAC's PBM accreditation standards, which were developed by a broad cross-section of PBM stakeholders in 2007, Coté adds.

Under URAC's standards, PBMs will disclose to clients — if the disclosures are required by the PBM/client contract — various financial model information upon request, including:

- Existence of organizational arrangements that could potentially create a conflict of interest that affects clinical or financial decisions,

- Sources of revenue, and
- Pricing structure for PBM services, such as rebate structures and administration fees .

But getting these points written into the contract can be tricky, some say. Clients and their consultants should focus on a client's audit rights during the RFP process, and before a PBM is selected, says Kevin M. Nagle, president and CEO of Envision Pharmaceutical Services. Unfortunately, many consultants reverse the process, and start the contract negotiation phase after a PBM finalist has been selected in an RFP, he tells DBN.

"And what they'll find out is that some of the things they wanted to accomplish in their RFP, they may in fact not be able to, because the PBM has negotiated certain clauses which prohibit them from doing the kind of auditing to ultimately get to that transparency component," he says.

The issue also caught the attention of the Texas State Auditor's Office, which issued a report Aug. 20 recommending that state agencies have greater power to audit their PBMs.

Meanwhile, some clients choose not to pursue their audit rights more fully, says Hayes. Most benefit managers would like to find an auditor who is not controversial, and some just want a clean bill of health, she asserts. Hayes recalls the reaction of a large Pennsylvania company after she told them how much money they were losing under the PBM. "They said, 'Oh well, it's a rounding error. Let's move on,'" Hayes says.

But others say PBM auditing is expected to increase as an important business process as pharmaceutical spending continues to balloon the coming years.

Innoviant's Campbell points out that in 2000, the U.S. spent roughly \$129 billion on prescription drugs. That figure is expected to grow to \$540 billion by 2014, he adds. "That got people scrambling a little bit to try and figure out what's driving these expenses," Campbell says.

He also notes the PBM audit process is still relatively new, and lacks standardization within the industry. "The overall process is good," he says. "It's just going to take a little while before there is a bit more commonality in how the process works and what's expected of both parties."