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LIBRARY

Regulator Insight:

Pharmacy Benefit
Managers

September 2023



The NAIC/CIPR Research Library has compiled a summary of recent articles, news coverage, and industry/trade reports about the impact of pharmacy benefit managers (PBMs) in the insurance industry. The Library's Regulator Insights series is aimed at assisting state insurance regulators in quickly understanding the breadth and depth of recent information produced on a key topic of interest across mass media and other sources. We've identified five common themes of news on PBMs from the past 18 months: (1) legislative and regulatory activity; (2) editorials; (3) litigation coverage; (4) mergers, consolidation, and market issues; and (5) reporting on research studies.

What are Pharmacy Benefit Managers?

Pharmacy Benefit Managers (PBMs) are third-party companies that function as intermediaries between insurance providers and pharmaceutical manufacturers. PBMs create formularies, negotiate rebates (discounts paid by a drug manufacturer to a PBM) with manufacturers, process claims, create pharmacy networks, review drug utilization, and manage mail-order specialty pharmacies.

Since its inception in 2018, the NAIC's [Pharmacy Benefit Manager Regulatory Issues \(B\) Subgroup](#) has been monitoring the PBM marketplace. In 2023 the group is finalizing a white paper to analyze, among other things, potential state-based approaches to PBM regulation.

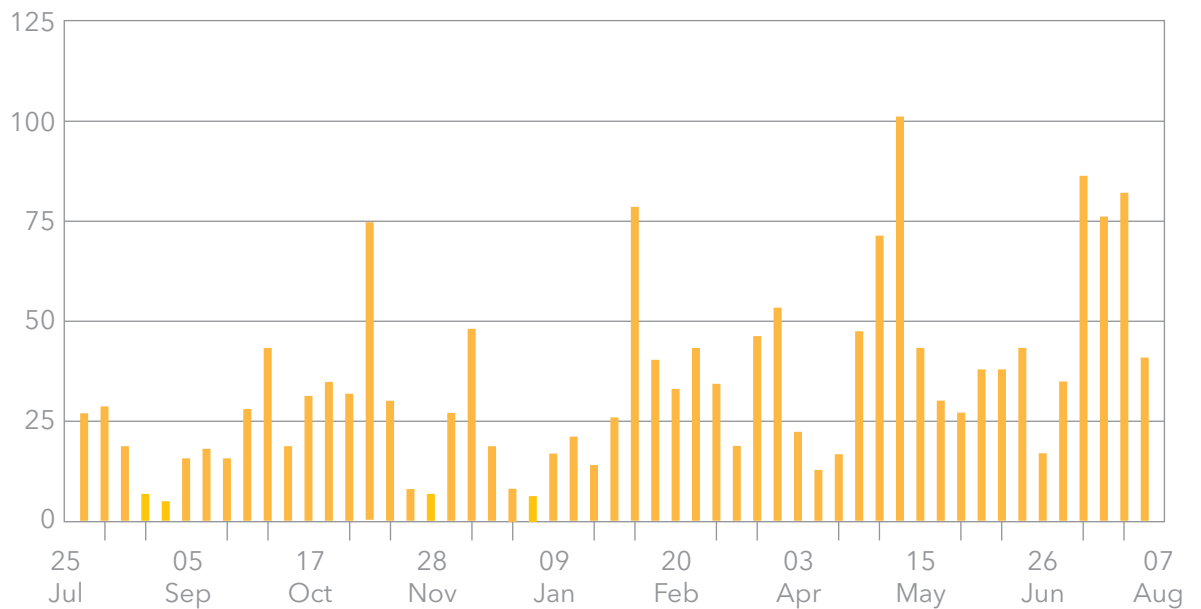
News Coverage of PBMS

The volume of news stories on PBMs has increased over the past year.

PBM Search Trends

01 Aug 2022–03 Aug 2023

Analysis by **FACTIVA**



■ PBMs

Publications only



Legislative & Regulatory Activity

In the last year, news coverage about PBMs in this area has centered primarily on the FTC investigation, Congressional hearings, and proposed legislation.

- **FTC puts PBMs on notice, withdraws previous health care antitrust policy statements** (BenefitsPro, July 2023)
 - “Consolidation and vertical integration and asymmetries” in the PBM market have led the FTC to change its position on state and other federal efforts to increase transparency.
 - Previously, the FTC’s position was these transparency efforts could harm competition in the market.
- **Bipartisan Congressional Support for PBM Reform Grows** (The Commonwealth Fund, June 2023)
 - Federal lawmakers are addressing high drug prices by focusing on PBMs through several legislative packages, aiming to increase transparency, ban spread pricing, ensure full rebate pass-through, reduce beneficiaries’ out-of-pocket costs, and delink PBM compensation from drug list prices.
 - The proposals have bipartisan support and are intended to promote competition, lower drug costs, and protect patients from potentially anticompetitive behavior.
 - Contains a chart outlining legislation introduced in Congress this session including bill status and features.
- **Pharmacy Benefit Manager Group Decries House Hearing Agenda** (Bloomberg Law, May 2023)
 - The Pharmaceutical Care Management Association criticized a House panel for not inviting their members to testify at a hearing on PBMs and prescription drug coverage management.
 - The industry argues that they work for the benefit of patients and highlights the lack of transparency in the drug supply chain as a challenge in addressing high drug prices.

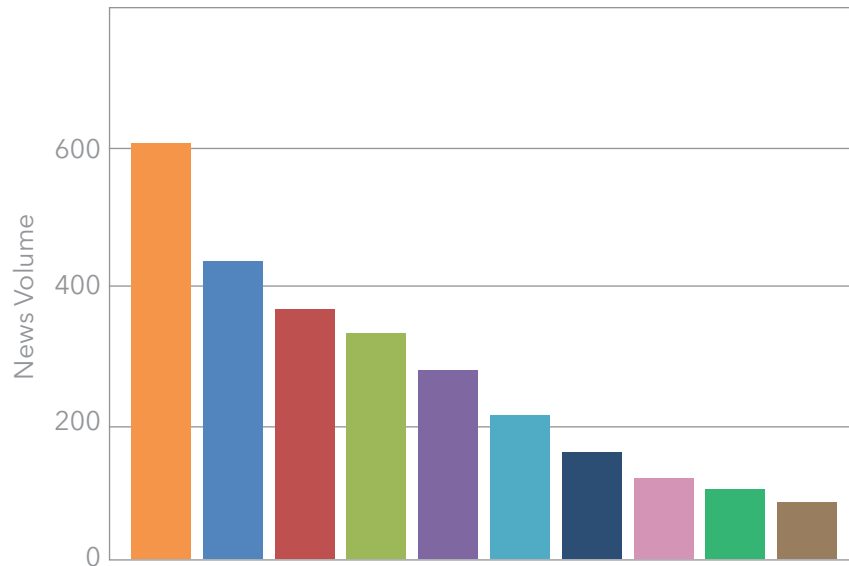
- **PBM Reform Legislation May Be One Step Closer to Reality, But It's Missing Two Key Components** (Forbes, May 2023)
 - The Senate Health, Education, Labor, and Pensions Committee advanced four bills related to PBM reforms, including the Pharmacy Benefit Manager Reform Act (S. 1339) that bans spread pricing and certain claw backs by PBMs, and requires rebates to be passed through to plan sponsors.
 - There's bipartisan support for increasing transparency and addressing unlawful PBM practices, but some key elements such as passing rebates through to patients and delinking PBM compensation from drug list prices were not included in the legislation.
- **Congress Investigates How Pharma Middlemen Affect Drug Prices** (Wall Street Journal, March 2023)
 - The House Oversight and Accountability Committee sent letters to CVS Health Corp.'s CVS Caremark, Cigna Group's Express Scripts and UnitedHealth Group Inc.'s OptumRx—the largest pharmacy benefit managers—seeking documents about the drug-price rebates they negotiate and fees they charge.
 - The committee sent requests to the Centers for Medicare and Medicaid Services and other federal agencies asking for their contracts with the PBMs.
 - The committee is interested in how PBMs affect drug costs overall and the prices patients pay at the pharmacy counter and in their health-insurance.
 - The committee aims to produce a report recommending potential legislation, the committee staffer said.
- **Pressure to Combat High Drug Prices Lands PBMs in the Hot Seat** (Mintz, Oct 2022)
 - Many states have introduced or enacted legislation aimed at PBMs in 2022.
 - The Pharmacy Benefit Manager Transparency Act of 2022 was introduced in the Senate in May.
 - The FTC launched an inquiry into large PBMs in June 2022.
 - Several states are investigating PBMs in relation to Medicaid managed care organizations. Centene has settled with at least 12 states.
- **PBM Regulatory Roundup: States Continue PBM Oversight Activities** (Mintz, Aug 2022)
 - At least 14 states introduced or enacted legislation on PBMs in the spring/summer of 2022.
 - Also has an overview of Louisiana's April 2022 complaint against UnitedHealthcare and OptumRX.

Most of the news volume relates to regulation/
government policy which includes coverage of
legislative activity.

PBM News Subjects

01 Aug 2022–03 Aug 2023

Analysis by **FACTIVA**



- Regulation/Government Policy
- Domestic Politics
- Corporate/Industrial News
- Political/General News
- Press Releases
- Securities Filings
- Earnings
- Quarterly Report Filings
- Equities Asset Class News
- Health

Publications only



Editorials

- [Midlands Voices: Pharmaceutical, insurance loopholes are hurting Nebraskans](#) (Omaha World-Herald, March 2023)
 - Patients suffering from chronic illnesses are being told they can no longer use coupons, vouchers or other copay assistance for their treatments, and have to pay massive healthcare bills.
 - Insurers and PBMs are using new loopholes by inserting new language into health plans known as copay accumulators, where copay assistance funds for certain drugs are not counted towards out-of-pocket maximums or deductibles.
 - Many insurers have chosen to characterize more modern life-saving treatments as non-essential with the intention of encouraging patients to choose a cheaper option, though 79% of branded medications with available copay assistance do not have a generic equivalent.
- [The PBM Transparency Act Will Not Lower Drug Prices](#) (Forbes, February 2023)
 - If passed, the act would serve to increase drug costs and worsen health outcomes for many people who take prescription drugs.
 - A summary of academic research that we published last year showed that efforts to limit the power of PBMs would increase drug costs by tens of billions of dollars every year, and research from the Congressional Budget Office and the Government Accountability Office has shown that hindering PBMs' negotiating power against big drug companies carry a high price tag for patients and taxpayers.
- [Who helps keep drug costs affordable? Pharmacy benefit managers](#) (The Hill, February 2023)
 - In a study on drug pricing competition, the nonpartisan Congressional Budget Office found that while drug companies have a vested interest in increasing costs, PBMs have a vested interest in restraining them. The CBO went on to describe PBMs as "an important intermediary that helps limit costs" by "putting downward

pressure on the prices of brand-name drugs, which would tend to reduce the returns from selling them.”

- [Bringing pharmacy costs into the light: Transparency is key to capping costs](#) (BenefitsPro, Sept 2022)
 - Argues for a “Transparent PBM” model that includes price transparency.
- [The Cantwell-Grassley PBM Bill is Much Needed But More Can Be Done](#) (Health Affairs Blog, July 2022)
 - The bill would require PBMs to pass along savings from rebates in order to use spread pricing. It also requires disclosures for cost/price/reimbursement data and that PBMs submit an annual report to the FTC.
 - The PBM systems in place now lack incentives to lower prices and reduce costs. There is also a lack of competition in the PBM market.
 - The authors suggest investigations into merger activity in this area to promote more competition, implementing value-based payment models, and greater transparency.
- [To be, or not to be...a fiduciary: That is the question for PBMs](#) (BenefitsPro, Feb 2022)
 - Fiduciary arrangements would prevent PBMs from engaging in opaque practices.

Litigation

There has been significant coverage of PBM-related litigation including suits brought by attorneys general in multiple states. Allegations include violations of deceptive trade practices laws, antitrust violations, collusion to raise prices, manipulation of Medicare star ratings of pharmacies, and nondisclosure of fraud.

- [Ohio AG sues ‘modern gangsters’ Cigna, Humana for alleged PBM price fixing](#) (Healthcare Dive, March 2023)
 - The suit claims companies violated Ohio antitrust law prohibitions against price fixing, controlled sales, and agreements retaining trade and hampering competition.
 - Ohio’s statutes are broader than federal antitrust laws.

- [\\$50 Million Prescription Drug Coverage Lawsuit Proceeds Against Stop-Loss Insurer and Pharmacy Benefits Manager](#) (Thomson Reuters, March 2023)
 - Two self-insured health plan participants diagnosed with a rare health condition incurred prescription drug expenses of over \$50 million, leading the employer plan sponsor to file this lawsuit against the plan's pharmacy benefits manager (PBM) and stop-loss insurer.
- [Centene agrees to \\$215M settlement for alleged Medicaid overbilling](#) (BenefitsPro, February 2023)
 - Investigators with the state Department of Justice found that Centene's subsidiaries reported inflated drug costs and fees in providing prescription drugs to patients in Medi-Cal, the state's Medicaid insurance program for people with low incomes and disabilities, from January 2017 to December 2018.
- [Attorney General Bonta Sues Nation's Largest Insulin Makers, Pharmacy Benefit Managers for Illegal Practices, Overcharging Patients](#) (State of California Department of Justice Office of the Attorney General, January 2023)
 - California Attorney General Rob Bonta announced a lawsuit against the nation's largest insulin makers and pharmacy benefit managers (PBMs) for driving up the cost of the lifesaving drug through unlawful, unfair, and deceptive business practices in violation of California's Unfair Competition
- [Oregon Announces \\$17 Million Settlement with Health Care Giant Centene](#) (Oregon Department of Justice Media, December 2022)
 - Attorney General Ellen Rosenblum and Insurance Commissioner Andrew Stolfi jointly announced a \$17 million settlement with managed health care giant Centene regarding pharmacy services and including allegations that the company overcharged Oregon's Medicaid program for pharmaceutical costs.
- [Pharmacy Benefits Manager To Pay \\$3.2 Million for Alleged Failure To Follow Pricing Procedures for Workers' Compensation Prescriptions](#) (Massachusetts Office of the Attorney General, November 2022)
 - The assurance of discontinuance, filed in Suffolk Superior Court, alleges that in some circumstances Express Scripts failed to apply various regulatory benchmarks - like the Federal Upper Limit for Medicare and the Massachusetts Maximum Allowable Cost - to its pricing determinations for certain workers' compensation insurance

prescription drug charges. According to the settlement, these failures allegedly occurred on various injured worker prescriptions filled in Springfield, Boston, and Worcester at Walgreens, CVS, and Rite Aid locations.

- [OptumRX repays Ohio \\$15 million after AG Dave Yost accuses it of overcharging](#) (Columbus Dispatch, Oct 2022)
 - Optum settled this suit. Was accused of overcharging on generic drugs for the state's bureau of work comp based on the terms of their contract.
- [AIDS Healthcare Foundation sues Express Scripts over Medicare 'clawbacks'](#) (Fierce Healthcare, July 2022)
 - "AFH alleges that the PBM manipulates Medicare star ratings to ensure participating pharmacies get unfairly low scores...which [they use to] claw back Medicare benefits from pharmacies to pad its bottom line".
- [PBM could be driving up plan sponsors' drug costs](#) (BenefitsPro, June 2022)
 - A suit against Express Scripts claims that they did not disclose fraudulent claims to the plan sponsor while earning money from spread pricing on those claims.
 - PBMs often attempt to limit the audit process by plan sponsors.
- [Express Scripts' 'refill pill mill' bilked government, suit alleges](#) (Modern Healthcare, June 2022)
 - A whistleblower alleged that Express Scripts over-enrolled Tricare patients in its auto refill and auto delivery programs.
 - The complaint alleges that Tricare overpaid by billions of dollars during a 9-year period.
 - [Summary with no paywall](#)
- [Former CVS exec accuses it of ripping off seniors, taxpayers](#) (Ohio Capital Journal, June 2022)
 - A whistleblower alleges that leadership at CVS health facilitated a scheme to collude between CVS subsidiaries to drive up drug prices for Medicare patients.
- [Centene to pay \\$13.7M to settle PBM allegations in New Mexico](#) (Fierce Healthcare, June 2022)
 - Overpayment allegations in Medicaid
 - Centene has set aside \$1.1 billion to address similar allegations in other states
 - New Mexico plans to investigate other PBMs operating in the state for similar issues.

- [State sues drug, pharmacy companies over insulin cost](#) (Arkansas Democrat Gazette, May 2022)
 - CVS Caremark, Express Scripts, and OptumRX are all named in the suit for violations of the AR Deceptive Trade Practices Act.

Mergers/Consolidations/Market Issues

Market concentration continues to be a topic of interest, with a majority of states having a highly concentrated market with only a few PBMs operating. Affordability and availability of prescriptions is also a common topic, including increasing use of copay cards and the rise of new pharmacy models like Cost Plus Drugs.

- [Kroger and Mark Cuban join forces to spread the availability of low cost prescription drugs](#) (Consumer Affairs, July 2023)
 - Cost Plus Drugs has contracted with 2,000 Kroger stores across the country.
 - The business model of a 15% markup plus a \$3 fee per script aims to compete with PBMs and other retail pharmacies.
 - Cost Plus also makes it standard practice to show manufacturing costs and the cost of drugs at other pharmacies.
- [Is prescription copay assistance contributing to rising drug prices? Why buyers should beware](#) (USA Today, Nov 2022)
 - PBMs oppose copay cards, saying they are “marketing tools used by drugmakers to get more people to use high-priced drugs” and remove “incentives to utilize a lower-cost preferred therapy”.
 - Copay assistance cards are often only good for a certain number of months.
 - Use of copay cards is growing as costs have shifted to patients and deductibles have risen. More than 80% of cancer patients use copay cards.
- [AMA report examines PBM and insurer market consolidation](#) (Healthcare Finance, Oct 2022)
 - The 10 largest PBMs had a collective share of 97%; the four largest PBMs had a collective share of roughly 66%; and six PBMs are used exclusively by one insurer or a set of Blue Cross Blue Shield affiliates.
 - More than three of four (about 78%) states had highly concentrated PBM markets. More than four of five (85%) of metropolitan areas had highly concentrated PBM markets.

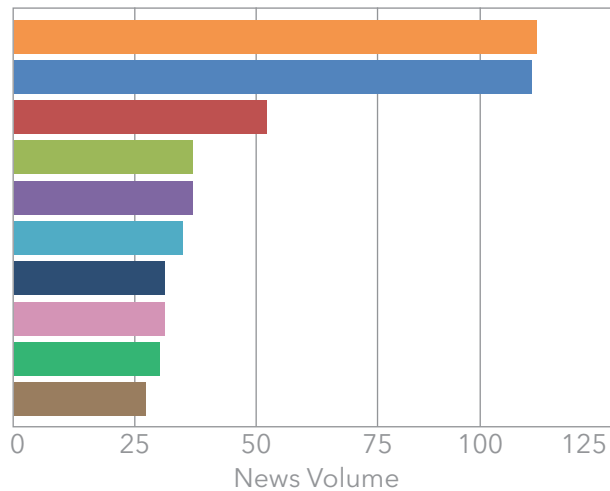
- [The Top Pharmacy Benefit Managers of 2021: The Big Get Even Bigger](#) (Drug Channels, April 2022)
 - In 2021 the three largest PBMs accounted for 80% of prescription claims.
 - The top 4 PBMs (representing 88% of market share) are all part of vertically integrated organizations which combine PBMs, insurers, specialty pharmacies, and providers.

Of the three largest PBMs (representing approx. 80% market share), only CVS is represented in the top companies mentioned in the news.

PBM News - Top Companies

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Analysis by **FACTIVA**



- CVS Health Corp
- Federal Trade Commission
- Centene Corp
- National Association of Chain Drug Stores
- U.S. Food and Drug Administration
- United States Senate
- Prime Therapeutics LLC
- Centers for Medicare and Medicaid Services
- National Community Pharmacists Association
- Idorsia Pharmaceuticals Limited

Publications only

Reporting on Research Studies

News coverage of PBM-related research has focused on formularies and supply chain issues. For additional information on PBM research, state insurance regulators can contact eecampbell@naic.org.

- [New study finds more than half of brand medicine spending goes to the supply chain and others](#) (PhRMA, January 2023)
 - Payers, including insurers, PBMs and government programs, received more than \$140 billion in spending on brand medicines. This spending reflects rebates, discounts and other payments from biopharmaceutical companies that lower the cost of medicines. However, savings in the system are often not shared with patients at the pharmacy counter.
- [New Report Finds Largest PBMs Restrict Access to More Than 1,150 Medicines](#) (PhRMA, May 2022)
 - A new report from Xcenda finds that pharmacy benefit managers (PBMs) are increasingly restricting patient access to prescription medicines. In 2022, 1,156 medicines were excluded from at least one of the three largest PBMs' standard commercial insurance formularies, a nearly 1,000% increase in the number of excluded medicines since 2014. Brand medicines without a generic or biosimilar alternative accounted for nearly half (47%) of total formulary exclusions, leaving patients with fewer treatment options.
- [Supply chain middlemen 'pocket half of US branded medicine spending'](#) (Pharmaphorum, Jan 2022)
 - In 2013 drugmakers received 67% of spending. By 2020 it was 49.5%. During the same period, total spending on medicines doubled.

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