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Center on Medicare and Medicaid Services

RE: Comments on (CMS-10855) Medicaid Managed Care and Supporting Regulations (Docket CMS-2025-0997)

Dear CMS Administrator Dr. Mehmet Oz,

Thank you for the opportunity to comment. PBMs contracted by Medicaid MCOs must have strict reporting requirements to ensure that states and the federal government are appropriately funding the Medicaid prescription drug benefit. As states face unprecedented budget strain due to the $1 trillion in healthcare cuts in the One Big Beautiful Bill Act, known as H.R.1, protecting the integrity of proper Medicaid payments is crucial for safeguarding state budgets against predatory corporate practices.

In the request for public comment, CMS states that the four reporting categories in § 438.3 will help states and MCOs evaluate drug spending in Medicaid managed care. These categories—reimbursements for CODs, payments for other outpatient services, dispensing or administering providers fees, and subcontractor administrative fees—need further definition to achieve this purpose, especially for states to identify inflationary PBM practices like spread pricing. States and MCOs cannot accurately identify PBM spread pricing practices without knowing the PBM's reimbursement to the pharmacy, the amount the PBM charged the MCO, and the amount of the manufacturer rebate retained by the PBM. CMS should clarify these reporting requirements, particularly "reimbursements for CODs," to accurately capture PBM rebates and additional revenue so that states can identify spread pricing.

I. PBMs in Medicaid Managed Care

States are increasingly contracting with PBMs to administer pharmacy benefits for Medicaid, with 33 states reporting such contracts in 2023. According to the Georgetown Center on Children and Families, around half of states that carve in pharmacy benefits in MCOs have PBM transparency reporting requirements. PBMs that charge Medicaid MCOs greater amounts than the actual payments to pharmacy for drug reimbursements and retain some of the difference participate in spread pricing. Spread pricing inflates the capitation payments that states pay to Medicaid MCOs, increasing the overall cost to states and the federal government so that PBMs can make additional profit.

II. CMS Action on Spread Pricing in Medicaid Managed Care

Federal law does not prohibit spread pricing in Medicaid managed care, and only a quarter of states have enacted legislation banning this practice. There has been greater attention to PBM spread pricing in recent years, including the 2019 CMCS Information Bulletin (CIB). The CIB requires that drug rebates must be deducted from pharmacy claims so that MCOs can properly report their Medical Loss Ratio (MLR). § 438.8(e)(2) cites that the numerator of the MLR must include information on incurred claims to the

MCO and rebates that are received and accrued must be deducted from said incurred claims. While the MLR rule explicitly requires information about rebates, § 438.3, which lists the aforementioned PBM reporting requirements, does not.

The § 438.3 (ii) reference to administrative costs and fees of the PBM does not include rebates. CMS has used this term to refer to PBM operating expenses, not revenue. Therefore, the four categories of reporting requirements for PBMs specified in § 438.3 do not include rebates, although the MLR rule requires knowledge of these rebates to be deducted from incurred claims. This is the regulatory gap in which PBMs can exploit loopholes and avoid transparency, and in which MCOs are held responsible for calculating MLRs based on rebate information they may not have. Under § 438.3, PBMs are only required to report amounts paid out, such as reimbursements and pharmacy payments. This does not adequately capture amounts received from rebates and other renumeration. As § 438.3 only requires reporting of PBM expenditures and not revenues, these subcontractors are not required to report the necessary information for MCOs and states to detect spread pricing.

III. CMS Should Clarify Reporting Requirements for "Reimbursements for CODs" to Ensure States Can Evaluate PBM Spread Pricing in Medicaid MCOs

A 2024 HHS Office of the Inspector General (OIG) report highlighted this issue and the necessity of accurate pharmacy reimbursement reporting. In their review, OIG cited that many of the managed care drug claims did not match the reported pharmacy reimbursement, suggesting the presence of undetected PBM spread pricing. OIG acknowledged that current reporting does not accurately reflect PBM rebates and inflationary practices, which undermines states' ability to evaluate Medicaid drug spending, develop MCO capitation rates, and combat Medicaid fraud and abuse.

For states to properly evaluate drug spending, CMS should clarify the four reporting categories. "Reimbursements for CODs" should include detailed information such as the actual amount reimbursed to the pharmacy and a breakdown of rebate components: the manufacturer rebate provided to the PBM, amount of the rebate passed through to the MCO, amount of the rebate retained by the PBM, and any other manufacturer payments to the PBM tied to formulary placement and utilization including revenues characterized as fees and bonuses. CMS must also explicitly require PBMs to report the amount charged to the MCO, which is an essential data point for states to determine the occurrence of spread pricing.

IV. Conclusion

Specific definitions for reporting requirements are important for MCOs and states to monitor PBM spread pricing. This issue is significant for calculating accurate MLRs, setting capitation rates to MCOs, and protecting the integrity of Medicaid spending by states and the federal government. Safeguarding the integrity of Medicaid dollars from corporate interests is of particular importance as H.R. 1 places significant strain on state budgets. State Medicaid programs are now facing historic restrictions in financing mechanisms, shifting burden of costs, and enormous budget items to implement work requirements and 6-month eligibility redeterminations. CMS must take action to specify these reporting requirements so that states can protect Medicaid funds and hold PBMs accountable for spread pricing.

Sincerely,

Becky Woolf