Department of Medicaid

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Dear CEOs:

As you know, pharmaceutical manufacturers go to extreme lengths to keep drug prices secret from the public. This secrecy is passed down through the value chain, creating mistrust among payers, insurers, benefit managers, pharmacists and patients. All are forced to speculate whether the price they pay for drugs is fair. Recently, this mistrust has been exacerbated by patients paying more out of pocket for drugs and payers insisting on aggressive cost control measures that squeeze operating margins throughout the supply chain.

The Ohio Pharmacists Association (OPA) has alleged that pharmacy benefit managers (PBMs) working for managed care plans (MCPs) used by Medicaid take advantage of the lack of transparency in manufacturer drug prices to engage in anti-competitive behavior that harms pharmacies. This allegation is not new, nor is it unique to the public sector, but for some time has also regularly been made against PBMs role in the commercial market.

This letter outlines the actions Ohio Medicaid is taking to respond to these concerns, including exercising its authority under ORC 5162.10 to conduct investigative reviews, and to accelerate these activities to provide greater transparency into drug pricing behavior as soon as possible. Our goal is to continue to protect consumers within a marketplace that is fair to Medicaid providers and ensure that Ohio Medicaid is optimizing opportunities for potential savings on behalf of Ohio taxpayers.

Background

Over the past seven years, Ohio Medicaid implemented an unprecedented package of reforms to improve health outcomes and hold down costs. Working with your plans, we improved care

coordination, linked reimbursement to performance, extended coverage to 700,000 more low income Ohioans, covered more than 89 percent of Medicaid enrollees through private sector plans, and increased behavioral health system capacity by $1 billion over five years. We achieved these results while ***holding per member spending growth below two percent annually*** and saving Ohio taxpayers more than $1.5 billion four fiscal years in a row (2014-2017).

We also took specific actions to control drug prices, the most significant of which was to include pharmacy benefits within the benefit package your MCP administers. This decision saves Ohio taxpayers at least $130 million annually because of greater administrative efficiencies and revenue generated from MCP taxes (said in reverse, "carving out" the pharmacy benefit would *increase* taxpayer spending on Medicaid at least $130 million annually). Ohio Medicaid contracts with your plan to manage the pharmacy benefit and each MCP in turn contracts with a PBM for pharmacy benefit program administration. Currently United contracts with OptumRx and the other four MCPs use CVS Caremark.

Concerns

OPA has been hearing from its members about erratic generic drug reimbursements from Ohio Medicaid health plan PBMs. Pharmacists have reported significant drops in gross margins on medications dispensed to Medicaid MCP enrollees. In some cases, PBM reimbursements are below the pharmacy's cost to acquire the drugs. This could be the result of constructive market forces that are pushing pharmacies to be more efficient or, as OPA claims, it could be the result of PBMs using the lack of transparency related to manufacturer prices to engage in anti-competitive behavior. Specifically, OPA alleges that PBMs reimburse pharmacies less than they charge the MCPs and pocket the difference. Further, OPA alleges that underpaying pharmacies is part of an intentional strategy by CVS Caremark to purchase those pharmacies.

Next Steps

Ohio Medicaid has been working with interested parties and legislators to address questions about PBM business practices since the fall of 2017. As part of those conversations, we are working to identify new approaches that allow pharmacists to bill for additional services, increase access to specific pharmacy-provided services like Medication Therapy Management, and improve member access to specialty pharmacy services.

We also implemented a new maximum allowable cost (MAC) pricing model in January 2018 that sets a maximum amount MCPs will pay for brand name drugs that have generic versions available. While the new model provides greater transparency into the price the state pays through your plans to the PBM, it does not provide transparency into the reimbursement provided to pharmacies by the PBM.

As you know, on April 1, 2018, Ohio Medicaid added language to your Medicaid Managed Care Provider Agreement that requires enhanced pharmacy data reporting and oversight beginning July 1, 2018, including transparency into the price list your PBM uses to reimburse pharmacies. The new language includes the following requirements:

- Upon request, the MCP must disclose to Ohio Medicaid all financial terms and agreements for payment of any kind that apply between the MCP and downstream entities, including PBMs. Ohio Medicaid acknowledges that such information may be considered confidential and proprietary and thus shall be held strictly confidential by Ohio Medicaid as specified in Article VII of the provider agreement.

- Effective July 1, 2018, for sub-contracted payment arrangements in which a vendor directly pays particular claims (e.g., a PBM pays claims to a pharmacist on behalf of the MCP), the MCP must submit encounters that include the amounts paid by the vendor to the provider at the claim level.

- In accordance with ORC 3959.111, a PBM must disclose to the MCP and/or Ohio Medicaid whether or not the PBM uses the same MAC list when billing an MCP as it does when reimbursing a pharmacy. If a PBM uses multiple MAC lists, the PBM must disclose to the MCP and/or Ohio Medicaid any difference between the amount paid to a pharmacy and the amount charged to the MCP.

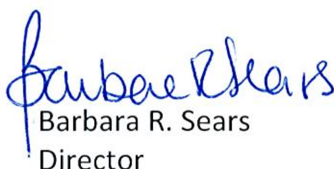
- The MCP must publish on its website the requirements and process for submitting an appeal related to MAC pricing for pharmacy providers. Prior to implementation, the MCP must submit its MAC appeal auditing process to Ohio Medicaid for approval to ensure a reasonable process is established for pharmacy providers.

Also, the Ohio Department of Insurance recently published a bulletin (attached) that clarifies what would constitute prohibited practices related to pharmacy benefits, including gag orders to prevent any entity from sharing information about less expensive ways to purchase prescription drugs, and cost-sharing requirements that exceed the amount an individual would pay for the same drug if it was purchased without coverage under a health benefit plan. These prohibitions are effective now and apply to all health insurance companies and PBMs.

Our goal in taking these actions is to ensure Ohio taxpayers continue to receive the best possible price for prescription drugs and Medicaid enrollees have access to pharmacy services, and to provide the information that is necessary to understand if any participant in the value chain is harmed by or engaged in anti-competitive behavior. Beginning July 2018, we will have better information to assess the OPA allegations and, if those allegations are backed by evidence, establish a corrective action plan for any violator and impose fiscal and/or administrative sanctions under the authority of ORC 5162.10.

Working together, I am confident we will resolve any issues that emerge from this process in a way that protects consumers, preserves Medicaid program integrity, and encourages innovation among providers within a fair and competitive marketplace.

Sincerely,



Barbara R. Sears
Director