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HOUSE FINANCE & FACILITIES SUBCOMMITTEE HEARING ON CONTROVERSIAL FLORIDA MEDICAID PBM STUDY LEAVES LAWMAKERS WITH DOUBTS, QUESTIONS ABOUT VALIDITY OF CURRENT PBM MANAGED CARE SYSTEM

AHCA Dodges Bipartisan House Subcommittee Questions About the PBM Practices that Have Cost Florida Taxpayers an Extra $200 Million on Medicaid-Covered Prescriptions

TALLAHASSEE, FL (February 19, 2021) - Florida Small Business Pharmacies Aligned for Reform (SPAR) applauds the House Finance and Facilities Subcommittee members for their review and deeply concerned questions this week regarding pharmacy benefit manager (PBM) practices that may have resulted in Florida taxpayers overspending on Medicaid prescriptions by as much as $200 million per year. The committee heard testimony from state Agency for Health Care Administration (AHCA) Deputy Director Beth Kidder and John Meerschaert, an actuary with Milliman, the Seattle-based management consulting firm that conducted a Medicaid PBM pricing study on behalf of AHCA.

The Milliman Report hearing took place approximately 3 months after the report's release last December. The report's findings pointed to several troubling trends in Florida Medicaid's use of a capitated "managed care" model to cover Medicaid prescription drug benefits. Critics of the managed care model have cited several studies conducted in other states that showed PBMs engaged in overcharging states through "spread pricing" (charging the plan more than the amount reimbursed to pharmacies for dispensing the medication and pocketing the difference).

SPAR, a local outspoken critic of the current model, is working with Rep. Randy Fine (R-Melbourne) and Sen. Ana Maria Rodriguez (R-Doral) on recently-introduced legislation that would "carve out" pharmacy benefits from Medicaid managed care, and Rep. Jackie Toledo (R-Tampa) on legislation that would eliminate the practice of PBMs charging pharmacies additional exorbitant fees to participate in the required PBM pharmacy network. Rep. Fine introduced HB 1043 last week, and Rep. Toledo's bill is expected to be introduced in the next several days.

Of the 18-member bipartisan committee, 13 members asked questions on topics of great concern to Florida patients and taxpayers, including instances of price gouging by PBMs on regular and specialty medications; excluding pharmacies from networks, and engaging in patient steering.

Committee Vice Chair Rep. Michael Caruso (R) opened the question-and-answer period with a summary of PBM CVS Caremark's disproportionate position, saying "Looking at the numbers, if they're getting 50% of the prescriptions but only have 25% of pharmacies, somehow prescriptions are being steered toward their pharmacies. Isn't that to the detriment of their competitors, the other pharmacies?"

Vice Chair Caruso further pressed on the matter of specialty prescriptions, noting the additional nearly $1800 per specialty prescription CVS Caremark paid itself over other pharmacies amounted to a "50% bonus" for CVS pharmacies.

Ms. Kidder responded by stating Medicaid recipients have a choice of pharmacy and under AHCA steering is not allowed.

Rep. Christopher Benjamin (D-Miami Gardens) then described his personal experience of being directed away from the Walgreens that filled his prescription to CVS, telling Ms. Kidder, "I would have preferred to stay with Walgreens but I was steered to CVS after 90 days. You keep saying we have a choice, but I didn't have a choice."

As committee members continued to ask detailed questions, evidence painting an undeniable picture of PBM antitrust activity emerged, leading committee members to delve further into topics that have plagued Florida pharmacies for years and lie in stark contrast to the PBM promises of patient choice, provider equity and cost containment. Committee members asked about vertical integration of insurance companies, PBMs and pharmacies through recent high-profile mergers; stifled competition; and shell-game tactics that result in hundreds of thousands of dollars in PBM "clawbacks". Ms. Kidder and Mr. Meerschaert cited limitations of the study's scope as the reason they couldn't answer committee members' questions.

In her opening presentation, Ms. Kidder said Florida Medicaid covers 4.5 million of the state's "most vulnerable" population, 48% of children, 56% of births and 63% of nursing homes, with some 78% of all Medicaid recipients receiving their services through the Medicaid managed care delivery system since 2013.

Ms. Kidder stated patients whose prescriptions are delivered through managed care and "fee for service" (a model in which pharmacies are paid a fee for dispensing plus the cost of the drug) see no difference in level of service or care, and that all plans are required to follow the state's single "Preferred Drug List" and adhere to AHCA's service standards. She later explained AHCA sets the Preferred Drug List with the assistance of an advisory committee and negotiates drug rebates with the assistance of separate contractors; but also admitted that AHCA had not conducted audits of PBMs to ensure compliance with the agency's regulations.

Following up on Ms. Kidder's testimony, Rep. Mike Beltran (R-Valrico) asked, "Those are 2 functions traditionally provided to health plans by PBMs in the private market. To the extent that AHCA is at least providing some of the services that PBMs provide to private health plans, what services are PBMs providing that are useful? What are the duties that are useful to the health plans, taxpayer, AHCA or the patient?"

Rep. Beltran further pressed the question of rebates, asking if someone was doing something to ensure the State was getting the full amount of the rebates that are negotiated ostensibly for taxpayer savings. When asked by Committee Chair Clay Yarbrough (R-Jacksonville), Ms. Kidder could not specifically state where the state's negotiated drug rebate dollars were kept but guessed that they were held in a trust account.

Speaking from his experience in the independent retail grocery business, Rep. Jim Mooney (R-Miami) asked, "Does CVS Caremark do the same clawbacks on themselves? And if they don't, who's watching the 'chicken coop'? Is anyone in the State of Florida checking on clawbacks and making sure they're done ethically?" going on to explain how small independent businesses are unable to fight back against the 5-figure clawbacks large corporations like PBMs foist upon them. He finished his statement, saying "The State needs to address this. A middleman making more money than the end user is wrong, and the bottom line is it's coming out of our citizens' pockets."

Ms. Kidder again deferred, saying PBMs are registered with the Office of Insurance Regulation (OIR) but she wasn't sure the extent of OIR's regulatory oversight of PBMs. It is worth noting the State's PBM registration fee for these multi-billion dollar corporations is only $5.

"We're extremely pleased and satisfied at the outcome of the hearing today," said SPAR co-founder and independent pharmacy owner Kevin Duane. "It was encouraging to see committee members ask detailed questions, even in the face of bureaucratic answers that often dodged the issue all together."

For more information about SPAR, please visit SPARFLcom.

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