

The Lessons of the Medco Settlement and Implications for PBM Regulation, Roles and Operations

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Views and Concerns of the Pharmaceutical Benefits Manager

Carolyn J. McElroy, Esq.

Mintz Levin

701 Pennsylvania Ave, N.W.

Washington, D.C. 20004

202-434-7408

CJMcElroy@mintz.com



Changes to Industry Practices in Several Key areas

- ▶ *Transparency, restrictions, protocols and responsibilities in connection with drug product interchange programs*
- ▶ *Transparency and reporting requirements to plans in connection with payments from manufacturers*
- ▶ *Flexibility and clarity in contract pricing terms*



Drug Interchange Programs

- ▶ *Prohibitions on switching*
- ▶ *Transparency on cost issues for switches*
- ▶ *Onerous notice, verification, other record keeping requirements and reimbursement for out of pocket additional costs (foreseeable and otherwise?)*



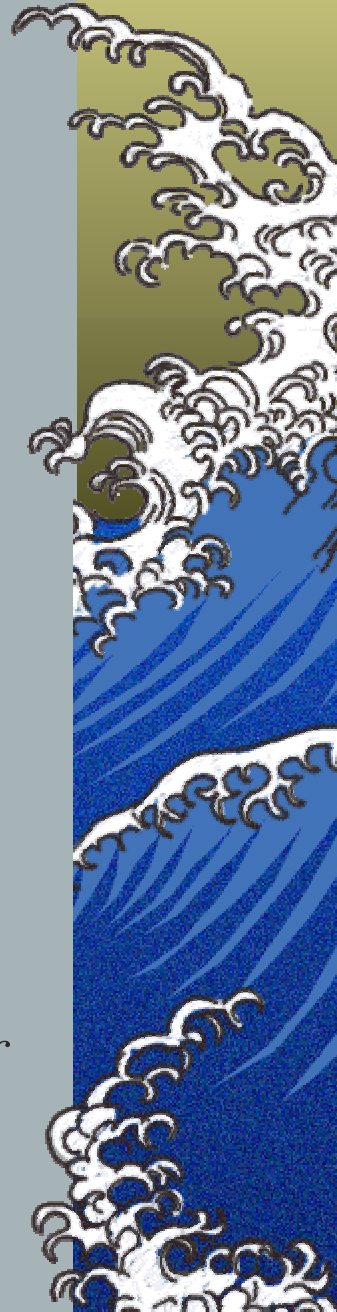
Concerns; Consequences

- ▶ *Overly detailed, long-term requirements and potential liabilities make these programs exceedingly costly/risky for the PBMs*
- ▶ *Baby with the Bathwater Issues – the potential to chill efforts to encourage leaner, cost-effective formularies under Medicare Part D?*



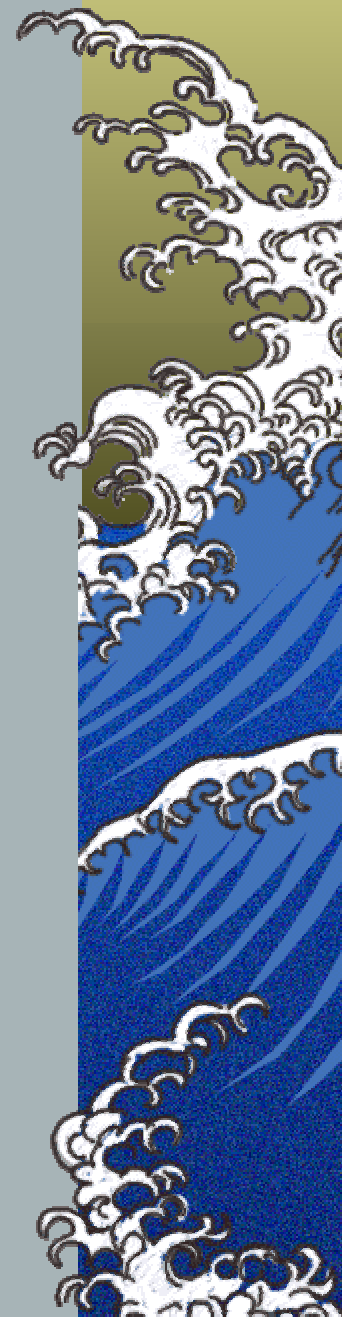
Reporting Requirements to Plans

- ▶ *Must disclose that Medco may retain some payments for self, where applicable*
- ▶ *Disclose to all clients that have contracted to receive mfgr payments:*
 - ▶ *Net Revenue from total operations (revenue recognized at amounts received from client plans)*
 - ▶ *Drug expenditures for each client plan (disclosed only to affected client plan)*
 - ▶ *Dollar amounts of all Mfgr payments, with percentage of formulary payments and percentage of additional payments disclosed for ALL client plans*



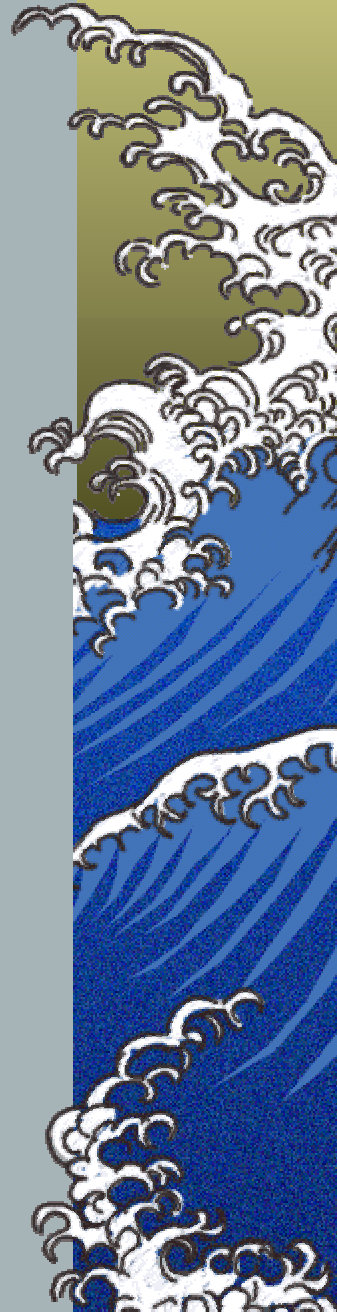
Definition is Broad

- ▶ *Formulary payments include placement fees and base rebates*
- ▶ *Everything else is “additional payment”*
- ▶ *All compensation or remuneration will fit into one or the other of these categories*
- ▶ *Does not distinguish between service-based FMV payments (claims processing, e.g.) and those that are related to drug sales*



Concerns; Consequences

- ▶ *Reporting detail will be costly to produce – will this be Medco's burden to bear alone, or become expectation for gov't contracts?*
- ▶ *Detail is NOT necessary for sophisticated purchasers who look at bottom line –and PBMs have highly sophisticated purchasers*
- ▶ *Transparency will potentially flatten competition in the market just at the time Medicare is counting on the competition to drive lower prices*
- ▶ *Revenue dollars not being associated with related costs may be more misleading than illuminating*



Contract Linkage with AWP

- ▶ *Medco is not permitted to refuse bids or proposals because they do not link pricing to AWP and must communicate to each plan that alternate pricing methods are available*
- ▶ *Relative pricing indicators must have specified ranges*



Concerns; Observations

- ✦ *Falls far short of the detailed transparency that was called for in Maine; contemplated by Cantwell Amendments*
- ✦ *Suggests, perhaps wrongly, that plans lacked the ability to negotiate effectively within or without AWP pricing*
- ✦ *Retains ability of plans to negotiate for Black Box arrangements that involve negotiated prices and do not promise pass through rebates*

