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# PHARMACY BENEFIT CONSULTANTS

## Examining the Role of Consultants in Pharmacy Benefit Management

This informational tool aims to educate employers about pharmacy benefit consultants and their role in the contracting process between Pharmacy Benefit Managers (PBMs). The tool includes a summary of available literature addressing the role of consultants as well as general guidelines that may assist employers in selecting a pharmacy benefit consultant.



# I. PHARMACY BENEFIT CONSULTANTS & THEIR ROLE

Pharmacy benefit consultants specialize in providing employers (referred to as “plan sponsors”) a variety of services concerning their prescription drug plans such as formulary design, claims evaluation or auditing, and contract negotiation.<sup>1</sup> Referred to as providing “intellectual capital” by one pharmacy benefit consultant,<sup>2</sup> pharmacy benefit consultants advertise to reduce the costs of prescriptions plans for their clients.<sup>3</sup> In particular, pharmacy benefit consultants advertise to provide assistance and counsel in the selection of a PBM or the RFP process to obtain the most favorable contracts and best pricing for their clients.<sup>4</sup>

Whether or not pharmacy benefit consultants are effective in reducing prescription plan costs for their clients during the contract process is unclear.<sup>5</sup> While there are currently no published studies on the efficacy of pharmacy benefit consultants and reducing prescription plan costs for plan sponsors, commentators have provided both criticism and praise for this industry. In a Wall Street Journal (WSJ) article, one commentator criticizes pharmacy benefit consultants for receiving financial remuneration from PBMs and thus, creating a conflict against working in the best interest of a plan sponsor.<sup>6</sup> The same commentator, in another WSJ article, describes payment models for consulting services through a prescription plan itself. For example, one payment model referred to as a “per-prescription method” has the PBM paying a consultant for each prescription filled under the prescription plan of a plan sponsor.<sup>7</sup> Implicit in the article is whether the pharmacy benefit consultant, with a financial interest in the contract between the PBM and plan sponsor, can act within the plan sponsor’s best interest.<sup>8</sup>

Another commentator, who worked as a pharmacy benefit consultant, asserts that “not all consulting firms accept fees from PBMs” and receive a negotiated fee or commission regardless of which PBM the plan sponsor chooses.<sup>9</sup> Moreover, he asserts that pharmacy benefit consultants are subject matter experts able to share their expertise in the area of PBM revenue models, particularly with drug pricing.<sup>10</sup> Other commentators and previous pharmacy benefit consultants, acknowledge that pharmacy benefit consultants are knowledgeable and experienced; however, they contend that the lack of transparency in PBM business practices often makes it difficult to discern areas for cost savings.<sup>11</sup> Moreover, the commentators point to the fact that many consultants do not monitor prescription pricing after a plan sponsor selects a PBM and thus, cannot determine whether there are costs savings to the plan sponsor.<sup>12</sup>

Regardless of the debate of a consultant’s efficacy, plan sponsors often use pharmacy benefit consultants to assist them with selecting a PBM.<sup>13</sup> And while there are limited resources or guidelines for plan sponsors to use when choosing a pharmacy benefit consultant, there are several topics that plan sponsors can ask about to ensure that they choose a pharmacy benefit consultant that will work in their best interest. Some of these topics are derived from general agency law.<sup>14</sup> Agency law refers to the area of law when one party (agent) acts on the behalf of another party (principal).<sup>15</sup>

## II. POTENTIAL AREAS FOR QUESTIONS

### A. CONSULTANT’S PREVIOUS EXPERIENCE<sup>16</sup>

Before selecting a pharmacy benefit consultant, plan sponsors can review the consulting firm’s previous experience.<sup>17</sup> During the selection process, plan sponsors can request from pharmacy benefit consultants a list of PBMs with whom the consulting firm has negotiated contracts.<sup>18</sup> This information can assist the plan sponsor in determining the range of PBMs that the consulting firm has worked with. If the pharmacy benefit consultant has done most of its business with just one or two PBMs, plan sponsors can ask if the firm comprehensively considers a wider range of PBMs.<sup>19</sup> Plan sponsors can also inquire about the reasons why a consultant selected certain PBMs including any information regarding specific contract terms. Plan sponsors may also request information on the number and size of employers the consultant has worked with in the past, including whether any of the employers are similar in size and needs.

### B. CONSULTANT’S LEVEL OF EXPERTISE

Plan sponsors can ask potential consultants firms how they solicit PBMs and how they are involved in the contracting process.<sup>20</sup> Questions can include whether consultants review PBM contracts prior to selecting a PBM and whether consultants provide the PBM with contract language or negotiate a contract based on the PBM’s contract.<sup>21</sup> Plan sponsors may also wish to ask consultants if a legal review is part of its services.<sup>22</sup> This information can help plan sponsors determine the

consulting firm's process for considering and recommending a PBM. Plan sponsors may also consider discussing other types of services that a consultant can offer to decrease costs or otherwise enhance a PBM contract. Plan sponsors may want to request specific past examples of how the consultant provided costs savings.

## **C. FINANCIAL INTERESTS**

The available existing literature on pharmacy benefit consultants discusses the potential conflict that consultants may have with plan sponsors if they receive financial remuneration from a PBM.<sup>23</sup> In order to avoid potential conflicts, plan sponsors can ask whether the consultant receives or has received any fees, bonuses, or other financial incentives from PBMs including nonmonetary compensation, such as sponsorship of conferences, vacations, or gifts.<sup>24</sup> If the consultant does receive fees from PBMs, plan sponsors can inquire whether the fee is commission-based, and whether the same fee applies regardless of which PBM it chooses for contract.<sup>25</sup> This can help the plan sponsor determine whether revenue received from PBMs might serve as a competing financial incentive or if the revenue is simply part of the consulting firm's business structure. If the consultant receives remuneration from PBMs, plan sponsors can consider requiring the consultant to disclose the amount. Additionally, plan sponsors can consider asking consultants to disclose any potential competing financial interests including business agreements with PBMs prior to its selection and throughout any consultancy agreement.<sup>26</sup>

## **D. ADDITIONAL EXPECTATIONS**

In addition to measures specific to pharmacy benefit consultants, plan sponsors may consider expressing specific expectations to potential consultants. For instance, plan sponsors may consider contracting for consultants to adhere to higher duties as agents.<sup>27</sup> These duties include the duty to act in good faith, the duty of candor the duty to inform and notify of new information, the duty to protect confidential information, and the duty to act in the best interests of the plan sponsor.<sup>28</sup> Plan sponsors may also consider requesting an oversight mechanism such as auditing to ensure that the consultant is meeting additional expectations.<sup>29</sup>

# **CONCLUSION**

Pharmacy benefit consultants can play an effective role for plan sponsors in selecting a PBM for prescription plan services. The plan sponsor, however, can manage the extent and effectiveness of a consultant's role in the PBM selection process by ensuring it requests and reviews pertinent information related to a consultant's experience and expertise. Additionally, knowing whether a consultant has financial interests or connections with PBMs can assist a plan sponsor in making the appropriate determination. Lastly, a plan sponsor can clearly outline and communicate its expectations for a consultant's role to ensure both parties have agreed upon objectives and expectations for their relationship. While not inclusive, the above areas are a few topics that a plan sponsor can discuss with any potential pharmacy benefit consultant to ensure the plan sponsor selects the PBM with the best services and pricing for its needs.

# ENDNOTES

- 1 See Excelsior Solutions, <http://www.excelsiorsolutions.com/pharmaceutical-consulting-services/pbm-consulting>; Wilkinson Benefit Consultants, <http://www.wbcbaltimore.com/>; Pharmacy Benefit Consultants, <http://pharmacybenefitconsultants.com/>; The Burchfield Group, <http://www.burchfieldgroup.com/>; Milliman, <http://www.milliman.com/expertise/healthcare/services/pharmacy-benefits-consulting/> (all last visited May 7, 2013).
- 2 ArmsRx Pharmacy Benefit Consultants, Consulting, <http://www.armsrx.com/index.html#> (last visited May 7, 2013).
- 3 See *supra* note 1.
- 4 Milliman, <http://www.milliman.com/expertise/healthcare/services/pharmacy-benefits-consulting/> (last visited May 7, 2013). See also Pharmacy Benefit Consultants, PBM Contract Analysis and Negotiation, <http://pharmacybenefitconsultants.com/offerings/pbm-contract-analysis-negotiation/>; ArmsRx, PBM Contract Evaluation, <http://www.armsrx.com/contractreview.htm:Wilkinson> Benefit Consultants, PBM Contract Review, <http://www.wbcbaltimore.com/contractreview.html>; The Burchfield Group, Solutions, <http://www.burchfieldgroup.com/solutions/>; Medtipster, PBM Consulting, <http://www.medtipster.com/pbm.php> (all last visited May 7, 2013).
- 5 See Christy A. Rentmeester and Robert Garis, *Rebates and Spreads: Pharmacy Benefit Management Practices and Corporate Citizenship*, 33 J. Health Pol. Pol'y & L. 943, 951 (Oct. 2008) [hereinafter Rentmeester & Garis, *Rebates and Spreads*].
- 6 Barbara Martinez, *Health-Care Consultants Reap Fees From Those They Evaluate*, Wall St.J., Sept. 18, 2006, <http://online.wsj.com/article/SB115853857241665847.html> [hereinafter Martinez, *Health-Care Consultants*]. See also Rentmeester & Garis, *Rebates and Spreads*, *supra* note 5, at 951 (referring to the same Wall Street Journal article).
- 7 Barbara Martinez, *When Employers Get Drug Advice, Price Can Be Steep*, Wall St.J., Sept. 18, 2006 [hereinafter Martinez, *Employers Get Drug Advice*].
- 8 *Id.*
- 9 John Malley, *Commentary – Response to Rentmeester and Garis*, 33 J. Health Pol. Pol'y & L., 965, 969-70 (Oct. 2008).
- 10 *Id.*
- 11 Christy A. Rentmeester and Robert Garis, *Commentary – Response to Malley*, 33 J. Health Pol. Pol'y & L., 975, 976-978 (Oct. 2008).
- 12 See Rentmeester & Garis, *Rebates and Spreads*, *supra* note 5, at 951.
- 13 See Martinez, *Health-Care Consultants*, *supra* note 6. See also Rentmeester & Garis, *Rebates and Spreads*, *supra* note 5, at 951.
- 14 See Charles R. T. O'Kelley, M. E. Kilpatrick, & Robert B. Thompson, *Corporations & Other Business Associations: Cases & Materials* 6e (Wolters Kluwer 2010).
- 15 Black's Law Dictionary 17c (9th ed. 2009).
- 16 David Calabrese, *Comparing Pharmacy Benefit Managers: Moving Well Beyond the Simple Spreadsheet Analysis*, Am. Health & Drug Benefits 9, 17 (Jun. 2008).
- 17 *Id.*
- 18 *Id.*
- 19 See, e.g., Martinez, *Health-Care Consultants*, *supra* note 6 (noting cases where consultants were accused of selecting the same insurer every year due to financial incentives).
- 20 *Id.*
- 21 See, e.g., Pharmacy Benefit Consultants, PBM Contract Analysis and Negotiation, <http://pharmacybenefitconsultants.com/offerings/pbm-contract-analysis-negotiation/> (last visited may 7, 2013).
- 22 *Id.*
- 23 See Rentmeester & Garis, *Rebates and Spreads*, *supra* note 5, at 951 (referring to the Barbara Martinez article); Martinez, *Health-Care Consultants*, *supra* note 6; Malley, *supra* note 9, at 969.
- 24 See, e.g., Martinez, *Health-Care Consultants*, *supra* note 6 (noting consultants often receive gifts from the plan sponsor's selected insurer and prescription-drug coverage, including bonuses, commissions, consulting fees, and even steaks).
- 25 See Malley, *supra* note 9, at 969.
- 26 See, e.g., Martinez, *Health-Care Consultants*, *supra* note 6 (noting a PBM consulting firm that also did consulting work for PBMs themselves).
- 27 See O'Kelley, Kilpatrick, & Thompson, *supra* note 4 (Wolters Kluwer 2010).
- 28 *Id.*
- 29 See Calabrese, *supra* note 16, at 17.



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