



**Testimony of Mark Merritt**

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**Before the**

**UNITED STATES SENATE  
COMMITTEE ON FINANCE**

***Implementing the Medicare Prescription Drug Benefit and Medicare Advantage Program:  
Perspectives on the Proposed Rules***

**September 14, 2004**

## Introduction

Good morning Chairman Grassley, Ranking Member Senator Baucus, and Members of the Committee. I am Mark Merritt, President and Chief Executive Officer of the Pharmaceutical Care Management Association (PCMA). I am pleased to be here today to discuss the proposed rules for implementation of the new Medicare prescription drug benefit.

As background, PCMA is the national association representing America's pharmacy benefit managers (PBMs). PCMA represents both independent, stand-alone PBMs and health plans' PBM subsidiaries. With as many as 60 PBMs operating nationally and regionally under a variety of business models,<sup>1</sup> PBMs offer public and private purchasers a wide variety of choices to meet the needs of their plan members. Together, PCMA member companies administer prescription drug plans that provide access to safe, effective, and affordable prescription drugs for more than 200 million Americans in private and public health care programs, including an estimated 65 percent of Medicare beneficiaries who have prescription drug benefits through employer and union-sponsored retiree health plans.<sup>2</sup> Because of the variations among PBMs, it is important that the rules governing Medicare prescription drug plans remain as flexible as possible to encourage the maximum amount of participation of PBMs and offer the widest range of choices to beneficiaries.

## Protecting PBMs' Proven Tools & Techniques

PCMA believes strongly that preserving and protecting the cost containment and quality improvement features of the Medicare Modernization Act should be job one as the Administration receives input into the new rules governing the new drug benefit. Ensuring that PBMs are able to participate effectively in Medicare will mean more cost savings for the program and, therefore, more resources available to assure beneficiaries – including those individuals managing complex conditions – access to the prescription drugs they need.

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<sup>1</sup> Federal Trade Commission & Department of Justice, "Improving Health Care: A Dose of Competition," Chapter 7, page 14, July 2004.

<sup>2</sup> Centers for Medicare & Medicaid Services, "Study of Pharmaceutical Benefit Management," Conducted by PricewaterhouseCoopers, June 2001.

In the commercial marketplace, PBMs have relied upon a broad range of tools and techniques to expand access, promote quality, improve outcomes, and drive down the cost of prescription drugs. PBMs typically offer purchasers a set of core services from which they can choose that include claims administration; clinically-based services; pharmacy network management; negotiation and administration of product discounts; and mail-service pharmacy. In addition, tools such as drug utilization review, clinical prior authorization, consumer and physician education, disease management, and consumer compliance programs help improve the cost-effectiveness of drug benefits.

### PBM Cost Savings

According to a new analysis conducted by PricewaterhouseCoopers, PBMs drive down the cost of prescription drugs for their clients on average by 25 percent – or the cost clients would otherwise incur if they chose not to contract with a PBM. Depending upon the level of pharmacy benefit management sought by an employer, health plan, Taft-Hartley union plan, or state and federal government, the savings can range from 15 percent to as much as 40 percent.<sup>3</sup>

Medicare beneficiaries enrolled in private plans are seeing real savings from PBMs. In 2005 alone, PricewaterhouseCoopers estimates that PBMs will save \$937 for each Medicare beneficiary with prescription drug coverage provided through private plans, including Medicare Advantage health plans and employer-sponsored retiree coverage. Other data from the Government Accounting Office and Congressional Budget Office have yielded similar findings.<sup>4</sup>

Clearly, when empowered to do so, PBMs are effective at driving down the cost of prescription drugs and improving quality for beneficiaries. PBMs offer private and public purchasers distinct clinical and cost-containment features. Together, these services help purchasers make decisions about the prescription drug plans they offer to their enrollees. As the Administration

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<sup>3</sup> Commissioned by PCMA and conducted by PricewaterhouseCoopers, “The Value of Pharmacy Benefit Management and the National Cost Impact of Proposed PBM Legislation,” July 2004. Available at [www.pcmagnet.org](http://www.pcmagnet.org)

<sup>4</sup> Government Accounting Office, “Federal Employees Health Benefits: Effects of Using Pharmacy Benefit Managers on Health Plans, Enrollees, & Pharmacies,” January 2003. Congressional Budget Office, “Issues in Designing a Prescription Drug Benefit for Medicare.” October 2002.

works collaboratively with stakeholders to structure a workable benefit, it is important to preserve PBMs' proven tools and techniques that provide value to beneficiaries and the Medicare program itself.

### Formularies

Formularies are one of the most important tools available for effectively managing prescription drug benefits and assuring that beneficiaries have access to safe, effective, and appropriate drugs while also controlling costs.

PCMA, as with the other stakeholders, has been monitoring the process of the US Pharmacopeia (USP) in developing the model formulary categories and classes. While we believe that the model formulary structure proposed by the USP is somewhat overly detailed, it can serve as a starting point for formulary development. PCMA believes it is not necessary, however, to expand further the number of categories and classes recommended. For example, formularies in the commercial marketplace with 80 to 90 categories of drugs can provide coverage for 500 or more different drugs.

PCMA believes the Medicare Modernization Act strikes the right balance between assuring appropriate beneficiary access to medicines, while allowing plan sponsors enough flexibility to administer the program and manage its costs. PCMA believes strongly that the best way to assure beneficiary access to medicines is to manage the costs of the benefit, both for the government and for the beneficiaries, many of whom will still face considerable out-of-pocket costs for premiums and cost-sharing. If premiums cannot be kept affordable, many seniors will not participate in the program or will drop out as premium costs rise. If out-of-pocket costs are too high, beneficiaries may be forced to go without needed medications.

## Pharmacy & Therapeutics Committees

In developing clinically-sound formularies, PBMs rely upon panels of experts, called Pharmacy and Therapeutics (P&T) committees, to make formulary recommendations and develop lists of preferred drugs. P&T committees are largely independent providers and include a variety of specialist physicians, pharmacists, and others with specific clinical knowledge of drugs and pharmacotherapy. These committees serve in an evaluative, educational, and advisory capacity in matters concerning formulary development and management. Primarily, this capacity is served in evaluating drugs for safety and efficacy. Development and maintenance of formularies is an ongoing activity, as they must be continually updated to keep pace with new therapies, recent evidence from clinical research, changes in medical practice, and FDA guidance.

PCMA has concerns regarding the implication in the proposed rule that CMS is considering investing P&T committees with broad authority – beyond their areas of expertise – over administration of the *entire* drug benefit offered by a prescription drug plan. P&T committee expertise lies in the evaluation of clinical safety and efficacy and typically does not have the financial and administrative management expertise necessary to develop and manage drug benefits. Considering most P&T committees are independent from the PBM or drug plan, it would not be appropriate for them to be given authority for making decisions that affect a plan sponsor when they have no accountability for those decisions. For these reasons, it is vital that P&T committees fulfill the role envisioned in the Medicare Modernization Act to provide clinical recommendations in developing the formulary. Policymakers should proceed with great caution before investing these clinical experts with the authority to manage and administer an entire drug benefit plan.

## E-prescribing

PCMA commends the Administration and Members of Congress from both sides of the aisle for the assertive stance they have adopted on the development of electronic prescribing, or e-prescribing. Republicans and Democrats alike have recognized that e-prescribing holds the promise of reducing drug-related medical errors and improving safety through the application of enhanced technology.

As CMS works to implement e-prescribing standards into the Medicare program – initial standards are due just one year from now, with a pilot program to commence in 2006 – it is critical to recognize that PBMs are at the forefront of implementing e-prescribing programs in the commercial marketplace. Standard PBM e-prescribing features, including information related to patient medication history, formulary information, and claims payment, are the very attributes that Congress intended to inject into Medicare e-prescribing programs with the Medicare Modernization Act. PCMA commends the expedient and diligent work of the National Committee on Vital Health Statistics (NCVHS) and believe the Committee’s initial recommendations to the Secretary appropriately look to existing e-prescribing frameworks to ensure seamless standard implementation.

PCMA will continue to work with the Administration and Congress on a bipartisan basis to expedite the development of e-prescribing standards and the eventual implementation of a uniform system. In particular, PCMA will be working for e-prescribing standards that ensure physicians have the right information – including both clinical data and formulary information – and can work with patients to choose the drug that best meets a patient’s overall needs. In addition, PCMA will be working to maintain the mail-service pharmacy option, a proven avenue to lower prescription drug costs for consumers and payers. And lastly, PCMA will be working collaboratively to ensure increased physician adoption of e-prescribing technology.

#### Mail-Service Pharmacy Option

PCMA is pleased that the Medicare Modernization Act recognizes the importance of providing seniors and disabled beneficiaries with access to the mail-service pharmacy option. Mail-service pharmacy allows for convenient access to prescription drugs at much more cost-effective prices. Without an effective mail-service pharmacy option, consumers’ prescription drug costs would undoubtedly rise. According to PricewaterhouseCoopers, undermining the mail-service pharmacy option would increase prescription drug costs throughout the entire system by \$97

billion between 2005 and 2014.<sup>5</sup> Similarly, a recent analysis by Milliman USA of a Michigan proposal to undermine the mail-service pharmacy option found it would raise the cost of prescription drugs in Michigan by 10 percent.<sup>6</sup>

Consumers are highly satisfied with mail-service pharmacies, according to a survey of nearly 14,000 mail-service pharmacy users nationwide. From the professionalism in customer service to outstanding accuracy in the drugs received by consumers, mail-service pharmacies receive high satisfaction marks of 95 percent or more.<sup>7</sup>

### Confidentiality of Contracting and Drug Price Negotiation Information

While public disclosure of drug prices for consumer shopping is important, it is imperative that such disclosure not undermine competition by including confidential contracting and drug price negotiation information. Maintaining confidentiality in contracting and drug price negotiation is essential to preserving PBMs' ability to negotiate discounts for consumers and purchasers. Public disclosure of contract terms between PBMs, drug manufacturers, and retailers would dramatically alter the competitive landscape by giving competitors access to proprietary price negotiation strategies.

Policymakers have struck the right balance in the Medicare drug discount card program in assuring beneficiaries access to the right kind of information. In the drug card program, beneficiaries have had access to useful information that helps them compare drug prices at competing pharmacies. In addition, PBMs have provided CMS with numerous data related to drug pricing, rebates, and discounts. Importantly, CMS has protected the integrity of this information by embracing strict rules guaranteeing that such information remains confidential. Nonetheless, it is critical that private and public purchasers alike keep contracting and drug price negotiation information confidential to prevent a loss of control over the use of the information. Without adequate confidentiality protections on the use of contracting and drug pricing

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<sup>5</sup> PricewaterhouseCoopers, "The Value of Pharmacy Benefit Management and the National Cost Impact of Proposed PBM Legislation," July 2004

<sup>6</sup> Milliman USA, "Potential Cost Impact of Michigan House Bills 4987, 5437 & 5438 on Purchasers of Prescription Drug Benefits," March 19, 2004.

<sup>7</sup> PCMA Patient Satisfaction Survey of Prescription Drug Benefit Programs, 2002.

information, competitors could obtain detailed drug pricing information and, ultimately, use it to set prices.

Numerous analyses have indicated cost increases associated with public disclosure of drug price negotiation information. During last year's Medicare debate, the Congressional Budget Office estimated that public disclosure of drug price negotiation information would increase the cost of the Medicare drug benefit by \$40 billion over ten years and increase Medicare beneficiaries' part D premiums by more than five percent in 2006 alone.<sup>8</sup> PricewaterhouseCoopers has estimated that public disclosure of drug price negotiation information could increase prescription drug costs by 7 percent.<sup>9</sup> And the Federal Trade Commission's Office of Policy Planning has concluded that mandated disclosure of information "is more likely to undermine competition than promote it."<sup>10</sup>

#### Assure Appropriate Program Oversight & Beneficiary Protections, *Not* Micromanagement

PCMA believes the success of the new drug benefit will depend in no small measure on the active participation of PBMs. PCMA members have the knowledge, experience, and infrastructure that is essential for administering this new benefit. Given this record and the extremely short time frame for implementation of the new program, it is critical that the regulations not impose considerable new burdens or require significant changes in the way PBMs currently conduct their business in the commercial marketplace. Experience to date with the Medicare drug discount card program demonstrates the positive effect that competition can have on reducing drug prices. We expect to build on this experience in helping to administer the part D benefit.

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<sup>8</sup> Congressional Budget Office, "Cost Estimate of HR 1, Medicare Prescription Drug and Modernization Act, and S 1, Prescription Drug and Medicare Improvement Act of 2003," Page 15. July 22, 2003.

<sup>9</sup> PricewaterhouseCoopers, "The Value of Pharmacy Benefit Management and the National Cost Impact of Proposed PBM Legislation," July 2004.

<sup>10</sup> Federal Trade Commission's Office of Policy Planning, Bureau of Competition, and Bureau of Economics, Letter to California Assembly Member Greg Aghazarian, September 3, 2004.

One year from now, CMS will begin signing contracts with plan sponsors and preparing for the November 2005 beneficiary enrollment campaign – an ambitious schedule. Over the next year, organizations interested in sponsoring and/or partnering with other organizations to offer Medicare drug plans will need to prepare business plans, engage subcontractors, design benefit packages, develop formularies, negotiate prices with drug manufacturers, establish pharmacy networks that meet access standards, prepare marketing materials, prepare their bids, and update their electronic processing systems. While PCMA members are already engaged in this planning effort, until the final regulations are known, it is difficult to finalize plans. While PBMs can make some changes to formularies, pharmacy networks, and other aspects of benefits administration to meet Medicare program requirements, given the timeframes, it would be difficult to develop programs in the Medicare drug benefit that look and operate significantly different from the rest of PBMs' operations in the commercial marketplace.

#### Creating a Competitive Marketplace in Medicare

A key intent of the Medicare Modernization Act is to expand the choices and benefits available to beneficiaries. PBMs will help expand health plan options and benefits available to Medicare beneficiaries as likely partners with Medicare Advantage plans and possibly as stand-alone prescription drug plans. PCMA is encouraged by recent public comments from CMS Administrator McClellan that plans offering Medicare drug benefits would have access to cost-control tools such as formularies and tiered-payment structures. PCMA believes strongly that the preservation of these tools and other important PBM techniques, including the mail-service pharmacy option, will encourage maximum plan participation in the new drug benefit.

PCMA is also encouraged by recent comments from the CMS Administrator indicating that CMS is working to make insurance risk in the stand-alone benefit more predictable by providing re-insurance for catastrophic coverage; offering flexibility around risk corridors; making rules clear; and providing potential bidders with the best possible data so that they can make competitive bids. When combined with the availability of cost-control tools, predictable and limited-risk options will further encourage plans to offer benefits on a competitive basis.

## Conclusion

PCMA and its member companies stand committed to do all we can to ensure the Medicare Modernization Act makes good on its promise to deliver more affordable prescription drugs to our nation's elderly and disabled. Over the next 18 months and beyond, we look forward to working with you, Mr. Chairman, the other Members of the Committee, your congressional colleagues, the Administration, seniors, and others to make the Medicare prescription drug benefit work as Congress intended and to build on the very best the private sector has to offer seniors and the disabled.

Mr. Chairman and members of the Committee, thank you for the opportunity to testify. I am happy to answer any questions you may have.