

Outline of Topics to be Discussed

By: William J. Kilberg, on behalf of the Pharmaceutical Care Management Association

Re: Hearing on Reasonable Contracts or Arrangements Under Section 408(b)(2)—Welfare Plan Fee Disclosure, December 7, 2010, 9 a.m.

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| I. | Introductory remarks | 0:30 minutes |
| II. | Overview of Pharmacy Benefit Manager (“PBM”) business models | 2:00 minutes |
| III. | Any regulations should not be applied to contracts or arrangements involving the provision of administrative services through PBM service contracts. | 5:00 minutes |
| | a. The Federal Trade Commission’s examination of the PBM industry has been thorough, and it has concluded that (1) market forces are operating to provide the transparency sufficient to allow consumers of PBM services, like ERISA-covered health plans, to make informed decisions regarding the selection of the PBM provider; and (2) attempts at mandating a disclosure regime will likely be anti-competitive, thereby increasing consumer costs with no offsetting benefit. | |
| | b. The fundamental justification for the new rules applicable to service providers to pension benefit plans, and the data relied upon by the Department in formulating those rules, was to address a demonstrated need for greater transparency in the contracting for investment services to defined contribution plans, specifically the providers of pooled investment vehicles. These concerns do not apply to PBMs or other service providers to welfare benefit plans, as the Department recognized when issuing the Form 5500, Schedule C FAQs relating to PBMs. | |
| | c. As it conducts its own review of the appropriate disclosure standards for PBMs, the Department should give great weight to the FTC’s conclusion that enhanced disclosure requirements may have significant anti-competitive effects. | |
| IV. | “Indirect” compensation should be clarified to exclude, <i>inter alia</i> : | 2:00 minutes |
| | a. Discounts and rebates received by a PBM or an affiliate with respect to the acquisition of, or contracting for, goods or services for sale to PBM clients and any related margin; | |
| | b. Income earned by a PBM or an affiliate on the investment of its own assets; and | |
| | c. Information that constitutes a trade secret or is not generally known to the public and affords the PBM a competitive advantage. | |
| V. | Concluding remarks | 0:30 minutes |