By Karen Welds

# Slippery slope

## Navigating the evolution of pharmacy benefits managers in Canada

**Erin Callahan has lived with type 1 diabetes for 37 years.** She uses insulin daily. After starting a new job, she was shocked to learn that her new drug plan would not cover her insulin. Why? Her doctor had prescribed a generic, which required prior authorization. Had she prescribed a higher-cost, brand-name insulin, the plan would have covered it right away.

If that doesn't seem to make any sense, you're right. In Canada, drug plans take the opposite approach. In fact, most automatically replace a brand-name drug with a lower-cost generic if available.

But Callahan does not live in Canada. This is her reality in her hometown of Chicago, and it's the reality of many Americans. Her drug plan, like many others, contrarily favours brand-name drugs over lower-cost generics because that makes more money for pharmacy benefits managers (PBMs) and their insurance-company owners.

Backroom deals on rebates have also led to inflated list prices and out-of-pocket costs for patients that are among the highest in the world. In some cases, patients are better off paying cash than getting coverage from their so-called "insurance" plan. Or they ration their medications and risk poor health.

"In addition to the access barriers and affordability barriers, the most crushing fact about PBMs is they have no duty of care. They're making life-changing and life-threatening decisions based on a balance sheet," says Callahan, COO of the Diabetes Patient Advocacy Coalition and head of the Patient Pocket Protector Coalition.

In addition to patients, pharmacies in the U.S. have also suffered. Over the past 30 years, PBMs have evolved from adjudicators of claims, at no cost to pharmacies, to seemingly monolithic arbiters that steer patients to use their own pharmacies or pharmacies that have signed on to preferred provider networks (PPN). They have imposed convoluted fees, performance measures and audit requirements on PPN and non-PPN pharmacies alike, and claw back reimbursements months after the fact.

"PBMs have become the judge, the jury and the executioner on all things in the drug supply chain," said Doug Hoey, CEO of the National Community Pharmacists Association (NCPA), during an Advocacy in Action session hosted by Neighbourhood Pharmacies in February.

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Ultimately, patients suffer yet again. The rate of pharmacy closures has led to "pharmacy deserts" that affect more than 25 per cent of the country's geography, according to research conducted at the University of Southern California. In a pharmacy desert, "patients' accessibility to a pharmacy is nearly impossible," says Hoey, adding that many of these deserts exist in large cities and in areas with vulnerable patient populations.

## Not in Canada, eh?

Canada's universal healthcare system has, without doubt, so far insulated patients and pharmacies from the extreme actions of PBMs in the U.S. But that doesn't mean PBMs are not growing their influence here as well.

In November 2023, pharmacies snapped to attention when Express Scripts, Canada's largest PBM, imposed a new monthly fee on pharmacies for the use of its online adjudication system. The fee is the first of its kind in Canada—and a shock because, up till now, the unspoken agreement was that PBMs needed pharmacies as much as pharmacies needed PBMs, and pharmacy's cost-free access to online adjudication was foundational to their symbiotic relationship.

Express Script's action is a "wake-up call for the profession that we need to get proactive," says Michael Nashat, board member of OnPharm United, a member of Neighbourhood Pharmacies.

For example, consider prior authorization's potential impact on choice. For all practical purposes, prior authorization gives PBMs the ability to approve or reject reimbursement for drugs prescribed by physicians. PBMs can also directly influence patients' choice of pharmacy.

"That's a powerful stick to have and it is a problem that it is not regulated," says Nashat.

Pavritha Ravinatarajan, a practising community pharmacist who works for an insurer and consults for the private benefits industry, agrees now is the time for pharmacy to be proactive.

"The PBM industry in Canada is starting to change. We are beginning to see trends in the U.S. come to the Canadian market. Insurers and employers are beginning to own/operate their pharmacies. Formularies, though not quite to the point of the U.S., have evolved for a number of years to ensure cost containment," notes Ravinatarajan. "It is a grey area with few regulations or mandated guidelines. Now is the time to think strategically about what we want the future to look like and decide what guardrails are needed."

As in the U.S., PBMs in Canada are growing their role without independent oversight, even though they serve or impact stakeholders—insurers, prescribers and pharmacies—that are heavily regulated.

"They are staking out a no man's land and it's critical to clarify their role in the healthcare landscape and from there determine how they are to be regulated," says Shelita Dattani, Senior Vice President, Pharmacy Affairs and Strategic Engagement at Neighbourhood Pharmacies.

"PBMs have evolved so much from a transactional, administration-and-payment-process model to being an integral part of how healthcare is accessed, funded and delivered. With that greater role comes greater responsibility, and appropriate governance needs to be there to protect the public," agrees Leanne MacFarlane, Director Pharmacy Affairs and Category Management at Sobeys National Pharmacy Group, a member of Neighbourhood Pharmacies.

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## The bigger picture

That said, it's essential to step back and recognize this as an opportunity for innovation and new ways of working that could benefit the healthcare system, advises MacFarlane.

"The timing is right to consider how PBMs should participate in a way that helps to drive better care, better access and better health outcomes. With the right governance in place, we unlock an opportunity that could benefit all participants in the system," says MacFarlane.

Ravinatarajan could not agree more. In fact, it's worth remembering that PBMs in the U.S. have achieved what we currently can only dream of in Canada: an unbroken line of sight throughout a patient's health journey.

"We can aspire to achieve that here in Canada, with several key differences. Access to care and health outcomes need to be the primary goal of this healthcare system. Control must remain in the hands of a non-partial body," says Ravinatarajan. "We each run businesses in our individual way, but the time is right to set guardrails to ensure that we bring forward a structure where we all take on the burden of care and create an environment of opportunity and patient-centred care."

The road to governance will undoubtedly be long, and slippery at times.

Perhaps the most important guardrail is patient choice. Quebec's law that protects patient choice can serve as a blueprint for the rest of Canada, suggests Nashat.

"No providers or payors should interfere with the patient's choice of provider, whether that's a pharmacy, a physiotherapist or a dentist," he explains. "This ensures that agreements between payors and pharmacy respect payors, respect

patient autonomy, and respect pharmacy owners. When each stakeholder considers the other, nobody can do anything on their own."

More joint efforts between pharmacy operators are also key, Nashat adds. "As a profession we are a long way back from other professions in terms of collaborating on business issues," says Nashat, citing the suggested fee guides of dentists and optometrists as examples. "We need to have more of a mentality that it's okay to collaborate… to learn where the lines are between competition and collaboration for the benefit of the pharmacy profession."

For its part, Neighbourhood Pharmacies' primary goal these past few months is to raise awareness among its members to prime discussions on where advocacy efforts need to go from here. A big part of that education is a deeper understanding of PBMs' rise to power in the U.S.—and how pharmacies and patients there are turning the tide.

## Lessons from our neighbour

Since becoming CEO of NCPA in 2011, not a day has passed without PBM reform on Hoey's agenda. NCPA's website includes an extensive list of resources for education and grassroots advocacy by its members. Its own advocacy efforts have helped garner growing, bipartisan political support at both the federal and state levels, culminating in the introduction of two federal bills in 2023—the PBM Transparency Act and the Protecting Patients against PBM Abuses Act—and a growing slate of new state regulations.

The tide really began to turn in December 2020, when the Supreme Court unanimously overruled the appeals of PBMs and backed new legislation in Arkansas that allowed the state to have greater oversight over PBMs. Until then, PBMs' legal teams had kept the states at bay by citing federal legislation dating back to the 1970s.

"The Supreme Court narrowed the way that old legislation was being interpreted...and ruled that states do have the ability to oversee entities doing business in their state," says Hoey.

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Since then, dozens of states have introduced legislation to regulate PBMs' policies for drug pricing and payments to pharmacies. "That's the good news. The bad news is that even though states are passing laws, we're seeing uneven enforcement. But at least we are moving in the right direction," says Hoey.

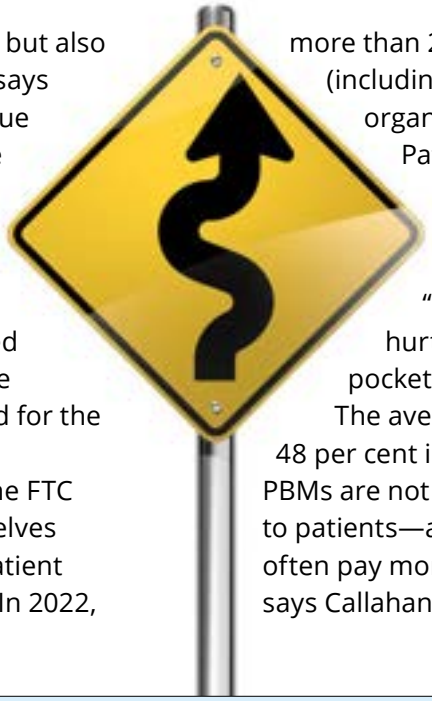
In June 2022, NCPA cheered the start of a long-sought probe of PBMs by the Federal Trade Commission (FTC).

"It has been heartening to see the FTC finally take an interest in oversight of these bad actors after

being complicit—and not only complicit, but also enabling—over the last 20 to 30 years," says Hoey. "Much of the PBM problems are due to the FTC not doing what it should have been doing as far as oversight, and even approving some of the mergers that made the situation much worse."

Unfortunately, the FTC recently reported that not all PBMs have complied with its requests for documentation. The release of its report, originally scheduled for the end of 2023, is indefinitely delayed.

Bipartisan pressure likely prompted the FTC to finally act—and the politicians themselves were pushed by a growing number of patient advocacy groups rallying against PBMs. In 2022, more than 20 national advocacy groups (including NCPA) and state-level patient organizations established the Patient Pocket Protector Coalition. The Coalition is funded by pharmaceutical manufacturers.



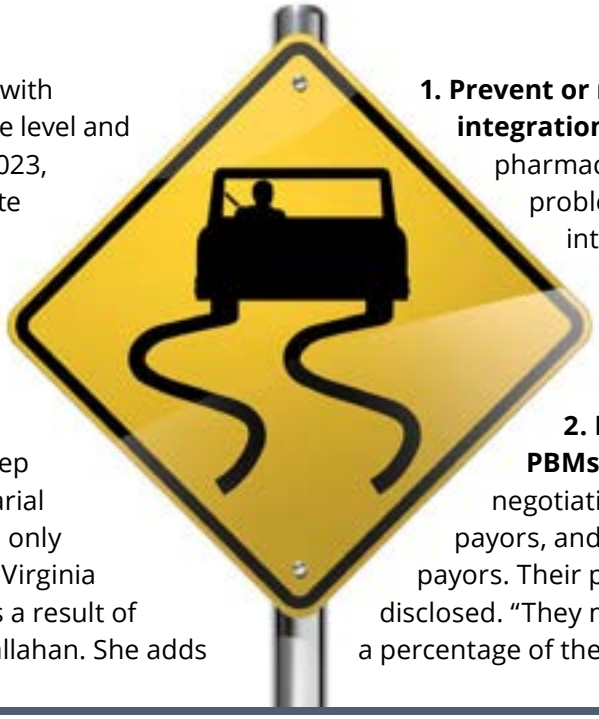
Its first priority is rebate reform. "We're tackling financial toxicity that hurts patients, particularly in their out-of-pocket costs," says Callahan.

The average negotiated rebate on a drug was 48 per cent in 2022. For insulin, it was 80 per cent. PBMs are not obliged to pass any of those savings on to patients—and the resulting reality is that patients often pay more than the PBM for their medication, says Callahan.

To start, the Coalition is working with governors and senators at the state level and is currently active in 13 states. In 2023, Arkansas and Indiana passed rebate laws that require PBMs to share rebates with patients. The two states joined West Virginia, the first to pass a rebate law in 2021.

Progress has not been easy. The PBMs' biggest argument was that rebates were necessary to keep premiums down. "In fact, an actuarial report found that rates would rise only minimally, and rate filings in West Virginia and Arkansas show no increase as a result of rebate reform legislation," says Callahan. She adds that their argument "is a bastardization of the insurance system. Insurance relies on pooled risk. It does not rely on taking the money from the unfortunate few to help everybody."

When asked what the U.S. should have done differently—and what Canada can learn from the U.S.—Hoey and Callahan boil it down to five key points:



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**1. Prevent or regulate vertical integration.** "PBMs owning pharmacies was the root of the problem. That's a huge conflict of interest," says Hoey. "And then when the PBMs and health plans got together through mergers and acquisitions, matters got worse."

**2. Pay flat, transparent fees to PBMs.** PBMs act as the middleman in negotiations between pharmacies and payors, and between manufacturers and payors. Their payment arrangements are not disclosed. "They make money off rebates that are a percentage of the list price of the drug. They make money on the difference between what they charge the payor and what they turn around and pay the pharmacy. They charge administration fees, and sometimes even part of the consumer's copay goes to the PBM. All those payments create a web of conflicts of interest and need to be replaced by a flat, transparent fee negotiated by the payor," states Hoey.

## All hands on deck

**On February 28, the Canadian Pharmacists Association (CPhA)** filed an abuse-of-dominance complaint with the Competition Bureau of Canada regarding the "longstanding and exploitative practices of Express Scripts Canada (ESC)."

In its press release, CPhA described ESC's new mandatory fee collected from pharmacies, implemented in November 2023, as "the latest in a series of actions by ESC that exploit its dominant position in the market." CPhA also stated that it seeks to use the complaint to "prompt a thorough examination of the PBM industry as a whole."

CPhA advocates on behalf of individual pharmacists through its member organizations, which are the provincial pharmacy associations and the Association of Faculties of Pharmacy of Canada.

"The situation with PBMs very much demands an all-hands-on-deck, tenacious approach," notes Shelita Dattani, Senior Vice President, Pharmacy Affairs and Strategic Engagement at Neighbourhood Pharmacies. "We've learned from the U.S. that this is a long and circuitous road with many challenges. As a sector and as pharmacy associations, we must continue to bring forward individual as well as collective solutions to advocate for change."

3. **Control the data.** PBMs' unrestricted use of claims data gives them too much power over manufacturers, pharmacies and patients. "Don't allow your data to be weaponized," warns Hoey. "It needs to be under the control of providers and patients, with restrictions and limitations on how it can be used by third parties."
4. **Prime your legal team.** "Always read the fine print, and follow the money," says Callahan. Echoes Hoey: "You want to make sure you have really good lawyers reviewing any document put in front of you."
5. **Rally your patients.** Educate patient advocacy groups and even patients in the pharmacy, says Callahan. Raise awareness of the existence of PBMs. "Our goal is to put patients at the center of care by informing advocates and uniting their voices. If something goes sideways, the patients' voice will ring loudest in governments' ears," says Callahan. Hoey adds that Canada has an advantage on this front, due to a universal healthcare system that promotes and protects patient choice. "If you can get enough patients involved and speaking up, the side of the good will win," he says.

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## Way forward in Canada

Until now, pharmacy's advocacy efforts in the private-sector group-insurance space have revolved around the implications of plan-design measures such as PPNs, prior authorization, caps on dispensing fees and markups, and the absence of funding for clinical services. Express Scripts Canada's new fee has galvanized pharmacy advocacy bodies (see sidebar), for reasons far beyond the economic impact.

"The fee was implemented without any approach of collaboration, transparency or positive intent," says Dattani. "Given the history of PBMs in the U.S., how they exploited the lack of clarity over their role, we very much see this action as a warning sign."

Neighbourhood Pharmacies recently released its position statement on PBMs, which lays out the main components of its advocacy efforts. A key recommendation is regulation or oversight by the federal and/or provincial governments to limit the potential for conflicts of interest between patients' needs and profits, and to bring transparency to PBMs' operating practices.

"If left unchecked, the rising influence of PBMs in Canada could have significant consequences on patient access to medications and the ability of pharmacies to continue to sustain patient care," reads the position statement.

Neighbourhood Pharmacies' position statement also speaks to the need for all stakeholders, including governments, to work together. To start, "we are engaging with PBMs and others in the private sector to build mutual awareness and transparency," says Dattani. "We must better understand each other's perspectives, but with the patient's needs always at the centre of discussions."

Neighbourhood Pharmacies also knows it is critical to generate a sense of urgency. A key message—and motivating factor—is the preservation of patient choice, emphasizes Dattani. "Our objective at Neighbourhood Pharmacies is to advocate on behalf of the sector to tell government that regulation must be introduced now to avoid the terrible consequences experienced by patients in the U.S. That is not where we want to be as Canadians."

*Karen Welds is a healthcare journalist and has written about community pharmacy for more than 30 years.*