

Regulating private health and benefit insurers and pharmacy benefit managers

Across Canada, private health and benefit insurers and the pharmacy benefit managers (PBM) that act on their behalf are increasingly directing how and where patients receive their care. This practice of 'patient steering' has been highlighted in recent media stories and raises significant concerns that necessitate immediate attention and action.

Preferred provider networks

Preferred provider networks (PPNs) refer to arrangements between insurers or PBMs and a specific pharmacy or group of pharmacies to exclusively provide prescription medications to plan members. If their pharmacy is not within a network, individuals are often required to switch from their chosen pharmacies, possibly facing inconvenience or disruption in their pharmacy care.

Payer-directed care is already having a widespread and concerning impact across Canada but it's clear that patients value choice and the trusted relationships they have with their pharmacy teams. According to a recent national survey conducted by Abacus Data:

- **8% of Canadians (nearly 3 million individuals)** report that they have switched pharmacies because it was recommended by their insurance company.
- **86% of Canadians** think they should be able to get prescriptions filled at any licensed pharmacy, regardless of their insurance provider.

Abuse of dominance by pharmacy benefit managers

As of January 1, 2024, Express Scripts Canada, the nation's largest pharmacy benefit manager, has introduced a mandatory service fee for all pharmacies. This fee offers no new services and essentially just allows pharmacists to continue submitting claims electronically on behalf of their patients. Without payment of this fee, pharmacies cannot provide the direct billing service—a service that has traditionally been offered by pharmacies at no cost to patients.

Public Opposition and Unilateral Implementation: The introduction of this fee was done without any prior consultations with stakeholders and is not reflective of public sentiment, with 61% of Canadians opposing insurance companies charging pharmacies for such services, highlighting a clear misalignment between industry practices and public opinion.

Concerns of Market Abuse and Regulatory Complaints: Pharmacies believe that this fee constitutes an abuse of market dominance under the Competition Act, given Express Scripts Canada's significant position in the PBM sector. The Canadian Pharmacists Association (CPhA) has submitted a formal complaint with the Competition Bureau, highlighting concerns that these practices are following a dangerous precedent from the United States, where PBMs are under significant scrutiny.





Potential Impacts on Pharmacies and Patients: This fee not only burdens pharmacies financially but also risks increasing health-care costs for patients. In a time when health-care affordability is crucial, such measures are counterproductive and harmful to public health. If left unchecked, such practices could lead to a monopolistic control over pharmacy services, reducing competition and choice for consumers, and potentially limiting access to essential health-care services.

Call for provincial regulation of private insurers and PBMs

Given these circumstances, there is a pressing need for provincial governments to regulate private insurers and the PBMs acting on their behalf.

The regulatory framework should include provisions that ensure:

-  **Patient-Centered Care:** PBM policies and practices must prioritize patient health outcomes over cost-saving measures. Medication coverage and dispensing should be based on clinical best practices and individual patient needs. PBMs should not be able to direct where a patient gets their medications. Specifically, regulations should include:
 - **Restrictions on PPNs,** ensuring that PBMs cannot discriminate against any particular pharmacy or group of pharmacies, allowing for fair competition.
 - **Conflict of Interest Rules,** especially in cases where PBMs are owned by or affiliated with insurers or drug companies.
-  **Transparent Audit Practices:** Establish clear, fair, and standardized guidelines for PBM audits. This will prevent practices that unfairly penalize pharmacies for minor, technical errors and ensure audits are conducted with reasonable notice and criteria. Regulations should include:
 - **Conflict of Interest Provisions:** Implement rules to prevent conflicts of interest where PBMs or their auditors might benefit from the outcomes of their own audits.
 - **Pharmacy Protection:** Create safeguards for pharmacies to prevent financially crippling audit recoupments and allow processes for fair dispute resolutions.

Conclusion

The recent actions by Express Scripts Canada and the recent backlash against PPNs have highlighted the need for a comprehensive regulatory approach to protect patients and pharmacies from potentially exploitative practices. By implementing the recommended regulatory measures, provincial governments will safeguard the interests of their residents and ensure the continued provision of accessible, affordable, and high-quality health-care services.

