OIG says Part D contracts cost Medicare as much as $75 million in lost drug manufacturer rebates in one year

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The Department of Health and Human Services (HHS) Office of Inspector General (OIG) released a report on July 1, 2019, finding that Medicare Part D contracts between Medicare Prescription Drug Plan sponsors and drug manufacturers may have cost the Medicare program nearly $75 million in 2014 alone due to lost rebates to the Part D program sponsors for drugs filled at pharmacies associated with the 340B discount drug program.

Under the terms of their contracts, drug manufacturers pay negotiated rebates to Part D program sponsors for drugs dispensed to Part D beneficiaries. These rebates reduce the Part D program sponsors' costs, which in turn reduces the amount that the Medicare program pays the plan sponsors. In order to avoid giving both a discount to the 340B covered entity furnishing the drug and a rebate to the Part D program sponsor, many negotiated contracts between Part D program sponsors and drug manufacturers exclude from rebate those drug prescriptions that were dispensed from 340B contract pharmacies and the in-house pharmacies of 340B covered entities, often regardless of whether the drug prescriptions were even dispensed to 340B eligible patients.

Because there is no prohibition on duplicate discounts/rebates in the Part D drug context as there is in the Medicaid context under the 340B program, drug manufacturers guard against the duplicate discount through their Part D contract terms. However, because there is a lack of specific identifiers on 340B drugs dispensed to Part D beneficiaries, many manufacturers have negotiated a broad rebate carve-out that applies to all 340B associated pharmacies, not just 340B program drugs. Because of this broad carve-out, Part D program sponsors receive greater rebates if prescriptions are filled at non-340B associated

pharmacies.

The OIG's report was not requested by a member of Congress (a common motivation for such reports), nor does it offer any recommendations by the OIG as to how to alleviate the issue identified by the report (generally OIG reports suggest modifications to the reviewed scheme). However, its factual conclusions suggest that the Medicare program could see significant savings if manufacturers did not include the 340B pharmacy carve-out provisions in their Part D contracts with sponsors or if coding was used for Part D beneficiaries' prescription drugs to identify 340B-eligible claims. Additionally, one possible result of the OIG's report could be that, in order to maximize Part D rebates, all Part D prescription drug fulfillment could be shifted away from 340B-associated pharmacies, which would rob 340B covered entities of a portion of the financial benefit of their contract pharmacies. 340B covered entities, Part D program sponsors and drug manufacturers should monitor the effects the OIG's report has on their operations.

Authors