Exhibit 1

Analysis of Broward County's Prescription Drug Coverage

Office of the County Auditor
Report

Robert Melton, CPA, CIA, CFE, CIG
County Auditor

Analysis Conducted by:
Pharmacy Benefit Consultants, P.C.

Review Conducted by:
Laura Rogers, CIA, CFE, CGAP

Report No. 19-15
July 31, 2019

OFFICE OF THE COUNTY AUDITOR
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July 31, 2019

Honorable Mayor and Broward County Board of County Commissioners:

Based upon the unique nature of prescription drug benefit analysis requiring specialized expertise, we engaged the services of a commercial consultant, Pharmacy Benefit Consultants, P.C. (PBC) (Consultant), to conduct an analysis of the County's prescription drug coverage for benefit-eligible County employees and their covered dependents, for claims incurred from September 1, 2017, through September 30, 2018. During this timeframe, the County's Pharmacy Benefit Manager (PBM) was OptumRx PBM of Wisconsin, LLC (Optum), operating under an agreement (RFP #R1412304P1), approved by the Board of County Commissioners on September 15, 2016, Item 76.

The focus of PBC's review was to evaluate Broward County's contract and claims coverage under its current agreement with Optum, and:

- identify weaknesses in the Optum agreement,
- complete an analysis of Broward's claims costs, as compared to general pharmacy benefit manager marketplace,
- complete an analysis of Broward's claims costs, as compared to the National Prescription Coverage Coalition (Coalition), and
- identify potential areas for cost savings by Broward County, based upon use of alternatives to high cost prescription medications, and other means, as may be available.

PBC's Overall Conclusions

PBC's report includes in-depth discussions on the various analyses completed. PBC also completed several detailed supporting analyses of Broward County's prescription coverage costs. Based upon the sensitive nature of the supplemental material, we are attaching only the summary report to this document; however, this information has been shared with the Human Resources Division for review and use.

In summary, PBC's conclusions are listed as follows, and are considered in additional detail in their report, *Pharmacy Benefit Consultants' Analysis of Broward County's Prescription Drug Coverage,* attached as Appendix A:

1. Several material weaknesses in Broward's agreement with Optum were identified, many of which are commonplace across pharmacy benefit manager agreements in general.
2. Opportunities for Broward to save costs in prescription expenses were identified, as applicable:
    a. Due to contract weaknesses, a comparison of Broward's PBM agreement, including rebate amounts received, to the Consultant's marketplace data was not feasible.
    b. Broward could save an estimated $1,480,000 per year in net prescription drug benefit expenses (based upon minimum rebate guarantees) by switching from its current agreement with Optum, to an agreement with its Coalition, which offers clearly defined contract terms, increased rebate guarantees and cost saving requirements.
    c. Additional monies (estimated up to $1,000,000) could be saved by using a 'coupon' program.
3. Potential additional savings of over $500,000 can be achieved by replacing several current high-cost drugs with lower-cost alternatives.
4. Ongoing customization of plan design, formulary and pricing guarantees are necessary measures for controlling costs.

We concur with PBC's assessment of Broward County's current agreement with Optum and provide recommendations throughout our report to enable the County to utilize the potential cost saving information obtained through this process to its maximum benefit.

We recognize the provision of medically necessary and potentially lifesaving prescription drugs is a sensitive issue, and the Board is invested in providing a robust plan to employees and their families, with a goal of optimizing health outcomes. The information presented herein is meant to assist and inform potential policy decisions which can achieve those goals, while ensuring appropriate and auditable contract terms are in place, and potentially avoiding excess profits to other parties.

Management's response is included as Appendix B. We appreciate the cooperation and assistance provided by the Human Resources Division and the Office of the County Attorney throughout the course of our review.

Respectfully submitted,

Bob Melton

Bob Melton, County Auditor

RM/besa

cc: Bertha Henry, County Administrator
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George Tablack, Chief Financial Officer
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INTRODUCTION

Background

Broward County (County) provides its employees with a comprehensive array of benefit options, inclusive of a health plan and prescription drug coverage. The County is self-insured for such costs, meaning that all costs are paid for directly by the County. However, the County contracts with managing entities to administer its benefit programs. Currently, employee prescription drug coverage is provided to employees via an agreement between Broward County and OptumRx PBM of Wisconsin, LLC (Optum), approved by the Board of County Commissioners (Board) on September 15, 2016. This agreement went into effect January 1, 2017, and provides for an initial term of three years, plus two one-year renewal options. December 31, 2019 will be the last date of this agreement, unless renewal period options are exercised.

Under this agreement, Optum acts as the County's Pharmacy Benefit Manager (PBM), and processes employee prescription claims, based upon its formulary and agreements with participating pharmacy entities. The formulary designates drugs as brand or generic, and prescription fills may be made by members for 30- or 90-day quantities at retail pharmacy locations, or fills may be made by mail order, in 90-day supplies. Specialty drugs, which are typically administered by a medical professional, are handled by Optum's specialty drug service. According to the terms of the agreement, Optum is to guarantee Broward County will achieve certain discounts on the costs of various drugs based on the ingredients. Optum is also required to 'pass through' to the County various rebates it may later receive from drug manufacturers, with minimum rebate guarantee amounts specified in the agreement. Optum processes prescription claims for a small fee for each prescription.

Due to the unique nature of prescription drugs claims, our Office contracted with Pharmacy Benefit Consultants, P.C. (PBC) (Consultant) to perform an analysis of the County's claims, including a review of current contract terms, overall cost comparisons to marketplace and coalition options, and the identification of cost savings alternatives. PBC's summary report, titled *Pharmacy Benefit Consultants' Analysis of Broward County's Prescription Drug Coverage*, is attached to this report as Appendix A. As part of its contracted service, the Consultant also completed several detailed analyses regarding specific drugs utilized by employees and costs for same. Due to the sensitive medical and cost information contained in these documents, these analyses are not being publicly released; however, the material has been shared directly with the Human Resources Division for their review and consideration.

PBC considered all prescription claims processed by Optum from September 1, 2017, through September 30, 2018, in its analysis (annualized as appropriate), including:

- Approximately 15,000 brand drug prescriptions and 77,000 generic drug prescriptions,
- Net prescription drug cost of $14,920,898 over a thirteen-month period of September 2017 through September 2018.

It is important to note that this review was not an audit of the accuracy of claim adjudication, rebate submissions, or compliance with other terms of the County's Agreement with Optum; it was meant to be an analysis of reported costs paid. Similarly, the review process conducted in developing this report is not considered an audit in accordance with Generally Accepted Governmental Auditing Standards; had we conducted an audit, we may have identified additional findings or concerns.

Summary of Conclusions

PBC did not specifically provide an executive summary in its report, *Pharmacy Benefit Consultants' Analysis of Broward County's Prescription Drug Coverage*; therefore, we offer the following as summary conclusions and recommendations, and provide further discussion regarding each item in the body of this report:

1. Several material weaknesses in Broward's agreement with Optum were identified, many of which are commonplace across pharmacy benefit manager agreements in general.
2. Opportunities for Broward to save costs in prescription expenses were identified, as applicable:
    a. Due to contract weaknesses, a comparison of Broward's PBM agreement, including rebate amounts received, to the Consultant's marketplace data is not feasible.
    b. Broward could save an estimated $1,480,000 per year in net prescription drug benefit expenses (based upon minimum rebate guarantees) by switching from its current flawed agreement with Optum, to an agreement with its Coalition, which offers clearly defined terms, increased rebate guarantees and cost saving requirements.
    c. Additional monies (estimated up to $1,000,000) could be saved by using a 'coupon' program.

3. Potential additional savings of over $500,000 can be achieved by replacing several current high-cost drugs with lower-cost alternatives.
4. Ongoing customization of plan design, formulary and pricing guarantees are necessary measures for controlling costs.

OPPORTUNITIES FOR IMPROVEMENT

The following section of the report identifies, for each of the four primary review areas in PBC's report; *Analysis of PBM Contract Terms; Analysis of Broward County's Existing Pricing and Minimum Projected Contract Savings from Joining Coalition; Improving the Plan's "Drug Mix"; and, Customizing Your Coverage To Better Control Costs Over Time*: an overall Opportunity for Improvement; a summary of the Consultant's conclusions; additional comments and perspective from our Office on the central issues; and recommendations to management, as applicable.

1. Current Pharmacy Benefit Manager Contract Language is Insufficient to Protect the County's Interests and Stronger Contract Terms Should be Developed and Implemented.

In the first section of the PBC report, *Analysis of PBM Contract Terms* (Appendix A, pages 2-10), the Consultant summarizes several concerns regarding Broward County's current agreement with Optum, many of which the Consultant finds as commonplace in pharmacy benefit manager agreements. Identified 'loopholes' in Broward's contract include:

- Lack of definition for 'Brand Drugs', which is especially problematic given that certain guarantees are based upon brand drugs;
- Failure to tie the definition of 'Generic Drugs' to the various generic pricing guarantees;
- Allowing Optum to move drugs in or out of mail guarantees;
- Lack of definition for 'Specialty' or 'Specialty (Exclusive Network)' drugs;
- Allowing Optum to have 'exclusive' rights to dispense all (undefined) specialty drugs and giving Optum the right to change its listing of specialty drugs whenever Optum chooses;
- Flawed definition for 'Rebates', which allows the exclusion of monies that should be included;
- Limitations within the definition for 'Pass Through Transparency Pricing';
- Lack of definition for terms used in rebate guarantee tables;
- Inconsistency in use of defined terms, or similar terms which are not defined, or not capitalized to identify them as defined terms, or conversely, the use of capitalized terms which are not defined; and

- Limitations in payout of rebates if certain termination circumstances apply.

To remedy this current state, the Consultant provides suggestions for County to consider when engaging in a new RFP process for PBM services:

- County should develop a contract focused Request for Proposal (RFP) process, foundationally based on an 'airtight' agreement (consistent language and well-defined terms) developed by an experienced legal team.
- Obtain services through a pharmacy coalition which already has appropriate agreements in place.
- Avoid requesting pricing on current claims when conducting an RFP. This will create a bias in favor of the current vendor, who likely has developed its formulary based upon its existing rebate agreements, placing other vendors, with other arrangements, at a comparative disadvantage.
- Avoid basing RFP pricing requests on current high-cost drugs which can be replaced by lower-cost and similarly effective drugs.

Office of the County Auditor Comments:

We concur with the Consultant's observations. Lack of definitions, or inconsistency in definitions, can create disparity in the interpretation of contract requirements. As a result, vendors can take advantage of such ambiguities or allowances to their benefit, and the County's detriment. As noted in the Consultant report, these language concerns are prevalent in the industry, emphasizing the need for experienced, independent experts to assist the County in developing stronger contract language.

We recommend management:

A. Explore means to exit or amend the current PBM agreement with Optum, as soon as practicable.

B. Ensure future PBM agreements are drafted in a manner that protects the County's interests.

C. Consider increased use of experienced, independent, and specialized consultants to assist in the development of contract language and/or RFP documents.

2. Better Financial Terms Could Be Achieved through Higher Guaranteed Discounts, Higher Minimum Rebate Amounts and Other Cost Saving Programs

In this heading, we have separated the Consultant's comments into two discussions, the first focusing on overall savings, based on concepts already included in the County's current plan; and second, the Consultant's recommendations for new plan design practices to achieve cost savings.

A. In the section of the PBC report titled *Analysis of Broward County's Existing Pricing and Minimum Projected Contract Savings from Joining Coalition (*Appendix A, pages 10-13)*,* the Consultant states "Based on its contract terms, Broward County does not have any control over any pricing component: retail, retail 90, mail, specialty drugs or rebates are all without control." Based on this perspective, the Consultant concludes that an analysis of Broward's cost elements against other entities would be a 'meaningless exercise'. Further, the Consultant notes that other trends in the County's current usage limit the effectiveness of any comparative analyses, such as heavy use of high cost retail pharmacies for generic drugs, and ongoing inclusion of high cost drugs rather than lower cost alternatives, which may result in higher initial costs, followed by higher rebate amounts. Accordingly, no analysis of current marketplace costs based on current contract terms is provided.

   As required, the Consultant completed an analysis of potential cost savings Broward could achieve by joining the PBC's National Prescription Coverage Coalition (Coalition).[1] The Consultant opines that savings could result from increased binding guarantees currently in place for the Coalition. The report estimates potential cost savings to Broward of $1.48 million in its first year, should the County use the Consultant's Coalition instead of its current arrangement with Optum, based on the County's current use of drugs and its current contract terms with Optum as compared to pricing discounts and rebates guarantees offered by the Coalition.

   Office of the County Auditor Comments:

   We understand the Consultant's position regarding limitations of a market analysis of the current Optum agreement when uncontrollable variables are in place.

   The Consultant is not necessarily independent when recommending its own Coalition for future County services. Therefore, there is potential bias, intentional or unintentional, in the

[1] This analysis was part of the intended Scope of Work, understanding that due to the sensitive nature of prescription drug pricing and rebates and lack of industry transparency, comparison to the Coalition managed by the Consultant may be the only means to develop any meaningful comparative pricing analyses based on known amounts.

analysis. As presented, the potential guaranteed cost savings identified for 'switching' plans is significant and represents approximately 10% annual savings. This calculation is not inaccurate, but for clarity, it must be noted that this is primarily derived by comparing Optum's minimum rebate guarantees ($2,236,020) against the Coalition's significantly higher minimum rebate guarantees ($3,615,019) based on current prescription usage.

Accordingly, the actual rebate savings that could be achieved by Broward County could be different. We note that for the time period analyzed by PBC, Optum has reimbursed the County for significantly more rebate monies ($3,666,524) than its minimum contract guarantees ($2,236,020). Therefore, the actual rebate amount received by the County for the review period was greater than the minimum rebate amount used to estimate the savings. As a result, actual net savings realized by switching to the Coalition may not be as high as the Consultant's estimates. Similarly, we recognize the Coalition could also exceed its minimum rebate guarantees and remit additional monies to the County.

As a result of the differences between minimum rebate guarantees and actual rebates, the potential net savings amount remains difficult to estimate, but we believe it would not be as high as projected in the PBC report. However, the guaranteed rebates offered by the Coalition are unquestionably higher than the County's current guarantee structure with Optum.

B. The Consultant also discusses potential plan design options which could result in additional savings to the County:

- **Use of lower cost retail pharmacies prescription fills.** The Consultant notes that guarantees on drug pricing discounts are generally weaker when plans use higher cost pharmacies, such as Walgreens or CVS (presently representing 76% of all generic fills during the review period), as opposed to lower cost pharmacies such as Costco or Walmart (Appendix A, page 11).

- **Implementation of a coupon program.** As explained by PBC (in the report and subsequent discussions), manufacturers of high-cost specialty drugs offer prospective patients a high value, point of sale 'coupon' for use at a retail pharmacy. The coupon, when used at the beginning of a plan year, typically covers the member's out of pocket expenses for initial plan deductible charges. Then, for each remaining prescription fill, the plan pays all expenses. Drug manufacturers employ the coupon process to entice members to use higher cost drugs by eliminating their out of pocket costs.

A coupon program allows the plan, rather than the member, to use manufacturer's coupons. As described by PBC, procedures would be enacted which would require the member to pay only the co-payment amount when filling their initial prescription (not forcing them to pay the full annual deductible). Then, the plan would use the value of the coupon to reduce its out of pocket costs. As a result, the member pays only the co-pay amount, while the plan benefits from the coupon. The Consultant acknowledges that calculation of such savings would be difficult but estimates that were the County to switch to the Coalition, an additional $1 million in savings could be achieved through its coupon program (Appendix A, page 12).

Office of the County Auditor Comments:

The plan design practices suggested by the Consultant may be appropriate for consideration by County. The majority of plan members reside in urban areas and have access to multiple lower cost retail pharmacies. Use of such providers may result in savings to both the County and its members. Developing a coupon program may also be a reasonable approach to cost savings when implemented in a manner consistent with plan design features, maintaining current deductibles and/or co pay amounts.

We recommend management:

A. Negotiate higher minimum rebate guarantees in any future contract amendments to its Agreement with Optum, or its successor.

B. Consider potential benefits of the use of a coalition for future provision of pharmacy benefit services.

C. Consider creating options in future RFPs which would allow coalitions to bid on pharmacy benefit management services, ensuring competition across all interested entities.

D. Consider whether other identified cost savings methods, such as use of a coupon program or incentivized/limited use of certain pharmacies, are appropriate for potential incorporation to the County's approach to prescription drug benefits.

3. County Should Explore Potential Savings through Certain Measured and Non-Medical Impact Approaches to Prescription Fulfillment Options

In the third section of the PBC report, *Improving the Plan's "Drug Mix"* (Appendix A, pages 13-14), the Consultant discusses its analysis of specific high cost drugs used by County members, and the availability of alternative, lower-cost substitutes. Specifically, the Consultant compared the costs of these drugs against the Coalition's customized formulary and then calculated potential savings. This savings calculation was adjusted to allow 'grandfathering' of current prescriptions of 30 to 90-days. Based on the length of the grandfathering period, estimated savings to Broward County could range from $547,332 to $504,501, respectively.

The Consultant states that these measures will not prevent "any beneficiary from obtaining drugs that will bring about the desired therapeutic impact" (Appendix A, page 14). The Consultant notes that overall 'disruption' impacts to County members might be minimal, as some of these prescriptions are not used on an ongoing basis. Further, the Consultant opines that such changes, many of which are from higher cost brand name drugs to lower cost generics, could result in reduced out of pocket expenses to members.

Office of the County Auditor Comments:

We recognize that any decisions to change or potentially limit formularies are sensitive, and the Board remains focused on ensuring a variety of medically effective drugs are available to its members. We also recognize the Board's and many members' desire to use lower cost generics when available, without medical compromise. Ensuring such options are at least available, if not specifically required, may be a reasonable approach, which lowers costs to all. No matter the composition of the formulary, fundamentally, all plans should include means for medical professionals to justify prescriptions they deem medically necessary, the approval of which should not be unreasonably withheld.

We note that in the accompanying analyses to the PBC's report, suggested changes to the current formulary are presented, along with estimated financial and member impacts. This information could be a valuable resource to the County. Potentially, formularies which offer, rather than mandate, alternatives can present new options to members who may be interested in changing medications and may have been prohibited from doing so due to formulary exclusions.

We recommend management:

A. Consider potential modifications to the County's current formulary through means including, but not limited to:

    i. Review of Consultant's identified alternatives to determine if all such lower cost generic options or alternative brands are available on County's current formulary.

ii. Identify any potential desired and reasonable changes to the County's formulary and discuss/negotiate such modifications with Optum, or successor PBMs, as feasible.

B. Continue to ensure plan designs contain means for physicians to make recommendations for medically necessary drugs that may not conform to standard formulary requirements.

4. County Should Explore Potential Savings and Increased Access to Medications Through Customized Formulary Approaches

In the final section of the PBC report, *Customizing Your Coverage to Better Control Costs Over Time* (Appendix A, pages 14-16), the Consultant discusses how reliance on PBMs, or insurance companies can be problematic. Aside from contract language issues already identified, the Consultant notes that most contracts require its beneficiaries to "rely on the insurer or PBM's "standard" Formularies and …. clients must "trust" their PBMs to act in the clients' interests, rather than allowing clients to customize their own decisions" (Appendix A, page 14). On this issue, the Consultant notes PBMs often have a conflict of interest in deciding which drugs to favor (or disfavor) based on the terms of their agreements with the manufacturers.

To address this concern, the Consultant recommends PBM contracts retain "customization" rights, allowing clients to decide which drugs are excluded/included in its formulary, as well as which drugs are appropriate for 'Step Therapy' or 'Prior Authorization' programs, or quantity limits. The Consultant recommends the strategic use of the following contract customization rights to increase member and plan savings:

- allow periodic changes to minimum discount guarantees for existing specialty drugs,
- negotiation of specific guarantees for new-to-market drugs,
- ability to 'carve out' specialty drugs to other pharmacies, if desired; and
- ability to expand specialty drug programs (including coupon programs) to include more drugs.

Office of the County Auditor Comments:

This discussion builds upon the conclusions and recommendations in Opportunity for Improvement No. 3B. In general, we support the Consultant's recommendations, as periodic customization and renegotiation of guarantees may result in both increased cost savings and increased access to new medications. However, we recognize that ensuring such decisions are appropriately made, without detrimental health or cost impacts to members and/or the plan, may be challenging without the services of an experienced and trusted pharmaceutical advisor.

We recommend management:

A. Review examples of potential formulary or plan changes provided by the Consultant for reasonable and beneficial modifications.

B. Consider retaining the right to customize formulary design in future contracts.

C. Consider benefit and feasibility of ongoing consultant services to ensure County formularies offer both cost efficient and medically effective drugs and take advantage of new-to-market drugs which can offer benefits to members, and that any cost impacts are appropriately negotiated.

APPENDIX A

Pharmacy Benefit Consultants’

Analysis of Broward County’s Prescription Drug Coverage

This Analysis – and the information contained in this Analysis – may be deemed Confidential by Optum. Accordingly, should Broward County choose to disclose this Analysis – or any information in this Analysis – to any brokerage firm or other third party, or to the public, Broward County should contact Optum prior to disclosure to verify said disclosure is permitted.

As requested, *Pharmacy Benefit Consultants* has reviewed Broward County's contract with Optum, as well as Broward County's prescription coverage under Optum as reflected in claims data that was provided. Our firm has done so for two purposes: (i) to assess weaknesses in Optum's contract; and (ii) to identify likely savings that Broward County will achieve by joining the National Prescription Coverage Coalition, based on contract guarantees provided by the PBM serving the Coalition (Envision).

We provide our Analysis in 4 Parts: *First,* we explain the critical importance of executing an "airtight" PBM contract. As noted in our discussion, Broward County's contract with Optum has numerous loopholes in it, making clear it is not an "airtight" contract that protects Broward County and enables Broward County to control its costs. The Coalition already has an "airtight" contract in place, after conducting a 9 month RFP in which 25 PBMs were invited to participate, and which was won by Envision.

Second, we provide an explanation of our Analysis of Broward County's claims data and our explanation for why we are not estimating potential savings, were Broward County to conduct a RFP.

We also provide our conclusions concerning projected contract savings, were Broward County to join the Coalition and take advantage of the Coalition's already-negotiated contract with Envision and Envision's proposed binding contract guarantees. We conclude that had Broward County had the Coalition contract in place with Envision's proposed guarantees during the past year, Broward County would have saved approximately **$1.48 million** solely from the better contract terms, based solely on Envision's guarantees. Savings would likely be greater, since Envision typically exceeds its guarantees.

Third, we explain how certain customization that the Coalition has already put in place will result in additional savings for Broward County by replacing beneficiaries' use of certain high-cost drugs with utilization of far lower-cost drugs. We project these additional savings at a range between **$504,501 and $547,332.**

Fourth, we describe why the ongoing customization work that the Coalition performs for every Coalition Member is necessary, will result in continued savings and will enable Broward County to better control its prescription coverage costs on an ongoing basis.

A spreadsheet containing our Analysis of the Plan's recent claims data - and likely savings - is separately provided.

I. Analysis of PBM Contract Terms

Every Analysis of a Plan's financial terms must begin by examining the relevant PBM-Client contract. That's particularly true, because virtually all PBM-Client contracts are written by PBMs to enable PBMs to charge clients essentially whatever the PBMs want.

The simplest way to understand this problem - and why contract terms are critical to controlling costs - is to consider the utility of a consumer trying to decrease and control a grocery store's costs for fish, by relying on a grocery store's "Fish Guarantee" if the Guarantee is grounded on a "loophole":

Suppose a grocery store currently provides a "Fish Guarantee" that reads as follows:

> All Fish** - Guaranteed to be no more than **$7.95** per pound
>
> *** Grocery reserves the right to determine Fish that are included in Guarantee*

Would this "Fish** Guarantee" have any real value to any shopper, including you?

The obvious answer: "Definitely not."

Why not? Because the grocery can decide to include in its Guarantee only low-cost fish (like $3.95 per pound cod), charge far too much for that low-cost fish, and charge whatever it wants for all fish that the grocery excludes from its Guarantee that costs more than $7.95 per pound (including the fish you are most likely to want, like salmon, Chilean sea bass, scallops, shrimp, etc.) Moreover, given how the Guarantee is written, on a daily basis the grocery can change the fish that it includes in its Guarantee, making it impossible for you as a shopper to predict which fish will be included and excluded from the Guarantee.

Now suppose the grocery "improves" its Guarantee by changing it to read as follows:

> All Fish** - Guaranteed to be no more than **$5.95** per pound
>
> *** Grocery reserves the right to determine Fish that are included in Guarantee*

Can you assume you will actually save money if you buy fish based on the "improved" Guarantee? Obviously not, since the grocery still has the right to include and exclude whichever fish it wants from its Guarantee, and change which fish are included and excluded whenever it wants.

Now suppose you hire a "grocery store expert" to try to compare two (or more) grocery stores' Fish Guarantees via a RFP, in order to determine the stores that are likely to provide you with the lowest-cost fish. And all the grocery stores that respond to the RFP have the same basic structure for their Guarantees, namely:

> All Fish** - Guaranteed to be no more than $____ per pound
>
> *** Grocery reserves the right to determine Fish that are included in Guarantee*

Can your expert compare the fish costs of each grocery store effectively by plugging into a spreadsheet each of the store's guaranteed numbers? Should you spend any time or resources on an expert who would engage in this exercise?

If you did, could you rationally conclude that your fish costs would be lower at a store that offered a $4.95 per pound guarantee, rather than a $6.95 or $7.95 per pound guarantee, especially if all the stores' guarantees contained the above described "asterisk" qualification?

For all the above reasons, virtually all PBM-client contracts enable PBMs to charge essentially whatever they want. And virtually all PBM RFPs are essentially of no value whatsoever.

Note, in contrast to our grocery store anecdote, PBM contracts do not contain a single guarantee, but instead multiple guarantees, all based on the same flawed "Fish** Guarantee" problem. In fact, PBM contracts typically contain at least the following flawed guarantees:

(i) retail, retail 90 and mail "Brand Drug" Guarantees (typically 6 in total – 3 for Ingredient Costs, and 3 for Dispensing Fees)

(ii) retail, retail 90 and mail "Generic Drug" Guarantees (typically 6 in total – 3 for Ingredient Costs, and 3 for Dispensing Fees)

(iii) 1 "Specialty Drug" Guarantee, or a List of a few hundred individual Specialty Guarantees

(iv) 2 or 3 – and sometimes 4 - per "Brand Drug" script "Rebate Guarantees"

Unfortunately, in virtually all PBM-client contracts, *all* of the above Guarantees are written in such a way that they are nothing but "Fish** Guarantees". In fact, just as our anecdotal "Fish** Guarantee" is worthless because the grocery's definition for the word "Fish**" is ambiguous and allows the grocery to shift fish in and out of its "Fish** Guarantee", PBMs write their contract guarantees using contract definitions that allow PBMs to shift drugs in and out of their core categories: "Brand Drug", "Generic Drug" and "Specialty Drug", and manufacturer payments in and out of their ill-defined term "Rebates".

To write effective "Brand Drug" and "Generic Drug" Guarantees for retail, retail 90 and mail drugs, the Plan needs a contract that contains "airtight" definitions for the capitalized terms "Brand Drug" and "Generic Drug". And the Plan must then use those identical capitalized terms when the contract states the "numbers" for each Ingredient Cost AWP Guarantee, and each Dispensing Fee Guarantee.[1]

Turning to "Specialty Drugs", which are the most expensive of every client's drugs as well as the category of drugs that represent every client's greatest financial exposure in the future: PBM-client contracts enable PBMs to overcharge for these drugs by engaging in one of two ploys:

The First PBM Approach: The PBM's contract defines "Specialty Drug" so that drugs can be slipped in and out of the category and provides a single Guarantee for "Specialty Drugs" (as ambiguously defined). For example, "all Specialty Drugs must annually cost no more than AWP-18%." However, the above is just like our anecdotal "Fish** Guarantee", since regardless of the strength of the guaranteed number, the guarantee will be useless since the PBM can exclude any Specialty Drugs it wants from the guaranteed number and charge whatever it wants for those Specialty Drugs.

The Second PBM Approach: The PBM-client contract includes a list of drug-by-drug Specialty Drug Guarantees. This appears on its face to be a better approach. But there are virtually always several fundamental flaws here, too, including the following:

- The PBM's List of Specialty Drugs doesn't include many Specialty Drugs, allowing the PBM to charge whatever it wants for the unlisted drugs
- The PBM's List – and other contract terms – entirely ignore new-to-market Specialty Drugs, which enables the PBM to charge whatever it wants for those drugs (Note that there are approximately 20 to 40 new Specialty Drugs that are approved every year)
- The PBM's contract contains provisions that allow the PBM to "amend" its Specialty Drug List, in its sole discretion, whenever it wants, enabling it to slip drugs in and out of the Guarantee[2]

Turning to PBM-client contracts' Rebate Guarantees: As mentioned, these guarantees are virtually always written as "per Brand Drug script" guarantees. Therefore, as long as a PBM can slip drugs in

[1] For a detailed explanation as to how "Brand Drug" and "Generic Drug" should be appropriately defined in a PBM contract, read the following article found on our firm's website: http://pharmacybenefitconsultants.com/wp-content/uploads/2017/11/nxtbook-managed_care.pdf

[2] For a detailed description on the terms that are needed to control Specialty Drug costs, read the following article found on our firm's website: http://pharmacybenefitconsultants.com/wp-content/uploads/2017/12/CahnLinda_SpecialtyDrugs.pdf

and out of the "Brand Drug" category, the PBM can manipulate these Guarantees as well. Moreover, as long as the term "Rebates" is written to include certain manufacturer payments, but exclude other payments, these Guarantees are no better than "Fish** Guarantees".[3]

Turning to a quick review of Broward County's terms under its existing Contract:

The Broward County-Optum Contract has numerous "loopholes" in all of its Contract guarantees. Without attempting to identify all of them, here are a few:

First, on the Contract's Retail and Mail Guarantees: There is no definition at all for "Brand Drugs", a rather significant oversight given the number of guarantees that are based on "Brand Drugs".

There is a definition for "Generic Drugs", but when Generic pricing guarantees are thereafter provided in the Contract, the term "Generic Drug" is not used in the Generic Guarantees, and instead, the term "Generic Formulary" or just "Generic" is used. Therefore, however the term "Generic Drug" is defined, that definition is irrelevant to the Generic pricing guarantees. And the generic drugs that will be included in the Generic pricing guarantees is left up to Optum.

For example, here's the Contract's Generic Drug definition:

> 1.17 **Generic Drugs** – means those prescription drugs, whether identified by its chemical, proprietary, or non-proprietary name, which are classified as a generic for pricing and/or discount guarantees according to the guidelines published under ANDA (abbreviated new drug application) guidance from 42 CFR Section 423.4.

But here's the Guarantee Table for Brand & Generic Ingredient Cost Guarantees:

Pharmacy Discount Percentage			
Brand Formulary for Retail 30	17.5%	17.5%	17.5%
Generic Formulary for Retail 30	80.0%	80.5%	81.0%
Brand Formulary for Retail 90	23.5%	23.5%	23.5%
Generic Formulary for Retail 90	82.5%	83.0%	83.5%
Brand Mail Service Network	25.0%	25.0%	25.0%
Generic Mail Service Network	84.5%	85.0%	85.5%
Specialty (Exclusive Network)	18.0%	18.0%	18.0%
	2017	**2018**	**2019**

Also, under the Contract, Optum has the ability to move drugs in – and out – of Guarantees, in its discretion. By way of example only, look at the Contract excerpt below essentially eviscerating the utility of the contract's Mail Guarantees:

[3] For a description of PBMs' Rebate Re-Labeling Games, read this article: https://www.managedcaremag.com/archives/2009/1/don't-get-trapped-pbms'-rebate-labeling-games

10. Certain drugs that become available on the market from time to time will not be subject to the mail service pricing rate due to, among other things, a drug's high cost, nominal or negative margin, extraordinary shipping requirements, or generics that have recently come off patent with a six month exclusivity, and may not be available through VENDOR's mail service pharmacy.

Second, on the Contract's Specialty Drug Guarantees: As reflected in the Table above, there is a Guarantee for "Specialty (Exclusive Network)" drugs. However, the contract does not contain any definition for "Specialty" or "Specialty (Exclusive Network)".

Making matters worse, the Contract gives Optum an "exclusive" right to dispense all (undefined) Specialty Drugs through Optum's Specialty Pharmacy, provides a list of possible Specialty Drugs but gives Optum the right to change the List whenever it wants, including presumably on Day 1 of the Contract. Therefore, Optum can move drugs in and out of Specialty Drug Pharmacy dispensing – and the amorphous Specialty Drug Guarantee – just as our anecdotal grocery store owner can move "fish" in and out of a "Fish** Guarantee":

15. VENDOR specialty pharmacies shall be the exclusive specialty providers under this Agreement and County Members shall utilize only VENDOR specialty providers. The attached Specialty Drug List may be updated from time to time.

Note that based on just the above matters, Broward County has no controls whatsoever in place for retail, mail or specialty drugs, whether Brand or Generic, regardless of which pharmacies the drugs are dispensed at.

Third, on the Contract's Rebate Provisions: The Contract attempts to require Optum to pass-through 100% of all payments or discounts that Optum receives from manufacturers. And the Contract attempts to ensure that there are meaningful Rebate Guarantees in place that will provide competitive payments. Unfortunately, the Contract does not contain terms that achieve either objective.

For starters, the definition for "Rebates" is flawed:

1.33 **Rebate** – means any discounts or fees of any kind which are paid to VENDOR from pharmaceutical manufacturers under a rebate contract that results from prescription utilization by Members. VENDOR does not include differentials and/or spread pricing in their calculations regarding this Agreement.

The above definition for "Rebates" limits the defined term to (i) "discounts or fees of any kind" that are (ii) "under a rebate contract" (iii) that results from prescription utilization by Members. But what if the "discounts and fees" are not contained in a "rebate contract", but instead contained in a "term sheet" or a "data sales fee contract" or a "drug switching contract" or a "price protection contract"? Obviously, those "discounts and fees" would not need to be passed through. Also, given the word "results" (rather than "result"), the phrase "results from prescription utilization by Members" must be related to the phrase "rebate contract" (and not "discounts or rebates"), which makes the number of "rebate contracts" that are potentially relevant quite small.

The Contract also contains a definition for "Pass Thru Transparency Pricing" that appears to require Optum to pass through all manufacturer payments. But there is a "limitation" in this definition, too, that limits what must be passed through to payments or price reductions that "are attributable to Members":

> 1.28 **Pass Thru Transparency Pricing** – means retrospective rebates, discounts, and any other revenues which are paid directly to VENDOR from various sources that are attributable to Members as a result of this Agreement, shall be paid to COUNTY. These sources include, but are not limited to, access rebates, market share rebates, administrative fees, data aggregation fees, data sales to third parties, discounts, disease management fees, Preferred Drug List, grants, and
>
> 5
>
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>
> compliance and adherence revenues paid directly or indirectly by third parties including, but not limited, to pharmaceutical manufacturers. VENDOR does not include differentials and/or spread pricing in their calculations regarding this contract.

There is other language in the Contract that attempts to achieve a 100% Rebate pass through goal, but is similarly flawed. For example, here's a Contract excerpt that is immediately below the Exhibit B Table:

> ** VENDOR will pass-through to COUNTY 100% of rebates it receives that can be attributed to allowable utilization of Members hereunder.*

As for the Contract's Rebate Guarantees: The excerpt below contains the relevant Guarantees:

	Rebates Per Net Paid Brand Claim	Rebates Per Net Paid Brand Claim	Rebates Per Net Paid Brand Claim
All Brand (Preferred & Non-Preferred)			
Retail 30 Minimum:	$85.00	$90.00	$100.00
Retail 90 Minimum:	$200.00	$205.00	$210.00
Mail Minimum:	$200.00	$205.00	$210.00
Specialty Minimum:	$550.00	$600.00	$650.00

Note that these guarantees are dependent on several terms:

- In the far left Column, the Contract states "All Brand (Preferred & Non-Preferred)". Therefore, presumably, the relevant term is "Brand". But there is no definition for "Brand" in the Contract.
- In the next three Columns, the Contract references "Rebates Per Net Paid Brand Claim". Therefore, presumably, the relevant words are "Rebates" and "Per Net Paid Brand Claim". But the "Rebate" definition is flawed, and there is no definition for "Net Paid Brand Claim". Moreover, if the County was to argue that this phrase should be split between "Net Paid Claim" and "Brand" Claim, there's no definition for "Brand" in the Contract.
- Finally, in the bottom row, there is a "Specialty" Rebate Guarantee, but since the word "Specialty" is not defined, it's not clear which drugs it applies to.

Also, note that other language in the Contract related to Rebate Guarantees is also flawed. For example, the excerpt below states that the Guaranteed Rebates are for those Covered Drugs "that are eligible for Rebates". Only Optum has control over that matter, and Broward County has no ability to even know which Rebates will be "eligible". Also, the provision uses certain terms – like "rebates" or "net paid claim" - but doesn't capitalize them. This means these terms have no "definition" at all. Also, the provision makes clear that Optum will not be obligated to pay out all earned "rebates", if certain termination situations arise:

pricing.

(ii) Guaranteed Rebates shall be provided for those Covered Drugs dispensed hereunder that are eligible for Rebates, as defined in Section 1.30 of this Agreement, and subject to the terms and conditions of Section 5(d) of this Exhibit. These guaranteed Rebate amounts are not subject to a minimum days' supply (i.e. 30 or 90 day supply as set forth in Exhibit "B"). VENDOR shall make payments to COUNTY on a per net paid brand claim basis ("Guaranteed Rebate Payment") based on the services provided under this Agreement, regardless of the amount of Rebates received by VENDOR. VENDOR shall provide COUNTY with quarterly reports identifying any and all rebates described above and make payment to COUNTY by check not later than one hundred and eighty days (180) after the close of each calendar quarter.

(1) VENDOR guarantees a minimum rebate as detailed in Exhibit "B".

(2) Rebate amounts shall be up to and including the last day of this contract period prior to expiration, termination, or cancellation thereof.

(iii) Discontinuation of Rebate Payments. Notwithstanding any provision herein to the contrary, all Rebate payments, including guaranteed Rebate payments, shall immediately cease accruing to COUNTY and shall not be payable to COUNTY as of the date COUNTY breaches any terms or conditions stated within this Agreement and/or upon the date COUNTY provides written notice of intended cancellation of this Agreement for convenience prior to the contract period stated in this Agreement.

It's worth noting that the rebates that Optum has paid Broward County in recent quarters, shown in the Table below, reflects that Optum's payments have been highly erratic. Based on the Contract's loophole ridden terms, in our view, it would not be worthwhile for Broward County to audit Optum to determine whether Optum has complied with the Contract's Rebate Guarantees:

Plan Year	Quarter	Sum of Amount
2017	1	$678,759.64
	2	$641,574.36
	3	$849,619.80
	4	$905,951.36
2017 Total		**$3,075,905.16**
2018	1	$996,166.57
	2	$914,786.60
2018 Total	**2 quarters**	**$1,910,953.17**
Grand Total		**$4,986,858.33**

In sum, just as a shopper would need to change the underlying structure of a grocery store's "Fish** Guarantee" to ensure the shopper could actually control his fish costs, your Plan needs to change the structure of its PBM contract in its entirety, if your Plan wants to control its prescription coverage costs. Otherwise, your Plan will be left in the position where it is essentially "trusting" its PBM to provide reasonable pricing and rebates.

To obtain an "airtight" PBM contract, Broward County can pursue either of two courses:

- Conduct a contract-focused RFP: If Broward County pursues this course, it needs to rely on a consulting firm that has an experienced legal team with a sophisticated knowledge of PBM contracts, and then it needs to have that legal team draft an entirely different contract at the beginning of the RFP, and use the RFP's leverage to extract the "airtight" contract from the PBM Contestants during the RFP, and before selecting the Finalist PBM. (i.e., Broward County cannot conduct its RFP as virtually all RFPs are conducted, based on a Questionnaire, and waiting until the end of the RFP to discuss and negotiate the contract). If Broward County wants to ensure a useful result from its RFP, it has to generate an "airtight' contract, bid out the contract, and then require all PBM Contestants to accept the contract's terms, or be dismissed from the RFP. By using the RFP's leverage to extract an "airtight" contract (without definitional and other loopholes that replicate "Fish** Guarantees"), Broward County will ensure that it obtains a contract that will result in significant savings. OR

- Locate a Coalition that already has an "airtight" PBM contract in place. Please note that our firm has reviewed half a dozen Coalition contracts in recent years, and all were relying on PBM contracts that had numerous loopholes similar to those described in the Broward County-Optum Contract. As mentioned, the National Prescription Coverage Coalition has already negotiated and executed an "airtight" PBM contract that would ensure that Broward County can control its costs.

Note that an alternative RFP approach – asking for pricing based on current use and the current Formulary – has several flaws and will not be effective. *First,* every PBM has its own set of Rebate contracts in place, favoring certain drugs and disfavoring/ excluding other drugs. If Broward requires the replication of its own Formulary and drug mix, Broward will eliminate rebates that it might otherwise obtain from an alternative PBM. *Second,* as the previous point makes clear, any RFP requiring the identical drug mix as is currently in place favors the incumbent PBM over other PBM Contestants, since the incumbent will be able to generate more rebates than other PBM contestants. Therefore, the RFP will not create an even playing field. *Third,* and most important: Any RFP should begin by an analysis of currently used, high-cost drugs that are unnecessary and could be replaced with far lower-cost alternatives. As our Analysis reflects, Broward County is currently allowing many such drugs to be adjudicated and squandering considerable amounts of money doing so.

By joining a Coalition, Broward County can avoid the cost of conducting a RFP, and take advantage of an already-negotiated PBM Contract. However, Broward County needs to make sure that the Contract is actually free of the loopholes that plague virtually all PBM-client contracts in the country. Otherwise, all Broward County would be doing would be continuing its current situation, while paying an additional Coalition Member Fee to do so. More information about our firm's Coalition – and contract – can be found at www.NationalPrescriptionCoverageCoalition.com. Information about other Coalitions can undoubtedly be obtained on their websites.

II. Analysis of Broward County's Existing Pricing and Minimum Projected Contract Savings from Joining the Coalition

Any analysis that attempts to compare a Plan's current costs with available marketplace costs must recognize from the outset the difficulties of doing so.

For starters: Virtually all PBM-Client contracts contain the flaws described in Section I above. Broward County's contract with Optum is no exception: Based on its contract terms, Broward County does not have *any control* over any pricing component: retail, retail 90, mail, specialty drugs or rebates are *all* without any control. Since RFPs are virtually all conducted by spread-sheeting numbers (rather than pinning down appropriate contract definitions, and then obtaining guarantees based on those definitions), all RFPs do is compare different PBMs' "Fish** Guarantees". For the reasons explained, this is a meaningless exercise.

Complicating matters further: The beneficiaries of every Plan use a different "mix" of retail pharmacies, as well as use the PBM's mail and specialty pharmacies to different degrees, all of which impacts costs. Also, every Plan's beneficiaries use a different "mix" of drugs, which impacts both drug costs and rebates.

For example, if a Plan has heavy use of high-cost CVS and Walgreens, its guarantees will inevitably be weaker and its costs will inevitably be higher. Similarly, the same will be true if a Plan has extensive use of rural independent pharmacies. On the other hand, if a Plan has relatively little use of all the above pharmacies, but greater use of Walmart, Costco and metropolitan independent pharmacies, its guarantees should be stronger and its costs should be lower since all such pharmacies typically provide lower costs. We note that Broward County has very heavy use of Walgreens (more than 58% of its generic scripts), as well as some use of CVS (more than 18% of generic scripts), meaning more than 76% of all generic scripts are going through relatively high-cost pharmacies.

As for differences related to the "mix" of drugs: A Plan that is covering numerous high-cost drugs will have higher drug costs, but higher rebates as well. On the other hand, to the extent the Plan has blocked a large number of high-cost drugs, the PBM will pass through less in rebates. Therefore, any evaluation of the competitiveness of a PBM's rebates must take into consideration the drugs that it is covering, as well as those it is excluding.

In terms of comparing Broward's existing costs with the costs it might incur were it to conduct a RFP, all of the above make estimating savings quite problematic. However, any such Analysis would be even more speculative because Optum's rebates have been so erratic. Therefore, we cannot project what Broward's future rebates will actually be.

For all of the above reasons, we are not providing an estimate of the savings that Broward might achieve, were it to conduct a RFP. Any such Analysis would be too speculative to be worthwhile.

However, as requested, we are providing an Analysis of how much Broward County would save, were it to join the Coalition. Our Analysis shows two layers of savings:

- Savings that would flow from Broward County implementing the Coalition's Contract w/ Envision, with the binding Guarantees that Envision is willing to provide to the Coalition for Broward County
- Additional Savings that would flow from the Coalition's customized coverage decisions

We compared the Plan's most recent drug costs as reflected in claims data, by identifying the actual retail, retail 90, mail and specialty drug costs the Plan incurred, and subtracting rebates paid and adding Administrative Fees. We then comparing those numbers to Envision's binding guarantees for the first year and for the 3 years. Savings were then calculated in the first year and across the 3 years.

All numbers are based on a pinned-down and appropriate classification of "Brand Drugs" and "Generic Drugs" using Medi-Span information fields. Envision's binding Specialty Drug Guarantees are based on the Coalition's definition for Specialty Drugs, which cross-references to a list of 1400+ drugs, and identifies a drug-by-drug Guarantee for each drug on the List. *We also evaluated the pricing for all Specialty Drugs that have been dispensed to Broward County beneficiaries using the Coalition contract's binding guarantees.*

Based on all of the above, comparing the Plan's existing costs and Rebates and Administrative Fees to the Guarantees that Envision has bound itself to provide, we project that Broward County's costs for the drugs dispensed during the 12 months shown in the claims data would have been at least $1.48 million lower than they were under its Optum contract.

The following additional observations are worth noting: The above figure projects savings based on the Coalition/Envision contract guarantees. However, savings are likely to be greater, since every PBM gives itself "wiggle room" when providing contract guarantees. The Coalition experience is that Envision has exceeded its contract Guarantees in most instances.

Also, we did not include potential savings from a Specialty Drug coupon program that the Coalition runs for Coalition Members. We did not do so, because calculating savings from the Program would be quite difficult, given Broward County's complex Benefit Plan Design. However, we believe this Program would result in additional savings of at least $1 million.

As a brief description: The Program takes advantage of available coupons to lower not only beneficiaries' copay costs for Specialty Drugs, but also your Plan's costs. For certain drugs with high-value coupons, our Program raises beneficiaries' copays by approximately the value of a coupon, and then uses an available coupon to reduce copays to the value stated in the Coupon. For example, a Specialty Drug (like Enbrel or Humira) may have a coupon worth $600, and the coupon may promise the patient's copay will be "no more than $5". Under our Specialty Drug Coupon Program, the beneficiary's copay of, say, $60, would be raised to $605, then the $600 coupon would be applied to reduce the beneficiary's copay to $5, and thus the Plan's costs would be reduced by $545 ($600 minus $55 – the savings provided to the beneficiary). For some Specialty Drugs, the coupon is far higher – for example, many of the hepatitis drugs have long had coupons of $5000 per 30 day script. For some it is lower. But the bottom line is: Our Program is designed to apply valuable, available coupons automatically to certain identified Specialty Drug scripts, and thus bring about savings to all beneficiaries using those drugs, as well as to Broward County.

Finally, note that the stated savings figure (of $1.48 million) projects savings based on your most recent drug mix and costs. However, since your Plan has essentially ceded control over the drugs that are covered and excluded to your PBM - and it's clear that your PBM is doing little to control the use of high-cost drugs - it is likely that were Broward County to remain under your existing coverage program, your existing costs would increase next year and over time.

In contrast, as described below, should Broward County join the National Prescription Coverage Coalition, the Coalition's staff would ensure that your Plan takes steps to alter the "drug mix" that is covered and used by your Plan Beneficiaries. Doing so would provide additional savings beyond those identified above, as well as provide your Plan with a means to control its costs in the future.

III. Improving the Plan's "Drug Mix"

In our Analysis, we also provide a "High-to-Low Cost Analysis" of your Plan's claims data. This analysis "sorts" the claims data that Broward County provided to show every drug dispensed to your Plan beneficiaries based on the total amount incurred, from the highest cost drugs to the lowest.

We have identified certain high-cost drugs where your Plan could take actions to reduce its costs by excluding a high-cost drug and covering only a lower-cost substitute(s). Also, we have identified high-cost drugs that should have Prior Authorizations or Step Therapies implemented to control their use and costs. Many of your most expensive drugs are drugs where your Plan could take action to reduce its costs.

In another study, we focus on these high-cost drugs and create a more detailed analysis of potential savings your Plan would achieve by implementing the Coalition's customization. We compared your Plan's current costs on the high-cost drugs with likely costs for replacement drugs, based on certain recommended actions, and thus calculate potential savings from each recommended coverage change

As requested, our Analysis also evaluates savings based on whether Broward County would allow grandfathering of the existing targeted drug for 30 days, meaning only 1 script would be allowed or using 90 day grandfathering, and makes recommendations for each drug as to the number of days of grandfathering that should be allowed.

As reflected in the Analysis, Broward County's total savings from adopting Coalition customization and implementing 90 day grandfathering would be **$504,501**. For 30 day grandfathering, savings would be **$547,332**. Savings based on or drug-by-drug recommendations on grandfathering would be **$530,429**.

Note two other matters about our Analysis:

First, on disruption: Typically, our Analyses identify the number of individuals who have taken each drug listed in our Analysis during the most recent 3 month period reflected in the claims data. This enables our Client to get a feel for the number of likely people who will be disrupted by implementing each recommended action for each drug. However, Broward County's claims data did not provide sufficient information to enable us to generate these numbers. However, we considered the number of scripts during the twelve month period reflected in the claims data to gain a basic understanding about likely disruption. For most drugs included in our costs savings analysis there was very little ongoing use during the twelve month period.

Second, on Savings for Plan Beneficiaries: We identified the likely financial impact to your beneficiaries of our recommended coverage changes. In most instances, our recommendations will result in *lower* copayments for beneficiaries, since we are recommending a switch from a higher-cost brand drug to a lower-cost generic. In some instances, we expect our recommendations will result in the same copayment for beneficiaries. In no instance will our recommended change result in a higher copayment. Note that these conclusions are based on our broad understanding of your complex Benefit Plan Design, where most of your Plan Beneficiaries have deductibles, and are paying 20% coinsurance.

Thus, our recommended changes to your Plan's drug coverage essentially provide a "win win": In most instances, they reduce Plan costs, as well as Plan beneficiaries', and they do so without preventing any beneficiary from obtaining drugs that will bring about the desired therapeutic impact.[4]

In this Memo, we are not describing the clinical basis for each of our recommendations, since given the number of relevant drugs, this would require a lengthy explanation. However, should your Plan want to do so, we can discuss this matter via a conference call. Also, we have provided "basic" information about each replacement action.

To provide one quick example of why we believe Optum has failed to "manage" your drug coverage successfully, we identified in our analysis that several identified drugs are acne treatments, with average costs ranging from $230+ to $1400+ per 30 day script. For example, your Plan paid for 12 scripts (probably one beneficiary), at an average 30 day script cost of $755. Similarly, your Plan also allowed 2 scripts of Absorica at an average 30 day script cost of $1431. Your claims data also reflects that large deductibles and/or copays were paid by your beneficiaries for these drugs, but that may – or may not – be accurate, since both drugs have coupons that essentially eliminate beneficiaries' contributions to costs.

Were your Plan to block these drugs, and only provide coverage for lower cost acne treatments, it would save several thousand dollars.

IV. Customizing Your Coverage To Better Control Costs Over Time

As you know, prescription coverage is provided to plan beneficiaries through a contract with a Pharmacy Benefit Manager (PBM) or a contract with an insurance company. Unfortunately, almost all such contracts are problematic for at least three reasons:

First, as previously described, the contracts contain ambiguous definitions and therefore useless price guarantees – similar to our anecdotal "Fish** Guarantee" - that enable PBMs and insurance companies to evade pricing terms and guarantees and charge essentially whatever they want.

Second, PBM-client contracts require clients to rely on the insurer or PBM's "standard" Formularies and "standard" Prior Authorizations, Step Therapies and Quantity Limits. As a result, clients must "trust" their PBMs to act in the clients' interests, rather than allowing clients to customize their own decisions.

Third, PBM-client contracts fail to provide clients with any of the necessary tools to "update" their contract and improve them over time. Instead, contracts lock clients into the same terms for the length of the contract (typically 3 or more years).

All three of these problems result in far larger costs for clients. Why?

[4] Note that our analysis is *not* factoring in the fact that many beneficiaries may be relying on manufacturer coupons to decrease their brand drug costs.

We've already explained the ramifications of loophole-ridden contracts.

Turning to the second problem: Virtually all insurers and PBMs have conflicts of interest in deciding which drugs to favor – or disfavor – on their "standard" Formularies and Programs. Often, the insurers and PBMs favor higher-cost drugs in exchange for collecting manufacturer payments that are labeled with names other than "Rebates", and then the PBMs/insurers retain for their own accounts all such "other payments". Some insurers and PBMs even dispense 90 day supplies of high-cost Specialty Drugs that may never get used by beneficiaries, causing waste and excessive costs, in exchange for manufacturers' secret payments that are not passed through to clients.

Accordingly, we recommend to every client that it obtain "customization" rights in its PBM contract, not only allowing the client to decide which drugs to exclude from coverage, but also to implement customized Prior Authorization and Step Therapy Programs. Also, we recommend that clients customize their own Quantity Limit Program. To prevent waste and excessive cost, most Specialty Drugs should be limited to a 30 day supply. Certain drugs that are very toxic and often not used by patients for more than a few days - like many cancer drugs - should be dispensed for the first three months of use with a 14 day supply limit.

The Coalition contract provides Coalition Members with customization rights, which our Coalition experts assist Coalition Members in exercising, on an ongoing basis. By way of example only, consider Harvoni and Epclusa. Both are hepatitis C drugs. This therapeutic category has seen continuing changes in the past few years, all of which have required responses in order to ensure that a Plan obtains the lowest net-cost hep C treatments. And recent changes have brought about additional new savings opportunities: Gilead, the manufacturer of Harvoni and Epclusa, is now offering far lower-cost authorized generics. Meanwhile, another manufacturer, AbbVie, of a drug called Mavyret, has significantly reduced that drug's costs. The Coalition Contract requires Envision to provide the Coalition with drug-by-drug rebate information, which has enabled the Coalition to evaluate the lowest "net cost" drug in the hep C category (factoring in all passed-through money), and make recommendations on an ongoing basis to Coalition Members for customized changes concerning the drugs that are favored in this therapeutic category. Note that changes are implemented only for new users of the drugs. Those already under treatment continue on their existing drug until 8 or 12 or 24 week treatments are completed.

The above example illustrates how the Coalition contract also solves the third problem that we identified, namely the inability of clients to change their contracts over time given PBMs' failure to provide information and transparency. To respond to the marketplace and protect their interests, clients must be able to obtain drug-by-drug rebate information, which enables them to compare drug costs and determine the lowest "net cost" drugs in each therapeutic category.

The Coalition Contract also provides Coalition experts with numerous other unique rights that enable the Coalition to update the Coalition Contract continuously, including:

(i) The right to renegotiate on a quarterly basis the Minimum Discount Guarantees of any Specialty Drug
(ii) The right to negotiate a new Minimum Discount Guarantee for any new-to-market Specialty Drug
(iii) The right to carve-out coverage for any Specialty Drug and have another Specialty Pharmacy dispense the drug
(iv) The ability to expand our Specialty Drug coupon program to include more drugs, to

increase Plan beneficiaries' and Plan Specialty Drug savings

Given the Coalition's ongoing work on behalf of all Coalition Members, should Broward County decide to join the National Prescription Coverage Coalition, Broward County would be able to better control its costs over time, while simultaneously providing strong coverage to all Plan Beneficiaries.

# # #

After you review our Analysis, please feel free to contact us to schedule a conference call to discuss the contract savings and drug mix savings analysis, as well as to enable us to answer any questions that you may have.

We look forward to talking with you, should you want to do so.

Linda Cahn
CEO, Pharmacy Benefit Consultants

APPENDIX B

BROWARD COUNTY FLORIDA
BERTHA W. HENRY, County Administrator
115 S. Andrews Avenue, Room 409 • Fort Lauderdale, Florida 33301 • 954-357-7362 • FAX 954-357-7360

MEMORANDUM

TO: Robert Melton, CPA, CIA, CFE, CIG
County Auditor

FROM: Bertha Henry
County Administrator

DATE: July 27, 2019

RE: **Management's Response to Office of the County Auditor's Report Regarding Analysis of Broward County's Prescription Drug Coverage**

Management has reviewed the Report from the Office of the County Auditor regarding the Analysis of Broward County's Prescription Drug Coverage as conducted by an external consultant, Pharmacy Benefit Consultants, Inc. (PBC) and submits the following as Management's response to each of the Auditor's opportunities for improvement and recommendations.

Opportunities for Improvement

1. **Current Pharmacy Benefit Manager (PBM) Contract Language is insufficient to Protect the County's Interests and Stronger Contract Terms Should be Developed and Implemented.**

As indicated in the Auditor's report and PBC's analysis, the County's current PBM contract language and desire for stronger business terms and conditions are a constant challenge in the pharmaceutical industry and are not unique to the County. Notwithstanding same, the County strives to maximize business terms and conditions that may provide the broadest protection under law of the County's interests.

Recommendation A – Explore means to exit or amend the current PBM agreement with Optum, as soon as practicable.

Agree in part. Management agrees that the County could benefit from stronger contract terms (particularly consistent language and additional well-defined terms). To that end, revised language is being drafted by the County Attorney's Office with the assistance of an independent pharmacy benefit plan consultant arranged through the County's general benefits consultant, USI. The revised language will be presented to our current vendor (OptumRx) as part of the renewal process. If revised language cannot be agreed to, staff will look to replace the current vendor through a normal or emergency procurement process.

Recommendation B – Ensure future PBM agreements are drafted in a manner that protects the County's interests.

Agree. Management agrees and will continue to work with the County Attorney's Office and the use of specialized consultants to draft PBM agreements that protect the interests of the County. As discussed in response to Recommendation A, to address the identified language concerns, the County Attorney's Office is drafting revised language in collaboration with an independent pharmacy benefit consultant.

Recommendation C – Consider increased use of experienced, independent, and specialized consultants in the development of contract language and/or RFP documents.

As indicated in the responses to Recommendation A and B above, the County has engaged the services of an independent pharmacy benefit plan consultant to assist in evaluating revised contract language and assist in any future procurements of services.

2. **Better Financial Terms Could Be Achieved through Higher Guaranteed Discounts, Higher Minimum Rebate Amounts and Other Cost Saving Programs**

It should be noted that the majority of the recommendations and savings analysis suggested by PBC are based on implementing the pharmacy plan offered solely through PBC's Coalition. The Coalition's pharmacy plan is a tightly-managed program emphasizing cost-saving methods including the use of lower cost drugs, changes to the formulary on a frequent basis by the Coalition, and a narrower retail pharmacy network. Furthermore, some of the issues described as concerns with using a PBM (i.e., conflict of interest, transparency, etc.) also exist in using a coalition structure.

Recommendation A – Negotiate higher minimum rebate guarantees in any future contract amendments to its Agreement with Optum, or its successor.

Agree. Management has and will continue to negotiate the best rates, discounts, fees, and guarantees in its insurance contracts. It is important to note, that minimum rebate guarantees are only one part of the complicated cost structure of a pharmacy contract. Other negotiated items include discount rates, administrative fees, dispensing fees, etc.

Recommendation B – Consider potential benefits of the use of a coalition for future provision of pharmacy benefit services.

Agree in part. Management agrees that the use of a coalition to provide pharmacy benefits services is a viable option. However, as indicated previously, some of the concerns with PBMs in general (i.e., conflict of interest, lack of transparency, etc.) also exist in the use of a coalition structure. In addition, coalitions are generally managed tightly for the good of the group rather than individual participants therefore they lack flexibility.

Recommendation C – Consider creating options in future RFPs which would allow coalitions to bid on pharmacy benefit management services, ensuring competition across all interested entities.

Agree. Management has and will continue to create the most competitive options to provide County employees and their families affordable quality healthcare that provides overall long-term stability to benefit plan and cost.

Recommendation D – Consider whether identified cost savings methods, such as use of a coupon program or incentivized/limited use of certain pharmacies, are appropriate for potential incorporation to the County's approach to prescription drug benefits.

Agree. Many of the recommendations, suggested by PBC and the Auditor's Office, were presented to the Board for its consideration at the Budget workshop on May 20, 2019. However, based on the comments from the Board at that workshop, staff is not proceeding with the recommendations at this time, except for the manufacturer coupon/assistance program for specialty drugs described below and which closes a loophole. Staff will continue to review and research the other programs for possible recommendation and implementation in the future.

The following table identifies the current benefit and the cost saving method specifically suggested by PBC:

CURRENT	COST SAVINGS
Broad retail pharmacy network.	Limit the pharmacies in the network to those that provide the lowest cost including eliminating Walgreens and/or CVS. ***Note:*** *Eliminating Walgreens or CVS presented by staff at the Budget Workshop on May 20th, 2019.*
Manufacturer coupons/assistance for Specialty drugs do not apply to the member's health plan deductible as it is processed as secondary. High-cost Specialty drugs can	Implement program that applies the manufacturer coupon/assistance for Specialty drugs to the plan first thereby only

cause the member to meet their annual health plan deductible in one or two fills without actually paying that amount out of pocket.	reducing the health plan deductible by the actual amount the employee pays. ***Note:*** *A similar program was presented by staff at the Budget Workshop on May 20th, 2019. This similar program that closes a "loophole" in our current system for specialty drugs is being recommended to the Board as part of the County's health insurance program on the August 20, 2019 agenda.*

3. **County Should Explore Potential Savings through Certain Measured and Non-Medical Impact Approaches to Prescription Fulfillment Options.**

County staff, with the assistance of its benefits consultant, is always exploring potential savings in its pharmacy spend without compromising the health and well-being of our employees and their families. However, frequently, such programs may appear more restrictive to members, when they are designed to manage member safety as well as cost.

Recommendation A – Consider potential modification to the County's current formulary through means including, but not limited to

- ***i. Review of Consultant's identified alternatives to determine if all such lower cost generic options or alternative brands are available on County's current formulary.***
- ***ii. Identify any potential desired and reasonable changes to the County's formulary and discuss/negotiate such modifications with Optum, or successor PBMs, as feasible.***

Agree in part. In its analysis, PBC also recommended a program to improve the County's "drug mix" by performing a "High-to-Low Cost" analysis of our claims data and identifying high-cost drugs that could be covered with a lower-cost substitute(s). Under this program, members would be allowed a 30 or 90-day grandfathering period to change to a lower-cost substitute(s). In addition, many of the High Cost drugs remaining on the formulary would be subject to Prior Authorization or Step Therapy programs.

Note*: A similar consideration was presented at the Budget Workshop on May 20, 2019.*

Recommendation B – Continue to ensure plan designs contain means for physicians to make recommendations for medically necessary drugs that may not conform to standard formulary requirements.

Agree in part. Management, through the use of our benefit consultant, does and will continue to administer plan designs that are in the best interests of its employees. However, the nature of pharmacy (as well as medical services) is that not everything is provided by the formulary or considered a covered service. In such events, members have multiple options:

- Purchase non-formulary drug outside of the plan at full retail cost.
- Request physician prescribe a therapeutically equivalent drug on the formulary
- If the non-formulary drug is medically necessary, the physician can submit a Prior Authorization request detailing the formulary equivalent that has been tried unsuccessfully.

4. The County Should Explore Potential Savings and Increased Access to Medications Through Customized Formulary Approaches

Customized Formularies are an option; however, they come with additional costs, need for clinical and pharmaceutical expertise, and if not appropriately controlled, can result in an ineffective formulary (i.e., too narrow or too broad) and signification disruption to the member.

Recommendation A – Review examples of potential formulary or plan changes provided by the Consultant for reasonable and beneficial modifications.

Recommendation B – **Consider retaining the right to customize formulary design in future contracts.**

Recommendation C – **Consider benefit and feasibility of ongoing consultant services to ensure County formularies offer both cost efficient and medically effective drugs and take advantage of new-to-market drugs which can offer benefits to members, and that any cost impacts are appropriately negotiated.**

PBC recommends maintaining formulary customization rights in the agreement which would allow the County to decide which drugs to exclude, customized Prior Authorization Program, Step Therapy Program, Quantity Limit Program and limit Specialty Drug to a 30-day supply (currently in place). PBC, through their Coalition, offers such a customized formulary and the ancillary programs and services. If the County decides to offer a customized formulary, it would have to rely on the PBM's clinical team or seek other external clinical expertise which, in either case, would result in the County incurring significant annual fees for these services to assist us with making these critical decisions.

In conclusion, Management appreciates the Auditor's information and the opportunity to respond to his report and PBC's Analysis of Broward County's Prescription Drug Coverage Plan.

If there are any addition, deletions/omissions, or other changes or modifications to Management's response, please provide us the opportunity to review prior to issuance. Should you have any questions, please do not hesitate to contact me.

c: Mayor and Broward County Commissioners
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Andrew Meyers, County Attorney
George Tablack, CPA, Chief Financial Officer
Kevin Kelleher, Deputy Chief Financial Officer
David Kahn, Director, Human Resources Division
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