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State Laws Emerge to Regulate Pharmacy Benefit Managers

In 2025, a total of 26 states enacted legislation regulating pharmacy benefit managers ("PBMs"). Although the content of the legislation varies among states, there is a consensus to increase transparency and lower prescription drug costs. This article explains current state legislative trends affecting PBMs.

Prohibition on Gag Clauses

A gag clause is a contract provision that prevents disclosing cost information and the availability of lower-cost prescription drug alternatives to individuals. The Consolidated Appropriations Act, 2021 is a federal law that eliminated the use of gag clauses in PBM agreements with group health plans. State laws aim to expand the prohibition to all PBM contracts. These provisions aim to increase price transparency by allowing patients to compare prices and make informed healthcare decisions.

States: AK, AL, AR, AZ, CA, CO, CT, DE, FL, GA, IA, ID, IL, IN, KS, KY, LA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OK, OR, PA, RI, SC, SD, TX, UT, VA, VT, WI, WV, WY

Prevents or Prohibits Spread Pricing

Spread pricing occurs when a PBM charges a health plan more than the amount paid to the pharmacy for a medication with PBMs retaining the difference, or "spread," as profit. States are enacting transparency laws that prohibit, limit or require disclosure of spread pricing practices, requiring PBMs to make a profit through other methods, such as flat fee schedules.

States: AR, CA, CO, DE, FL, IA, ID, IL, IN, LA, MD, MI, MN, NC, NE, OK, UT, VA, VT, WA, WV

Restricts PBM Steering

Many PBMs have common ownership with pharmacies. Steering is when a PBM directs patients to their affiliated pharmacy and limits or completely restricts access to competitor pharmacies. States seeking to discourage steering have taken different approaches. One common approach prohibits disparate reimbursements to affiliate and nonaffiliate pharmacies. Higher reimbursements incentivize patients to use affiliate pharmacies over nonaffiliate pharmacies.

States: AL, AR, CO, DE, GA, IA, IL, IN, KY, LA, MD, MI, MN, MT, NC, ND, NE, OK, OR, PA, SC, SD, TN, TX, UT, VA, VT, WA, WV

Rebate Transparency

PBMs negotiate rebates and discounts for prescription drugs with pharmaceutical drug manufacturers. Rebate transparency provisions attempt to clarify the amount of rebate savings retained by PBMs and encourage full rebates to pass through to consumers.

States: AL, AR, CA, CO, CT, IA, IL, ID, IN, KY, LA, ME, MI, MN, MT, NC, ND, NH, NJ, NM, NV, NY, OR, UT, VA, WA, WI, WV

Fiduciary Duty to Insurer

Healthcare insurers have fiduciary duties requiring insurers to act in the best interest of the insured (i.e., plan participants and beneficiaries). States are adding provisions requiring PBMs to act in a similar fiduciary capacity owing a duty to both healthcare insurers and those insured. PBMs with fiduciary duties will have to put the insureds' interest above their own profits.

States: AL, IN, ME, NC, VT

PBM Licensure or Registration

In an attempt to increase transparency, many states require PBMs to be licensed, registered or to have obtained a certificate with the state before operating or conducting business. Typically, a license is renewed annually. Violations of any state PBM law can result in license revocation or denial of renewal.

States: AK, AL, AR, DE, FL, GA, IA, IL, IN, KY, LA, MD, ME, MI, MN, MT, NC, ND, NE, NJ, NM, NY, OK, OR, SD, TN, UT, VA, VT, WA, WI, WV

MAC List Requirements

A maximum allowable cost ("MAC") list is a payment model that sets the highest price a PBM will reimburse pharmacies for medications. MAC list requirements vary by state. Common MAC list requirements include MAC list source disclosures, weekly MAC list updates, and prerequisites for drug placement on the MAC list.

States: AK, AR, AZ, DE, GA, IA, ID, IL, IN, KS, LA, MD, ME, MI, MN, MT, NE, NH, NM, OR, SC, SD, TX, VT, WV

Prohibition on Clawbacks

A clawback is when a PBM retroactively reduces payment to a pharmacy after the point of sale. It often occurs when the plan's copay is higher than the prescription cost. The clawback results in the PBM recovering the difference and retaining the spread as profit. State prohibition on clawbacks are often limited to clean claims, meaning claims that are complete and consistent with plan terms. If a clawback is done as a result of an audit or fraud, a PBM is permitted to retain the clawback. In states where clawbacks are prohibited, the pharmacies retain the full amount.

States: AL, AR, CO, CT, DE, GA, IA, ID, IN, KY, LA, MD, ME, MI, MN, ND, OK, PA, SC, SD, TX, UT, WA, WI, WV

Limitation on Patient Cost Sharing

States that limit patient cost sharing seek to decrease the cost of prescription drugs by reducing patient payments. The amount a patient is required to pay can be reduced by requiring manufacturer rebates to be passed through to patients or applied toward their deductible. Additionally, some states require patients to pay the lesser of the National Average Drug Acquisition Cost or the wholesale acquisition cost.

States: AR, AZ, CA, CO, CT, DE, FL, GA, IA, IL, IN, KY, LA, ME, MT, NC, ND, NE, NJ, NM, NV, OK, OR, SD, TX, UT, VA, VT, WA, WI, WV

These provisions are a small sample of current or pending legislation. PBMs are pushing back against these state laws. After two PBMs sued challenging the constitutionality of an Arkansas law prohibiting PBMs from owning pharmacies in the state, a federal court issued a preliminary injunction blocking the enforcement of the legislation. Similarly, Iowa faces a challenge alleging a PBM law recently enacted is preempted by ERISA and in violation of the First Amendment.

If you have any questions about state laws regulating PBMs, contact a member of our Employee Benefits and Executive Compensation practice group.

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