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## PHARMACY BENEFITS MANAGEMENT UPDATE

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**ABOUT US**

State legislators are having a busy year and there are currently several bills pending regarding PBM licensure and obligations. Below are descriptions of some of the more significant provisions contained in these bills:

#### **Alaska SB 38** requires that:

- PBMs be registered as Third Party Administrators.
- Agreements between a PBM and a health care insurer, a pharmacist, a pharmacy, or a covered person must be approved by the director of the Department of Insurance.
- The PBM acts as a fiduciary of the pharmacist or pharmacy, if an agreement provides that a PBM receives payment for the services of the pharmacist or pharmacy.
- A PBM must provide to a health care insurer the financial and use information requested by the health insurer relating to providing pharmacy benefits to a covered person for the health insurer.
- A PBM shall disclose to the health care insurer all financial terms and arrangements for remuneration that apply between the PBM and a prescription drug manufacturer or labeler, including rebates, formulary management and drug-switching or drug substitution programs, educational support, claims processing and pharmacy network fees charged by retail pharmacies, and data sales fees. A health care insurer may audit the PBM's records related to the rebates.
- A PBM must disclose to the health care insurer whether there is a difference between the price paid to a retail pharmacy and the amount billed to the health insurer.

#### **Arkansas HB 1601** requires that:

- PBMs, when seeking payment or reimbursement for pharmacist services or reporting expenditures for pharmacist services, must itemize the amount actually paid or to be paid to the pharmacy or pharmacist for the pharmacist services by individual claim.
- A PBM must pay the amounts its receives for pharmacist services to the pharmacies or pharmacists that provided the pharmacist services, but the PBM may charge for other

The Phoenix Law Group of Feldman Brown Wala Hall and Agena, PLC is one of the few law firms in the country with an entire practice group devoted exclusively to pharmacy benefits and operations. What sets our practice group apart? For starters, it is made up entirely of attorneys that have in-house counsel experience, giving us significant expertise in an extremely complex industry.

Primarily representing pharmacy benefit managers (PBMs) and retail pharmacy chains, we work with our clients daily as an extension of their in-house legal departments. Because we get to know our clients thoroughly, we understand how to achieve their business goals, and are able to provide each with pragmatic advice and workable solutions. From contract development and negotiation, to structuring operations to meet regulatory requirements, our experience allows us to handle a client's needs seamlessly without wasted time getting up to speed.

services in addition to pharmacist services.

**Mississippi HB 299** requires that:

--PBMs, at least once each quarter, inform the plan sponsors, insurance companies, unions and HMOs for which the PBM administers the prescription drug/device portion of a pharmacy benefit management plan or health insurance plan, of the amount and source of any rebates received from the manufacturers or prescription drugs or devices that are covered under the pharmacy benefit management plan or health insurance plan.

**Missouri HB 458**

requires that:

--A PBM remit to the covered entity each individual claim, the prescription number, the eleven-digit NCD number, the quantity and the amount the PBM actually paid each pharmacy or pharmacist, and the amount charged to the person, business, or other entity that is purchasing pharmacist's services through the PBM.

--A PBM itemize by individual claim the amounts the PBM actually paid each pharmacy or pharmacist for pharmacist's services on any invoice, statement, or remittance.

--The Department of Insurance to create one form for health carriers and PBMs to use in switch communications to patients, prescribing practitioners, and health insurance payers including employers, and to promulgate rules governing switch communications.

**New Jersey AB 1578**

requires that:

--PBMs serve in a fiduciary capacity on behalf of health plans.

--PBMs may solicit and receive payments and remuneration from pharmaceutical manufacturers, labelers, or other entities that are not health plans; however if that remuneration is given to a PBM based on a health plan's prescription benefits or drug utilization, then the PBM is required to transfer all payments to the health plan, in full, unless the health plan agrees under explicit contract language that the PBM can keep all or a portion of the remuneration.

--PBMs must make certain disclosures in the contract issued or renewed to the health plan, including any conflicts of interests a PBM might have and any direct or indirect financial relationships with pharmaceutical manufacturers, labelers, and other entities.

**New Mexico SB 295** requires that:

--PBMs to be licensed by the Superintendent of Insurance.

**New York SB 58 (HB 158)** requires that:

--A PBM perform its duties in connection with pharmacy benefit management services it provides to a health plan or participants in the state with care, skill, prudence and diligence.

--Prior to entering into its initial contract with a health plan and annually thereafter, the PBM shall fully disclose to the health plan (a) the content of all contracts and other agreements it directly or indirectly has with, and all payments it receives from, a drug manufacturer, labeler or other third-party in connection with any pharmacy benefit management service it provides to the health plan and (b) the percentage of all such payments retained by the PBM or distributed to the health plan.

--During a contract period, the PBM must provide to the health plan the following information in writing: (a) every activity, policy or practice of the PBM that directly or indirectly presents any actual or potential conflict of interest with the health plan; (b) any increase in the net price to the health plan for any covered drug and the reason for such increase; (c) any increase in the dispensing fee paid to any pharmacy and the reason for such increase; and (d) documents sufficient for the health plan to determine whether any covered dispensed prescription filled with a repackaged drug, including a drug repackaged by an affiliate of the PBM, had either a higher net cost to the health plan or a higher co-payment or co-insurance amount to the participant than any therapeutically equivalent drug available on the date the prescription was filled.

**New York HB 2008** requires that:

--PBMs shall have a fiduciary relationship with and obligation to the health plan or provider, and shall perform its services with care, skill, prudence, diligence, and professionalism.

--All funds received by the PBM in relation to providing PBM shall be

received by the PBM in trust for the health plan or provider and shall be used or distributed only pursuant to the PBM's contract with the health plan or provider or applicable law.

--The PBM shall periodically account to the health plan or provider for all funds received by the PBM

--The health plan or provider shall have access to all financial and utilization information of the PBM in relation to services provided to the health plan or provider.

--The PBM shall disclose in writing to the health plan or provider the terms and conditions of any contract or arrangement between the PBM and any party relating to services provided to the health plan or provider.

--The PBM shall disclose in writing to the health plan or provider any activity, policy, practice, contract or arrangement of the PBM that directly or indirectly presents any conflict of interest with the PBM's relationship with or obligation to the health plan or provider.

**South Carolina HB 3063** requires that:

--PBMs register with the Department of Insurance.

--A PBM must notify a covered entity, in writing, of any activity, policy, practice, ownership interest, or affiliation of the PBM that directly or indirectly presents any conflict of interest with the duties imposed by this article.

--A PBM must make available for review by the covered entity: (a) all financial and utilization information requested by the covered entity relating to the provision of benefits to covered individuals through that covered entity and all financial and utilization information relating to services to that covered entity; (b) all financial terms and arrangements for remuneration of any kind that apply between the PBM and any prescription drug manufacturer or labeler including, but not limited to, formulary management and drug switch programs, education support, claims processing and pharmacy network fees that are charged from retail pharmacies and data sales fees; and (c) whether there is a difference between the price paid to a retail pharmacy and the amount billed to the covered entity for said purchase.

**Tennessee HB 1110** requires that:

--when a patient's out-of-pocket cost for a prescription or covered service is percentage-based, the covered entity or PBM shall calculate the out-of-pocket cost such that when the out-of-pocket cost is added to the amount that the covered entity or PBM will directly pay to the pharmacy or other dispenser the sum will equal the actual reimbursement. "Actual reimbursement" means the total amount that a covered entity or PBM determines that a pharmacy or other dispenser will receive consistent with the provider agreement, and is the sum of the amount the covered entity or PBM will pay directly to the pharmacy or other dispenser plus any applicable patient out-of-pocket cost paid directly by the patient to the pharmacy or other dispenser, for dispensing of a particular prescription or providing of a covered service.

**Texas HB 1696** requires that:

--PBMs: (a) be licensed as a Third Party Administrator; (b) exercise good faith and fair dealing in the performance of contractual obligations toward a "covered entity"; and (c) notify a "covered entity in writing of any activity, policy, practice, ownership interest, or affiliation of the PBM that may present a conflict of interest.

Phoenix Business Journal named The Phoenix Law Group Of Feldman Brown Wala Hall & Agena to the list of largest specialty firms in Phoenix for its Pharmacy Benefits and Operations practice.

For additional information that impacts the pharmaceutical benefit industry, visit [PLGTRACK.COM](http://PLGTRACK.COM) or contact Samantha Brown [sbrown@phoenixlawgroup.com](mailto:sbrown@phoenixlawgroup.com), Laurel Wala [lwala@phoenixlawgroup.com](mailto:lwala@phoenixlawgroup.com), or Cami Agena [cagena@phoenixlawgroup.com](mailto:cagena@phoenixlawgroup.com) at The Phoenix Law Group [www.phoenixlawgroup.com](http://www.phoenixlawgroup.com).

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