



THE PHOENIX LAW GROUP OF Feldman Brown Wala Hall & Avena, PLC



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JUNE 2013

PHARMACY BENEFITS MANAGEMENT UPDATE

NEW STATE LAW TREND - MAC RESTRICTIONS

Three states (Arkansas, Kentucky, and North Dakota) have now adopted new laws placing requirements and restrictions on MAC lists. These laws vary by state, but tend to:

- Put limits on what drugs can be included on a MAC list
- Provide for regular updates to MAC lists (e.g., every seven business days)
- Require pharmacy access to MAC lists
- Set forth appeals process requirements related to MAC pricing, including the application of changes to MAC pricing resulting from such challenges (e.g., application of adjustment to pricing to all similarly situated pharmacies)
- Disclosure of methodology and source information

A similar bill currently is pending in Oklahoma (HB 2100).

PHARMACY AUDIT REQUIREMENTS/RESTRICTIONS EXPAND

Since the beginning of 2013, three more states (Colorado, Montana, and South Dakota) have adopted laws regulating pharmacy audits, bringing the total number of states with requirements around pharmacy audits/recoupments to thirty-one. Two of the states (Arkansas and Georgia) modified their existing requirements with respect to pharmacy audits in 2013. These pharmacy audit laws vary by state, but typically address:

- Scope of audits
- Timing of audits
- Frequency of audits
- Notice requirements
- Audit report requirements
- Response time for pharmacies
- Appeal rights
- Recoupment restrictions
- Confidentiality requirements / sharing of information among payors
- Auditor compensation restrictions

While CMS was asked to impose similar restrictions in connection with Medicare Part D in comments to the draft 2014 Call Letter, CMS declined in the final 2014 Call Letter to impose such restrictions, stating that it

was beyond the scope of the Call Letter. However, CMS did set forth requirements around how pharmacy audits can and can't be handled in terms of reporting to CMS. See next section of this newsletter for additional details.

MEDICARE PART D - DIR REPORTING REQUIREMENTS/PDE GUIDANCE

On May 14, 2013, CMS released the Draft Medicare Part D DIR Reporting Requirements for 2012. The draft requirements set forth the change in position taken by CMS in the final 2014 Call Letter with respect to reporting of pharmacy payment adjustments. Historically, CMS has allowed pharmacy payment adjustments (e.g., pharmacy audit recoveries/underpayments) to be reported as a component of DIR. CMS has changed its position and now requires that pharmacy payment adjustments resulting from financial, administrative, and coverage errors be accurately reflected in the PDE record submissions, not the DIR reporting. Despite that the change of position was first reflected in the 2014 Call Letter, this change applies to 2012 claims. According to the draft 2012 DIR Reporting Requirements, Part D sponsors must submit their 2012 DIR submission information by 11:59 PM PT on July 5, 2013. For additional information, see the final 2014 CMS Call Letter at pages 157-164 and the draft Medicare Part D DIR Reporting Requirements for 2012 released by CMS on May 14, 2013.

ACTIVE LEGISLATIVE/REGULATORY SESSIONS

Since January 1, 2013, over 100 new laws and regulations have been adopted or finalized that relate to the pharmacy benefit management industry. Stay up to date on the latest by subscribing to PLGTrack.com. To subscribe or receive a temporary password to review a sample of the PLGTrack database, email PLGTrack2013@gmail.com or contact Samantha Brown at 480-694-0727.

ABOUT US

The Phoenix Law Group of Feldman Brown Wala Hall and Agena, PLC is one of the few 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 health plans, 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.

For two years in a row, the Phoenix Business Journal has 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.

To join our mailing list, please contact:
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For additional information that impacts the pharmaceutical benefit industry, visit PLGTRACK.COM or contact us at PLGTRACK2013@gmail.com.

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