

Pennsylvania Regulates PBMs

On July 17, 2024, Governor Josh Shapiro signed House Bill 1993 (“the Bill”) into law. The Bill seeks to further regulate pharmacy benefit managers (“PBMs”) by, among other things, requiring pass-throughs for drug manufacturer rebates, requiring provider freedom of choice, and enacting provider network requirements.

The Bill is effective on November 14, 2024, and could have significant impacts on the prescription drug coverage offered under fully insured group health plans covering residents of the Commonwealth of Pennsylvania.

■ Applicability

The Bill amended the existing Pharmacy Audit Integrity and Transparency Act, with the amended statute now called the Pharmacy Benefit Reform Act (“the Act”). The Act applies to fully insured health plans offering prescription drug coverage in the Commonwealth. Importantly, self-insured ERISA plans, non-federal governmental plans, church plans, and Indian tribal government plans are not covered by the Act.

■ Impact of the Bill on Fully Insured Group Health Plans

The Bill is intended to regulate contracts between a pharmacy or PBM and a health insurer or health benefit plan. As a whole, the Act regulates a wide variety of PBM operations; however, specific to group health plans, the Bill imposes the following requirements on PBMs operating in the Commonwealth:

- **Pass-through of Drug Manufacturer Rebates.** If the health plan designates negotiation of a drug manufacturer rebate to a PBM, the PBM is required to pass through to the health plan at least 95% of any rebate received by the PBM on behalf of the health plan.
- **Freedom of Choice.** Provided that the provider agrees to the terms and conditions of the PBM’s contract, an individual covered under the health plan must be permitted to select an in-network pharmacy or pharmacist of their choice and a PBM cannot:

- require the use of a mail order pharmacy or PBM retail pharmacy affiliate,
- transfer a covered individual's prescription from an in-network pharmacy to another pharmacy unless the individual requests it, or
- auto-enroll an individual in mail-order pharmacy services.

In addition, a PBM is prohibited from “steering” a covered individual to a PBM-affiliated retail pharmacy by using financial incentives.

- **Prohibition on Clawbacks.** Health plans, health insurers, and PBMs are prohibited from collecting the difference in the cost-sharing that a covered individual pays to a pharmacy and the applicable cost-sharing as defined by the health plan.
- **Network Adequacy.** A PBM is required to establish a provider network that allows for convenient access to providers within a reasonable distance from a covered individual's residence. In doing so, the PBM must adhere to the following requirements:
 - The network cannot be limited to only pharmacies affiliated with the PBM, and
 - The network must meet the requirements for pharmacy networks related to Medicare Part D drug coverage.

Beginning April 1, 2026, PBMs must file an annual network adequacy report with the Pennsylvania Insurance Department (“the Department”).

- **Effects of Spread Pricing.** “Spread pricing” is where a PBM charges a health plan or health insurer a contracted price for prescription drugs, but that contracted price differs from the amount the PBM directly or indirectly pays the pharmacy for prescription drugs. The Department is permitted to request data from a PBM to analyze the impact of, among other things, spread pricing and steering on the cost of prescription drugs in the Commonwealth.

■ Employer Action

Employers sponsoring fully insured group health plans which cover residents of Pennsylvania should review their contracts with their carrier and/or PBM to ensure that they are compliant and amend them as necessary.