

New York Enacts Landmark Legislation Regulating PBMs

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On December 31, 2021, New York Governor Kathy Hochul signed landmark legislation to increase the transparency of prescription drug pricing and to establish requirements on pharmacy middlemen. This new law is amongst 100 [\[1\]](#) state bills introduced in 2021 that shed light on the business practices of pharmacy benefit managers (PBM). In an approval memo, Governor Hochul described the New York legislation as the most comprehensive regulatory framework in the country for PBMs. The new law requires PBMs to register with the State Department of Financial Services (DFS) by April 1, 2022 and thereafter to be licensed by January 1, 2023. Failure to obtain a license by 2023 could result in a cease and desist order from DFS and financial penalties. The new legislation also sets forth duties and obligations that PBMs must follow, which are outlined below.

Duties

The new legislation creates a duty on the PBM to perform their services to covered individuals, health plans, and providers with “care, skill, prudence, diligence, and professionalism”.

Price transparency

The new law requires the PBM to place all money for service in trust to be distributed according to the PBM’s contract with the health plan, provider, or applicable law, including any payment that has been specifically allocated to compensate the PBM. In addition, PBMs must inform the health plans and providers of any pricing discounts, rebates, credits, fees, grants, reimbursements or other benefits “annually or more frequently.” The PBM is required to ensure that *any* portion of such income or financial benefit is passed in its entirety to the health plan or provider.

The new law also requires PBMs to disclose to DFS financial information and the terms and conditions of any contract they have with any party in writing, including dispensing fees paid to the pharmacies. Annually on or before July 1, PBMs are required to file a detailed report of: 1) any pricing discounts, rebates, credits, fees, grants, reimbursements and other benefits received by the PBM, and 2) the terms and conditions of any contract or arrangements between the PBM and “any other party relating to PBM services provided to a health plan or provider.” Medicare and Medicaid have had similar price transparency rules, but now those rules will apply across all lines of business in New York.

Disclosure requirements

If any activity, policy, practice or contract presents a conflict of interest with a PBM’s relationship or obligation to a health plan or provider, the PBM is required to disclose this information in writing.

Private Right of Action

If a PBM is in violation of any of their duties, providers and patients are afforded a private right of action to seek legal or equitable relief for any injury or loss resulting from a violation.

DFS along with the Department of Health in New York (DOH) will issue regulations that establish the minimum standards and requirements of PBM services in order to address the elimination of: conflicts of interest, deceptive and anti-competitive practices, and unfair claims practices. The new statute authorizes DFS to examine any registrant or licensee at any time they deem it expedient to ensure compliance.

The new legislation was passed as part of a three-part pharmacy reform package, one of which was vetoed. The vetoed Senate Bill 6603 prohibited PBMs from limiting an individual's option to receive medications from non-mail order pharmacies, and from denying a retail pharmacy participation in another provider's network. No other PBM measures were included in Governor Hochul's proposed 2023 Budget, released yesterday. However, time will tell if other legislation is contemplated in the budget negotiations and this legislative session. Given the newly enacted legislation and the evolving landscape on PBM regulatory oversight, Proskauer attorneys can assist self-insured employers and health plans regarding PBM business practice compliance.

[1] <https://www.nashp.org/rx-legislative-tracker/>

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