

# PBMs: What's the Buzz??

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## PBMS: THERE ARE ISSUES

## AND THERE ARE SOLUTIONS

- Business Model

- Rebates
- Spread

**Contractual fixes**

- Vertical Integration hides revenues

- GPOs/Rebate aggregators
- Owned pharmacies
- Integration with health plans

**Insist on  
Transparency**

- Misaligned Consultants

**Hire the right consultant**



# THE “OUR VENDOR IS OUR PARTNER” ISSUE



## Consultants

*“Some consulting firms often are getting paid more — a lot more — by the PBMs and health insurance carriers that they are supposed to scrutinize than by companies they are supposed to be looking out for.”*

*“...as high as \$5 per prescription in extreme cases...”*

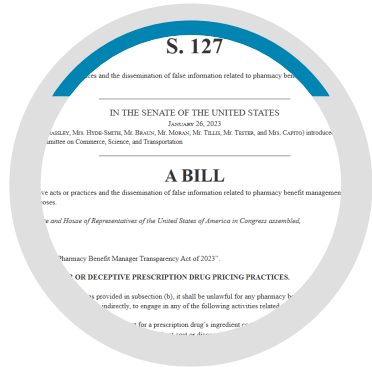
*“...they may share in the rebates that the PBMs pluck from pharmaceutical manufacturers...”*

## Traditional PBMs



- Scalability
- Risk-avoidance (nobody ever got fired for hiring IBM)
- Rebate addiction
- Lack of senior leadership understanding/support
- Bundled health plan/PBM services

# THE BRIGHT SIDE



## REGULATORY INTERVENTION

- Multiple proposed bills
- Bi-partisan support



## CONSOLIDATED APPROPRIATIONS ACT

- Data Transparency
- Elimination of gag clauses
- Consultant revenue disclosures



## PURCHASER EDUCATION

- Fiduciary responsibility
- Fed-up purchasers
- Plan member medical debt



## = CHANGE IN THE STATUS QUO

- Lower plan cost
- Lower member cost
- Informed plan management
- Improved clinical outcomes

# CLEANING UP OUR CONTRACTS

The Problem: PBM “Gotcha Clauses”	The Solution: Better PBM Contracts
<p>What’s a <b>brand</b>, a <b>generic</b>, a <b>specialty</b>? It matters because discounts and rebate guarantees are contractual. PBMs will change the definition to meet their needs.</p>	<p>Insist on a consistent means of defining brand, generics, and specialty drugs using an industry standard (Medi-Span MONY codes). Do not allow definitions to vary. Add a generic specialty category.</p>
<p>100% “<b>rebate pass-through</b>” might not include pharma revenue called something else</p>	<p>Insist on accountability for all pharma revenue, to PBM AND GPO, called rebates, distribution fees, marketing fees, clinical management fees or virtually known as any other name.</p>
<p><b>Formulary design</b> favors high rebate drugs over low net cost drugs</p>	<p>Insist on low net cost drugs and guard against wasteful drugs despite lower rebate checks. Low net cost = lower net cost</p>
<p>Directing care to <b>PBM-owned or affiliated pharmacies</b> that are more expensive than community pharmacies</p>	<p>Insist on reporting that allows comparability of drug spend at owned pharmacies vs. contracted pharmacies</p>
<p>Etc!</p>	<p>Be diligent and work with trusted, non-conflicted advisors</p>

# National Academy for State Health Policy Resources

- Model Legislation and Contracts: Prescription Drug Pricing
  - The landmark Inflation Reduction Act (IRA) allows Medicare, to negotiate the price of certain high-cost drugs. NASHP’s model bill enables states to extend the benefits of federal negotiations to state-regulated markets by using the negotiated Medicare rates as reference rates to set upper payment limits for state and private purchasers — and to use the savings that are achieved to help consumers.

[Model Legislation: An Act to Reduce Prescription Drug Costs Using Reference-Based Pricing](#)

[Blog: New NASHP Model Legislation Supports State Efforts to Lower Drug Costs by Leveraging Medicare Negotiations](#)

[Q&A: A Model Act to Reduce Prescription Drug Costs Using Reference-Based Pricing](#)

# Number of States With Common Provisions in State PBM Legislation: 2017–2022

PBM provision	Definition	Number of laws	Number of states	States
<b>Total PBM provisions in state legislation (2017-2022)</b>	-	123	50	
<b>Prohibits gag clauses on pharmacies</b>	Prohibits a PBM from including in their contract with a pharmacy any provision that prevents a pharmacy or pharmacist from disclosing specific information to a patient, including: - the existence or availability of lower-cost, therapeutically equivalent alternatives; - copayment or coinsurance information; - information as to how the patient may pay a lower price for their prescription, including paying the cash price instead of using their insurance plan.	57	43	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, OH, OK, OR, PA, SC, SD, UT, VA, VT, WI, WV, WY
<b>Limits patient cost-sharing</b>	Limits the amount a patient is required to pay for their medication(s) through: - manufacturer rebates or coupons; - requiring a patient pay the lesser of National Average Drug Acquisition Cost (NADAC), wholesale acquisition cost (WAC), or other approved costs.	33	28	AL, AR, AZ, CA, CO, CT, DE, FL, GA, IA, IL, IN, KY, ME, MO, MT, NC, ND, NE, NJ, NV, SC, SD, UT, VA, VT, WI, WV
<b>Requires PBM licensure/registration</b>	Requires a PBM to be licensed with the state before operating or conducting business as a PBM. Typically requires renewal of licensing every one to three years.	31	25	AK, AL, AR, DE, FL, HI, ID, IL, IN, KS, LA, ME, MI, MN, NE, NH, NM, NY, SC, TN, UT, VA, WA, WI, WV
<b>Prohibits clawbacks/retroactive denials</b>	Prohibits PBMs from retroactively reducing payment to a pharmacy on a clean claim after the point of sale, except as the result of an audit or adjudication.	24	21	AL, AR, CO, GA, IA, ID, IN, LA, MD, ME, MI, MN, ND, OK, PA, SC, SD, UT, WA, WI, WV
<b>Establishes Maximum Allowable Cost (MAC) list requirements</b>	MAC list requirements include: - Establishing requirements for placing drugs on a MAC list (e.g. therapeutically equivalent generics must be rated 'A', 'B', or 'AB' in the FDA's green or orange book); - Requiring PBMs to provide to a pharmacy, at the beginning of each contract or upon renewal, the sources utilized to determine the MAC list used by the PBM; - MAC lists must be updated every 'X' days, noting changes from the previous list and PBMs must allow "reasonable" appeals processes for challenging changes to a MAC list.	19	19	AR, AZ, DE, GA, IA, ID, IL, IN, KS, LA, MD, ME, MI, MN, NE, NH, NM, SC, WV

# Number of States With Common Provisions in State PBM Legislation: 2017–2022

<b>Requires PBMs to report rebate or other information to the state</b>	Requires a PBM to report information, including aggregate rebates, to certain state departments, most often to the Insurance Commissioner.	18	17	AR, CA, CO, CT, <b>IN</b> , KY, LA, MI, MN, NH, NV, NY, UT, VA, WA, WI, WV
<b>Establishes reimbursement requirements</b> ★	Reimbursement requirements include: - allowing a Department of Medicaid to change at any time for any reason the reimbursement rates between a PBM and a contracted pharmacy; - prohibiting a PBM from paying a pharmacy for a drug less than NADAC or WAC.	22	16	AL, AR, CO, GA, KY, LA, MD, NM, NY, OK, OR, TN, UT, VA, WA, WV
<b>Prohibits discrimination against non-affiliated pharmacies</b>	Prohibits a PBM from reimbursing a non-affiliated pharmacy in an amount less than the PBM would reimburse an affiliate pharmacy; prohibits a PBM from refusing to contract with or imposing more restrictive contractual terms on a non-affiliated pharmacy.	18	15	AL, AR, GA, IA, <b>IN</b> , LA, MD, MI, MN, NE, PA, UT, VA, VT, WV
<b>Prevents or prohibits spread pricing</b>	Prohibits a PBM from charging a health plan for a drug a greater amount than that paid to the pharmacy for filling the prescription.	13	11	CO, IL, <b>IN</b> , MD, MI, MN, NE, VA, VT, WV
<b>Prohibits discrimination against 340B-covered entities</b> ★	Prohibits a PBM from reimbursing a 340B-covered entity in an amount less than the PBM would reimburse a non-340B pharmacy in their network; prohibits a PBM from refusing to contract with a 340B entity or imposing more restrictive contractual terms on a 340B entity.	13	10	AR, CO, GA, KY, LA, MI, NV, NY, PA, VA, WV
<b>Creates regulations for the state or a contracted party's audit of a PBM</b>	Allows for a party in contract with a PBM to conduct an audit of the PBM to ensure compliance with the contract. Audit items often include rebate amounts received by PBMs from drug manufacturers.	10	8	AL, AR, CT, <b>IN</b> , MI, PA, VA, WI
<b>Creates regulations for a PBM's audit of a pharmacy</b>	Regulations include requiring a PBM to give notice to a pharmacy before conducting an audit; requires PBMS to audit each pharmacy (whether affiliate or non-affiliate) under the same standards, and mandates that specific requirements for recoupment or chargebacks must be met.	7	6	AK, <b>IN</b> , MI, MN, WI, WV



# Number of States With Common Provisions in State PBM Legislation: 2017–2022

<b>Requires PBMs to report rebate or other information to health plans</b> ★	Requires PBMs to share information with health plans including: <ul style="list-style-type: none"> <li>- total and/or aggregate rebates negotiated with manufacturers;</li> <li>- amounts of rebates retained by the PBM and/or passed on to patients;</li> <li>- individual and/or aggregate amounts paid by an insurer to a PBM for pharmacy services.</li> </ul>	5	5	AL, CA, GA, MN, UT
<b>Requires a PBM to have a fiduciary duty to insurer</b> ★	Ensures that within a contract between a health plan and a PBM, the PBM acts as the carrier’s agent and owes a fiduciary duty to the carrier with relation to prescription drug benefits. PBMs must notify carriers of conflicts of interest.	3	3	IA, ME, VT