

February 13, 2024

MEMORANDUM

TO: CIAB

FROM: Scott Sinder
Nick Sutter

RE: New York Department of Financial Services Proposed PBM Regulations

On February 6, the New York State Department of Financial Services (“NYDFS”) issued [proposed regulations](#) to regulate pharmacy benefit managers (“PBMs”) operating in the state and to deter anti-competitive practices (the “Proposed Regulations”). The NYDFS issued the Proposed Regulations to implement a [2021 law](#) aimed at requiring PBM licensing, combatting spread-pricing, and addressing conflicts of interest and other unfair claims practices and after previously issuing and withdrawing similar regulations in October 2023.

The Proposed Regulations are subject to a 10-day preproposal comment period, ending on February 16. A 60-day public comment period will follow after the Proposed Regulations are published in the State Register. NYDFS will then review all received comments and issue a revised proposal or a notice of adoption of the final regulation.

The Proposed Regulations would:

- Prohibit PBMs from certain actions, including:
 - Reimbursing an in-network pharmacy less than what an affiliated pharmacy within the same network is reimbursed for providing the same covered services;
 - Retroactively denying or reducing any reimbursement for a claim after adjudicating a claim and returning a paid claim response unless certain criteria are met;
 - Restricting disclosure of information by a pharmacy to the NYDFS;
 - Clawing back any reimbursement payment to a pharmacy or a drug’s ingredient cost or dispensing fees.
- Impose new consumer protections to prohibit PBMs from engaging in certain activities, including:
 - Engaging in false or deceptive practices and or promotional activities to gain dispensing opportunities at affiliated pharmacies;
 - Transferring or sharing prescription information records containing a covered individual’s identifiable data to an affiliated pharmacy;

- Preventing steering to affiliated pharmacies;
 - Removing a specific drug from a formulary or denying coverage of a specific drug to incentivize coverage from a different health plan;
 - Prohibiting or limiting a covered individual from selecting an in-network pharmacy of their choice required by the health plan;
 - Requiring a covered individual purchasing a covered drug to pay greater than the lesser of the cost-sharing amount, maximum allowable cost for the drug, or the amount the individual would pay for the drug if they were paying the cash price the pharmacy would charge without health plan coverage.
- Require PBMs to publish formularies and pharmacy directories online and prohibit PBMs from punishing a consumer who relies on such information.
 - Require PBMs to disclose the sources used by the PBM to calculate the reimbursement paid for covered prescription drugs in each pharmacy contract.
 - Impose credentialing, certification, and accreditation requirements and prevent PBMs from requiring a pharmacy to re-credential more than once every three years.
 - Prevent PBMs from immediately terminating a pharmacy from a network unless due to limited and narrow circumstances.
 - Allow NYDFS to request copies of the terms and conditions of any contract or arrangement between a PBM and any other party relating to the PBM services provided by a health plan.
 - Require NYDFS approval before acquiring a licensed PBM.
 - Expand pharmacy audit protections and require PBMs to apply the same audit standards across all facilities.