

Pharmacy Benefit Manager Reform

POLICY SNAPSHOT

Pharmacy benefit managers, or PBMs, are third-party administrators of [prescription drug benefits for 266 million people](#) who have health insurance coverage through commercial health plans, self-insured employers, state employee health plans, Medicare Part D plans, Medicaid managed care and others. PBMs provide a wide array of services such as processing claims, performing drug utilization review, creating formularies, and negotiating contracts between health plans, manufacturers and pharmacies.

PBMs negotiate [rebates from manufacturers](#), which are passed on to plan sponsors for favorable placement on a health plan's formulary—a list of covered drugs. One way health plans and PBMs manage drug costs is by using tiered formularies that influence the products prescribed and purchased. Medications with higher consumer cost-sharing are placed on upper tiers, and drugs that cost a patient less out-of-pocket, often generics, are put on lower tiers. Although a drug may be on a lower cost-sharing tier, it may still have a high list price. List prices can have a significant impact on consumers who pay a percentage of the drug's price—or coinsurance—and those with no prescription drug coverage.

Reimbursement between health plans and PBMs are typically designed using either a [spread or pass-through pricing model](#). Spread pricing occurs when a PBM reimburses a pharmacy less than the cost charged to the plan sponsor—whereby the PBM retains the spread. State audits into PBM reimbursements have found spread pricing is often found with generics. For example, [Ohio audited](#) prices paid for generics in the state Medicaid program and found PBMs kept a spread of 31% totaling over \$200 million dollars.

With a pass-through contract, the PBM passes through the full amount collected by the pharmacy to the plan sponsor. Since there is no spread, PBMs are paid an administrative fee instead.

Contractual terms are commonly proprietary and often unknown to consumers and payers, including employers and states. A lack of transparency in these arrangements makes it difficult for pay-



ers to assess how beneficial the negotiated prices are.

Agreements may also include provisions limiting a pharmacist's ability to reveal alternative cost-sharing information to a consumer, such as if a consumer would pay less by purchasing a prescription without using the drug benefit through their insurance plan.

In recent years, [PBMs have integrated with health plans and pharmacies](#) and the [three largest PBMs control approximately 80% of the market](#). PBMs have also become prominent providers of mail-order and specialty pharmacy services. Contracts may require certain providers, such as oncology and rheumatology practices, to receive drugs from PBM-owned specialty pharmacies instead of through the traditional method called buy-and-bill.

Buy-and-bill is a process that allows providers to purchase phy-

sician-administered medications, prepare them for specific patients, then bill the insurer or PBM for the drug once it's administered. Instead of reimbursing providers using the buy-and-bill process, some insurers and PBMs are shifting to "white bagging"—when an insurer or PBM requires providers to receive drugs shipped from a specialty pharmacy.

PBMs maintain that drugs shipped directly from a specialty pharmacy are less costly. Provider groups say white bagging can delay care when a product is not readily available at the provider's office. Providers further argue that white bagging leads to waste because when a patient's treatment changes in dosage or strength, the prepackaged product cannot be used for another patient and must be discarded.

Some policymakers are pursuing a wide range of policy options aimed at reforming the PBM industry. All 50 states have at least one PBM related law or regulation.

State Policy Options

State legislators have taken the following actions, among others, related to PBM reform:

- Emphasize state oversight and restructure state contracts.
 - Require registration and/or licensure with a state agency.
 - Encourage competition through a reverse auction process.
 - Require reporting of price and cost information to a state agency.
 - Eliminate spread pricing.
- Enhance consumer protections and ensure provider payment.
 - Ban the use of gag clauses in pharmacy contracts.
 - Prohibit the use of "white bagging" policies.

POLICY OPTIONS	STATE EXAMPLES
Emphasize state oversight and restructure state contracts.	
<p>Require registration and/or licensure with a state agency. To help track which companies are doing business in the state, states may require PBMs to register or obtain licensure to conduct business, often through the state department of insurance or board of pharmacy.</p>	<p>At least 30 states require registration or licensure.</p> <p>A first-in-the-nation law in New York establishes the Pharmacy Benefits Bureau which will oversee the PBM industry and manage licensing and reporting requirements.</p> <p>To obtain licensure in Wisconsin, a PBM must demonstrate to the Commissioner of Insurance that it intends to act in good faith, also known as a fiduciary.</p>
<p>Encourage competition through a reverse auction process. A reverse auction is when PBMs compete to manage the state employee health plan prescription drug benefit. Bids are anonymously submitted through an online portal and the lowest offer is awarded the contract.</p>	<p>Colorado, Louisiana, Maryland, Minnesota and New Jersey have passed laws to conduct reverse auctions in their states.</p> <p>New Jersey experienced a cost decrease of 25% in the first nine months after a contract was granted.</p> <p>In Louisiana, the reverse auction process may extend to health plans offered through the Louisiana State University System, including any public four-year college or community college system, or to public school employees.</p>
<p>Require reporting of price and cost information to a state agency. Several states have implemented legislation requiring transparency across the supply chain, including PBMs.</p>	<p>At least 12 states—including Arkansas, Connecticut, Iowa and Utah—require reporting of aggregated rebates, administrative fees and other payments between PBMs and insurers, pharmacies and manufacturers.</p> <p>Nevada centers data collection on essential diabetes and asthma drugs.</p> <p>PBMs which do not comply with reporting requirements in North Dakota may be fined up to \$10,000 per violation.</p>

POLICY OPTIONS	STATE EXAMPLES
<p>Eliminate spread pricing.</p>	<p>More than a dozen states bar the use of spread pricing models in PBM and health plan contracts.</p> <p>Ohio prohibits Medicaid managed care organizations to contract with PBMs that use spread pricing and has moved to a single PBM contract.</p> <p>Medicaid pharmacy benefits were removed—or “carved-out”—from managed care contracts in New York and benefit oversight was transferred to the state Medicaid agency.</p>
<p>Enhance consumer protections and ensure provider payment.</p>	
<p>Ban the use of gag-clauses in pharmacy contracts.</p>	<p>The federal “Patient Right-to-Know Drug Prices” Act of 2018 bans the use of gag clauses; however, states may implement their own protections.</p> <p>Over two-thirds of states have laws prohibiting the use of gag clauses in pharmacy contracts.</p> <p>Michigan allows pharmacists to tell patients about lower cost options, as well as the availability of other appropriate therapies.</p> <p>Virginia requires PBMs to provide patient cost and benefit information in real time and use a certain format.</p>
<p>Prohibit the use of “white-bagging” policies.</p>	<p>Providers in Arkansas, Louisiana and Virginia cannot be denied payment for physician-administered drugs and related services covered by a patient’s health plan.</p>

Federal Action

The impact of the PBM industry on prescription drug access and affordability has received Congressional interest from both chambers and parties. In 2019, the [Senate Committee on Finance questioned PBM executives](#) about the industry’s role and business practices. Over 18 months later, a forum held by the [House Committee on Oversight and Reform](#) evaluated how PBMs influence the prescription drug market. Most recently, [the Federal Trade Commission unanimously voted in favor of launching an inquiry](#) into the PBM industry which will investigate their impact on the access and affordability of prescription drugs.

Additional Resources

- [State Policy Options and Pharmacy Benefit Managers](#) (National Conference of State Legislatures)
- [Prescription Drug Pricing Transparency Law Comparison Chart](#) (National Academy of State Health Policy)
- [White and Brown Bagging Emerging Practices, Emerging Regulation](#) (The National Association of Boards of Pharmacy)
- [Prohibition of Spread Pricing in Medicaid MCO Contracts](#) (Kaiser Family Foundation)
- [Understanding the Evolving Business Models and Revenue of Pharmacy Benefit Managers](#) (3 Axis Advisors)

Please note that NCSL takes no position on state legislation or laws mentioned in linked material, nor does NCSL endorse any third-party publications; resources are cited for informational purposes only.

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