

# Pharmacy Benefit Managers

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## How states regulate them

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## **Report directive**

This one-time only report is a budget proviso (Engrossed Substitute House Bill 1109, the 2019-2020 Biennial Budget) requiring the Washington state Insurance Commissioner to review how pharmacy benefit managers (PBMs) are regulated in other states and report the findings to the governor and appropriate committees of the Legislature by Sept. 15, 2019.

## **About pharmacy benefits managers**

According to the Centers for Medicare & Medicaid Services (CMS) <sup>1</sup>, pharmacy-based and mail-order consumer purchases of prescription drugs were a \$333 billion market in the United States in 2017. Pharmaceutical Research and Manufacturers of America (PhRMA) estimates that physicians and other prescribers write approximately 6 billion prescriptions in the United States every year, two-thirds of which are processed by a PBM.

## **What are PBMs and what is their role?**

PBMs are third-party administrators of prescription drug coverage for insurers and employers who pay a fee to the PBM for their services. These services include developing and maintaining formularies, processing claims and negotiating discounts and rebates. PBMs manage plans for millions of Americans who have health insurance from a variety of sponsors including commercial health plans, self-insured complier plans, Medicare Part D plans, state government employee plans, and Medicaid managed care organization (MCO) plans. According to the Drug Channel Institute <sup>2</sup> as of 2018, the three largest PBMs - ExpressScripts, CVS Caremark and OptumRX -- controlled over 70% of the market.

## **State laws enacted in 2018 that affect PBMs**

According to the National Conference of State Legislatures (NCSL), <sup>3</sup> state legislatures passed over 30 laws banning the practice of "gag clauses," which restrict pharmacists from discussing drug pricing options in PBM contracts with pharmacies.

Many states have passed legislation prohibiting "clawback" practices which is when there a discrepancy in price between the cost of the drug and the co-pay and the PBM keeps the difference.

Multiple states enacted legislation either requiring PBMs to register with the state or acquire a license, as outlined below.

## State laws enacted in 2019 that affect PBMs

This report provides an overview of state laws enacted to regulate PBMs and is organized into three categories:

1. States that require PBMs to register with its insurance regulator.
2. States that require PBMs to be licensed.
3. States that require action other than registration and/or licensure.

## States that register PBMs

Fifteen states require PBMs to register. They are listed here in alphabetical order and include legal citations and registration requirements.

Note: The State of Maine will require PBMs to become licensed starting January 1, 2020, in addition to registering with its insurance regulator.

State	Citation	Registration language
Alabama	AL S 73 <sup>4</sup> Act No. 2019-457 (06/07/2019)	Requires PBMs to register. Prohibits PBMs from preventing pharmacies and pharmacists from disclosing information on the amount an individual would pay for a prescription drug, if he/she does not have an insurance plan, benefits, discounts, or if an individual paid for a prescription without using their pharmacy benefits.
Alaska	AS 21.27.901 <sup>5</sup> (2018)	(a) A person may not conduct business in the state as a pharmacy benefits manager unless the person is registered with the director as a third-party administrator under AS 21.27.630.
California	2017 CA A.B. 315 <sup>6</sup>	Requires PBMs to register.
Connecticut	C.G.S § 38a-479bbb <sup>7</sup>	Requires all PMBs to obtain a certificate of registration.
Kansas	K.S.A. § 40-3823 <sup>8</sup>	Requires PBMs to register.
Maine	Title 24-A: M.I.C, chapter 18, § 1913 <sup>9</sup>  ME S 350 <sup>10</sup> (06/24/2019)  ME S 466 <sup>11</sup> (06/24/2019)	Starting April 1, 2011, PBMs required to pay registration fee prior to operation.  Expands drug price transparency.  Requires PBMs to obtain license starting January 1, 2020.
Maryland	M.I.C. § 15-1604 <sup>12</sup>	Requires PBMs to register.
Massachusetts	211 CMR 148.03 <sup>13</sup>	Requires PBMs and third party administrators (TPAs) to register with commissioner.

Montana	M.C.A. 33-17-603 <sup>14</sup> (2017)  MT S 83 <sup>15</sup> (03/21/2019)	Certificate of registration required.  Establishes allowable and prohibited practices for PBMs and other third party payers.
North Dakota	N.D. Cent. Code § 26.1-27.1 <sup>16</sup>	Requires PBMs to register.
Oregon	Or. Rev. Stat. 735.532 <sup>17</sup>	Requires PBMs to register.
Pennsylvania	Pa. Stat. Ann. Title 40, § 4521 <sup>18</sup>	Requires PBMs to register.
Utah	Utah Code Ann. 31A-22-640 <sup>19</sup>	Requires PBMs to register.
Vermont	18 V.S.A § 9421 <sup>20</sup>	Requires PBMs to register.
West Virginia	W. Va. Code Ann. § 33-51-7 <sup>21</sup>	Requires PBMs to register.

### States that require PBMs to be licensed

Nine states require PBMs to be licensed. They are listed here in alphabetical order and include legal citations and licensing requirements.

State	Citation	Licensing language
Arkansas	Ark. Code §23-92-504 <sup>22</sup>  AR S 520 <sup>23</sup> Act No. 994 (04/15/2019)	A person or organization shall not establish or operate as a pharmacy benefit manager in Arkansas for health benefit plans without obtaining a license from the Insurance Commissioner under this subchapter.  Clarifies the State Insurance Department's regulatory and enforcement authority concerning PBM-modifies the PBM licensure act, and requires PBMs to report certain information to the Insurance Commissioner.
Louisiana	La. R.S. 22:1657 <sup>24</sup>  LA S 41 <sup>25</sup> (06/06/2019)  LA H 242 <sup>26</sup> (06/04/2019)  LA H 433 <sup>27</sup> (06/06/2019)	Every PBM shall be required to be licensed by the commissioner of insurance.  Authority to regulate PBMs.  Prohibits certain claims fees assessed by health insurers and PBMs.  Addresses PBMs pricing and payment.

Minnesota	MN S 278 <sup>28</sup> (05/17/2019)	Requirement for PBMs to be licensed starting January 1, 2020.
New Mexico	NM S 415 <sup>29</sup> (04/04/2019)	Amends the PBM Regulation Act, provides for renewal of PBMs licensure, etc.
Oklahoma	Okla. Stat. Ann. Tit. 59, § 358 <sup>30</sup>	PBM licensure, procedures, penalties for noncompliance, etc.
South Carolina	SC S 359 <sup>31</sup> (05/16/2019)	Establishes a license requirement for PBMs.
South Dakota	SDCL § 58-29D-21 <sup>32</sup>  SD H 1137 <sup>33</sup> (03/07/2019)	Administrator's license or registration required.  No PBM shall contractually require a health plan or pharmacist, who is a participating provider in a health plan, to collect cost sharing in an amount greater than the amount the person without coverage under a health benefit plan would pay for the drug. Addresses contractual "gag-clauses" between PBM and pharmacist.
Tennessee	TN Code § 56-7-3113 <sup>34a, 34b</sup>  TN H 786 <sup>35</sup> (05/24/2019)	Requirement for PMBs to be licensed.  Various changes to law concerning PBMs, requires annual audit of all PBMs, etc.
Wyoming	Wyo. Stat. § 26-52-101 <sup>36</sup>  WY H 63 <sup>37</sup> (02/16/2019)	Requires PBMs to obtain licensure.  Relates to regulation of PBMs under the insurance codes; PBM shall not prohibit or penalize disclosure of prescription cost information or affordable alternatives, etc.

### States that require something other than registration or licensure

Twenty-seven states do not require registration or licensure of PBMs in their states. They are listed here in alphabetical order and include legal citations and requirements.

Of the 27 states, five have pending laws that would require registration or licensure for PBMs in the future.

- New Hampshire and Washington state have pending laws that would require PBMs to be registered and licensed.
- North Carolina has a pending law that would require PBMs to obtain a license.
- Wisconsin and Michigan have pending laws that would require PBMs to register with their state's insurance regulator.

State	Citation	Defining language
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<p>Arizona</p>	<p>AZ H 2285<sup>38</sup> Act No. 152 (04/30/2019)</p>	<p>PBMs are required to update the price and drug information for each list they maintain every 7 business days, make available to each network pharmacy the sources used to determine maximum allowable cost pricing, and establish a process by which network pharmacies may appeal reimbursements.</p> <p>Provides rules for certain 90-day prescriptions and for delivery by mail of prescription drugs.</p> <p>Provides definitions.</p>
<p>Colorado</p>	<p>HB18-1284<sup>39</sup> (04/30/2018)</p> <p>HB19-1131<sup>40</sup> Effective 8/2/19</p> <p>Failed Bill (2019) HB19-1154<sup>41</sup></p> <p>Failed Bill (2019)</p>	<p>Prohibits PBMs from providing a covered person information on the amount of the covered person's cost share for their prescription drug and clinical efficacy of any more affordable alternative drugs, etc.</p> <p>Requires that one-to-one communications between pharmaceutical representatives (or anyone communicating on their behalf) and prescribers must include written information about the wholesale cost of a drug, as well as the names of at least three generic equivalents.</p> <p>Prohibits a carrier that offers or issues a health benefit plan that covers pharmaceutical services including prescription drug coverage, or a PBM firm managing those benefits for a carrier from:</p> <ul style="list-style-type: none"> <li>Limiting or restricting a covered person's ability to select a pharmacy or pharmacist if certain conditions are met;</li> <li>Imposing a copayment fee, or other cost-sharing requirement for selecting a pharmacy of the covered person's choosing;</li> <li>Imposing other conditions on a covered person, pharmacist, or pharmacy that limit or restrict a covered person's ability to use a pharmacy of the covered person's choosing;</li> <li>Denying a pharmacy or pharmacist the right to participate in any of its pharmacy network contracts in this state or as a contracting provider in this state if the pharmacy or pharmacist has a valid license in Colorado and the pharmacy or pharmacist agrees to specified conditions.</li> </ul>

	HB19-1296 <sup>42</sup>	Requires health insurers, prescription drug manufacturers, pharmacy benefit management firms, and nonprofit organizations to report specified information about the costs of prescription drugs to the commissioner of insurance; to direct the commissioner to analyze the information and submit a report regarding the effects of prescription drug costs on health insurance premiums; to preclude pharmacy benefit management firms from retroactively reducing payments to pharmacies; and to require carriers to reduce consumer cost sharing for prescription drugs to reflect rebates the carrier or pharmacy benefit management firm received.
Delaware	DE H 24 <sup>43</sup> (06/19/2019)	Prohibits PBMs from engaging in the practice of clawbacks, which is the imposition of copayments or coinsurance requirements, for a covered prescription drug that exceeds specified coverage amounts.
Florida	§ 465.1885 <sup>44</sup> (2018)  Failed Bill (2019) FL H 271 <sup>45</sup>          Failed Bill (2019) FL S 906 <sup>46</sup>	Pharmacy audits; rights.  Prohibits attorneys from engaging in misleading advertisement related to prescribed drugs; imposes limitations on auditing entities. Requires: Insurance regulator to establish appeals process to findings in audit reports; Registration of pharmacy services administration organizations; Health insurers & HMOs to offer online prior authorization process; Health insurers to publish procedure for exemptions for first fail policies; Pharmacy benefit managers to publish list of covered drugs.  Prescribed drug services and audits
Georgia	GA H 323 <sup>47</sup> (05/07/2019)	Revises provisions relating to administration of claims by PBMs and those relating to prohibited activities of PBM, etc.
Hawaii	Introduced and/or Pending HI S 507 <sup>48</sup> (2019)	PBM, pricing and payment, etc.

	<p>Introduced and/or Pending HI H 1361<sup>49</sup> (2019)</p> <p>Introduced and/or Pending HI S 1401<sup>50</sup> (2019)</p> <p>Introduced and/or Pending HI S 1521<sup>51</sup> (2019)</p>	<p>Prohibits PBMs from engaging in self-serving business practices, replaces registration requirement with licensure requirement, increases PBM reporting requirements.</p> <p>PBMs may not prohibit sharing of an insured individual's cost share for prescription drug and clinical efficacy or more affordable alternative drug, etc.</p> <p>Establishes contract, cost disclosure, reimbursement, appeals, and information protection requirements for pharmacy benefit managers that contract with small, independent, and isolated pharmacies. Establishes enforcement jurisdiction in the Department of Commerce and Consumer Affairs.</p>
Idaho	<p>Failed Bill ID S 1068<sup>52</sup> (2019)</p>	<p>Required PBMs to register with Department of Insurance and gives pharmacists more flexibility in informing patients how they can pay less out-of-pocket for prescriptions.</p>
Illinois	<p>Sent to Governor IL H 465<sup>53</sup> (2019)</p> <p>Introduced and/or Pending IL S 652<sup>54</sup> (2019)</p> <p>Introduced and/or Pending IL H 891<sup>55</sup> (2019)</p>	<p>Require PBM to update maximum allowable cost pricing information and maintain a process that will eliminate drugs from maximum allowable cost lists or modify drug prices to remain consistent with changes in pricing data; prohibits PBM from limiting a pharmacist's ability to disclose the availability of a more affordable alternative drug; prohibits PBM from requiring an insured to make a payment for a prescription drug in an amount that exceeds the lesser of the applicable cost-sharing amount or the retail price of the drug, etc.</p> <p>PBMs must provide an insured info regarding amount of the insured's cost share for prescription drug, etc.</p> <p>Provides PBM shall not, through contract, prohibit a pharmacy from offering and providing direct and limited delivery services to an insured as an ancillary service of the pharmacy, as delineated in the contract between the pharmacy benefits manager and the pharmacy. Provides that a pharmacy benefits manager shall not charge, or attempt to collect from, an insured a copayment that</p>



	<p>Introduced and/or Pending IL S 1557<sup>56</sup> (2019)</p> <p>Introduced and/or Pending IL H 3187<sup>57</sup> (2019)</p>	<p>exceeds the total charges submitted by the network pharmacy.</p> <p>Provides that a PBM may not prohibit a pharmacy or pharmacist from providing a customer with a more affordable alternative if a more affordable alternative is available.</p> <p>Provides PBM shall: disclose any rebate amounts provided by a pharmaceutical manufacturer; disclose the actual amounts paid by the PBM to the pharmacy; etc.</p>
Indiana	<p>Indiana Code § 25-26-22-4.2<sup>58</sup></p> <p>Failed Bill IN S 40<sup>59</sup> (2019)</p> <p>Failed Bill IN H 1180<sup>60</sup> (2019)</p> <p>Failed Bill IN H 1252<sup>61</sup> (2019)</p> <p>Failed Bill IN H 1570<sup>62</sup> (2019)</p>	<p>Audit of a pharmacy.</p> <p>Requires PBMs to register with board of pharmacy.</p> <p>Requires PBM to obtain a license issued by the department of insurance.</p> <p>Requires PBM not licensed as an administrator to be registered with the board of pharmacy.</p> <p>Requires a retail pharmacy, before dispensing a prescription, to inform an insured patient of the cost of the drug or device without insurance or an applicable discount, if the cost of the drug or device is less than the copayment cost to the patient using the insurance or an applicable discount.</p>
Iowa	<p>Iowa Code 510B.2<sup>63</sup></p> <p>Signed by Governor IA S 563<sup>64</sup> (05/08/2019)</p>	<p>PBM shall obtain a certificate as a third-party administrator.</p> <p>Requires PBMs to file annual reports with the Commissioner of Insurance disclosing the amounts of rebates and administrative fees retained, allows for enforcement by the Department of Insurance, and is retroactive to January of 2019.</p>
Kentucky	§ 304.17A-740 <sup>65</sup>	Relates to the auditing of pharmacy records.

	<p>Failed Bill KY S 139<sup>66</sup> (2019)</p> <p>Failed Bill KY H 394<sup>67</sup> (2019)</p>	<p>Prohibit PBMs from taking actions related to payment and practices, permit the commissioner to promulgate administrative regulations prohibiting practices by PBMs, etc.</p> <p>Authorizes administrative action against a PBM if the manager engages in certain practices relating to pharmacy wholesalers, require the Department of Medicaid Services to not approve contracts with certain requirements relating to pharmacy wholesalers or to directly impose any of those requirements, etc.</p>
Michigan	<p>MCLS § 400.109I<sup>68</sup></p> <p>Introduced and/or Pending MI H 4155<sup>69</sup> (2019)</p>	<p>Process for maximum allowable cost pricing reconsiderations; use by department of community health and contracted health plans; completion; notification to pharmacy.</p> <p>Requires PBMs to register, fine of not more than \$7,500 for not registering by May 1<sup>st</sup> of each year, etc.</p>
Mississippi	<p>Miss. Code Ann. § 73-21-183<sup>70</sup></p> <p>Failed Bill MS H 128<sup>71</sup> (2019)</p>	<p>Defines PBMs and audit/report requirements.</p> <p>Reduces the time period covered by an audit of claims submitted by pharmacies to PBMs and other entities from 2 years to 90 days, etc.</p>
Missouri	<p>Mo. Rev. Stat. § 338.600<sup>72</sup></p> <p>Failed Bill MO H 1186<sup>73</sup> (2019)</p>	<p>Rules for auditing pharmacy, etc.</p> <p>Adds provisions for prescription drug costs.</p>
Nebraska	<p>Approved by Governor LB 316<sup>74</sup> (2019)</p> <p>NE 71-2484<sup>75</sup></p>	<p>Provides protections for pharmacies to disclose information regarding drug prices and prohibits insurers from charging covered individuals in excess of certain amounts.</p> <p>Information regarding cost, price, or copayment of a prescription drug; pharmacist or contracted pharmacy; authorized activities; pharmacy benefit manager; insurer; prohibited acts.</p>

Nevada	Enacted NV A 141 <sup>76</sup> (2019)	Prohibits PBMs from imposing certain limitations on the conduct of a pharmacist or pharmacy under certain circumstances, etc.
	Enacted NV S 276 <sup>77</sup> (2018)	Directs the Legislative Commission to appoint a committee to conduct an interim study concerning the issue of the costs of prescription drugs, etc.
New Hampshire	Introduced and/or Pending NH S 222 <sup>78</sup> (2019)	Establishes the licensure and regulation of PBMs by the insurance commissioner.
	Introduced and/or Pending NH H 671 <sup>79</sup> (2019)	Relative to registration of PBMs and reestablishing the commission to study greater transparency in pharmaceutical costs and drug rebate programs.
	Introduced and/or Pending NH S 226 <sup>80</sup> (2019)	Relative to pharmacy benefit manager business practices, licensure, and transparency.
New Jersey	Introduced and/or Pending NJ S 728 <sup>81</sup> (2019)	Prohibits PBMs from making certain retroactive reductions in claims payments to pharmacies, requires PBMs to disclose certain product information to pharmacies, etc.
	Introduced and/or Pending NJ S 1863 <sup>82</sup> (2018)	Regulates PBM companies.
	Introduced and/or Pending NJ A 2214 <sup>83</sup> (2018)	Prohibits PBMs from collecting copayments in excess of certain amounts (clawbacks); requires certain language prohibiting "gag clauses" in contracts with pharmacists.
	Introduced and/or Pending NJ S 2438 <sup>84</sup> (2018)	Requires certain language prohibiting "gag clauses" in contracts between PBMs and pharmacists.
	NJ S 2690 <sup>85</sup> (2019) Passed both houses	Prohibits PBMs and carriers from engaging in "clawback" and "gag clause" practices, requires certain disclosures by pharmacists, etc.

	<p>NJ S 2727<sup>86</sup> Combined with S 2690 (2019)</p> <p>Introduced and/or Pending NJ S 3341<sup>87</sup> (2019)</p>	<p>Prohibits PBMs from engaging in “clawback” and “gag clause” practices, etc.</p> <p>Regulates certain practices of PBMs related to specialty drugs and requires disclosure of payment information related to prescription drugs.</p>
New York	<p>§ 280-c PBM<sup>88</sup></p> <p>Introduced and/or Pending NY S 1705<sup>89</sup> (2019)</p> <p>Introduced and/or Pending NY S 2087<sup>90</sup> (2019)</p> <p>Introduced and/or Pending NY A 2836<sup>91</sup> Sub. by S 6531 (2019)</p>	<p>Addresses pharmacy audits by PBMs.</p> <p>Implements the pharmacy benefit manager transparency act requiring disclosure and publishing of reports relating to pharmacy benefit managers.</p> <p>Provides for PBM and the procurement of prescription drugs to be dispensed to patients, or the administration or management of prescription drug benefits, provides for funds received by a pharmacy in trust for the health plan or provider and provides for accountability of such funds, further provides for an appeals process to investigate and resolve disputes regarding multi-source generic drug pricing, etc.</p> <p>Provides for PBM and the procurement of prescription drugs to be dispensed to patients, or the administration or management of prescription drug benefits, provides for funds received by a pharmacy in trust for the health plan or provider and provides for accountability of such funds, further provides for an appeals process to investigate and resolve disputes regarding multi-source generic drug pricing, etc.</p>
North Carolina	<p>§ 90-85.50<sup>92</sup></p> <p>Introduced and/or Pending NC H 534<sup>93</sup> (2019)</p>	<p>Addresses pharmacy rights during audit.</p> <p>PBMs requires license to operate.</p>

	Introduced and/or Pending NC S 632 <sup>94</sup> (2019)	Pharmacy Benefits Manager Licensure Act.
North Dakota	N.D. Cent. Code § 19-03.6-02 <sup>95</sup>	Addresses PBM audit rules, etc.
Ohio	§ 3901.81 <sup>96</sup>  Introduced and/or Pending OH S 14 <sup>97</sup> (2019)  Introduced and/or Pending OH H 63 <sup>98</sup> (2019)	Defines PBMs.  Addresses pharmacy and disclosure of drug price information.  Addresses pharmacy and disclosure of drug price information.
Rhode Island	R.I. Gen. Laws §§ 27-29.1-7; 27-20.7-12 <sup>99</sup>  Enacted RI S 581 <sup>100</sup> (2019)	PBMs shall be included with the definition of third party administrators and shall be regulated as such. The annual report filed by third-party administrators with the department of business regulation shall include: contractual language that provides a complete description of the financial arrangements between the third-party administrator and etc.  Establishes audit requirements for PBMs and annual reporting for health insurers.
Texas	Tex. Ins. Code §§4151.051; 4151.151 <sup>101</sup>  §533.056 <sup>102</sup>  Enacted TX H 2536 <sup>103</sup> (2019)	Defines PBM.  Addresses audits of PMBs.  Relating to the transparency of drug costs.
Virginia	Va. Code Ann. § 38.2-3407.15:3 <sup>104</sup>	Addresses carrier and intermediary contracts with pharmacy providers, disclosure and updating of maximum allowable cost of drugs and limits on termination or nonrenewal.

	Enacted VA H 2561 <sup>105</sup> (2019)	Audit requirements for pharmacy, etc.
Washington	RCW 19.340.030 <sup>106</sup>  Pending/carryover House Health Care and Wellness Committee HB 1911 <sup>107</sup> (2019)  Pending/carryover Senate Health and Long Term Care Committee SB 5422 <sup>108</sup> (2019)  Pending/carryover Senate Health and Long Term Care Committee SB 5982 <sup>109</sup> (2019)	Addresses auditing of claims, requirements and prohibited practices.  Concerns licensing and regulation of PBMs, etc.  Regulation of PBM, etc.  Concerns licensing and regulation of PBMs, etc.
Wisconsin	Introduced and/or Pending WI S 100 <sup>110</sup> (2019)  Introduced and/or Pending WI A 114 <sup>111</sup> (2019)	Requires PBMs to refrain from certain actions in their interactions with pharmacists or pharmacies including charging a pharmacist or pharmacy a fee related to the adjudication of a claim, etc.  Registration requirements for PBMs, etc.

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