

## Massachusetts Enacts Enhanced PBM Law

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Massachusetts recently enacted a new law (“the Act”) which further regulates Pharmacy Benefit Managers (“PBMs”) and pharmaceutical manufacturers doing business in the state. Key provisions of the Act include consumer cost-sharing limitations, mandatory PBM licensing and regulation, and PBM and pharmaceutical manufacturer detailed data reporting, enhanced transparency, and increased oversight. Prior to the issuance of regulations, it appears the direct impact to employer plans is not significant.

### ■ Cost Sharing Limitations

The Act requires health plans to identify and offer, without cost-sharing (including copays and deductibles), one generic drug used to treat diabetes, asthma, and the two most prevalent heart conditions among its enrollees. These cost sharing limitations do not apply to self-funded plans. In addition, health plans must identify and offer one brand name drug for the above conditions and cap cost-sharing at \$25 for a 30-day supply. Health plans may not change the selection of drugs more than annually and must make public the drugs selected. The cost sharing limitations are effective July 1, 2025.

### ■ PBM Licensing and Regulation

PBMs must obtain a license from the Massachusetts Division of Insurance (“DOI”) to do business in the state. A PBM license is valid for a three-year period, is renewable for additional three-year periods, and requires a \$25,000 application and renewal fee. The Act establishes a \$5,000 per day penalty for an individual or business that operates an unlicensed PBM. Further, the Act establishes a penalty of no less than \$5,000 for each violation of other Massachusetts PBM laws.

The Act requires licensed PBMs to notify health plans in writing of any activity, policy, practice contract or arrangement of the PBM that directly or indirectly presents any conflict of interest with the PBM’s relationship with or obligation to the health plan client. A PBM may not make payments to a pharmacy benefit consultant or broker whose services were obtained by a health benefit plan sponsor to work on the pharmacy benefit bidding or contracting process if the payment constitutes a conflict of interest. The DOI will decide what payments constitute a conflict of interest.

The Act requires the DOI to implement licensing regulations by October 1, 2025, and requires all PBMs operating in Massachusetts to be licensed by January 1, 2026.

## ■ Data Reporting, Transparency and Oversight

The Act requires PBMs and pharmaceutical manufacturers to submit detailed cost and pricing data to the Center for Health Information and Analysis (“CHIA”) on an annual basis. CHIA will be required to implement regulations to ensure the uniform reporting of information from PBMs to allow CHIA to analyze:

- year-over-year changes in wholesale acquisition cost;
- year-over-year trends in formulary, maximum allowable cost lists and cost-sharing design, including the establishment and management of specialty product lists;
- aggregate information regarding discounts, utilization limits, rebates, administrative fees charged to pharmaceutical manufacturing companies and other financial incentives or concessions related to pharmaceutical products or formulary programs; and
- trends in estimated aggregate drug rebates and other aggregate drug price reductions from PBMs to health plans.

The data CHIA obtains will generally not be publicly available; however, CHIA will analyze the data it collects for inclusion in its annual health care costs trends report.

The Act also requires PBMs and pharmaceutical manufacturers to participate in certain state hearings and creates an office of pharmaceutical policy and analysis to review data and provide oversight of the entities.

## ■ Employer Action

It seems that the Act will have a minimal direct impact on employer health plans. However, there appears to be extraterritorial requirements on HMOs and certain other types of health plans. It is also likely that the costs associated with the burden placed on PBMs will be passed on to employer plans. We will continue to monitor this issue as more information and regulations become available.