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LEGAL UPDATE

GAO Report Highlights Common Themes in State PBM Regulations

As more states enact various laws to regulate pharmacy benefit managers (PBMs), a recent report to Congress from the U.S. Government of Accountability Office (GAO) highlights actions taken by state regulators in five states selected for review—Arkansas, California, Louisiana, Maine and New York. **With many state PBM laws being challenged in court, the report provides a helpful framework for PBMs, insurers and plan sponsors as they navigate their compliance obligations in this evolving area of law.**

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Prescription Drug Spending Trend

- According to the GAO, prescription drug spending by private health plans rose to nearly $152 billion in 2021, an 18% increase from 2016.
- Some researchers and stakeholders have questioned certain PBM practices, such as PBMs retaining a share of drug manufacturer rebates and use of spread pricing.
- In response, states have begun to enact legislation addressing PBMs, with all 50 states having enacted at least one PBM-related law between 2017 and 2023.
- GAO focused on a selection of five states that have enacted a wide range of PBM laws and interviewed state regulators as well as a variety of other stakeholders.

Background

Private health plans contract with PBMs to administer their prescription drug benefits. Health plans generally rely on PBMs to process claims, develop pharmacy networks and negotiate rebates from drug manufacturers. Because the PBM industry is subject to minimal federal regulation, many states are enacting their own laws to regulate PBMs, and GAO was asked to review these state regulations.

GAO Findings

The GAO report outlines common themes from these states' PBM laws, which include the following:

1. **Fiduciary or other "duty of care" requirements.** Four of the five states enacted laws to impose a duty of care on PBMs. The laws varied from imposing a fiduciary duty—that is, a requirement to act in the best interest of the health plan or other entity to which the duty is owed—to what state regulators described as "lesser" standards, such as a requirement to act in "good faith and fair dealing."
2. **Drug pricing and pharmacy reimbursement requirements.** All five states enacted a variety of laws relating to drug pricing and pharmacy payments, such as laws limiting PBMs' use of manufacturer rebates and their ability to pay pharmacies less than they charge health plans—a practice referred to as "spread pricing."
3. **Transparency, including licensure and reporting requirements.** To increase the transparency of PBM operations, all five states enacted laws that require PBMs to be licensed by or registered with the state, or both, and to report certain information such as drug pricing, fees charged, and the amounts of rebates received and retained.
4. **Pharmacy network and access requirements.** All five states enacted laws regarding pharmacy networks and patient access. Examples include laws prohibiting discrimination against unaffiliated pharmacies and limiting patient co-pays charged by PBMs.

In addition, regulators stated that providing them with **broad regulatory authority** was more effective than enacting specific statutory provisions, and certain regulators stressed the need for **robust enforcement** of PBM laws. Plan sponsors in all states should continue to monitor state regulation of PBMs as this area of law continues to evolve and PBM oversight becomes a priority.

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