

Pharmacy Benefit Manager (PBM) Contracting

For more than 20 years, Wiley lawyers have represented health plans in their procurement of and contracting with pharmacy benefit managers (PBMs) for Mail, Retail and Specialty drug services in connection with commercial and government health care programs. The PBM engagements for which we typically are retained often involve health plans with annual drug spend in the billions (e.g., \$4 billion in annual drug spend for one of our clients; \$8 billion for another). Our lawyers have negotiated with the majority of PBMs, including CVS Health, ESI, OptumRx, MedImpact, IngenioRx, Envolve Health, PerformRx, and Prime Therapeutics.

PBM prescription drug pricing mechanics are extremely complex, constantly evolving and often proposed in a convoluted way. Our attorneys are highly skilled and experienced at mapping the financial and operational concepts and pricing mechanics into clear, concise, enforceable contract terms that maximize health plans' leverage, incentivize optimal operational performance, and anticipate potential market fluctuations.

We have prepared contracts for an integrated Retail and Mail program and contracts to support programs where the Retail, Mail and Specialty functions are segregated. We also have experience drafting contract terms to support numerous pricing strategies, including both transparent pricing (both on the Retail and Mail side) and traditional pricing models. We have specific experience drafting provisions addressing various network configurations and corollary pricing, e.g., broad networks, narrow networks, 90-day networks, and mail order pharmacy networks. Critically, the various contract provisions we have drafted have weathered negotiation with national top-tier PBMs and are working to our clients' advantages in contracts today. Our years of drafting creative, complex PBM deals means that we can be nimble and draw on a wealth of experiences in capturing the nuances of the most intricate of arrangements.

Our lawyers have been engaged at various points in the procurement process – at the beginning before an RFP is issued, after the RFP is issued but before the first best and final offer (BAFO), and on occasion after the RFP has been issued and there have been several rounds of BAFO. No matter the point in the procurement process at which we are engaged, we have been able to leverage our experience and expertise in PBM contracting to construct a contract that builds upon the strengths of our client's existing contract(s) and the expertise of their business team and consultants, reflects innovations that the business team is seeking in the program, and addresses legal (and business) risks that are inherent in PBM contracts. In this regard, our lawyers work in conjunction with a health plan's business team and consultants to provide legal guidance on the full range of services sought. Our PBM procurement and contracting experience has both breadth and depth.

Contact Us

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