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ALERT

Considering a New PBM? What to Know and What to Do Now

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From our years of counseling clients on effective pharmacy benefit management (PBM) contracting – from procurement to contract execution – Wiley Rein knows that many Plans (health plans/plan sponsors/collectives/third party administrators/etc.) are entering the season of annual PBM market checks or beginning to strategize regarding procurements (RFPs and/or RFIs) for the 2027 and 2028 contract years. This period often brings renewed focus on evaluating current performance, assessing the Plan's contractual leverage, and determining whether your PBM arrangement continues to support your organization's goals for cost management, transparency, lowest net cost and the delivery of high-quality member services. These considerations require a deft strategy on how to use effectively: in-house resources (operational and legal); pharmacy consultants (for financial modeling and industry intelligence); and outside legal counsel seasoned in PBM procurements, contract development and negotiations.

Throughout the past year, we have issued Wiley Insights to address different components of the multidimensional PBM contracting process. As many Plans enter a period of reflection and decision-making around PBM strategy, we are pleased to share practical insights and key considerations to help ensure your upcoming choices are informed, confident, and strategically aligned.

Assessing Existing PBM Agreements

For many Plans, the challenge is not simply whether to launch a new PBM procurement, but rather "what should I do differently," given that despite repeated market checks or contract extensions, their PBM still is not delivering fully or accurately on existing contract commitments.

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Whether it is unmet performance guarantees, unclear financial reporting, or ongoing transparency concerns, these frustrations often signal that it is time to reassess leverage points within the existing PBM agreement. In many cases, Plans have more tools than they realize – from enforcing contractual audit rights and benchmarking provisions to negotiating targeted amendments that restore accountability and value.

At the same time, it is important to recognize that initiating a procurement is not a failure or an overreaction – rather, it is a strategic opportunity. A well-structured RFP that marries operational requirements with legal terms can reset expectations, reintroduce competitive pressure, and ultimately realign your PBM relationship with your organization's goals for cost management, transparency, and member service. If that process leads to a PBM transition, most PBMs are well-versed in managing implementations with minimal member disruption. With the right preparation and legal guidance, procurement can be a path to progress – not a source of disruption.

The Decision to Establish a New PBM Agreement

1. Choosing Your Contracting Approach

The dynamic between time and financial constraints is a constant reality. The need to reconcile competing priorities comes sharply into focus when evaluating which contracting approach your time and budget will support. Selecting the right contracting approach is one of the initial consequential decisions a Plan must make.

While every Plan faces different financial pressures, regulatory considerations, and operational constraints, the choice of approach generally falls into one of three categories: 1) developing a curated contract tailored to the Plan's long-term needs; 2) working from the PBM's template to achieve efficiencies while mitigating risks; or 3) pursuing a strategic refresh of an existing agreement. Each path carries distinct advantages, trade-offs, and resource implications, but all require careful planning to ensure the contract keeps pace with industry changes and positions to allow the Plan to maximize value over the contract term. Below, we provide a high-level overview of the three choices.

- **Curated Contract.**
  A fully customized, "best-in-class" PBM contract requires a significant up-front investment, but it allows the Plan to standardize terms, enhance transparency, and embed long-term strategic priorities. This approach minimizes reliance on proprietary PBM forms and provides leverage in subsequent procurements.
- **PBM Template.**
  When time or resources are constrained, Plans often begin with the PBM's contract template. Although always heavily slanted to protect the PBM's various sources of profit, this option can still produce favorable outcomes if the Plan strategically identifies and negotiates high-value issues – such as defined terms, rebate definitions, data ownership, financial guarantees, etc. We recommend consulting our previous alert for guidance when identifying critical high-value issues.

- **Strategic Strikes and Refreshing.**
  For Plans remaining with an incumbent PBM, refreshing outdated contract terms is essential. Over a typical three-to-five-year term, PBM industry dynamics will shift materially. Such industry dynamics include market consolidation and concentration, regulatory and transparency pressure, business model evolution and technology adoption, cost-pressure, and stakeholder pushback, as well as vertical integration and conflict-of-interest concerns. Plans should consider mid-cycle contract updates to strengthen the Plan's protections. When executed thoughtfully, such adjustments can produce measurable financial and operational gains.

2. Industry Context: Evolving Models and Oversight

Beyond selecting a contracting approach, Plans must consider the broader industry dynamics that shape – and increasingly determine – how PBM contracts are structured and enforced. These dynamics extend well beyond pricing or rebate considerations. Market consolidation, the rise of transparent and alternative PBM models, and heightened regulatory scrutiny are reshaping how pharmacy benefits are managed and negotiated. At the same time, emerging delivery models are disaggregating traditional PBM services – allowing Plans to segment programs such as specialty pharmacy, rebate management, and clinical oversight to achieve greater transparency and flexibility. Together, these forces demand that Plans approach contracting with strategic foresight and fiduciary discipline to ensure accountability, regulatory compliance, and measurable financial benefit for both the Plans and their members. As such, Plans should consider the following industry pressures that are currently on the rise:

- **New Delivery Models.**
  Plans are exploring product/service disaggregation, program segmentation, and even industry disruption, in which each component of a pharmacy program is separately procured. While these models offer greater competition and revenue diversification, they also introduce complexity and operational risk. Check out podcast episode for the specific types of models we are seeing in the industry, as well as our previous alert.

- **Regulatory Scrutiny.**
  The FTC's ongoing PBM investigation and high-profile litigation, alongside state and federal legislative proposals, continue to drive reforms targeting transparency, spread pricing, and affiliate arrangements.

- **Fiduciary Obligations.**
  Recent ERISA litigation underscores that Plans must demonstrate prudence in PBM procurement, oversight, and contract management to mitigate fiduciary liability. Plans should review our previous alert for specific recommendations.

3. Practical Steps for Plans

While a Plan's positioning in the contracting process and any applicable industry dynamics are important, it is equally critical to establish your PBM contracting strategy well before contract expiration. With many organizations already planning for the upcoming cycles, the most successful outcomes stem from early preparation, structured procurement, and vigilant oversight. Drawing on our previous alert identifying the critical high-value issues in PBM contracting, as well as our recent webinar, *Effective PBM Contracting in a Changing World: From Procurement to Contract Execution,* the following are certain key steps to guide Plans:

- **Begin with Market Intelligence.**
  The foundation of any successful PBM contracting strategy is a clear understanding of the market. Plans should monitor how the PBM industry is evolving, particularly with respect to new business models, emerging entrants, and alternative revenue streams outside of rebates. Just as importantly, Plans must understand their own position in the marketplace through benchmarking and market checks, which help identify leverage points and inform procurement priorities. Engaging experienced consultants and legal counsel early on can be invaluable in synthesizing competitive intelligence, regulatory trends, and plan-specific needs into a procurement strategy designed to maximize results.

- **Leverage the Procurement Process.**
  The procurement process itself offers Plans a unique opportunity to establish leverage and extract favorable contract terms. Competition is essential, and Plans that replicate government-style procurements – uniform treatment of offerors, strict deadlines, and structured evaluation criteria – are best positioned to control the process. Integrating draft contract terms into the RFP eliminates surprises later in negotiations, ensures comparability across proposals, and streamlines execution. Wiley's competitive contracting model, which incorporates contract drafting and negotiations into the procurement process, allows Plans to preserve leverage and resolve the most critical issues up front, resulting in more efficient and favorable outcomes. To learn more about this approach, known as the "Wiley Competitive Contracting Process," check out our podcast.

- **Develop the Right Contract for Your Plan.**
  As outlined in Section 1 of this Alert, Plans generally face three pathways when structuring PBM agreements: creating a curated contract, working from the PBM's template, or refreshing an existing agreement. Each option carries distinct advantages and trade-offs, but the ultimate goal is the same – developing a contract that reflects the Plan's priorities, market position, and regulatory obligations.

- **Negotiate and Protect High-Value Terms.**
  Another critical step in PBM contracting is ensuring that high-value terms are fully captured and aligned with the plan's priorities. Financial guarantees should be carefully negotiated to include comprehensive rebate definitions that account for all revenue streams attributable to the plan's utilization, not just traditional manufacturer rebates. Audit rights and reporting obligations must be robust, enforceable, and tailored to provide meaningful insight into PBM performance.

- **Hold the PBM Accountable Post-Execution.**
  Lastly, it is important to note that execution of the PBM agreement is only the beginning; effective administration requires active oversight. Plans should train internal teams on the contract's key provisions so they can identify when rights must be exercised and obligations enforced. Reporting requirements and audit rights should be used consistently, not left dormant, to validate performance guarantees and confirm the accuracy of financial terms. Plans should also remain vigilant against

amendment requests that may erode negotiated protections, and ensure that any modifications are carefully reviewed in light of fiduciary responsibilities.

Summary

In a landscape where every contractual provision can shift millions in value, legal foresight is not optional – it is essential to your ability to gain and maintain leverage. From assessing a current PBM agreement to initiating a new procurement, Wiley brings the precision, advocacy, and depth of experience needed to transform your PBM relationships into strategic assets. With decades of PBM experience supporting clients through the complexities of RFPs and contract negotiations, we ensure every decision advances your organization's goals.

Connect with our cross-practice and full-service Health Care team today to turn insight into impact – and secure stronger, more sustainable PBM . For more information on our PBM expertise, see additional details here.