

Major Shifts in PBM Contracting Landscape: Navigating CAA and Other Policy Developments

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PBM reform is taking an even deeper turn, as shifts in the obligations imposed on pharmacy benefit managers (PBMs) are taking place at the federal level, directly impacting PBM prescription drug pricing transparency and compensation structures. On February 3, 2026, Congress enacted into law the Consolidated Appropriations Act of 2026 (CAA), effectively amending the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act, and the Internal Revenue Code of 1986, mandating drug pricing transparency, increased reporting, and annual audit rights. And just a week prior to Congress enacting the CAA, the U.S. Department of Labor (DOL) (on January 30, 2026) published proposed regulations requiring PBMs, as well as certain PBM-affiliated brokers and consultants, to disclose information about their compensation to fiduciaries of self-insured group health plans subject to ERISA. Together, these measures require a renewed reevaluation of several aspects of your PBM agreement, including the financial, reporting, and auditing terms.

What's Required by the CAA?

The CAA will apply to plan years beginning on or after 30 months from the date the law was enacted. For plans that operate on a calendar year cycle, this means the law takes effect on January 1, 2029. The CAA sets forth the following key requirements, among others, for PBMs:

- Section 6701 (Oversight of Pharmacy Benefit Management Services) imposes extensive transparency requirements upon PBMs, and upon group health plans (GHPs) (both self-funded

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and fully insured) and health insurance issuers (insurers). These transparency obligations require PBMs to provide (and GHPs and insurers to obtain) detailed reporting data including, but not limited to, prescription drug spending, pricing arrangements, drug rebates, formulary placement, benefit designs, and affiliated pharmacies. Such reports shall be provided semiannually (or quarterly upon request) and should be made in plain language, in machine-readable format (and other formats that the Secretary may determine), and must comply with HIPAA. Failure to provide such information, or providing of false information, shall result in a civil penalty being imposed on both the PBM and GHP/insurers.

Additionally, GHPs and insurers are required to provide to each participant or beneficiary, each plan year, written notice informing them of the requirement of PBMs to submit reports and their right to obtain a summary of such report upon request.

- Section 6702 (Full Rebate Pass Through to Plan; Exception For Innocent Plan Fiduciaries) requires PBMs to pass through 100% of drug rebates, fees, alternative discounts, and remuneration received that are related to utilization of drugs or drug spending (not including bona fide service fees) to the GHP or issuer and prohibits the GHP or insurer from entering into a contract with a PBM that does not comply with this requirement.
- Section 6224 (Modernizing and Ensuring PBM Accountability) seeks enhanced transparency in Medicare by requiring PBMs to pass through 100% of remuneration, not including bona fide service fees, and sets forth certain definitions for pricing terms in contracts with Part D plan sponsors. PBMs are required to comply with new reporting requirements on drug pricing and related information, and shall permit Part D plan sponsors to audit, at least annually, the PBM to ensure compliance with all terms and conditions of the CAA. Part D plan sponsors shall have the right to select an auditor, and, importantly, the PBM shall not impose any limitations on the selection of such auditor (an issue that can become contentious). For Medicare only, the CAA is in effect for plans that start on or after January 1, 2028.

What Should You Do Now?

The CAA effectively federalizes PBM contracting, whereby the requirements of the CAA must be met in contracts between PBMs and GHPs and insurers (including contract extensions or renewals) as of the effective date of the CAA. While many customized/curated PBM agreements already address these required elements (and therefore will require only minor adjustments to capture some of the specific details), those PBM agreements that have used the PBM's own template contract as a base might require significant restructuring. Therefore, GHPs and insurers seeking a new PBM agreement (or an extension or renewal), should start reviewing their PBM agreements now to identify the steps needed to ensure full compliance. Accordingly, below are a few areas of your PBM agreement and questions to ask yourself in light of the CAA (and DOL proposed regulations discussed below):

- Agreement Term: One of the first steps in considering the impact of the CAA is to determine when these changes might affect your PBM agreement. When does the term of your current PBM agreement expire? Are you in the process of negotiating an extension/option year or renewal? Are you gearing up to go to market for a new PBM? The answers to these questions will determine how quickly you need to prepare

to integrate these requirements into your pharmacy program.

- **Financial Terms:** Does your PBM agreement require the PBM to pass through 100% of PBM revenue generated on the GHPs/insurers utilization or just 100% of the PBM revenue the PBM actually receives? How are fees of PBM-affiliated group purchasing organizations currently handled? What changes are you anticipating? When are rebates being paid out under your current PBM agreement? If the rebate payment requirements (i.e., no later than 90 days after the end of each quarter) differ than those under your current agreement or your historical patterns, what impact could this have on drug costs or on rebate guarantees?
- **Defined Terms:** How does your PBM agreement define/capture key concepts such as rebates, manufacturer administrative fees, fees from retail pharmacies, bona fide service fees, etc.? Does your PBM agreement now capture other streams of PBM revenue that is expected to be passed through (e.g., revenue from services provided by the PBM where such services do not constitute bona fide service fees)? To the extent you have a Medicare program, do the defined terms in your agreements differ from those definitions set out in the CAA?
- **Reporting and Notice Requirements:** Many PBM agreements already require extensive reporting requirements. However, what level of reporting (i.e., reporting detail and frequency) does your PBM agreement require now? What changes (including to your notice requirements) might be necessary to ensure compliance with the CAA?
- **Audit Rights:** What is the current scope of audit rights under your PBM Agreement? What needs to be added or deleted to ensure compliance (e.g., removing language that gives the PBM the right to veto the auditor chosen by the GHP/insurer)?
- **Performance Penalties/Guarantees/Compliance with Law:** The CAA imposes civil penalties on the PBM and the GHP and insurer for failure to comply with the CAA and failure to provide accurate information. You should consider what might be the best approach to extract consistent, compliant performance from your PBM. For example, should you incorporate CAA-specific performance guarantees, or impose an additional PBM payment to you (over and above the performance guarantees) to signal the seriousness and cascading deleterious impact resulting from the PBM's failure to comply fully with the CAA?

These questions only begin to scratch the surface of the requirements of the multidimensional CAA. You should begin now to develop an outline that details not only changes needed to your PBM agreement, but changes needed to your operational infrastructure to ensure the CAA requirements (and possibly the DOL proposed regulations) are fully, timely and accurately implemented and executed.

What's Next for PBM Reform?

Department of Labor's Proposed New Disclosure Rule

PBM reform remains a priority for both Congress and the Administration, as additional shifts in the PBM landscape are underway. As noted above, just a week prior to Congress enacting the CAA, the DOL published proposed regulations on January 30, 2026, requiring providers of PBM services, as well as certain PBM-affiliated brokers and consultants, to disclose information about their compensation to fiduciaries of self-insured group health plans subject to ERISA.

The DOL's proposed regulation is a direct response to President Trump's Executive Order 14273 (EO), *Lowering Drug Prices by Once Again Putting Americans First*, issued April 15, 2025, which instructed the DOL to propose regulations to improve transparency into the direct and indirect compensation received by PBMs (which includes arrangements with drug manufacturers, pharmacies, rebate aggregators, and other fees not fully disclosed). The DOL's proposed regulation would (i) require providers of PBM services to provide specific initial and semiannual disclosures to plan fiduciaries of employer-sponsored self-insured group health plans; (ii) require PBMs to allow plan fiduciaries to audit the disclosures to verify accuracy; and (iii) provide relief for plan fiduciaries in the event their PBM fails to meet its obligations under the regulation. Comments on the proposed regulation, which may be informed by the recently enacted CAA, are due by March 31, 2026. The proposed rule is intended to apply to plan years beginning on or after July 1, 2026.

FTC Settles with Express Scripts

On February 4, 2026, the Federal Trade Commission (FTC) entered into a landmark settlement with Express Scripts, Inc., requiring significant changes to Express Scripts' PBM service offerings by January 1, 2027. The FTC remains in litigation against CaremarkRx and OptumRx for similar issues, whose business and drug pricing models, along with other PBMs if the FTC continues to investigate, could be significantly reshaped.

PBM contract development and negotiation is a core pillar of Wiley's Health Care Practice. Wiley's PBM Contracting team of experienced attorneys and advisors is available to assist with any questions or contracting needs related to the CAA, DOL's proposed new rule, or anything else related to PBM contracting.

Contact Us

For more information, please contact one of the attorneys listed below.

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