

## State Laws Concerning Pharmacy Benefit Managers

By: Janet Kaminski Leduc, Senior Legislative Attorney  
March 1, 2018 | 2018-R-0083

### Issue

Do Connecticut and other states regulate pharmacy benefit managers (PBMs)? Do any states require PBMs to disclose the administrative or service fees they charge? Do any states require PBMs to disclose a fiduciary relationship they may have with an insurance company?

### Summary

PBMs administer the prescription drug, prescription device, or pharmacist services portion of a health benefit plan on behalf of plan sponsors (e.g., self-insured employers, insurance companies, labor unions, or HMOs).

Based on research by the National Conference of State Legislatures and Connecticut's Legislative Library, Connecticut and at least 42 other states have laws that regulate various aspects of PBM activity.

Among other things, these laws generally require a PBM to (1) register with or be licensed by the state (21 states); (2) follow certain procedures when auditing pharmacies (33 states); and (3) be transparent in its development and use of maximum allowable cost (MAC) lists, which list the maximum amount a PBM will reimburse a pharmacy for the cost of a drug (35 states).

### *Related OLR Reports*

*For related information, see the following OLR Reports:*

[2018-R-0084](#), *Health insurers' and PBMs' size and CEO salaries*

[2017-R-0294](#), *Prescription drug pricing transparency laws*

[2017-R-0009](#), *PBMs and formularies*

This report provides a general overview of state PBM laws. It is not meant to present an exhaustive list of every such law.

The research did not find any state law that requires a PBM to disclose the administrative or service fees they charge. However, at least one state—South Dakota—requires a PBM to disclose, no less than once a year and upon written request of a covered entity (e.g., insurer or health plan) with which it has a pharmacy management services contract, the nature, type, and amounts of revenues it receives from pharmaceutical manufacturers or labelers (S.D. Codified Laws § 58-29E-4).

Nor did the research find any state law that requires a PBM to disclose its fiduciary relationship with an insurance company. However, at least one state—Nevada—specifies that a PBM has a fiduciary duty to a third party with which it has entered into a contract to manage that party's pharmacy benefits plan. (Laws in two other jurisdictions—Maine and the District of Columbia—imposed a fiduciary duty on PBMs, but they were challenged in court and were subsequently repealed and found to be preempted by federal law, respectively.) Also, at least three states—Iowa, South Dakota, and Vermont—require a PBM to perform its duties with good faith and fair dealing toward a covered entity with which it has a contract.

## **Connecticut**

### ***PBM Definition***

In Connecticut, a PBM is any person or entity that administers the prescription drug, prescription device, or pharmacist services portion of a health benefit plan on behalf of plan sponsors (e.g., self-insured employers, insurance companies, labor unions, or HMOs) ([CGS § 38a-479aaa](#)).

### ***Registration and Oversight***

Connecticut law requires PBMs, with some exceptions, to obtain a certificate of registration from the insurance commissioner before operating in the state ([CGS § 38a-479bbb](#)). PBMs must renew the registration annually ([CGS § 38a-479fff](#)). Although the law exempts from the registration requirement a PBM that is a line of business or affiliate of a Connecticut-licensed health insurer, HMO, hospital or medical service corporation, or fraternal benefit society, it requires such entities to notify the insurance commissioner annually that they are affiliated with or operating a business as a PBM.

To apply for registration, a PBM must give the Connecticut Insurance Department a completed application, including information about the people running the PBM; a nonrefundable \$50 fee; and evidence of a surety bond that equals 10% of one month of claims in the state over a 12-month

average, except that the bond must be at least \$25,000 and no more than \$1 million ([CGS § 38a-479bbb](#)). The PBM may request a hearing if the department denies registration ([CGS § 38a-479ddd](#)).

PBMs are subject to investigation by the insurance commissioner ([CGS § 38a-479hhh](#)). The law also permits the commissioner, after notice and hearing, to suspend, revoke, or deny registration for specified causes, including conduct that is likely to mislead, deceive, or defraud the public; unfair or deceptive business practices; or nonpayment of the renewal fee ([CGS § 38a-479ccc](#)). Anyone aggrieved by the commissioner's decisions may appeal to Superior Court ([CGS § 38a-479hhh](#)).

### ***Claim Payments***

In addition to registering with the department, PBMs must, upon written request from a pharmacy, pay claims to the pharmacy by electronic funds transfer ([CGS § 38a-479eee](#)). Such payments must be made in a timely fashion (e.g., within 60 days from receipt for claims filed in a paper format and within 20 days from receipt for claims filed electronically) ([CGS §§ 38a-479eee & 38a-816\(15\)\(B\)](#)).

### ***Pharmacy Audits***

Connecticut law authorizes PBMs and health insurance plan sponsors to audit certain pharmacy records and specifies how they may do so ([CGS § 38a-479iii](#)). A pharmacy audit is an audit conducted of any pharmacy's records for prescription drugs or devices the pharmacy dispenses to a health insurance plan's beneficiaries. The audit can be conducted on-site or remotely by, or on behalf of, a PBM or health insurance plan sponsor. The law establishes the duties of the auditing entity and how pharmacies can validate their records. It requires the auditing entity to give the audited pharmacy a preliminary report and final report and allows the pharmacy to appeal the final report. It also limits when a pharmacy can be subjected to a charge-back or recoupment.

### ***Contract Provisions***

*Gag Clauses Prohibited.* Starting January 1, 2018, [PA 17-241](#) (§ 1) prohibits a pharmacy services contract between a PBM or health carrier and a pharmacist or pharmacy from containing a provision prohibiting or penalizing a pharmacist's disclosure of certain information to an individual purchasing prescription medication (e.g., increased utilization review, reduced payments, or other financial disincentives).

Specifically, such a contract cannot prohibit or penalize the disclosure of the (1) prescription's cost to the individual or (2) availability of any therapeutically equivalent alternative medications or alternative, less expensive methods of purchasing the prescription, including paying the cash price.

*Limits on Prescription Payments.* Starting January 1, 2018, [PA 17-241](#) (§ 1) also prohibits a PBM or health carrier from requiring an individual to pay more for a covered prescription medication than the lesser of the (1) applicable copayment, (2) allowable claim amount (i.e., the amount the PBM or health carrier agreed to pay the pharmacy for the prescription), or (3) amount an individual would pay for the drug if he or she paid without using an insurance plan or other source of drug benefits or discounts.

*Violations and Enforcement.* Any provision of a contract that violates [PA 17-241](#) is void and unenforceable, but a contract provision rendered invalid or unenforceable does not affect remaining contract provisions. Under the act, any general business practice that violates its provisions is an unfair trade practice under the Connecticut Unfair Trade Practices Act. Additionally, the law grants the insurance commissioner authority to enforce its provisions and audit pharmacy services contracts for compliance.

## Other State PBM Requirements

At least 42 other states have laws that generally specify (1) PBM registration or licensure requirements, (2) pharmacy audit procedures, and (3) MAC list requirements. These states are identified below and in Attachment 1.

Additionally, a few states have laws that impose a fiduciary duty (Nevada) or other performance duty (Iowa, South Dakota, Vermont) on a PBM. These laws are briefly described below.

### *PBM Registration or Licensure*

At least 21 states require PBMs to register with or be licensed by the state, often through the insurance department, in order to do business in the state. Most of these states' laws require a PBM to submit an application, identify board members and principle officers, and pay a fee. Table 1 lists the states and the respective statutory citation.

**Table 1: States Requiring PBM Registration or Licensure**

Connecticut <a href="#">CGS § 38a-479bbb</a>	Maine <i>Me. Rev. Stat. Ann. tit. 24-A, § 1913</i>	Rhode Island <i>R.I. Gen Laws §§ 27-29.1-7 &amp; 27-20.7-12</i>
Georgia <i>Ga. Code Ann. § 33-64-2</i>	Maryland <i>Md. Code Ann., Ins. § 15-1604</i>	South Dakota <i>S.D. Codified Laws § 58-29E-2</i>
Hawaii <i>Haw. Rev. Stat. § 431S-3</i>	New Mexico <i>N.M. Stat. Ann. §59A-61-3</i>	Utah <i>Utah Code Ann. § 31A-22-640</i>

Table 1 (continued)

Iowa <i>Iowa Code § 510B.2</i>	North Dakota <i>N.D. Cent. Code § 26.1-27.1-02</i>	Vermont <i>Vt. Stat. Ann. tit. 18, § 9421</i>
Kansas <i>Kan. Stat. Ann. §40-3823</i>	Oklahoma <i>Okla. Stat. Ann. tit. 59, § 358</i>	Washington <i>Wash. Rev. Code Ann. § 19.340.030</i>
Kentucky <i>Ky. Rev. Stat. Ann. §304.9-053</i>	Oregon <i>Or. Rev. Stat. § 735.532</i>	West Virginia <i>W. Va. Code Ann. § 33-51-7</i>
Louisiana <i>La. Rev. Stat. Ann. § 22:1657</i>	Pennsylvania <i>Pa. Stat. Ann. tit. 40, § 4521</i>	Wyoming <i>Wyo. Stat. Ann. § 26-52-101</i>

### ***Pharmacy Audit Procedures***

At least 33 states require PBMs or other entities, when auditing pharmacies, to follow specified audit procedures. Among other things, these laws generally set limitations on what can be audited and how frequently audits may occur. They also require PBMs to (1) notify a pharmacy before conducting an audit, with notice ranging from seven to 14 days, and (2) allow pharmacies an opportunity to appeal audit results. Table 2 lists the states and the respective statutory citation.

**Table 2: States Mandating Pharmacy Audit Procedures**

Alabama <i>Ala. Code § 34-23-184</i>	Maine <i>Me. Rev. Stat. Ann. tit. 24-A, § 4317</i>	Oklahoma <i>Okla. Stat. Ann. tit. 59, § 356.2</i>
Arizona <i>Ariz. Rev. Stat. Ann. § 20-3322</i>	Maryland <i>Md. Code Ann., Ins. § 15-1629</i>	Oregon <i>Or. Rev. Stat. § 735.542</i>
Arkansas <i>Ark. Code Ann. § 17-92-1201</i>	Massachusetts <i>Mass. Gen. Laws Ann. ch. 175, § 226</i>	Pennsylvania <i>Pa. Stat. Ann. tit. 40, § 4511</i>
California <i>Cal. Bus. &amp; Prof. Code § 4430 et seq.</i>	Minnesota <i>Minn. Stat. Ann. § 151.63</i>	South Dakota <i>S.D. Codified Laws § 58-29F-1 et seq.</i>
Colorado <i>Colo. Rev. Stat. Ann. § 10-16-122.5</i>	Mississippi <i>Miss. Code Ann. § 73-21-183</i>	Tennessee <i>Tenn. Code Ann. § 56-7-3103</i>
Connecticut <a href="#"><u>CGS § 38a-479iii</u></a>	Missouri <i>Mo. Rev. Stat. § 338.600</i>	Texas <i>Tex. Ins. Code Ann. § 1369.251 et seq.</i>
Delaware <i>Del. Code Ann. tit. 18, § 3304A</i>	Montana <i>Mont. Code Ann. § 33-2-2004</i>	Utah <i>Utah Code Ann. § 58-17B-622</i>
Florida <i>Fla. Stat. Ann. § 465.1885</i>	New Mexico <i>N.M. Stat. Ann. §§ 61-11-18.2 &amp; 59A-61-6</i>	Vermont <i>Vt. Stat. Ann. tit. 18, § 3802</i>

Table 2 (continued)

Georgia <i>Ga. Code Ann. § 26-4-118</i>	North Carolina <i>N.C. Gen. Stat. § 90-85.50</i>	Washington <i>Wash. Rev. Code Ann. § 19.340.040 et seq.</i>
Indiana <i>Ind. Code Ann. § 25-26-22-5</i>	North Dakota <i>N.D. Cent. Code § 19-03.6-02</i>	West Virginia <i>W. Va. Code Ann. § 33-51-4</i>
Kentucky <i>Ky. Rev. Stat. Ann. § 304.17A-741</i>	Ohio <i>Ohio Rev. Code Ann. § 3901.811</i>	Wyoming <i>Wyo. Stat. Ann. § 26-52-103</i>

### ***Maximum Allowable Cost (MAC) List Requirements***

At least 35 states require PBMs to follow certain procedures when developing and using MAC lists. MAC is the maximum amount a PBM will reimburse a pharmacy for the cost of a drug. A MAC list is a list of drugs for which the PBM has established a MAC. While the laws vary by state, most generally set criteria for a PBM to include a prescription drug on a MAC list and require a PBM using MAC lists to (1) disclose certain information about them to pharmacies and plan sponsors, (2) update the lists regularly (e.g., every seven days), and (3) establish an appeals process for pharmacies to contest a prescription drug's MAC. Table 3 lists the states and the respective statutory citation.

Table 3: States with MAC List Requirements

Arkansas <i>Ark. Code Ann. § 17-92-507</i>	Maryland <i>Md. Code Ann., Ins. § 15-1628.1</i>	Oregon <i>Or. Rev. Stat. § 735.534</i>
California <i>Cal. Bus. &amp; Prof. Code § 4440</i>	Minnesota <i>Minn. Stat. Ann. § 151.71</i>	Pennsylvania <i>Pa. Stat. Ann. tit. 40, § 4531 et seq.</i>
Colorado <i>Colo. Rev. Stat. Ann. § 25-37-103.5</i>	Missouri <i>Mo. Rev. Stat. § 376.388</i>	Rhode Island <i>R.I. Gen Laws §§ 27-41.38.2 &amp; 27-18-33.2</i>
Delaware <i>Del. Code Ann. tit. 18, § 3323A</i>	Montana <i>Mont. Code Ann. § 33-22-170 et seq.</i>	South Carolina <i>S.C. Code Ann. § 38-71-2110 et seq.</i>
Florida <i>Fla. Stat. Ann. § 465.1862</i>	New Hampshire <i>N.H. Rev. Stat. Ann. § 420-J:8</i>	Tennessee <i>Tenn. Code Ann. § 56-7-3106 et seq.</i>
Georgia <i>Ga. Code Ann. § 33-64-9</i>	New Jersey <i>N.J. Stat. Ann. § 17B:27F-2 et seq.</i>	Texas <i>Tex. Ins. Code Ann. § 1369.351 et seq.</i>
Hawaii <i>Haw. Rev. Stat. § 328-106</i>	New Mexico <i>N.M. Stat. Ann. § 59A-61-4</i>	Utah <i>Utah Code Ann. § 31A-22-640</i>
Iowa <i>Iowa Code § 510B.8</i>	New York <i>N.Y. Pub. Health Law § 280-a</i>	Vermont <i>Vt. Stat. Ann. tit. 18, § 9473</i>

Table 3 (continued)

Kansas <i>Kan. Stat. Ann. §40-3830</i>	North Carolina <i>N.C. Gen. Stat. § 58-56A-5</i>	Washington <i>Wash. Rev. Code Ann. § 19.340.100</i>
Kentucky <i>Ky. Rev. Stat. Ann. § 304.17A-162</i>	North Dakota <i>N.D. Cent. Code § 19-02.1-14.2</i>	Wisconsin <i>Wis. Stat. § 632.865</i>
Louisiana <i>La. Rev. Stat. Ann. § 22:1864</i>	Ohio <i>Ohio Rev. Code Ann. § 3959.111</i>	Wyoming <i>Wyo. Stat. Ann. § 26-52-104</i>
Maine <i>Me. Rev. Stat. Ann. tit. 24-A, § 4317</i>	Oklahoma <i>Okla. Stat. Ann. tit. 59, § 360</i>	

### ***Fiduciary Duty***

Although our research found no state law that requires a PBM to disclose its fiduciary relationship with an insurance company, several states have laws that impose a fiduciary duty (Nevada) or other performance duty (Iowa, South Dakota, Vermont) on a PBM.

At least one state—Nevada—specifies that a PBM has a fiduciary duty to a third party with which it has entered into a contract to manage that party’s pharmacy benefits plan (SB 539 (2017), § 19, effective January 1, 2018). Under that law, a PBM must notify the third party in writing of any activity, policy, or practice that presents a conflict of interest that interferes with the ability of the PBM to discharge its fiduciary duty.

Previously, Maine (2003) and the District of Columbia (2004) passed laws imposing a fiduciary duty on PBMs. However, the Pharmaceutical Care Management Association filed lawsuits to stop the enforcement of the laws. The cases resulted in contradicting decisions. A court upheld the Maine law, while another court struck down the D.C. law (*Pharm. Care Mgmt. Ass’n v. Rowe*, 429 F.3d 294 (1<sup>st</sup> Cir. 2005); *Pharm. Care Mgmt. Ass’n v. Dist. of Columbia*, 613 F.3d 179 (D.C. Cir. 2010)). In the D.C. case, the court found that the federal Employee Retirement Income Security Act (ERISA) preempted the provisions requiring PBMs to act as fiduciaries and disclose conflicts of interests, among others. Although Maine’s law survived the court challenge, the Maine legislature subsequently repealed the law in 2011.

Additionally, at least three states—Iowa, South Dakota, and Vermont—require a PBM to perform its duties with good faith and fair dealing toward a covered entity (e.g., insurer or health plan) with which it has a contract (Iowa Code § 510B.4; S.D. Codified Laws § 58-29E-3; Vt. Stat. Ann. tit. 18, § 9472). The Iowa and Vermont laws also require a PBM to notify a covered entity of any activity, policy, or practice that presents a conflict of interest.



**Attachment 1: States with PBM Registration or Licensure Requirements,  
Mandated Pharmacy Audit Procedures, or MAC List Requirements**

<b>State</b>	<b>PBM Registration or Licensure</b>	<b>Pharmacy Audit Procedures</b>	<b>MAC List Requirements</b>
Alabama	No	Yes	No
Arizona	No	Yes	No
Arkansas	No	Yes	Yes
California	No	Yes	Yes
Colorado	No	Yes	Yes
Connecticut	Yes	Yes	No
Delaware	No	Yes	Yes
Florida	No	Yes	Yes
Georgia	Yes	Yes	Yes
Hawaii	Yes	No	Yes
Indiana	No	Yes	No
Iowa	Yes	No	Yes
Kansas	Yes	No	Yes
Kentucky	Yes	Yes	Yes
Louisiana	Yes	No	Yes
Maine	Yes	Yes	Yes
Maryland	Yes	Yes	Yes
Massachusetts	No	Yes	No
Minnesota	No	Yes	Yes
Mississippi	No	Yes	No
Missouri	No	Yes	Yes
Montana	No	Yes	Yes
New Hampshire	No	No	Yes
New Jersey	No	No	Yes
New Mexico	Yes	Yes	Yes
New York	No	No	Yes
North Carolina	No	Yes	Yes
North Dakota	Yes	Yes	Yes
Ohio	No	Yes	Yes
Oklahoma	Yes	Yes	Yes
Oregon	Yes	Yes	Yes
Pennsylvania	Yes	Yes	Yes
Rhode Island	Yes	No	Yes
South Carolina	No	No	Yes
South Dakota	Yes	Yes	No
Tennessee	No	Yes	Yes
Texas	No	Yes	Yes
Utah	Yes	Yes	Yes
Vermont	Yes	Yes	Yes
Washington	Yes	Yes	Yes
West Virginia	Yes	Yes	No
Wisconsin	No	No	Yes
Wyoming	Yes	Yes	Yes

JKL:bs