INTRODUCTION

Pharmacy Benefit Managers (“PBMs”) play a substantial role in today’s health care marketplace. PBMs serve as intermediaries between health plans, pharmaceutical manufacturers and pharmacies; PBMs establish networks of pharmacies for consumer access; and some PBMs even own their own pharmacies. Although the primary function of a PBM initially was simply to create networks and process pharmaceutical claims over the years these entities have positioned themselves to become substantial players in the health care marketplace. PBMs administer over 80% of prescription drug claims making them a critical source of revenue for supermarket pharmacies. Needless to say, PBMs are an entity with which every pharmacy must deal.

The PBM market is dominated by two PBMs, ESI/Medco and CVS Caremark who together control over 80% of the market for large plans. Because the two largest PBMs’ operations are operated in a significantly opaque manner, PBMs have effectively increased the cost of drugs over the past several years and have seen their profits skyrocket from $900 million a year to over $7 billion a year at the expense of payors, providers and consumers.

PBMs were initially founded to process pharmaceutical claims for health plans. In the late 1980s, PBMs began to create more significant “pharmacy benefit” networks by creating a system for reimbursement of drug claims, claim processing and cost control. PBMs contract with drug manufacturers and pharmacies to create these networks. PBMs negotiate with drug manufacturers to have their drugs included in the PBM’s formulary. The major PBMs’ market clout allows them to obtain payments (in the form of rebates and other compensation) from drug manufacturers in exchange for promoting the use of the manufacturer’s more expensive brand-name drugs. PBMs negotiate with retail pharmacies to participate in the PBMs’ networks, but instead of the opportunity for arms-length negotiations, pharmacies are typically provided with take-it-or-leave-it contracts. Ultimately, the PBMs sell the formulary services and the pharmacy network, along with its claim processing to health plans.
Pharmacy is an important part of supermarket operations, making up 10-12% of supermarket revenues. In fact, supermarket pharmacy grew more than any other pharmacy sector in 2012 at 6.2% growth, consisting of 12% of the U.S. pharmacy market share.\(^1\) Despite the importance of pharmacy operations to supermarkets, and the obvious need to contract with PBMs, there is relatively little information about the nuts and bolts of contracting with PBMs.

This manual is intended to provide information on pertinent topics of supermarket pharmacy contracting with PBMs. It is designed to provide helpful tips and areas to be cognizant of during contract discussions.\(^2\)

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\(^1\) IMS Health, National Prescription Audit, December 2012.

\(^2\) This manual is not intended to be legal advice.
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There are numerous considerations in analyzing drug reimbursement. This section discusses the various types of common reimbursement structures for both brand and generic drug reimbursement.\(^3\)

**Average Wholesale Price (AWP)**

**What:** Average Wholesale Price or “AWP” represents the average price which drugs are purchased at wholesale.

**Why it matters:** PBMs traditionally use AWP as a benchmark rate for setting reimbursement rates. PBMs reimburse pharmacies based on the cost of the AWP of the ingredients dispensed, plus a dispensing fee. The ingredient cost is generally derived by using the AWP less a percentage discount.

**Important Information:**
- AWP is derived from multiple sources and published by pricing and database service companies. As of 2011, Medi-Span was the main publisher of AWP. Following a 2009 class action legal settlement involving inflated AWP pricing, the other major publisher First DataBank ceased publication. Medi-Span has announced its intention to also cease publication of AWP after the industry develops “a viable, generally acceptable alternative price benchmark.”\(^4\)

- Because the sources for AWP can differ it is important that both the PBM and the Pharmacy use the same source to avoid discrepancies between anticipated and actual payment for the Pharmacy.

- It is preferable that the source is chosen through mutual agreement, rather than at the discretion of the PBM. Once the source is chosen and agreed upon, it is imperative that the agreement explicitly state the source, as well as the how frequently the AWP will be updated to help ensure the Pharmacy is reimbursed at the correct amounts.

- In determining AWP it is important to state within the agreement on what packaging size the AWP will be based. This is important to avoid the Pharmacy receiving reimbursement below cost to obtain the product in cases where the Pharmacy dispenses a package with a high per unit price and the PBM chooses to reimburse at a rate corresponding to a package with a lower unit price.

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\(^3\) This section does not discuss Average Manufacturer’s Price or AMP which Medicaid uses to calculate federally mandated rebates. For more information visit [www.medicaid.gov](http://www.medicaid.gov).

Wholesale Acquisition Cost (WAC)

What: Wholesale Acquisition Cost or “WAC” is the published price drug wholesalers pay manufacturers for prescription products.

Why it Matters: Some PBMs reimburse pharmacies on the basis of WAC, plus an added value, typically a markup percentage. This reimbursement methodology, replacing AWP, is become more prevalent among PBMs due to the allegations of pricing fraud among AWP publishers and wholesalers that lead to the 2009 class action legal settlement.

Important Information:
✓ When the Pharmacy evaluates proposed reimbursement that is based on WAC, it will want to confirm that WAC, plus the markup, is equal to or greater than the Pharmacy’s cost to acquire the product. Because AWP has historically been the industry standard, a comprehensive understanding of the difference between the WAC and the AWP is helpful, so that the Pharmacy can calculate how the WAC, plus the markup, reimbursement compares to the Pharmacy’s cost to acquire the product. This will in turn help the Pharmacy determine what the WAC and appropriate markup will be to ensure profitability.

Example of WAC Calculation:
- Step 1: The AWP = $50.00.
- Step 2: The wholesaler receives a 16% discount off AWP from the manufacturer.
  - WAC would equal $42.00 ($50.00 – 16%).
- Step 3: The Wholesaler sells to the Pharmacy at the AWP minus a percentage ($50.00 – 10% = $45.00).
- Step 4: The cost to the Pharmacy for that drug is $45.00.
- Step 5: WAC is $42.00.
- Step 6: The Pharmacy’s cost less WAC is $3.00 ($45.00 - $42.00 = $3.00).
- Step 7: In order for the Pharmacy to recoup its cost it must have a WAC plus a markup equal to $3.00, or WAC plus 7.15%.

Notice:
✓ Recently, some PBMs have included contract provisions known as “Change Events.” Change Events allow a PBM to convert reimbursement from an AWP pricing methodology to a WAC based methodology upon notice to the Pharmacy.

✓ If the PBM insists upon such a provision, the Pharmacy should ensure that the agreement states that the Change Event from one pricing methodology to the other is “economically equivalent” to guarantee an equal reimbursement level under the new methodology.
Acquisition Cost and Usual and Customary Charge

**What:** Acquisition Cost is the actual cost to the Pharmacy to obtain particular drugs.

**What:** Usual and Customary Charge is the actual retail prices that Pharmacy charges to cash-paying consumers for prescription drugs. It is important that the Pharmacy obtains a very clear definition of its Usual and Customary Charge.

**Why they matter:** PBMs often reimburse the Pharmacy for their services based on the lesser of the drug’s acquisition cost, plus a dispensing fee, or the usual and customary charge. Therefore, the Pharmacy must know what their products cost them and what they are charging to non-insured or cash-paying consumers.

**Important Information:**
- Due to numerous business arrangements with wholesalers or manufacturers as well as differences in the timing of purchases, the actual acquisition costs for specific products can be difficult to determine.

- The preference when negotiating a contract should be to agree upon specific reimbursement rates for products rather than “actual acquisition costs” which are subject to change, either through timing of purchases or agreements with suppliers.

**Notice:**
- It has been reported that some PBMs may be taking liberties with poorly defined Usual and Customer Charges and allowing them to include pricing such as 340b and other one-time discounts as the Usual and Customary price. Pharmacies should be on the lookout for this practice.

Maximum Allowable Cost (MAC)

**What:** Maximum Allowable Cost or “MAC” is the maximum amount or the upper limit that a PBM will reimburse a pharmacy for generic drugs and brand name drugs that have generic versions available.

**Why it Matters:** MAC establishes an upper limit reimbursement price PBMs will pay for certain multiple-source drugs, or single source generic drugs dispensed. Understanding MAC rates allow Pharmacies to analyze correct payments under PBM contracts.

**Important Information:**
- Some PBMs develop their own MAC lists and other use published standard sources. It is imperative to know the source of the MAC list used by a specific PBM as this will allow the Pharmacy to be aware of the products and pricing and help the Pharmacy determine when MAC prices change.
✓ It is essential to agree upon the frequency with which the MAC list will be updated for the Pharmacy to analyze the impact of any change. Without an agreement of prior notice of MAC list changes, the Pharmacy will have difficulty accurately tracking payments due it under the contract.

✓ MAC may not apply if a physician indicates that the product should be dispensed as written or is medically necessary. In these cases PBM’s may require the Pharmacy to follow additional administrative procedures to receive reimbursement greater than the MAC.

✓ It is important to understand if a PBM uses multiple MAC lists. If so, the Pharmacy should understand how it can differentiate the claims processed under the various list so it can verify accurate payment.

Notice:
✓ It is important for pharmacies to be aware of any state legislation that addresses MAC pricing. Current state legislation addresses certain areas including transparency of MAC pricing, provision of PBM developed MAC lists, and time for MAC list change notifications.
GENERIC DRUGS

Generic drugs are substantially important to supermarket pharmacies. The average generic drug dispensing rate of supermarket pharmacies is 77%, saving consumers on average $8-10 billion a year.\(^5\) Understanding the importance of generic drugs and proper determination of generics in PBM contracts are essential.

Generic Drugs

**What:** Generic Drugs are drugs available from multiple manufacturers that also contain the same active ingredients, in the same dosage form and strength, as the manufacturer’s brand name drug.

**Why it matters:** Generic drugs most often cost less than brand name drugs. Therefore, plan sponsors prefer and PBMs often require that generics be used in place of more expensive brand name products, unless the brand name product is medically necessary or is dispensed as written by a physician.

**Important Information:**

- It is important for the Pharmacy to understand what criteria the PBM uses to determine whether a given brand is a generic; this includes what databases the PBM uses as well as the frequency of updates to those sources. It is also important for the Pharmacy to understand how the PBM pays the different dispense-as-written codes available through NCPDP.

- The PBM may not permit or require generic substitutions for certain products for which there is a significant therapeutic concern. If the PBM does restrict the use of generics, the restrictions should be well defined, with a listing of specific exceptions and limitations included in the agreement or PBM’s manual.\(^6\) If some restrictions on the use of generics can be waived, the agreement should provide clear directions for the procedures and documentation required for the Pharmacy to dispense the product and submit billings for payment.

- The Pharmacy must be aware of any PBM sponsored generic incentive programs written into its PBM agreement. If a PBM provides incentives or different reimbursement rates to encourage dispensing generic products, that incentive program must be clearly defined for the Pharmacy’s full understanding. A clearly defined incentive program will include how the incentives will be calculated and paid,

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\(^6\) PBM Manuals are important as they contain the major policies and procedures that are applicable to participating pharmacy providers. See Other Important Topics, infra, for a discussion of the PBM Administrative Manual.
a definition of the baseline used to calculate the incentive, a description of how performance is measured and whether performance criteria changes over time.

✓ Pharmacies are cautioned that under such program the Pharmacy’s failure to use a generic drug, or the patient’s refusal to accept it, may result in penalties to the patient or to the Pharmacy.
PAYMENT TERMS

Understanding the payment terms under a PBM contract will better help ensure accurate reimbursement to the pharmacy. This section discusses important contractual payment terms essential to pharmacy financial planning.

Amount and Timeliness of Payment

What: Amount and Timeliness of Payment relate to the contractual obligations for the amount and timing for reimbursement from PBMs to the Pharmacy.

Why it Matters: This section is essential as it lays out when and how the Pharmacy will be paid for its services, so that the Pharmacy can seamlessly conduct business.

Important Information:

Amount of Payment

✓ It is essential for Pharmacies to be aware of all payment and reimbursement terms and conditions in the PBM contract to ensure they are receiving full amount of payment. Pharmacies should be aware of the following:

- Whichever reimbursement method (e.g, AWP or WAC) is used by the PBM, the Pharmacy is well aware of the terminology as well as the formulas.

- Ingredient cost reimbursement for generic drugs is typically different than for brand name drugs. Generic drugs are usually reimbursed at MAC, or with a discount from AWP, which is significantly greater than the discount for brand name products. The dispensing fee may also differ depending on whether the dispensed product is a brand name.

- Most prescriptions will require that a portion of the agreed-upon reimbursement be paid by the member as a copay, which reduces the amount that the PBM is required to pay.

- The PBM contract may limit reimbursement to the Pharmacy's “usual and customary” pricing. For example, many PBMs reimburse pharmacies the lower of (i) the contracted rate or (ii) the Pharmacy’s “usual and customary” charge for the particular prescription dispensed.
• Some agreements also provide incentives to the Pharmacy for use of generics, patient counseling, management of formulary, use of preferred products, therapeutic substitution, medication therapy management, and other performance-based criteria.

• Contracts should also state if the Pharmacy has any responsibility for coordination of benefits. This would indicate if it is necessary to the Pharmacy to pursue other potentially liable insurers for payment, and the effect of such payment on the PBM’s obligations. Should the Pharmacy have this burden of pursuing payment from sources other than the PBM, the Pharmacy may wish to obtain the right to keep the full amount it collects from such sources.

✓ The Pharmacy should refrain from contract language stating that the Pharmacy’s acceptance of payment constitutes agreement with the PBM’s reimbursement calculation. Rather, the Pharmacy should insist upon a reasonable amount of time after receipt of payment to confirm the appropriateness of the PBM’s calculation and, if it finds discrepancies between the actual payment and the expected payment, to dispute the payment and have the dispute resolved.

✓ The Pharmacy should not allow contracting language permitting the PBM’s Provider Manual to adjust financial terms. Any financial change should require signature from both parties.

**Timing of Payment**

✓ The Pharmacy’s should seek an agreement provision requiring the PBM to pay the Pharmacy within a specified number of days after the Pharmacy submits a complete claim, rather than through vague language like “prompt” or “timely.” Without such precise language it is difficult to determine when payment will arrive or if the PBM is late in making payment.

✓ While not often addressed, it is beneficial for a PBM contract to state consequences of untimely payment. These could be in the form of late payment penalties or suspension of pharmacy services until the PBM settles their overdue payments.
AUDITS

PBM Audits have legitimate purposes to root out fraud, waste and abuse, and to take back legitimate overpayments. Unfortunately, PBMs have taken advantage of their leverage over pharmacies using egregious tactics to extract as much revenue from pharmacies as they case. Understanding certain aspects of audit provisions will help you better prepare for facing PBM audits.

Auditing and Recovery

What: All contracts will authorize the PBM to audit the Pharmacy. PBMs may audit numerous aspects of a Pharmacy’s claims, including auditing for compliance with the PBM’s manual, validity of the prescription, and/or documentation of actual prescription dispensing. PBM’s may also audit a Pharmacy’s level of service, formulary compliance, generic utilization, and compliance with other PBM-defined criteria.

Why it Matters: Unfamiliarity with PBM audit provisions may allow PBMs to require the Pharmacy to comply with the PBM’s auditing methods, with the results of the PBM’s audits, and may give the PBM the right to offset any overpayments against future amounts due the Pharmacy. In these situations the Pharmacy will have little recourse.

Important Information:

✓ The Pharmacy is strongly recommended to ensure that the PBM’s audit procedures are included in the agreement or the PBM’s manual, and that the Pharmacy understand the procedures BEFORE signing the agreement.

✓ Once the Pharmacy has signed the PBM contact, it is essential to abide by the PBM manual. The PBM manual will often outline standard procedures for claims processing, and clinical and regulatory information, as well as potential auditing pitfalls the Pharmacy can avoid.

Types of Audits:

On-site Audit. On-site audits consist of a PBM scheduling an appointment and going onsite at the Pharmacy to conduct a review of adjudicated claims against the original prescription, verify policies and procedures and interview the pharmacist-in-charge. The auditor completes a report that identifies any issues, concerns or prescription discrepancies.

✓ It is recommended that the contract audit provisions explicitly require the PBM to schedule the audit in advance, at a mutually agreeable time during business hours. When the PBM does schedule the on-site audit the legal department or counsel should be notified and a competent member of the Pharmacy’s management should
be present, to assist and control the audit, document activities and conversations, determine which materials the auditor may or may not review, and otherwise protect the Pharmacy’s interests.

Desk Audit. Desk audits are when the PBM conducts an in-house retrospective audit on adjudicated claims. PBMs will often do this looking for unusual claims and, based on these, request explanation for claims and often times changes in the Pharmacy’s practices.

✓ Desk audits are undesirable for the Pharmacy as they often do not provide a path for the Pharmacy to validate the auditor’s claims. This is because the auditor controls the claims data and the audit methodology is often unknown to the Pharmacy. A Pharmacy facing a desk audit should attempt to obtain the claims data and methodology from the auditor. If the auditor’s findings are unsubstantiated, the Pharmacy should challenge the findings. (Desk audits usually do provide a path for appeal.)

PBM Recovery:
✓ Should the audit uncover problems, the PBM may demand a refund from the Pharmacy. Some PBMs will assess recovery based on specific claims they audited and for which they have questions, and for which the Pharmacy is unable to disprove the auditor’s findings.

✓ Other PBM will attempt recovery using “extrapolation.” This technique involves using the results of sampled data to be applied across the entire number of claims in the audit period, and then determining, by mathematical formulas, the total amount of discrepancies that the plan believes would be present if they looked at every claim. This methodology presents numerous areas of concern and should the Pharmacy be confronted with a request for recovery based upon extrapolation, it should retain competent financial and statistical analysts to review the extrapolated findings.

✓ Some contracts provide for recovery through use of “offsets” or “withholds.” This is a procedure which allows the PBM to withhold current payments to a pharmacy and apply these payments to audit or utilization review findings for which the PBM requests recovery.

✓ Offsets can be quite problematic as they require the Pharmacy to pursue recovery of any withheld payments by the PBM, often necessitating the commitment of legal resources, should the Pharmacy’s review not concur with the PBM’s findings.

✓ Offset or withhold language in PBM agreements should be reviewed very carefully.

✓ Pharmacies should be aware of any state regulation governing offsets or withholds to understand their rights.
Helpful tips for preparing for an audit:

- Assign a manager to assist the auditor. The Pharmacy should assign a manager to control the review process. The manager will assure that the Pharmacy complies with its obligations under the agreement, but guard against any activity by the PBM's auditor that is not expressly permitted by the agreement.

- The Pharmacy should specifically note the documents reviewed by the PBM's representative, and document the principal statements made by PBM's representatives during the review and the exit interview.

- Remember to protect patient information pursuant to the Health Insurance Portability and Accountability Act ("HIPAA"). For instance, if the auditor is a contractor, ensure that the auditing entity has signed a "business associate agreement" with the PBM as required by HIPAA so that the auditor will keep information confidential. Provide the auditor with the information requested during your initial meeting with the auditor, but do not disclose to the auditor records and documents outside the scope of the written on-site audit notification. The Pharmacy should ensure that the on-site audit remains limited to the parameters of the written on-site audit notification.

- Auditors will often have an interest in taking photos of documents. Pharmacies however cannot ensure that the auditor will not take photos of documents they are not entitled to view. Preventing auditors from bringing photo equipment into the Pharmacy will allow the Pharmacy to be fully aware of what is being copied and reviewed.

- The auditor should be provided with an area to work, which is removed from the Pharmacy's operational areas. The Pharmacy should select a location that is unlikely to expose the reviewer to information about the Pharmacy unnecessary for to audit.

- An auditor is not entitled to review records regarding non-members or other PBMs. The Pharmacy should craft its contract with the PBM to only authorize the PBM's auditors to review those business records which pertain to the Pharmacy’s obligations under its agreement with that PBM.

- The Pharmacy should not allow the auditor to leave without an exit meeting. During this meeting, ensure that the auditor discloses to you any discrepancies and/or problems he found during the on-site audit. If possible, obtain a written list of all discrepancies and/or problems, and ask the auditor to sign and date it. Request information from the auditor on how each and every discrepancy or problem can be resolved with supporting documentation and/or evidence so that you can limit the amount of the chargebacks contained in the audit findings.

- The Pharmacy should carefully review the audit results. If the PBM's review results in a request for repayment from the Pharmacy, the Pharmacy should carefully
review the PBM’s refund request. The Pharmacy should also consult with legal counsel before agreeing to make a refund to the PBM. The Pharmacy should not agree to a PBM’s request for recovery without undertaking its own review and obtaining appropriate legal and financial advice.

Helpful contracting tips:

✓ The Pharmacy should try to negotiate for a reasonable amount of notice time a PBM is required to give before it conducts an on-site audit. (Most contracts do specify at least 14 days’ notice, however they typically also allow for unannounced visits for suspected fraud audits.)

✓ It is strongly recommended that the agreement contain a “statute of limitations” which permits the PBM to audit (and recalculate the payment for) only relatively recent claims. Most plans will specify a pharmacy must keep records at least 5 years, and Medicare Part D addendums require the current contract year plus an additional 10 years.

✓ It is recommended that the Pharmacy negotiate contract language that entitles the Pharmacy to review the PBM’s records, as necessary to confirm the PBM’s calculation of its payments to the Pharmacy.

✓ The Pharmacy should avoid signing an agreement that allows PBMs to recover funds from the Pharmacy based on “extrapolation.”

Notice:

✓ It is important for pharmacies to be aware of any state legislation or regulation that addresses pharmacy audits or PBM audit procedures. Laws may dictate procedures that the PBMs must follow when conducting audits. Current state regulation and pending state legislation address some important areas of pharmacy audits by PBMs including notification time for on-site audits, how many years back an auditor can review claims, certain methods for identifying claims discrepancies and monies owed, and limitations on what can be recouped.

✓ There has been significant attention by the Centers for Medicare and Medicaid Services, and others, as to what is recoverable and the definition of clerical error. Pharmacies should familiarize themselves with what errors are recoverable.  

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TERMINATION

Understanding the Pharmacy’s termination rights under the contract with the PBM is important in protecting access to patients and maintaining access to the PBM’s network.

Terms and Termination

What: The portion of the contract that specifies the duration of the contract as well as how it can be terminated or dissolved.

Why it Matters: Clearly defining the terms and termination section ensures that the Pharmacy will be able to adequately plan its future finances as well as have a clear understanding of all of its obligations with regard to the PBM.

Important Information:

Terms
✓ Many contracts do not specify a particular term, but rather have an indefinite term. Others are evergreen contracts, meaning they have a one-year term that renews automatically until either party terminates the agreement.

Termination Without Cause:
✓ Most contracts permit either party to terminate the agreement without cause at any time by giving the other party prior written notice within a contractually stated number of days. This is useful if the Pharmacy has agreed to unfavorable contract terms. It is important that the Pharmacy be able to preserve its options to terminate quickly without cause.

✓ If termination is without cause, the notice requirement should be sufficient to allow the parties to make other arrangements. Sixty to ninety days notice is considered sufficient notice to provide the necessary transition time.

✓ Either party should have equivalent rights to terminate the agreement without cause. While different actions by the PBM and the Pharmacy may warrant termination for cause, both parties should have the ability to escape the agreement if the other party commits a material breach.

Termination With Cause:
✓ All contracts include a “for cause” termination provision. It is imperative that the specific actions which constitute cause are stated in the agreement.
✓ Generally, contracts should allow for “cure” of the breach, which is the opportunity to correct the issue and have the termination rescinded.

✓ Agreements often permit termination for cause immediately for material breach, without a notice period or opportunity for the other party to cure the breach. Such material breach for example could be a violation of the law by one party, the loss of the Pharmacy’s license or failure of the PBM to make payments.

Written Notice of Termination:
✓ The agreement should require that notice of termination be in writing, which reduces any confusion, or potential legal complications, as to whether a party has or has not exercised its right to terminate.

✓ Some contracts allow for “automatic termination” upon the occurrence of certain contractually stated events. Written notice of termination should always be required to avoid ambiguity as to whether the contract remains in effect. As a precaution for the Pharmacy, written notice of termination should be required even if termination is effective immediately upon delivery of the notice.

✓ Absent written notice of termination the Pharmacy will likely continue to bill prescriptions to the PBM and fail to be compensated, unaware of its effective termination date.

Other Obligations:
✓ A Pharmacy should seek agreement that the PBM is to compensate the Pharmacy for all covered services provided before and up to the effective date of termination of the agreement. This should also include payments that are currently in arrears or dispute that were filed in accordance with contractual requirements.

✓ PBM.s often propose that the Pharmacy’s recordkeeping and indemnification commitments, and the PBM’s right to audit, survive contract termination.

✓ If the Pharmacy has any contractual duty or legal duty under state law to continue furnishing services to the PBM’s members following termination of the agreement, the contract should specify the reimbursement the Pharmacy will receive for such services.
OTHER IMPORTANT TOPICS

There are other topics essential to understanding the Pharmacy's responsibilities under contracts with PBMs. In addition to areas involving pricing (reimbursement, payment terms, auditing) and network access (terms and termination), pharmacy services, required counseling, and adherence to the PBM’s Administrative Manual are essential to successful relationships with PBMs.

Pharmacy Services

What: “Pharmacy Services” are typically defined in terms of the pharmacy benefits to which the PBM’s members are entitled to receive from the Pharmacy.

Why it Matters: These are the services or products that the Pharmacy is obligated to provide plan enrollees in exchange for reimbursement from the PBM.

Important Related Information:
✔ When reviewing PBM agreements the Pharmacy should be well aware of any and all service commitments required by the PBMs to ensure that the Pharmacy can fulfill such commitments.

✔ It is vital that the Pharmacy avoid blanket commitments in PBM agreements to deliver all services in accordance with the PBM’s service requirements. To the extent possible, only reasonable commitments should be agreed to. It is recommended the Pharmacy request to receive prior written notice in any change in service requirements.

Counseling

What: Counseling is what pharmacists may provide to patients to inform them of the products that will be dispensed.

Why it Matters: Counseling is important because it can ensure patient compliance with drug regimens, which in turn aids the overall health of patients. PBM agreements may provide for additional compensation for the provision of added services.

Important Related Information:
✔ Pharmacists are required to counsel patients under some PBM agreement. In these instances, if the agreement requires the Pharmacy to provide the PBM’s members with a level of service which is different than that which the Pharmacy typically
provides, the Pharmacy should determine what, if any additional compensation is provided for these expanded services, and what costs the Pharmacy is likely to incur in order to provide services.

✓ It is important for the contract to define what standard counseling is in order the Pharmacy to make as assessment on its financial viability to perform the counseling. For example, if the required counseling crosses the line into Medication Therapy Management, the Pharmacy may determine that additional compensation is required.

✓ It is important that all documentation requirements be clearly understood as well, if any are required. If there is a misunderstanding or improper documentation of counseling, the Pharmacy may risk being penalized or not compensated for its counseling services.

**PBM Administrative Manual**

**What:** Most PBMs publish provider manuals which contain policies and procedures that apply to participating pharmacies.

**Why it Matters:** Most PBM contracts require the Pharmacy to adhere to the PBM's manuals, and often times incorporate the manuals into the contract by reference. It is important for the Pharmacy to obtain a copy of the manual and read them before signing the agreement. The manual addresses important issues that may affect the Pharmacy's assessment of a proposed contract.

**Important Information:**
✓ PBM must give the Pharmacy prior written notice of proposed changes to a manual and the Pharmacy shall have the right to terminate the agreement if the changes are unacceptable to the Pharmacy.
Acknowledgement and Questions:

This manual was prepared by David Balto and Brad Wasser of the Law Offices of David Balto. Mr. Balto is known as one of the preeminent experts on Pharmacy Benefit Managers and he represents pharmacies, payors, health plans and others in PBM matters. Mr. Balto has testified before Congress and several states on PBM reform legislation and has worked for several states on PBM issues. He formerly was the Policy Director of the Federal Trade Commission and helped bring some of the first cases against PBMs. He represented FMI in the Express Scripts/Medco merger.

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