

CAPITOL STREET

June 12, 2023

State Update: New Florida PBM Law in View

Medicaid, Medicare and Potentially ERISA Impact for PY 2024

Relevant Companies



On May 3, FL Governor DeSantis signed *the Prescription Drug Reform Act* which requires drug manufactures to report increases in WAC costs and requires pharmacy benefit managers (PBMs) to register with the Office of Insurance Regulations (OIR) in Florida, along with a ban on spread pricing and narrow networks. Link to new law is [here](#). The law follows current state trends as anti-PBM laws pick up traction in states, due to the absence of federal PBM oversight (which will likely change in 4Q 2023).

»» Our Take & Next Up

The FL bill contains oversight that started July 2023, but PBMs have until January 2024 to comply. The Florida Office of Insurance Regulations is expected to conduct rulemaking to implement the law before January 1, 2024. We expect rule-making to progress in July/August at the earliest.

Stakeholder groups including employers and plans are expected to lobby OIR to limit commercial impact. *Pharmaceutical Care Management Association v. Mulready* is currently also under review by the Tenth Circuit Court of Appeals. The appeal decision is expected to impact state authority on regulating Medicare and ERISA drug benefits.

Overall, we expect state enforcement of PBMs to continue due to bipartisan support and its role as a healthcare cost lever for states. We also expect to see some federal anti-PBM legislation to pass in 2023/2024, although implementation and market impact is not likely to occur until 2025.

»» Key Points

FL health insurance market impact. The fully insured commercial market in FL is expected to be impacted with less certainty if ERISA plans will have to comply. The fully insured market makes up below 20% of covered lives in Florida and if the OIR is responsive to stakeholder feedback and excludes ERISA plans, the impact on the FL commercial market is expected to be smaller than expected. Biggest impact? The biggest cost to plans and PBMs will likely come from the spread pricing ban and pass-through model requirement for PBM contracts. PBMs are also expected to lose revenue from the affiliate network ban and ban on mandatory mail order pharmacies. While there is no CBO-type score, prohibition of affiliate networks is expected to cost plans roughly \$2M.

Florida's Office of Insurance Regulations (OIR) regulatory work will be key in determining private market impact. The law passed with strong support from the independent and community pharmacies. It appears that employers (fund commercial plans) were not vocal during bill passage assuming ERISA plans were not impacted. Plans and PBMs appear to be taking an active role in engaging the OIR and regulations will provide more information on their view and their plans for enforcement. If the OIR takes the stance of the FL governor's office and intends to apply to as many covered lives as possible in Florida, employers and employer sponsored plans are expected to face increasing costs from the benefit design enforcement. If commercial plans are impacted, we will see lobbying and potentially lawsuits. The Florida Hospital Association is supportive of the law as it increases patient access. Despite the slow nature of state governments, the OIR has a limited time to stand up regulations with a start date of January 2024. We expect the OIR to work on regulations throughout the summer.

The law builds and expands on the previous PBM oversight executive [order](#) signed by Governor DeSantis. The Florida EO signed in July 2022 required state agencies to ban clawbacks and spread pricing in new, renew, or extended contracts for the state's Medicaid managed-care and the state-employee health insurance program. The new law represents an expansion of these policies into the commercial market.

The Prescription Drug Reform Act bans clawbacks, spread pricing, and prohibits mail order mandates for any PBM contracts in FL. See key provisions below.

- PBM can no longer charge clawbacks including retroactive recoupments, imposing charges, or withholding fees with some limited exceptions for performance measures, erroneous claims, fraud/waste or abuse, pharmacy audits or recoupment to the state for certain programs.
- Spread pricing is banned and PBMs must use pass-through pricing and pass on all rebates to the plans.
- PBMs are prohibited from mandating consumers to use a mail-order pharmacy; however, consumers will still be allowed to opt-in. There is also a ban on affiliate -only pharmacy networks.
- PBM/plans will be required to take increased financial share if a formulary change occurs as PBMs, or plans will be required to provide a 60-day continuity-of-care period when a formulary change occurs during a plan year where the beneficiary will continue to pay the same cost for the drug for the 60-day period.

Starting in January 2024, PBMs will be mandated to register as third-party administrators (TPAs) with the OIR. PBM will have to provide to the state detailed information that includes yearly financial statements, all affiliated organizations (including affiliated pharmacies), ownership information, and copies of the PBM's contract templates with pharmacies. Since 2019, PBMs that contract on behalf of an insurer or an HMO to residents in Florida have been required to register with the Office of Insurance Regulation (OIR). There are 71 PBMs registered in Florida at this time. While PBMs are exempt from FL's public record disclosure requirements, we can expect the OIR to step up on oversight of PBM organizations. If the OIR examines a PBM and determines that it has engaged in knowing

and willful violations, the OIR can order the PBM to file all contracts and all internal documents related to how the PBM conducts business relevant to the violations.

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