

October, 2023

Changing the Game: Groundbreaking PBM Purchasing Standards for Large Employers

For decades, pharmacy benefit manager (PBM) firms have leveraged their middleman role in the drug supply chain to maximize profits at the expense of prescription drug affordability, leaving U.S. patients and employers to pay [2.5 times](#) as much for life-saving medications as those in other high-income nations. Unchecked PBM profiteering has contributed to rising medication costs, threatened the sustainability of employer-sponsored health insurance and, in some instances, jeopardized patient health.

The Purchaser Business Group on Health (PBGH) has long played a leadership role in helping both employers and policymakers understand and address PBM behavior, and remains an outspoken advocate for large private employers and public purchasers in support of legislative, regulatory and market remedies.

PBGH has provided practical, research-driven assistance. In partnership with its members, the organization created guidelines that helps plan sponsors eliminate low-value, high-cost drugs from PBM-imposed drug formularies and has been a pioneer in raising awareness about the role biosimilars can play in reducing expenses associated with costly, life-saving specialty drugs.

Now PBGH has taken the next step by developing a new contracting tool that can help purchasers counter a range of common but costly PBM tactics. The PBM Purchasing Standards for Plan Sponsors offers an array of model provisions that collectively create a framework for viable PBM contracting.

[Purchasing Standards Help Employers Meet Their Fiduciary Obligations, Improve Employee Drug Benefits](#)

PBGH's latest effort – the [PBM Purchasing Standards](#) – reflects insights gained through earlier initiatives and arguably marks the organization's most impactful resource for helping employers and other health care purchasers combat abusive PBM contracting practices.

The 40-page document was developed by PBGH's Pharmacy PBM Workgroup, which includes representatives from PBGH member companies, as well as ERISA attorneys, pharmacy industry specialists and PBGH expert staff. The document's sample provisions offer a starting point for organizations seeking to establish a solid contractual footing in their PBM relationships.

Central to the creation of the standards are purchasers' fiduciary duties designated under the Employee Retirement Income Security Act of 1974 (ERISA). According to the act, health plan fiduciaries are required to run their health plan solely in the interest of their employees and dependents and with the exclusive purpose of providing benefits. That means purchasers must prevent conflicts of interest and demonstrate that the plan pays only reasonable expenses.

New vendor transparency requirements contained in the Consolidated Appropriations Act of 2021 (CAA) for the first time equip plan sponsors with the data they need to fulfill their fiduciary obligations. Critically, the CAA stipulates that health benefit vendors, including providers, insurers and third parties like PBMs and consultants, must provide access to comprehensive financial information about costs, prices, fees and other remuneration.

The PBGH PBM Purchasing Standards offers guidance for leveraging these mandates in preliminary discussions with PBMs and pharmacy advisors. Recommendations include insisting on access to all direct and indirect compensation paid to benefit consultants and/or brokers by PBMs, as well as details about the purchaser's pharmacy spend, historical drug costs and the financial impact of rebates on plan premiums.

Four categories of purchasing standards further inform the guidelines and underpin model provisions that can help plan sponsors meet their fiduciary obligations. The four standards include:

- **Transparency** that supports a clear understanding of drug cost, drug utilization and revenues paid by the plan to the PBM.
- **Clarity** of definitions that cannot be manipulated to mislead plan sponsors and allow PBM profiteering.
- **Customization** that allows plan sponsors to provide an excellent benefit that optimizes clinical outcomes and cost-effectiveness.
- **Client- and member-centric customer and account management** that prioritizes member clinical outcomes, financial well-being and member satisfaction and that supports plan sponsors with trustworthy strategic guidance.

Sample contract language is provided in support of each standard. Model provisions tied to the transparency standard, for example, address two of PBMs' primary avenues for profiteering: rebate retention and spread pricing.

Regarding the former, the provisions codify that 100% of drug manufacturer rebates must be passed through from the PBM to the plan sponsor for a full array of drugs, vaccines, supplies, devices, biosimilars and other products. Some PBMs own entities that serve as group purchasing organizations (GPOs) that aggregate rebates from manufacturers. PBMs will "hide" rebates in these organizational structures and will often reclassify rebates as other fee types to avoid 100% rebate pass-through. The provisions address this by explicitly defining rebates as all manufacturer revenue captured by PBMs, their GPOs or rebate aggregators.

The model language also includes detailed prohibitions against spread pricing, a common tactic wherein the PBM charges the plan sponsor more than the PBM pays a pharmacy for dispensing a drug, then pockets the difference or spread. This relies on confidentiality clauses that make it difficult, if not impossible, for the employer to identify what PBMs actually pay. Hence, the margin any given employer may be paying over the amount charged to the pharmacy is unknown.

All told, the guidelines include more than 140 model provisions or sub-provisions that contain specificity on everything from PBM reporting requirements and drug definitions to prior authorization, pharmacy network creation, formulary development and audit rights. The document also includes detailed definitions of multiple terms commonly used in PBM contracts.

PBGH recommends that plan sponsors interested in using the guidelines share the document with a specialized PBM ERISA attorney or expert pharmacy consultant. All advisors should review the document and attest to their alignment with both the spirit and letter of the guidelines.

[View the PBM Purchasing Standards.](#)

Peeling Back the Industry's Veil of Secrecy

PBGH's PBM initiatives are designed to help purchasers rein in out-of-control pharmaceutical spending. Over the past 40 years, U.S. drug costs have climbed more than [ten-fold](#), from \$30 billion in 1980 to [\\$348 billion](#) in 2020. While

pharmaceutical manufacturers are frequently blamed for rising costs, an undeniable link exists between price increases and the ever-expanding supply-chain dominance of PBMs.

PBMs were initially created in the 1960s to process claims and perform other administrative functions on behalf of payers. They've since morphed into powerful gatekeepers that exert vast, often-harmful influence over drug cost and access for [266 million](#) Americans.

PBMs employ a multitude of strategies to leverage their intermediary role in pursuit of outsized profits. Because these activities occur behind a veil of secrecy and ambiguity, most stakeholders have remained largely uninformed and uncertain about whether and how to challenge the status quo.

But that hesitancy is changing now, thanks to a growing public understanding of abusive business practices and concurrent efforts to compel accountability and reform. Rare political consensus at both the federal and state levels is driving legislative initiatives that impose key structural changes on the PBM industry. In the marketplace, new transparency rules -- coupled with fiduciary obligations for large employers offering employee health benefits -- are triggering unprecedented scrutiny of PBM costs, fees and client representations.

Success in rolling back PBM abuses ultimately will depend on a critical mass of employers using their market power -- coupled with emerging legislative reforms -- to force fundamental change across the industry. This requires increased awareness from benefit departments and their senior leadership of the problems PBMs create, as well as practical, iterative steps to resolve them. Both objectives are priorities for PBGH.

Advocating for a Fair Market

When it comes to supporting regulatory reforms, recent PBGH advocacy efforts include providing substantial input into the landmark federal PBM Transparency Act of 2023, and successfully influencing the House to modify provisions of the 2021 budget reconciliation bill to include individuals with commercial coverage, not just Medicare, in legislation to lower drug costs. This effort will bring new savings to employers and working families.

PBGH has additionally created and led the Employers Prescription for Affordable Drugs (EmployersRx) coalition, working closely with labor groups and consumer organizations on legislation to reduce costs. The coalition joined with nearly 40 organizations representing all facets of commerce and society to lobby Congress to end the pharmaceutical industry's anti-competitive behaviors and egregious pricing, resulting in several legislative efforts to address the problem.

Waste-Free Formularies

PBGH has invested considerable time and effort in developing guidance on how to remove wasteful drugs from PBM formularies. Purchaser pharmacy spending is frequently dictated by PBM-developed lists of approved drugs, or formularies, that often favor high-priced, low-value medications with large rebates over low-net-cost drugs with no rebates. To support the effort, PBGH partnered with John Hopkins University and consultant Integrity Pharmaceutical Advisors to create a [Waste-Free Formulary Guidebook and Calculator](#). These tools have contributed to significant savings for both companies and employees.

Success stories stemming from PBGH's waste-free formulary efforts include:

- PBGH and partners identified 49 common medications – accounting for \$6 billion in annual U.S. retail drug spending – that can be replaced with less-expensive therapeutic alternatives.
- The research showed that nearly a quarter of pharmacy spending can be saved by removing low-value drugs from health plan formularies.
- A major university achieved a 40% reduction in annual drug spending by implementing the higher-value, waste-free formulary.

Biosimilar Adoption

Biologics are cutting-edge specialty drugs used for patients with cancer and other serious conditions and typically are enormously expensive. Substituting FDA-approved biosimilars, which are lower-cost equivalents of biologics, can substantially increase patient access and reduce cost.

That's why PBGH has been a leader in efforts to prioritize the use of [biosimilars](#). Our research in this area is designed to help member companies identify

appropriate biosimilars and break down barriers to adoption. The results have been dramatic, with one purchaser having identified \$48 million in potential savings by adopting a “biosimilars first” program.

Real-World Results

A half-dozen member organizations have already used preliminary drafts of the PBGH PBM Purchasing Standards with positive results. Several said it was clear the document would help strengthen their PBM contracting and management going forward. One plan sponsor said they used it during renegotiation of their PBM relationship to incorporate new access to lower-cost drugs through Mark Cuban Cost Plus Drugs.

Between mounting legislative efforts, new purchaser tools and an increasingly untenable status quo, the PBM industry today faces an historic and long-overdue reckoning. Yet genuine PBM reform is not guaranteed and can only occur if purchasers are unrelenting in their push for change. PBGH understands the influence purchasers can muster and will continue working to harness it in pursuit of affordable medications for all.