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COMPLIANCE INSIGHTS

Proposed DOL transparency rules for pharmacy benefit managers

The Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) has released proposed regulations that, if adopted as currently drafted, would offer substantially greater transparency to self-insured plan sponsors and fiduciaries concerning the compensation received by Pharmacy Benefit Managers (PBMs) and their affiliates.

Executive Summary

The proposed rules would create comprehensive federal requirements for providers of PBM services and their affiliates to disclose all forms of direct and indirect compensation, pricing methodologies, and formulary-related incentives to fiduciaries of ERISA-covered self-insured group health plans. These rules will materially reshape PBM contracting and oversight beginning with plan years on or after July 1, 2026.

The proposal seeks to force greater PBM transparency by requiring initial compensation disclosure, twice-yearly reports on actual earnings, detailed explanations of pricing and formulary incentives, and audit rights to verify disclosure accuracy. Ultimately, this is the information plan fiduciaries need to evaluate whether PBM compensation is reasonable based on the services provided to avoid a prohibited transaction under ERISA.

If the rules are finalized, plan fiduciaries could utilize these disclosures to help choose a PBM, oversee its activities and adherence to contract terms, and possibly gain useful understanding of what influences prescription drug expenses.

Plan sponsors currently do not need to take any action regarding these proposed rules. Lockton Compliance Consulting will monitor changes and provide updates as they occur.

Detailed Breakdown

Under ERISA, plan fiduciaries have a duty to ensure that the plan only pays reasonable expenses necessary for the administration and operation of the plan. If a fiduciary permits the plan to pay for services or compensation that exceeds what is reasonable considering the services provided, this constitutes a prohibited transaction. Such transactions can expose the fiduciary and other involved parties to enforcement actions and penalties. This fundamental ERISA principle emphasizes the need to thoroughly assess service provider fees and compensation structures to ensure plan participants' interests are protected.

Proposed DOL transparency rules for PBMs

The new regulations set out additional responsibilities and restrictions for plan sponsors and PBMs, including:

Expanded compensation disclosures – The rule requires comprehensive compensation disclosures.

Initial disclosure – A PBM must disclose the compensation it expects to receive before contracts are signed, renewed, or extended. These must include: a description of provided services; total expected direct compensation; anticipated manufacturer payments (rebates, fees, etc.), both individually and in aggregate; projected spread revenue by drug and pharmacy type; expected copay claw backs and transaction counts; any termination-related compensation; all formulary placement incentives; and reasons for excluding certain therapeutic alternatives from formularies. This ensures fiduciaries understand if formulary choices are influenced by manufacturer incentives instead of clinical or economic value.

Six-month disclosures – Every six months, PBMs must provide an updated report that shows actual compensation received including rebates, spreads, fees, price protection revenue, and other payments. If actual amounts exceed initial estimates by 5% or more, the PBM must explain why. The EBSA considers these measures essential, as PBMs frequently amend contracts during the year, which can impact compensation without notifying fiduciaries. Notably, these disclosure obligations are more stringent than existing ERISA standards applicable to pension plan service providers.

Audit rights for fiduciaries - Under the proposed rule, self-insured plans would be guaranteed a broad annual audit right using an auditor of their choosing to verify PBM disclosures for accuracy and completeness. The PBM will be required to share all pertinent details, including manufacturer contracts, pharmacy reimbursement agreements and pricing models. This information must be made available without restricting auditor selection, audit site, document access, or requiring the use of PBM-prepared summary reports. This mandate aims to do away with common PBM contract terms that limit the scope of audits, restrict access to information, or allow only sample-based audits.

Additional content elements and disclosure formatting – The rule also throws in some additional nuggets that could benefit plan sponsors. The PBM must state in its disclosures whether it intends to act as an ERISA fiduciary and disclose any potential conflicts of interest. All disclosure content must be straightforward, easy to understand and free of complex language that might confuse plan sponsors. The plan fiduciary must be allowed to share the information with third parties such as healthcare consultants or attorneys for quality control purposes and to assist plan fiduciaries with verifying that compensation disclosures are accurate and complete. If requested, disclosures must also be provided in machine-readable format. Plan sponsors may also submit written requests to the PBM for necessary information, such as for federal reporting requirements like Form 5500 Schedule C or prescription drug cost reporting to HHS ("RxDC").

Penalties and proposed class exemption – Both PBMs and plan fiduciaries could face EBSA enforcement action for a prohibited transaction which includes penalties for failing to comply with these transparency mandates. Prohibited transactions under ERISA trigger both IRS excise taxes and DOL civil penalties, and these can escalate quickly if the violation is not corrected.

In the event a plan fiduciary does not receive compliant disclosures from the PBM automatically, the rule requires the fiduciary to formally request the mandatory disclosure and report the PBM to EBSA within 90 days if they fail to respond appropriately. The good news is that EBSA is also proposing to create an administrative class exemption from the prohibited transaction rules for plan fiduciaries acting in good faith and reporting noncompliance to EBSA. While the disclosure rules do not require the responsible fiduciary to terminate the contract due to a PBM's noncompliance, the plan fiduciary must exercise fiduciary prudence in assessing the situation and taking appropriate action.

Why it matters and what fiduciaries can do now:

As proposed, the regulations would be applicable to PBMs and plan sponsors beginning with plan years that begin on or after July 1, 2026. Considering that the comment period is 60 days and the DOL must respond to comments before publishing a final rule, this could be an incredibly quick turnaround for affected parties. However, the newly passed PBM law (Consolidated Appropriations Act, 2026) may impact the release and contents of any final rule. Lockton Compliance Consulting will continue to monitor developments and share updates as this proposal progresses.

While we all wait for the dust to settle on these rules, there are a number of tasks plan fiduciaries can implement now to push for more transparency:

- Inventory current PBM arrangements and ask questions about how compensation is structured, including rebates, fees and any affiliate relationships which may be implicated by the proposal's expanded disclosure framework.

- Review PBM contract terms related to pricing transparency, formulary management, and audit rights to identify current practices and potential gaps if the proposal is finalized.

- Prepare fiduciary processes for evaluating PBM disclosures and document reasonableness determinations under ERISA's fiduciary standards.