

BEST PRACTICES

for Enforcement of PBM Regulation

This document shares the best practices we have seen in states for enforcing regulations of pharmacy benefit management companies (PBMs). This is needed perspective because even the most comprehensive laws and regulations addressing the egregious business practices of PBMs fall short if they are not enforced. The National Community Pharmacists Association advocates for strong oversight authority granted to departments of insurance with specific expertise, resources, and tools to implement an enforcement program. For more information, please visit our [PBM reform webpage](#).

STRUCTURE

- Oversight and enforcement authority for the Office of Insurance Commissioner (OIC)
 - Authority included in state’s PBM licensing language, but authority is not limited to licensing process ([Arkansas](#))
 - OIC authority expressly stated throughout statutes ([Colorado](#))
- OIC authority should include requirement for rulemaking ([North Dakota](#), [West Virginia](#))
 - Example of what rulemaking can include ([Arkansas](#))
- Applicable to all PBMs, including those serving ERISA plans ([Tennessee](#))

LICENSING FEES

- Funds should be placed in an account dedicated to PBM oversight ([Florida](#), [Kansas](#))
- Application fees and renewal application fees should be sufficient to fund the OIC’s duties ([West Virginia](#))
- Appropriations for implementation ([Florida](#))
- Application fee minimum of \$5,000

COMPLAINTS AND REPORTING

- Designate a primary contact or contacts in the OIC for consumer and pharmacy PBM concerns ([Florida](#), [Indiana](#))
- Should include state tracking of Insurance Department capacity for PBM oversight (headcount, budget, funding sources, etc.) in the [NAIC Insurance Department Resources Report](#)
- Standardized PBM complaint form on OIC websites should allow a consumer, pharmacy, or pharmacist to file administrative complaints ([Alabama](#), [South Carolina](#), [Tennessee](#))
- Electronic system for submitting such complaints and tracking the Insurance Department’s investigation and resolution of any such complaint
- Director can delegate adjudicative function to subordinate employees of the Insurance Department and hold fact-finding hearings to adjudicate complaints
- Establish a process for timely resolution of such complaints
- Annual and quarterly reporting ([West Virginia](#))
- Network adequacy not less strict than Medicare standards ([Arkansas](#))

AUDITING OF PBMS

- OIC authority and prerogative ([Colorado](#), [Georgia](#), [Tennessee](#) proposed, [West Virginia](#))
- Require at least biennial audits ([Florida](#))
- Access to all information needed to conduct audit ([Georgia](#), [Tennessee](#) proposed)
- Costs associated charged to PBM ([Florida](#), [Georgia](#), [Tennessee](#) proposed)
- Example of what PBM audits can examine: [Indiana](#)

FINES

- Up to \$10,000 per violation, no maximum ([West Virginia](#))
- Fines to above-mentioned account should be dedicated to PBM oversight

REPEAT VIOLATIONS

- Should be expressly stated in statute/rule with increasing penalties ([Arkansas](#), [Georgia](#), [Minnesota](#))
- Cease and desist
- Suspension from servicing state employee health plans
- Suspension of license
- Revocation of license
- Defining “knowing and willful” violations ([Florida](#))
- OIC may refer to state attorney general for additional investigation or enforcement action ([South Carolina](#))

APPEALS PROCESS

- Appeals process with timelines ([Tennessee](#), [West Virginia](#))
 - External appeals process with OIC or delegated third-party reviewer ([Tennessee](#), [South Carolina](#) proposed)
- Authority for restitution ([Tennessee](#) proposed, [West Virginia](#))
- Successful appeals applicable to similar claims by other providers ([Florida](#), [Tennessee](#))