ASSEMBLY PBM FIDUCIARY BUDGET PROVISIONS

HPA Opposes the Assembly One-House Budget PBM Fiduciary Proposal

The Assembly one-house budget proposal seeks to mandates a fiduciary responsibility between pharmacy benefit managers (PBMs) and health plans with which they contract. The establishment of this relationship raises several concerns because it will:

Limit health plan contracting options

Many health plans contract with PBMs to help manage pharmaceutical benefits on behalf of members. Traditionally, PBMs serve in an administrative and advisory role to the plan—often providing advice on formulary management, claims processing and other tasks related to the proper administration of a pharmacy benefit.

Meeting the needs of consumers in the evolving health insurance marketplace requires health plan contracting flexibility. Typically a plan will seek to establish a set price for its expected pharmaceutical purchases based on a certain benchmark (Average Wholesale Price, Average Manufacturers Price, etc.). Once a price is agreed upon, the plan is able to underwrite the entire product offering for premium pricing. This contractual arrangement prohibits a business model that places the onus on the PBM to chase price concessions from manufacturers to meet its costs. This legislation effectively eliminates the ability of a plan to obtain price certainty from PBMs when it designs the benefit, which would likely cause the drug benefit to be priced conservatively high to allow the plan to guard against the uncertainty of final rebates and other future price concessions by manufacturers.

Improper Transfer of Fiduciary Authority

According to the Center for Fiduciary Studies, a fiduciary is defined as "any entity that has the legal responsibility for managing the property for the benefit of another, exercising discretionary authority or control over assets and acting in a professional capacity of trust." PBMs administer a benefit that health plans have designed and implemented for their members. PBMs have no discretionary control over plan assets and, while parties can negotiate such a relationship, most health plans have preferred keeping their PBMs at "arm's length." This legislation inappropriately alters this relationship by removing the plan's discretionary authority over the pharmacy benefit and transferring it entirely to the PBM. Furthermore, in an effort to establish a single national standard for fiduciaries, ERISA specifically preempts state fiduciary mandates as embodied in this proposal. Imposing a new "fiduciary obligation" where no such obligation arises is in direct conflict with provisions in ERISA and disruptive to the administration of health plans. A similar statute enacted in Maine was repealed as the courts determined that it violated ERISA.

The New York Health Plan Association represents 29 managed care health plans that provide comprehensive health care services to nearly 8 million New Yorkers.