

January 2023 Will Bring Wave of New State Laws Targeting Drug Prices, PBMs

With the adjournment of the California Assembly on August 31, only four state legislatures remain in session for 2022—Michigan, Pennsylvania, Ohio, and New Jersey. (As of this writing, Missouri is in Special Session to deal with state tax issues; a state legislature calendar is available [here](#).) The National Conference of State Legislatures [bill tracking database](#) shows that through August, 418 bills had been introduced, in 47 states, directly addressing prescription drug-related issues. Of these, 252 targeted drug pricing and cost sharing; 147 focused on PBMs and formularies. While a majority of the bills failed to make it through the legislative process before adjournment, several were signed into law. Here is brief summary of the bills enacted this year with a January 1, 2023, effective date.

Colorado [H 1122](#) Prohibits PBMs and their representative from reimbursing a pharmacy for a prescription drug in an amount less than the national average drug acquisition cost for the prescription drug.

Colorado [HB 1370](#) Prohibits PBMs from modifying a formulary during the plan year and requires that they use 100% of estimated rebates received from manufacturers to reduce policyholder costs.

Florida [H 357](#) Authorizes audited pharmacies to appeal certain findings and imposes penalties for PBM failing to register with the state.

Iowa [H 2384](#) Prohibits PBMs from discriminating against a pharmacy or pharmacist with respect to participation, referral, or reimbursement of a covered service if a pharmacist is acting within the scope of the pharmacist's license.

Maine [S 621](#) Requires health insurers to include cost-sharing amounts paid on behalf of an insured when calculating the insured's contribution to any out-of-pocket maximum, deductible, or copayment when a drug does not have an alternative equivalent or was obtained through prior authorization.

Maine [LD 1636](#) Directs the state health agency to prepare an annual report showing the potential savings that could be achieved if the most costly drugs in the state were subject to a "referenced rate," defined as the lowest available price from among the four largest Canadian provinces and the U.S. WAC.

Maryland [S 823](#) Requires GPOs to submit their contracts with PBMs to the state Insurance Administration and requires pharmacy services organizations to provide access to, rather than copies of, certain documents to independent pharmacies.

Nebraska [L 767](#) Prohibits health benefit plans from penalizing a pharmacy or pharmacist for disclosing to any covered person any health care information that the pharmacy or pharmacist deems appropriate regarding the availability of an alternate therapy or the process that is used to authorize or deny a health care benefit.

New York [S 7767](#) Prohibits an insurer from removing a prescription drug from a formulary or placing it in a tier with a larger deductible, and prohibits insurers from adding utilization management restrictions to a prescription drug on a formulary unless such changes occur at the time of enrollment.

Tennessee [S 1859](#) Provides that prescription drug labeling must accommodate individuals who are visually impaired.

Tennessee [HB 2661](#) Bars PBMs from reimbursing their contracted pharmacies an amount lower than the actual cost of the drug, and prohibits PBMs from trying to influence patients when choosing a pharmacy or provider.

Vermont [HB 353](#) Prohibits certain provisions in contracts between PBMs and health insurers and outlaws "gag clauses" in contracts with pharmacies.

Vermont [H 462](#) Requires pharmacies that operate 10 or more establishments in the U.S. and conducts business in Vermont to enroll in a drug disposal kiosk program.

Washington [S 5610](#) Requires plans to apply any cost-sharing amounts paid by the enrollee directly or on behalf of the enrollee by another person for a covered prescription drug when calculating an enrollee's contribution to any applicable cost-sharing, deductible, or out-of-pocket maximum requirement.

West Virginia [HB 4112](#) Mandates that reimbursements are no less than the amount the PBM would reimburse itself or an affiliate.