



# Illinois Department of Insurance


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BRUCE RAUNER  
Governor

JENNIFER HAMMER  
Director

## MEMORANDUM

**TO:** All Entities and Persons Engaged in Pharmacy Benefit Management

**FROM:** Jennifer Hammer, Director 

**DATE:** November 9, 2018

**RE:** Company Bulletin 2018-10 – Pharmacy Benefit Managers – Registration, Licensing and Activities

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The Illinois Department of Insurance (“Department”) has issued this bulletin to clarify certain aspects of the registration, licensing, and regulatory requirements under Illinois insurance laws that apply to entities commonly referred to as pharmacy benefit managers (“PBMs”).

Illinois currently does not have a statutory definition of “pharmacy benefit manager” or “pharmacy benefit management,” nor is there a specific PBM license; however, the Department regulates activities commonly performed by PBMs.

### **Prohibited Activities**

Under the recent Patient Right to Know Drug Prices Act, P.L. 115-263, federal law now requires a health insurance issuer to ensure that its contracted PBM does not prohibit a pharmacy or pharmacist from discussing a consumer’s out of pocket costs for a prescription drug and more affordable alternatives. Pharmacies and pharmacists are encouraged to advise consumers when the total cost of a prescription drug is less than the consumer’s coinsurance.

### **Registration and Licensing**

The Illinois registration and licensing requirements depend on the particular regulated activities in which the PBM actually engages.

If a PBM engages in a sufficiently broad scope of activities, the PBM may be required to file applications with the Department for multiple registrations or licenses. Below are some common types of administrative activities in which a PBM is likely to engage that would subject the PBM to the Department’s regulatory oversight. This is not an exhaustive list.

### **Third Party Administrator (“TPA”)**

A TPA is defined as “any person who on behalf of a plan sponsor or insurer receives or collects charges, contributions or premiums for, or adjusts or settles claims on residents of this State in connection with any type of life or accident or health benefit provided through or as an alternative to insurance within the scope of Class 1(a), 1(b) or 2(a) of Section 4 of the Illinois Insurance Code...” 215 ILCS 5/511.101(a). A PBM is not included by name or description among most of the exceptions to this statutory definition or to any legal requirement applicable to TPAs, though it is possible that some PBMs would fall under the exception for a “person who administers *only* self-insured workers compensation plans, or single employer self-insured life or accident or health benefit plans.” 215 ILCS 5/511.101(a)(8) (emphasis added).

If a PBM engages in any of the activities listed in that definition and does not fall within an applicable statutory exception, then it must apply for a TPA license pursuant to 215 ILCS 5/511.102(a). PBMs frequently process prescription drug claims for individuals covered by a plan sponsor or insurer, and they may perform other administrative services within the scope of the statutory definition.

### **Third Party Prescription Administrator (“TPP Administrator”)**

A TPP Administrator is defined as “any person, partnership or corporation who issues or causes to be issued any payment or reimbursement to a provider for services rendered pursuant to a third party prescription program.” 215 ILCS 5/512-3(b). A PBM is not included by name or description among the exceptions to this definition or to any legal requirement applicable to TPP Administrators.

In turn, a “third party prescription program” is “any system of providing for the reimbursement of pharmaceutical services and prescription drug products offered or operated in this State under a contractual arrangement or agreement between a provider of such services and another party who is not the consumer of those services and products.” 215 ILCS 5/512-3(a).

A third party prescription program is narrower in scope than the services performed under a TPA agreement. Whereas a TPA may adjust or settle claims on behalf of a plan sponsor or insurer, a third party prescription program only provides for reimbursements to providers.

If a PBM issues or causes to be issued any payment or reimbursement under a third party prescription program in Illinois for any plan sponsor, insurer, health maintenance organization, or other payor, then that PBM must register as a TPP Administrator.

If a PBM administers a third party prescription program for any payor but also offers TPA services to any plan sponsor or insurer, then the PBM will need both a TPP Administrator registration and a TPA license.

### **Preferred Provider Program Administrator (“PPP Administrator”)**

A PPP Administrator is defined as “any person, partnership or corporation, other than a risk-bearing entity that arranges, contracts with, or administers contracts with a provider under which insureds or beneficiaries are provided an incentive to use the services of the provider. Administrator also includes any person, partnership or corporation, other than a risk-bearing entity, that enters into a contract with another administrator to enroll beneficiaries or insureds in a preferred provider program marketed as an independently identifiable program based on marketing materials or member benefit identification cards.” 50 Ill. Adm. Code 2051.220. A PBM is not included by name or description among the exceptions to this

definition, or to the substantially similar statutory definition at 215 ILCS 5/370g(g), or to any legal requirement applicable to PPP Administrators.

Apart from processing and paying claims, some PBMs build pharmacy networks that a risk-bearing entity then incorporates into its own provider network.

Under the definition of a PPP Administrator, if the contracts that are entered between the PBM and its network pharmacy providers do not create incentives for an insured or beneficiary to use those providers, then the PBM is not a PPP Administrator. An important feature of a contract between a PPP Administrator and its network providers is provisions “relating to the amounts to be charged the insureds or beneficiaries for services rendered...” 215 ILCS 5/370i(b)(1).

If the PBM’s contracts with its network pharmacy providers include provisions that relate to the amounts to be charged the insureds or beneficiaries for services rendered as a means of creating incentives for insureds and beneficiaries to use those pharmacies’ services, then the PBM will be considered a PPP Administrator and must register with the Department pursuant to 215 ILCS 5/370k(a).

On the other hand, if the PBM’s contracts with its network pharmacy providers in no way relate to the amounts to be charged the insureds or beneficiaries but help reduce the providers’ own expenses and thereby enable the providers to independently elect whether and how much to pass on some of the savings to their customers, then that PBM will not be considered a PPP Administrator.

If a PBM is a PPP Administrator and subcontracts any of its functions to another PBM, the subcontractor will also be a PPP Administrator if the subcontractor arranges, contracts with, or administers provider contracts as described in the definition of “Administrator” in 50 Ill. Adm. Code 2051.220 or 215 ILCS 5/370g(g). This includes, but is not limited to, a subcontractor PBM that enrolls beneficiaries or insureds in a preferred provider program marketed as an independently identifiable program based on marketing materials or member benefit identification cards.

If a PBM meets the definition of a PPP Administrator and also performs the functions of a TPA and/or a TPP Administrator, then it must file for each applicable registration or license with the Department.

Nothing prohibits a PBM from being a PPP Administrator for workers compensation insurance, as well as health insurance or discounted health care services coverage. For workers compensation insurance, a PBM would be considered a “Specialty Preferred Provider Program Administrator” as defined in 50 Ill. Adm. Code 2051.220.

PBMs are not required to submit any filings specified in the Network Adequacy and Transparency Act (215 ILCS 124).

*Note: The Illinois Department of Insurance (“DOI”) intends for Company Bulletins to provide timely, relevant, and helpful guidance to insurance companies based on information existing at the time the Bulletin is issued. Company Bulletins are not updated when the underlying regulations change, and DOI anticipates companies will implement the guidance provided shortly after the Bulletin is issued. No Company Bulletin should be relied upon as the primary or current source of law or regulation.*