

PBM Regulatory Roundup (Fall 2022): State Medicaid Enforcement Efforts Continue As Legislative Activity Slows Down

November 14, 2022 | Blog | By [Bridgette A. Keller](#), [Hassan Shaikh](#)

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Though the flurry of state PBM-focused legislation slowed down with the summer recess, there has still been plenty of noteworthy PBM news. This roundup focuses on state Medicaid enforcement activities involving Centene and provides a brief overview of recent legislative activity.

State Medicaid Enforcement

Centene Corporation, on behalf of itself and its subsidiaries (collectively, Centene), has been subject to a number of state investigations alleging that certain of Centene's managed care organizations and Centene's PBM, Envolve Pharmacy Solutions, together participated in state-specific schemes to misrepresent pharmacy costs, artificially inflate fees, and ultimately overcharge applicable state Medicaid programs. These investigations focused primarily on transparency.

In June 2021, Centene settled the matter of *Ohio Department of Medicaid and State of Ohio v. Centene Corporation et al.* for \$88.3 million. Immediately following the Ohio settlement, Centene and the State of Mississippi agreed to a \$55.5 million settlement to resolve materially similar issues. Since then, Centene has settled with several other states over similar accusations, including, Arkansas (\$15.2 million), **Kansas (\$27.6 million)**, Illinois (\$56.7 million), **New Hampshire (\$21.1 million)**, and **New Mexico (\$13.7 million)**; and is rumored by some news outlets to have settled with Georgia and Oklahoma.

From July through September 2022, Centene settled with three additional states for a cumulative \$213 million.

- Texas: On July 11, 2022, Centene **agreed** to pay approximately \$166 million, its largest settlement to date, to settle allegations that it violated the Texas Medicaid Fraud Prevention Act.
- Washington: On August 17, 2022, Centene **agreed** to pay \$33 million to settle allegations that it overcharged the Washington State Medicaid Program and violated that Washington Medicaid False Claims Act.
- Massachusetts: On September 29, 2022, Centene **agreed** to pay \$14 million to MassHealth, the Massachusetts Medicaid program, to settle allegations that it failed to disclose or pass through some retail discount fees to MassHealth, which inflated fees and drug costs reported to Massachusetts.

Of note, Massachusetts Attorney General Maura Healey indicated that her office undertook a review of Centene operations in Massachusetts following the series of investigations and settlements across the country. In light of this review and Centene's announcement of a \$1.25 billion reserve to cover future settlements, we expect to see additional settlements in the coming months.

State Legislation

States continue to enact legislation aimed at increasing pharmacy price transparency. Though activity slowed in the last quarter, three states took action in October:

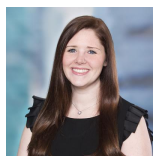
State	Description of Measure(s)	Status
Delaware	S.B. 267: requires PBMs to include any cost-sharing amounts paid by an enrollee or another third party on behalf of an enrollee when calculating an enrollee's total cost-sharing contributions. The bill intends to curb certain accumulator programs and ensure that manufacturer coupons and other assistance programs "count" towards the calculation of an enrollee's contributions toward their deductible and total out-of-pocket spend.	Signed into law on 10/26/2022; Effective 1/1/2024
New Jersey	S.B. 3199: proposes to regulate certain practices of PBMs and health insurance carriers by, among other things, (i) prohibiting the practice of "steering" – which is defined as channeling prescriptions to pharmacies that a PBM has an ownership interest in; and (ii) prohibiting PBMs from charging a pharmacy a fee for network enrollment, or collecting point-of-sale or retroactive fees from pharmacies.	Introduced on 10/13/2022; referred to Senate Commerce Committee
Pennsylvania	H.B. 1630: establishes the ability for the Department of the Auditor General to conduct an audit and review of PBMs that service the state's Medicaid managed care organizations.	Signed into law on 10/28/2022; effective 12/28/2022

Federal Legislation

Representatives Bruce Westerman and Anthony Gonzalez introduced **H.R. 8588**, the Fair Care Act of 2022, in the House of Representatives for the third time since 2019. The Fair Care Act of 2022 is a comprehensive bill that intends to, among other items, "address the high costs of health care services, prescription drugs, and health insurance coverage." Notable for PBMs are the proposed provisions that would: (i) attempt to eliminate rebates from the commercial market unless the price reduction is reflected at the point-of-sale; (ii) prohibit PBMs from levying retroactive fees or payment reductions on retail pharmacies; (iii) impose certain contractual requirements and covenants in PBM agreements; (iv) prohibit spread pricing practices; (v) increase oversight by health plans of their contracted PBMs; and (vi) require the U.S. Comptroller General to conduct a study on the role of PBMs in the pharmaceutical supply chain. The likelihood that the Fair Care Act of 2022 becomes federal law is understood by some legislative experts to be low.

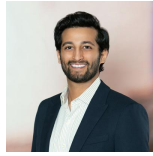
We expect states to continue engaging in efforts to increase oversight of PBMs. We will continue to monitor and report on relevant legislative activity.

Authors



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