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White paper

How your pharmacy can establish and maintain healthy relationships with pharmacy benefit managers

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About the author

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With an increasing number of pharmacies competing in the specialty pharmacy and infusion spaces, pharmacy benefit managers (PBMs) often determine which pharmacies can enter limited drug networks and which ones are excluded. PBMs have developed stricter requirements and qualifications for entry. Even when a pharmacy meets all of the requirements, it may still be denied access to a limited network because, according to the PBM, the network is "full." That is why specialty pharmacies need to demonstrate their value to effectively compete in these limited networks and create long-standing relationships with PBMs.

This white paper will:

- Give the framework for establishing positive relationships with PBMs
- Outline changes to the recredentialing process
- Share tips for avoiding common risks for termination
- Demonstrate how to respond to termination
- Show how to repair and maintain a long-standing relationship with PBMs

Why the pharmacy must build relationships with PBMs

A PBM is a third-party administrator contracted by health plans, employers, unions, and government entities to manage prescription-drug programs. The PBM acts as a fiscal intermediary between insurers/payers and pharmacies, with a mission to help control the cost of drug coverage through the PBM's network of pharmacies, benefit-specific utilization management programs, and formularies.

Most PBM contracts give the PBM the right to terminate its contract with the pharmacy with or without cause. "Cause" can include, but is not limited to: the pharmacy's misrepresentations to the PBM; the pharmacy's failure to adhere to the requirements imposed by the PBM on its member pharmacies; and the pharmacy's breach of PBM contract terms. Because the PBM plays such a pivotal role in the success of the pharmacy, it is important for the pharmacy to not view this as a transactional relationship, but instead, as a long-term partnership.

Why accreditation is a good start

Completing specialty pharmacy accreditation requires significant time commitments from your staff as well as an upfront financial commitment. PBMs often require specialty pharmacies to have not just one, but two accreditations to qualify for entry into exclusive networks. However, while having two accreditations is a great start, this does not guarantee automatic acceptance into a network. It is a hard balance for pharmacies because not having any accreditations limits competitiveness, but having two accreditations still does not grant immediate access to the networks. When the pharmacy is making this tough decision, it should weigh the costs of accreditation with the expectation of being accepted to limited drug networks.

Why recredentialing questionnaires matter

A PBM is allowed to recredential pharmacies in accordance with the PBM's own timetable . . . typically once a year or every two years. During this recredentialing process, the goal of the PBM is to ensure that the pharmacy is in good standing with licensing agencies and meets quality performance standards. Recently, PBMs have introduced new questionnaires that ask specific questions. Examples include whether the pharmacy (i) participates in compounding; (ii) uses W2 employee sales reps vs 1099 independent contractor sales reps; (iii) has entered into central fill relationships; and/or (iv) uses pre-printed prescription pads. Additional questions

inquire about the pharmacy's policies and procedures relating to its operations and billing practices, such as relationships with referral sources, billing processes, collection of copayments, and USP <795> compliance.

It is important for the pharmacy to answer these questions honestly. For example, if a pharmacy provides mail-order service, it needs to state this on the questionnaire, even if the mail-order service is a large percentage of the pharmacy's business. Most PBMs own a mail-order pharmacy. As such, PBMs do not want retail network pharmacies to compete with the PBMs in the mail-order market. When responding, if the pharmacy discloses a large mail-order operation, then there is a risk that the PBM will terminate the pharmacy's retail network contract. As will be discussed below, the pharmacy will need to work with the PBM, in a win-win manner, to avoid the termination.

PBM audits: What to look out for and how to prepare

A PBM can audit a pharmacy in order to detect any improper payment and to verify that the patient received the correct medication and dose. In addition, a PBM will conduct an audit on a pharmacy to verify that the pharmacy is complying with its PBM contract.

Typically, a PBM begins an audit by sending a letter to the pharmacy informing it of the audit. A PBM can also conduct an audit in one or more of the following ways:

- A PBM can conduct an on-site audit, which can include physical observations, prescription reviews, and checks for compliance with Medicare Part D regulations.
- A PBM can conduct an audit by phone to correct claim billing for a small number of claims
- A PBM can conduct a desk audit, which uses automated means to review pharmacy claims and encounter data.

Common reasons why PBMs terminate contracts

The pharmacy should analyze its internal processes to determine if there are any practices that could conflict with the terms of its PBM contracts. If the pharmacy does not know if it is violating any PBM contract terms or is otherwise at risk for termination from the PBM's network, then it is in the pharmacy's best interest to speak with a health care attorney.

Here are four common reasons why pharmacies are terminated by their PBMs:

- **The pharmacy routinely waives copayments.** Federal and state laws, and most PBM contracts, require the pharmacy to take reasonable steps to collect copayments. Pharmacies cannot routinely waive copayments. A pharmacy can reduce or waive copayments on a patient-by-patient basis if the patient submits a Financial Hardship Waiver Form establishing the financial inability to pay the full copayment. Through advertising or any other means, the pharmacy cannot tell (or imply to) a patient, in advance of the patient purchasing the drug, that the pharmacy may waive/reduce the copayment if the patient establishes financial hardship.
- **The pharmacy is engaged in mail-order.** Many PBMs have their own mail-order pharmacy... and they do not like competition. If the pharmacy is accepted into the PBM's retail network, then the PBM contract will likely state that the pharmacy's mail-order business cannot exceed a certain

(small) percentage of the pharmacy's total sales. If the pharmacy discloses on the PBM questionnaire that the pharmacy's mail-order business exceeds the percentage set out in the contract, then the PBM will likely terminate the contract. Additionally, the PBM will terminate the contract if the pharmacy does not accurately disclose the extent of its mail-order business and the PBM finds out about it through other means.

- **The pharmacy markets through 1099 contractors.** The federal anti-kickback statute ("AKS") prohibits the pharmacy from providing anything of value to a person/entity in exchange for the person/entity referring (or arranging for the referral of) patients to the pharmacy who are covered by a federal government health care program ("FGHP Patients"). As such, payment of commissions to a 1099 independent contractor for directly or indirectly generating FGHP Patients for the pharmacy violates the AKS. On the other hand, it is acceptable for the pharmacy to pay commissions to a bona fide W2 employee.

- **Pharmacy is engaged in compounding.** PBMs have been victimized by a number of compounding pharmacies. Over the past several years, compounding pharmacies contracted with marketing companies to generate patients who wanted compounded pain and scar creams. The compounding pharmacies would prepare and dispense the pain/scar creams and bill the PBMs an exorbitant amount per month/per patient for the creams. The commercial insurers came down on the PBMs. For these and other reasons, PBMs do not want their contract retail pharmacies to be engaged in compounding in a meaningful way.

How to respond to a termination letter

If a pharmacy receives a termination letter, then it is important not to take an adversarial stance. At the end of the day, the PBM is in a stronger bargaining position than the pharmacy. The pharmacy should work with the PBM to find a "win-win" solution. If the pharmacy is unsuccessful at resolving the termination at the lower level, then the pharmacy's health care attorney should contact the PBM's in-house attorney with the goal of reaching a resolution.

Keys to maintaining healthy relationships with PBMs

It is important for the pharmacy to maintain good working relationships with PBMs. The PBM has the ultimate control of who is and is not in the network and the PBM sets the standards for entry.

The pharmacy should work with the PBM to demonstrate the pharmacy's value through the collection of data that reflects (i) cost savings for the PBM and (ii) improving health for the patients. We are in the era where "data is king" and pharmacies need to collect data that shows the patient's journey over the course of therapy, drug interactions, outcomes, and adherence. Pharmacies should package this data in a way that can be utilized by PBMs. Collecting and sharing cost-saving and patient outcome data demonstrates the pharmacy's value and sets the pharmacy apart from its competition. In particular, the data can show cost-savings by preventing the patient from being readmitted to the hospital soon after discharge.

It is important for the pharmacy to take a win-win approach regardless of whether it is trying to enter the network, trying to remain on the contract, or attempting to save a contract that is on the verge of termination.

Frequently asked questions

How do we respond to PBM audits if we continue to receive audits on the same issue and we are clearly not in the wrong?

- *The pharmacy needs to go to upper-level PBM management and ask for an intervention. The pharmacy may need for its health care attorney to talk to the PBM's in-house counsel.*
- *File a complaint with the state insurance commissioner*
- *Talk with state legislators who sit on committees with jurisdiction over the state insurance commission.*

If the pharmacy speaks out about the PBM practices, does it place the pharmacy at future risk for being in the spotlight and viewed as a troublemaker?

As long as the pharmacy moves up the "food chain" respectfully, then there exists a win-win relationship, not a zero-sum game. This should result in the PBM not labeling the pharmacy as a "troublemaker." If the pharmacy goes with a "ready-shoot-aim," approach, then the risk of termination increases.

Do you anticipate pharmacy recredentialing applications to continue to ask questions that the pharmacy may consider to be invasive (e.g., questions about mail-order, compounding, copayment collections, use of marketing reps)?

Yes, we do not believe that this trend will slow down. When you are dealing with a PBM, it is not an equal fight. If at all possible, the pharmacy should work cooperatively with PBMs.

How does dispensing mail-order drugs affect the pharmacy's PBM retail contract?

Most PBMs have their own mail-order pharmacy and they do not want retail network pharmacies competing with the PBMs' mail-order pharmacies. Therefore, if a retail network pharmacy is engaged in mail-order, then there is a risk of termination.

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