



Family Care Connections, LLC

NEW LAW TO CONTROL PHARMACY BENEFIT MANAGERS (PBM's), PHARMACEUTICAL COSTS AND KEEP CONSUMERS BETTER INFORMED IN NEW YORK

Governor Kathy Hochul signed a new Law requiring the licensing and regulation of pharmacy benefit managers also known as PBM's. The new law establishes new duties and obligations on the part of the PBM's and further provides the Department of Financial Services, formally known as the New York State Insurance Department, with jurisdiction to enforce the law and receive complaints from consumers, health providers and pharmacies. The goal is to make pricing more transparent and to help consumers make better informed decisions regarding their medication purchases.

What is the role of the Pharmacy Benefit Manager?

The Pharmacy Benefit Manager (PBM) is a third-party administrator of prescription drug programs for commercial health plans, self-insured employers plans, Medicare Part D plans, the Federal Employee Health Plan and state government employee plans. The primary role is to develop and maintain the formulary, contract with pharmacies, negotiate discounts and rebates with manufacturers and process and pay prescription drug claims.

The three largest public PBM's in the US are Xpress Scripps, CVS Health and United Healthcare/OptimumRX/Catamaran. They control about 80% of the market. Consequently there has been evolving problems with transparency, and conflicts of interest. As a result it is unclear how much consumers really save on medication. In addition, independent pharmacies are at the mercy of the PBM's creating a hostile marketplace for the local independent pharmacy.

The new legislation should improve the market place for consumers and independent pharmacies by requiring the following:

- Pharmacy benefit managers now have a duty to conduct themselves in good faith and deal fairly with independent pharmacies, regulations to follow.
- The Department of Financial Services will implement rules limiting spread pricing. This is a practice that makes the actual cost and savings unclear to the general public and a systematic trade secret, which prior to the legislation could not be disclosed.
- PBM may not substitute drugs unless the prescriber allows it and/or it is permitted by law.
- The PBM law will develop and implement an appeals process.

- Gag clauses regarding cash prices will be eliminated.
- All PBM's must be registered and licensed in New York State by January 1, 2024.
- The pharmacy benefit manager must disclose to the Department of Financial Services any and all pricing discounts reductions of any kind, inflationary payouts, credits clawbacks, fees etc. this will allow for a true understanding of the cost and reimbursement to the PBM. Also, the source of payment and the reason for the payment. This information will be used to generate more regulations of the industry.
- A PBM license may be revoked or suspended if it is determined that there has been fraudulent, coercive or dishonest practice, as well as demonstrated incompetence or financial irresponsibility in connection with the operation of business in New York State or elsewhere. In addition, the PBM can be held responsible for improperly withholding, appropriating or converting money.

All of these measures are intended to improve the marketplace for consumers and independent pharmacies. With greater transparency and understanding of the cost of the medications, consumers will be in a better position to make decisions regarding their healthcare and pharmaceutical purchases. Family Care Connections will continue to monitor the implementation and effectiveness of this new legislation.

For further information please contact Dr. Frank G. D'Angelo JD, PhD,
Family Care Connections, 516-248-9323 or
DrFrank@FamilyCareConnections.com

Contact Information:

Dr. Ann Marie D'Angelo, DNP, CNS
Doctor of Nursing Practice, Director of Clinical Services

Dr. Frank G. D'Angelo, JD, PhD
Director of Medicaid, Medicare & Eldercare Consulting Services

901 Stewart Ave, Suite 230, Garden City, NY 11530
(516) 248-9323

224-44 Braddock Ave, Queens Village, NY 11428
(718) 470-6300