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EMPLOYEE BENEFITS COMPLIANCEALERT!

DOL Issues PBM Fee Disclosure Final Rule

November 5, 2026

On November 2, 2026, the U.S. Department of Labor's (DOL) Employee Benefit Security Administration (EBSA) published a final regulation ("Final Rule") which implements the existing ERISA § 408(b)(2)(B) service-provider disclosure framework by adding compensation disclosure requirements applicable to pharmacy benefit managers ("PBMs") and affiliated brokers and consultants who provide services to large, self-funded group health plans. The Final Rule is intended to provide fiduciaries of these large ERISA-covered self-funded group health plans with the necessary information to evaluate PBM compensation arrangements and determine whether those arrangements satisfy the reasonableness standards under the ERISA § 408(b)(2) prohibited transaction exemption framework. The DOL also issued a Fact Sheet on the Final Rule.

ACTION REQUIRED

Review PBM and consulting agreements to address new requirements.

Establish and document a consistent fiduciary process for evaluating vendor compensation.

Monitor ongoing regulatory guidance with FRP Compliance assistance.

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BACKGROUND ON THE FINAL RULE

PBMs provide a wide range of services relating to managing prescription drug benefits for employer-sponsored group health plans. While they provide valuable services to these plans, their compensation arrangements can be complex, making them difficult to evaluate. As such, for years, and from both sides of the aisle, plan transparency and cost reduction advocates have been urging Congress to implement expanded PBM reforms, particularly in the areas of PBM compensation structures and fee disclosure. While many states have adopted PBM reform legislation in recent years, at the federal level, these new rules, along with the Consolidated Appropriations Act, 2026 ("CAA 2026") (see our eAlert here), represent the largest reforms in this area to date. As a result, these changes are likely to significantly alter the economic relationship between plan sponsors and their service providers and give sponsors more leverage in negotiating these contracts.

WHO MUST COMPLY?

The requirements of the Final Rule are narrower in scope than the disclosure obligations imposed under CAA 2026, which remain in effect. The Final Rule applies only to "covered service providers" ("CSPs"). CSPs are entities that provide pharmacy benefits management services to large, self-funded group health plans (generally plans with 100 or more participants or plans offered by employers with 100 or more employees). The Final Rule uses a functional test to determine whether an entity is considered a CSP. As such, CSP status is not limited to service providers who identify themselves as PBMs. Any service provider that provides PBM services for a large self-funded plan, including affiliated brokers and consultants, may be treated as a CSP under the Final Rule.

Further, covered services include any services necessary to manage or administer a group health plan's prescription drug benefits and generally include negotiating rebates, managing drug formularies and pharmacy networks, conducting utilization review, processing claims, and performing compliance activities.

To be subject to the requirements of the Final Rule, a CSP must reasonably expect to receive $1,000 or more in compensation in connection with the services it provides, whether that compensation is received directly or indirectly through services performed by affiliates, agents or subcontractors.

The Final Rule does not apply to fully insured group health plans or plans sponsored by or affiliated with a drug manufacturer, distributor, wholesaler, PBM or rebate aggregator, however, it should be noted that CSPs to fully insured plans are still subject to the underlying statutory disclosure requirements under ERISA § 408(b)(2)(B), even though they are not subject to these specific PBM requirements set forth in the Final Rule.

FINAL RULE – KEY PROVISIONS

What follows is a brief overview of the key provisions of the Final Rule:

Initial Disclosures: The Final Rule requires a CSP to provide written initial disclosures to plan fiduciaries reasonably in advance of entering, extending, or renewing service contracts or arrangements. Providing the initial disclosure within 90 days of a renewal or extension is considered reasonable. The purpose of providing these initial disclosures is to give plan fiduciaries information necessary to evaluate whether a contract or arrangement is reasonable.

The initial disclosures must include a description of

- The services to be provided under the contract or arrangement;
- The amount of direct compensation the CSP reasonably expects to receive from the plan or plan sponsor, broken down by service and in total;
- The amount of indirect compensation the CSP reasonably expects to receive from sources other than the plan or plan sponsor including:
  - Manufacturer payments
  - Spread compensation
  - Pharmacy recoupment
  - Price protection agreements
- What portion of these types of compensation are retained by the PBM versus what portion will be passed through to the plan;
- Any incentives, arrangements and policies that push participants to pharmacies affiliated with the CSP.
- Any expected compensation related to contract termination;
- Other compensation not previously disclosed;
- Any incentives or arrangements with drug manufacturers that affect formulary placement decisions, including their impact on the plan and participants, and in some cases, a list of alternative drugs omitted from the formulary, an explanation for such omission, and information about what changes the CSP can make to the formulary;

• The net price that will be paid for prescription drugs after accounting for rebates and fees, or if the net price cannot be reasonably determined, the methodology used to calculate the net price;
• If applicable, a statement that the CSP expects to act as a fiduciary to the plan;
• A description of the plan's right to audit the CSP's disclosures, including the procedures for requesting an audit.

Ongoing Disclosure Requirements: In addition to initial disclosures, CSPs must also provide plan fiduciaries with periodic ongoing disclosures reflecting actual compensation received or reasonably expected to be received under each of the same categories included in the initial disclosures. These ongoing disclosures are intended to enable plan fiduciaries to monitor compensation over time by comparing compensation actually received by CSPs to the amounts originally disclosed. Ongoing disclosures must be provided no later than 30 calendar days after the end of each semiannual period under the arrangement, or quarterly upon the plan's request. In addition, if the actual compensation reported by the CSP exceeds the amount initially disclosed by five percent or more, the CSP must explain the reason for the discrepancy.

Information Upon Request: Upon written request of a plan fiduciary, a CSP must also provide any information required by the plan to meet its reporting and disclosure obligations under ERISA. A CSP must provide this information reasonably in advance of any applicable compliance deadline, or as soon as practicable if extraordinary circumstances prevent timely disclosure.

Method of Disclosure: All required disclosures must be clear, concise, free of misrepresentations, and specific enough to give the plan fiduciary the ability to assess whether the service contract or arrangement is reasonable. Disclosures cannot use overly technical verbiage unless those terms are defined. CSPs must also ensure that their disclosures are made available through standard machine-readable files using industry standard drug identifiers.

Audit Rights: The Final Rule gives plan fiduciaries express authority to audit the accuracy of applicable fee disclosures at least once a year. CSPs cannot take steps to limit or otherwise hinder the ability to conduct audits, and they must be responsive to requests for data.

Administrative Class Exemption for Responsible Plan Fiduciary: Recognizing that CSPs may sometimes fail to meet their obligations under the Final Rule, the DOL created an additional administrative exemption under ERISA § 408(b)(2)(B) for responsible plan fiduciaries when a CSP fails to comply. To rely on the exemption, plan fiduciaries must take corrective action, including reporting non-compliance to the DOL.

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WHEN DOES THE FINAL RULE GO INTO EFFECT?

The Final Rule is effective January 4, 2027, and applies to plan years beginning on or after July 1, 2027. For calendar year plans, the requirements will first apply to plan years beginning January 1, 2028.

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE WITH THE PROPOSED RULE?

A fiduciary that fails to review and monitor PBM disclosures could face allegations of fiduciary breach. Further, because the disclosures are intended to enable fiduciaries to assess the reasonableness of PBM compensation, a failure to obtain and evaluate the required disclosures could risk the availability of the prohibited transaction exemption under ERISA § 408(b)(2), potentially resulting in prohibited transaction exposure and related penalties.

The DOL is providing temporary good-faith enforcement relief from February 3, 2026 (the date of enactment of the CAA 2026) until the applicable date of the Final Rule. For calendar year plans, the enforcement relief will extend to January 1, 2028. During this period, the DOL will not treat CSP disclosures as deficient provided they are made using a good faith interpretation of the amended statute. Similarly, DOL will not treat an arrangement with a CSP as a prohibited transaction if the responsible plan fiduciaries acted under a good faith interpretation of their obligations to determine reasonableness.

WHAT SHOULD EMPLOYERS AND PLAN SPONSORS DO TO PREPARE FOR THESE CHANGES?

While there are no specific action items that employers and plan sponsors need to complete right now, there are several steps that can be taken to prepare for these changes, including:

- **Review Current PBM and PBM Consulting Agreements:** Ensure that your group health plan service agreements with PBMs and PBM consultants properly take into account the new rules explained above. Many PBM and PBM-related agreements will require substantial restructuring, especially surrounding definitions of compensation, reporting and audit rights.

- **Review your Plan's Process:** Ensure that your organization's plan fiduciaries or fiduciary committee have a process in place for reviewing and assessing plan vendor compensation that is consistent and compliant with these new rules, and that such processes are memorialized and consistent with your organization's plan document and other relevant policies.

Finally, and perhaps most importantly, plan sponsors and fiduciaries should stay tuned to future rulemaking and guidance developments in this area, as they may further shape PBM transparency and fiduciary compliance obligations in the coming months and years. FRP's Compliance and Account Management Teams are here to assist.

If you have any questions, please call your Account Manager or 877.426.7779.

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Foundation Risk Partners
780 W. Granada Blvd, Ormond Beach, FL 32174
(386) 999-0001 | foundatrionrp.com