Compliance Alert

DOL Proposes PBM Compensation Disclosures for Self-Insured Plans

PROVANT

Proposed Rule to Require Pharmacy Benefit Manager (PBM) Compensation Disclosures

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On January 30, 2026, the Department of Labor (DOL) issued a proposed rule that would require pharmacy benefit managers (PBMs) and affiliated providers of brokerage and consulting services to disclose their compensation to self-insured health plan fiduciaries under the Employee Retirement Income Security Act (ERISA). The goal (as highlighted in the accompanying fact sheet) is to ensure fiduciaries of self-funded ERISA group health plans can ascertain the reasonableness of fees and compensation tied to their prescription drug plan and evaluate any potential conflicts of interest.

Applies To: Employers of any size with a self-insured, ERISA group health plan, including a level-funded plan, that covers prescription drugs. Governmental, tribal, and church plans are exempt from ERISA, and this rule is not intended to apply to fully insured ERISA group health plans (for now).

Go Deeper:

Currently, ERISA requires group health plan fiduciaries to obtain §408(b)(2) compensation disclosures from their insurance broker/consultant but not necessarily from their third party administrator (TPA) or PBM unless they are also providing consulting services.

However, there is a growing urgency to increase transparency in PBM compensation and fees so fiduciaries can ascertain reasonableness and potential conflicts of interest. Congress just passed legislation on February 3 to be effective plan years beginning 30 months from now which bears some similarities and overlap with this proposed rule. However, this DOL proposal to require disclosures with respect to PBM compensation and fees for self-insured ERISA plans regardless of size is proposed to be effective for plan years starting this summer, so an overview of the proposed rule is provided below.

The proposed rule requires the following of PBMs and PBM consultants:

- An initial disclosure required reasonably in advance of the contract starting, with real dollar estimates (not formulas) of all direct and indirect compensation and fees, including rebates, spread pricing, copay claw-backs, and more.

WHAT'S NEW

PBMs would be required to disclose real dollar estimates of all direct and indirect compensation — including rebates, spread pricing, and claw-backs — before contracts begin.

Semiannual updates must explain 5%+ overages and honor detailed data requests, including drug-level reporting.

Failure to disclose could trigger prohibited transaction risk under ERISA.

TAKEAWAY

Employers with self-insured or level-funded plans should prepare to formally review and document PBM compensation as part of fiduciary governance — as soon as the 2026 plan year.

- A semiannual disclosure which must explain overages of 5% or more from initial disclosure estimates.
- A requirement to honor certain information requests, such as a funded plan needing more compensation details for a 5500 Schedule C, or RxDC needing to report all remuneration in specific data fields which can go down to the specific drug level.
- Honoring the right for a plan fiduciary to audit the PBM's compensation at least annually, with the plan fiduciary paying the auditor's fees and the PBM required to share obligated information at no cost with the plan's chosen auditor.
- Limits on confidentiality restrictions the PBM can impose.
- Providing a machine readable file upon request.
- Correcting good faith disclosure errors within 30 calendar days.
- Treating a failure to disclose as the PBM (or insurance carrier for a level-funded plan) being a "party in interest" to a prohibited transaction.

Comments are due by March 31, and a final rule is intended to be effective 60 calendar days after publication, with the stated goal of applying to plan years beginning on or after July 1, 2026.

The rule also asks for public comment on ways this disclosure would be helpful/actionable for employers with fully insured plans (who generally do not carve out self-insured prescription drug coverage). The intent is to publish similar rules in a future round of rulemaking.

Practical Impact to Employers

With the proposed effective date of a final rule being as soon as this summer, employers with self-insured or level-funded ERISA group health plans should become familiar with the compensation information provided under this rule, so the employer can incorporate review of prescription drug-related compensation into their fiduciary governance practices.
While the proposed rule would allow, but not require, plan fiduciaries to audit their PBM's disclosures for accuracy, engaging with a PBM without evaluating the reasonableness of their compensation and fees may be considered engaging in a prohibited transaction.

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