Compliance Alert

CAA-26 Imposes Major PBM Transparency & Pass-Through Mandates

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New Law to Fund the Government Imposes New Requirements on PBMs

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On February 3, 2026, Congress passed, and the President signed, the Consolidated Appropriations Act, 2026 (CAA-26) into law and included three new requirements of pharmacy benefit managers (PBMs) and group health plans providing prescription drug coverage. For plan years beginning 30 months from the passage of the law, plans and PBMs will be subject to the following new requirements:

1. **Semiannual PBM Reporting to Large Employer Health Plans**
2. **Annual Participant Notice for Employers of Any Size**
3. **100% Pass-Through of All Non-Transparent Compensation to ERISA Plans of Any Size**
   - The law amends ERISA §408(b)(2) to state ERISA plan fiduciaries must only enter into contracts that pass through all non-transparent compensation and fees and must evaluate compensation for reasonableness and potential conflicts of interest before the contract or agreement begins.

Applies To:

- Regarding semiannual PBM reporting, large employer health plans (100+) that cover prescription drugs, whether insured or self-insured.
- Regarding annual participant notice requirements, employers of any size covering prescription drugs. *(Notably, the CAA-26 reporting and notice requirements apply to church plans and nonfederal governmental plans as a function of the law also amending the Public Health Service Act and Internal Revenue Code).*
- Regarding 100% pass-through of compensation, ERISA plans that cover prescription drugs, regardless of employer size, whether insured or self-insured.

Go Deeper:

ERISA §408(b)(2) provides an exemption from prohibited transaction rules when plan service providers exchange necessary services for 'reasonable' compensation. Compensation disclosures are generally a required mechanism for said service providers to demonstrate the reasonableness of fees. Since the Consolidated Appropriations Act, 2021 (CAA-21), ERISA has required 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. CAA-21 did not expressly apply to PBMs or PBM consultants.

WHAT'S NEW

Beginning with plan years on or after August 3, 2028, PBMs must provide semiannual drug-level reporting to large (100+) employer plans, including rebates, spread pricing, and pharmacy differentials.

All employers must deliver an annual participant notice explaining PBM reporting rights.

ERISA plans of any size must contract only with PBMs that pass through 100% of non-transparent compensation and evaluate fees for reasonableness before the contract begins.

TAKEAWAY

While effective dates are 30 months out, employers should begin reviewing PBM contracts now — particularly rebate structures and pass-through provisions — to avoid future $10,000-per-day penalties and prohibited transaction exposure.

There is a growing urgency to increase transparency in PBM compensation and fees so fiduciaries can ascertain reasonableness of PBM compensation and potential conflicts of interest. Congress decided to take action on this in the CAA-26 by requiring certain transparent actions of PBMs. Beginning with plan years starting 30 months after passage of the CAA-26 (so plan years starting on or after August 3, 2028), the following mandates apply:

Semiannual Reporting

PBMs will be required to provide a semi-annual report to all large employer health plans. The report must be HIPAA-compliant, in plain language, also provided in a machine readable format, and must provide drug-level reporting. Among other things, the reports must include:

- Total net spending by the plan and out-of-pocket participant costs;
- Net pricing on all direct and indirect compensation and fees paid by the plan and the PBM to include rebates, spread pricing, copay claw-backs, and broker compensation;
- Therapeutic class coverage details;
- Explanations for formulary placement for the 50 drugs with the highest spending;
- Clarity on differentials for PBM-owned/affiliated pharmacies, and more.

Congress gave federal regulators 18 months to develop a standardized report format.
Notably, plan fiduciaries will have the option to require this reporting quarterly instead of semiannually.'

Annual Notices

The CAA-26 also mandates a new annual notice that must be provided to participants of all size employers, informing participants of the PBM's reporting obligations and how to request new PBM data. This notice may be provided in the plan document or as a separate notice.

Other New Reporting and Disclosure Requirements

While the full detailed semiannual PBM reports are only required for large employer health plans as described above, PBMs must also provide any size employer a summary document with aggregate information, which the plan may then provide to participants upon request. The summary document should be useful to group health plans for purposes of selecting PBM services. To ensure the reporting and disclosure aims of the law are met, the CAA-26 also places limits on confidentiality restrictions PBMs can impose.

The penalties for non-compliance with the CAA-26 PBM reporting and disclosure rules include:

- $10,000 per day penalties for any reporting or disclosure failure of a health plan, PBM, or insurance carrier for any plan; and
- $100,000 penalties for each item a health plan, PBM, or insurance carrier knowingly reports inaccurately.

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100% Pass-Through under ERISA

With respect to ERISA plans of any size, CAA-26 also makes the following changes:

- ERISA §408(b)(2) is amended to require that plan fiduciaries:
  - Only enter into PBM contracts which pass through 100% of all non-transparent compensation and fees on a quarterly basis, and
  - Evaluate PBM compensation disclosures for reasonableness and potential conflicts of interest before the start of the plan year or before the contract or agreement begins.
- Rebate aggregators or other group purchasing organizations must remit such rebates to the entity providing PBM services no later than 45 days after the end of each quarter.
- Contracts with PBMs, rebate aggregators, drug manufacturers, and other PBM services must be available for a plan fiduciary to audit.
- PBMs must honor the right of 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 with the plan's chosen auditor at no cost.
- Limited confidentiality restrictions the PBM can impose.
- A PBM's or insurance carrier's failure to disclose will result in their compensation deemed as unreasonable under ERISA, meaning the Plan could not use their services without engaging in a prohibited transaction.

Practical Impact to Employers

The new reporting, notice, contract, and disclosure requirements are not effective for at least 30 months, and regulations on standardized reporting formats are due within 18 months, so there is lead time to plan ahead for these new requirements.
At the end of January, the Department of Labor (DOL) proposed new PBM rules they hope to finalize for any size ERISA self-insured health plan years starting July 1, 2026. The focus of those rules is on requiring PBMs to provide initial estimates of all non-transparent compensation and fees and a semiannual explanation of any overage of 5% or more. So, it is more about estimates and a follow-up than the extensive detail the CAA-26 requires. Also, CAA-26 will eventually require 100% pass-through of non-transparent PBM compensation and fees in late 2028, which may mean the DOL's PBM compensation disclosures are a helpful resource for self-insured ERISA plan fiduciaries until that time.

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