Request for Public Comments on the Practice of Patient-Steering by Pharmacy Benefit Managers in New York State

The New York State Department of Financial Services’ (“Department”) Pharmacy Benefits Bureau is inviting public comments about the applicability of the Pharmacy Benefit Manager (“PBM”) laws set forth in New York Insurance Law (“IL”) Article 29, as well as the need for rules to be promulgated thereunder, relating to the practice of patient-steering by PBMs in New York State. Patient-steering is a practice that may be employed by PBMs to steer patients to its wholly owned or affiliated retail, mail order or specialty pharmacies.

IL §§ 2905-2906 require the Department to establish, by regulation, minimum standards for the issuance of a license to a PBM, including both prerequisites for the issuance of a license and requirements for maintenance of a license. Among the specific grants of regulatory authority the statute empowers the Department to make rules addressing “deceptive practices[,]” “anti-competitive practices[,]” “unfair claims practices[,]” “excessive concentration and vertical integration of markets” and “protection of consumers.” Additionally, the Department is empowered to examine licensees to verify compliance with the rules applicable to PBMs and to establish methods and procedures for conducting such examinations.

In considering the exercise of these authorities, the Department seeks comments from any interested parties on the exercise of its rulemaking authority forth in IL Article 29 as they relate to patient-steering by PBMs in New York State, including, but not limited to, whether and how the Department should implement any of the following:

- Rules concerning mandatory specified pharmacy use, including mail order, specialty, and retail pharmacies (commonly referred to as “preferred pharmacies”);
- Rules concerning correspondence from PBMs to consumers/insured individuals/patients to encourage mail order or other specified pharmacy use;
- Rules concerning restrictions on services (such as delivery or packaging services) provided by network pharmacies;
- Rules concerning restrictions on access to certain in-network pharmacies, and processes for approval of use of a patient’s pharmacy of choice;
- Rules concerning differences in quantity limits, days supply limits, or cost sharing for the patient (copay or coinsurance) between different pharmacies within a PBM network; and
- Rules concerning restrictions or thresholds on the dispensing of certain medications or NDCs within a network pharmacy.

The Department encourages any interested parties or members of the public to comment on any issues or concerns they believe are relevant or appropriate for our consideration and to submit written data, views, facts, and opinions addressing these subjects as they relate to the practice of
patient-steering by PBMs. Please do not include any confidential information, including but not limited to protected health information.

Responses should be emailed to PBM@dfs.ny.gov by August 19, 2022, with “PBM2022-04” included in the subject line. Failure to include “PBM2022-04” in the subject line may result in your comment not being considered.