



# Michigan enacts three new prescription drug laws

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Three new prescription drug laws in Michigan aim to control drug costs by regulating pharmacy benefit managers (PBMs) that provide services on behalf of group health plans to Michigan residents. Enacted Feb. 23, the laws address licensing, transparency, network adequacy, spread pricing, medication limits, affiliated pharmacy preferences and disclosures between a pharmacy and a participant. The PBM Licensure and Regulation Act ([2022 Pub. Act 11](#), HB 4348), effective Jan. 1, 2024, sets out parameters for PBM licensing and regulates PBM practices and contracts with pharmacies. Effective immediately, another law ([2022 Pub. Act 12](#), HB 4351) amends Michigan's [Third Party Administrator \(TPA\) Act](#) to include PBMs in the definition of a TPA. The third law ([2022 Pub. Act 13](#), HB 4352), also effective immediately, amends the state's [Public Health Code](#) to require certain pharmacy disclosures.

## Scope and background

The three laws stem from the governor's 2020 [executive order](#) creating a [Prescription Drug Task Force](#), whose [report](#) formed the basis of the legislation. The PBM licensing law covers qualified health plans as [defined](#) by the federal Affordable Care Act and exempts claims entirely preempted by federal law, including Medicare Part D and ERISA. This provision seems to indicate that the law's health plan provisions do not apply to self-funded ERISA plans, due to ERISA preemption. Guidance from the Department of Insurance and Financial Services would be helpful. The other two measures make no distinction between self-funded and fully insured ERISA plans.

## Highlights of PBM licensing law

Here is a summary of the law's significant provisions:

- **Spread pricing.** The law bans spread pricing — paying pharmacies less than the amount the PBM pays for the drug. However, the law allows plans to continue using spread pricing until the later of the date their current contract is amended, extended, or renewed or Jan. 1, 2028, so the impact may not be immediate.
- **Specialty drugs.** Specialty drugs must be dispensed by a nationally accredited specialty pharmacy and fall within one of the following categories:
  - A drug to treat a serious, chronic or life-threatening disease and whose cost exceeds the Medicare Part D drug cost threshold
  - A medication requiring special administration, such as injection, infusion or inhalation
  - A drug requiring unique storage, handling or distribution
  - A medication needing special oversight, intensive monitoring, complex education and support, or care coordination
- **Network adequacy.** New network adequacy standards require “convenient enrollee access to pharmacies within a reasonable distance.” Mail-order and specialty pharmacies cannot count in determining adequacy.
- **Patient access.** PBMs can't impose limits on patient access to medication — including quantity or refill frequency limits — that differ based on the pharmacy's PBM affiliation.
- **Affiliated pharmacies.** A PBM cannot make disparate reimbursements to certain pharmacies based on their affiliation with the PBM. However, the law allows plan sponsors to adopt tiered or custom networks. How plan sponsors could do so without some level of steerage is unclear.
- **PBM conduct standard.** PBMs must adhere to a standard of “good faith and fair dealing” and provide health plans a written disclosure of any conflict of interest.
- **Pharmacy MAC notices.** PBMs must provide prompt notice to each pharmacy subject to the maximum allowable cost (MAC) list when the MAC list is updated.
- **Appeals process.** PBMs must establish and maintain a reasonable administrative appeal process to allow a pharmacy subject to the MAC list to challenge the adjudication of the pharmacy's claim.

Starting April 1, 2025, a PBM must file with regulators an annual transparency report detailing various costs, rebates and fees from the previous calendar year.

## Additional legislation

The two other measures now in effect require PBM compliance with Michigan's TPA law and impose a pharmacy disclosure mandate.

- **TPA regulation.** In redefining a TPA to include a PBM, the new law subjects PBMs to existing TPA requirements, including annual reporting. Among other things, a PBM doing business in Michigan may not prohibit pharmacies from disclosing a drug's current selling price to customers. In addition, insurance regulators have broad oversight authority under the existing TPA law (MI Comp. Law [§ 550.920](#)).
- **Pharmacist disclosure.** The disclosure mandate requires pharmacists to conspicuously display a notice disclosing a patient's right to find out the price of a prescription drug before the pharmacist fills it, the availability of a less expensive generic and contact information for the Board of Pharmacy.

Self-funded plans should see limited or no short-term impact. However, fully insured employers may see higher premiums in the coming years due to the changes related to networks and spread pricing. Early estimates are that some plans could see as much as a 5%–10% increase in pharmacy claim costs, which could eventually affect premiums. The impact of a spread-pricing ban is more difficult to determine. In many cases, fully insured plans do not receive detailed claim reporting, so they may not have a baseline to determine impact. Employers should discuss this point with their insurers.

## Employer next steps and other considerations

- Affected employers should discuss the implications of these laws with their insurers and/or PBMs and confirm the timing of those changes.
- A fully insured employer with a significant Michigan population might consider what communications, if any, to provide participants.
- Employers may also want to discuss tiered or custom networks with their insurers and/or PBMs.

## Related resources

### Non-Mercer resources

- [2022 Pub. Act 11](#), HB 4348 (Michigan legislature, Feb. 23, 2022)
- [2022 Pub. Act 12](#), HB 4351 (Michigan legislature, Feb. 23, 2022)
- [2022 Pub. Act 13](#), HB 4352 (Michigan legislature, Feb. 23, 2022)
- [Public Health Code](#) (Michigan Legislature, 1978)
- [Third Party Administrator \(TPA\) Act](#) (Michigan Legislature, 1984)

## **Mercer Law & Policy resource**

- [States seek to rein in Rx costs and pharmacy benefit managers](#) (Oct. 26, 2021)

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