Overview of the State Auditor's Office of Texas – Report on PBM Contracts

In August 2008, the State Auditor's Office of Texas released an Audit Report on Pharmacy Benefit Manager Contracts at Selected State Agencies and Higher Education Institutions in August 2008. The Auditor reviewed the PBM contracts of the Teacher Retirement System, the Employees Retirement System, the University of Texas System and the Texas A&M University System ("the entities").

The Report concluded that there were opportunities for these entities to enhance their PBM contracts by strengthening certain contract provisions in "high-risk areas". Specifically the following five "high risk areas" were identified as follows:

- **Audit rights:** Current contract provisions restrict access to information necessary to verify plan costs and PBM compliance with the contract. The Auditor recommended provisions to allow audits that are not limited or unreasonably restricted. Rebate audits are necessary in order to verify the rebates that the PBM receives from the manufacturer and the amounts passed back to the entity.

  Entities have not defined the reporting requirements for audits that the PBMs conduct of the retail pharmacies, independent pharmacies and mail order pharmacies. The Auditor found that contracts do not always define how audit results are to be reported, how often audit results should be reported and whether the PBM is required to return recovered overpayments to the entity. Contract provisions do not define requirements to ensure that the PBM is objective when they conduct audits of their mail order pharmacies.

- **Costs, discounts, and other fees associated with the services provided by the PBM:** Additional contract provisions are necessary so that agencies can understand the true costs and discounts. Contracts usually prohibit access to documentation on discounts with manufacturers and others. Without access to that information, the entities cannot evaluate whether the payments are reasonable or excessive. In order to ensure that PBMs are passing the correct amount of rebates to the entities, the methodology and the data must be provided. Contracts are ambiguous in defining the database that the PBM uses for pricing drug purchases. The database should be identified.

- **Drug formulary management:** Contracts should clearly state whether PBMs can or cannot substitute a prescribed drug and PBMs should be required to notify the agency prior to making changes to the formulary.

Entities should ensure that either allowing or prohibiting therapeutic interchange is to the benefit and interest of the entity and the plan members.

- **Protection of confidential data:** Contracts need to include language as to whether PBMs are allowed or prohibited from selling plan data.

- **Contract monitoring**: Performance standards including those for cost-savings initiatives and customer service need to be consistently defined. Contracts should require disclosure of any policies, practices or business relationships that could conflict with their obligations under the contract. PBMs serve as both the manager and the mail order pharmacist. The Auditor noted that this situation is risky because the PBM may be able to manipulate drug costs through its mail order pharmacies in order to increase its profit.

The Auditor stated that strengthening certain provisions would provide the entities with greater accountability for the PBMs. Some of those provisions include the following:

1. Require all documentation and data concerning the PBM's financial agreements with drug manufacturers, drug wholesalers and the pharmacy network is accessible to the agencies and their independent auditors.
2. Define the methodology that the PBM uses to calculate rebates.
3. Define MAC list prices that the PBM will use.
4. Require notification of all changes made to the MAC list during the term of the contract.
5. Identify the specialty drugs that are included in the formulary and the costs and discounts.
6. Require that audits of mail order pharmacies owned by the PBM be conducted by independent auditors that are selected by and report to the entity.
7. Require both the medical and financial reasons for the PBM's addition, removal or change in placement of a drug on the entity's drug formulary.
8. Require disclosure of all sales of the entity's plan data.
9. Clearly identify and label the contract provisions that include proprietary PBM information.

Many of the Auditor's recommendations are addressed in NCPA's Model PBM and Audit legislation.