

Advisory Committee Fine / Penalty Recommendations for Violations of Oklahoma Statutes by PBMs	
Violation Type	Fine / Penalty Recommended by Advisory Committee
Transaction Fees	
MAC Pricing	
Network/GeoAccess	
Choice Restriction - Referred to PBM Owned	\$5,000 per occurrence
Choice Restriction - Referred to PBM Owned Specialty Pharmacy	\$10,000 per occurrence
Partial Referral List (Referred to Non-PBM owned)	\$3,000 per occurrence
Network Enrollment / Participation / Credentialing Charge	\$2,000 per occurrence
Consumer Share Differential Mail vs. Retail	
PBM denied contract to pharmacy	
Contract Restrictions Against Consumers	
PBM-Retro Claim Adjustment	
Retail Paid Less Than PBM Owned	
Late (untimely) response by a PBM to a Complaint	\$5,000 per occurrence
Operating Without a License	

CATEGORY 1: COMPLAINTS REFERRED TO NETWORK PROVIDER OR AFFILIATED WITH THE PBM/HEALTH PLAN

These complaints are brought forward in potential violation of O.S. 36, Sections 6961(C), 6963(E). The nature of these complaints involves the following:

- Consumers are being directed to PBM owned mail order pharmacy after in-network non-preferred retail claims are denied.
- Consumers are incentivized to use PBM mail order without fill limitations.
- In-network non-preferred retail pharmacies are limited to 30 days dispensing and a limited number of fills per prescription.

The Committee was presented with 14 cases/complaints. After much discussion by the Committee members, it was determined that the cases were a material violation of the statute. The question was put forth as to whether each case rose to the level of violation of the statute and what recommendation the Committee thought appropriate to forward to the Insurance Commissioner.

Mr. Lewandowski made a motion, seconded by Ms. Maxwell that a violation had occurred and a fine of \$3,000 would be imposed on each violation by the PBMs. An amendment to the motion was made by Ms. Maxwell that would create a differential of fine amounts when the complaint involved a referral to a PBM-owned mail order pharmacy. In this instance, the fine would be set at \$5,000 per occurrence while a referral to a non-owned pharmacy would be set at \$3,000 per occurrence. The motion was seconded by Mr. Dixon. With acceptance of the amended motion, the Chair asked for approval: all members signified support with no objections. Mr. Baldwin and Mr. Moore abstained from voting since they had missed portions of the discussion.

Further discussion by the Committee on the topic of violations of this nature took place, specifically related to recurring and consistent complaints received by the Compliance Department. A requested was made by Ms. Maxwell that a policy statement be developed by staff and brought back to Committee at the next meeting that address progressive disciplinary actions related to the issue. Ms. Maxwell also asked that an additional column be added to the spreadsheet that would identify the specific complaint filed. Mr. White agreed to supply the additional information.

CATEGORY 2: COMPLAINTS INVOLVING NETWORK CONSUMER SHARE (CO-PAY) DIFFERENTIAL

These complaints were brought forward as a potential violation of 36 O.S.6963(E). Two (2) complaints were identified where PBMs failed to administer the same out of pocket at mail order as Non-Preferred Retail. Additionally, consumers are being incentivized by PBMs to use mail order with larger quantity and less out of pocket to select PBM-owned mail order pharmacy.

After discussion by the Committee, Ms. Maxwell made a motion to impose a two-tiered fine structure, wherein a \$5,000 fine would be recommended when PBMs directed consumers to use a PBM-owned pharmacy; \$3,000 fine when directed to 'neutral' mail order pharmacy.

The motion was seconded by Mr. Considine. The Chair asked for approval of the motion: all members signified support with no objections.

CATEGORY 3: CONSUMER MANDATED SPECIALTY PHARMACY

These complaints were brought forward as a potential violation of 36O.S.6961(C). Two (2) complaints were identified where consumers were being directed to use a PBM-owned specialty pharmacy. It was pointed out that in-network non-preferred or preferred pharmacies have had all specialty claims denied referring the consumer to use a PBM-owned Specialty Pharmacy.

After discussion by the Committee, Mr. Baldwin moved to impose a fine of \$10,000/occurrence along with a letter of reprimand from Compliance to the PBM's cited for the violation. Motion was seconded by Ms. Thomas-Bendel. The Chair asked for approval of the motion: all members signified support with no objections.

CATEGORY 4: PBM'S CHARGING FEE TO BE CREDENTIALLED AND ADDED TO THE PHARMACY NETWORK

These complaints were brought forward as a potential violation to 36O.S.6962(B)(2). Two (2) complaints were identified where PBM's were assessing credentialing fees to be added to the network. In its discussion, the Committee heard remarks that this was a "pay to Play" arrangement; that most PBM's consider credentialing expense to be a cost of doing business; a leveraging mechanism against pharmacies.

After discussion, Mr. Lewandowski moved to impose a fine of \$2,000/occurrence. Ms. Maxwell seconded the motion. All Committee members indicated support for the motion, none objected.

CATEGORY 5: LATE (UNTIMELY) RESPONSE BY A PBM TO A COMPLAINT

These complaints were brought forward as a potential violation of 36O.S.6965(C). Fifteen (15) complaints were identified where the PBM failed to response to the request made by the Regulatory Compliance Department within the statutory 30-day requirement. The Committee observed that the practice of failing to response to a complaint was still commonplace among PBMs and discussed the need for a policy statement to be drafted by staff addressing this situation (see related request in Category 1 complaints). Suggested components of the policy would be a set standard amount imposed for the violation, a letter outlining a progressive disciplinary process and authority for the Regulatory Compliance Department to fast track violations to the OIG Legal Department for action.

On the issue of the fifteen complaints presented, a motion was made by Mr. Considine, seconded by Mr. Baldwin to impose a fine of \$5,000/occurrence with appropriate communication to the PBM as recommended by Legal. All Committee members indicated support for the motion, none objected.