



**ARIZONA STATE SENATE**  
*Fifty-Sixth Legislature, First Regular Session*

**AMENDED**  
FACT SHEET FOR S.B. 1382

pharmacy benefit managers; certificate requirements

Purpose

Effective January 1, 2025, requires a pharmacy benefit manager (PBM) to apply for, obtain and maintain a valid certificate of authority (certificate) to operate as a PBM in Arizona and outlines certification requirements. Requires a PBM to provide a reasonably adequate and accessible retail PBM network for the distribution of prescription drugs.

Background

A *pharmacy benefit manager* is a person, business or entity that, either directly or through an intermediary, manages the prescription drug coverage provided by a contracted insurer or other third party payor, including the processing and payment of claims for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to prescription drug coverage, contracting with network pharmacies and controlling the cost of covered prescription drugs ([A.R.S. § 20-3321](#)).

PBMs are charged with: 1) updating the price and drug information for each list that the manager maintains; 2) making the sources used to determine maximum allowable cost pricing available to each network pharmacy at the beginning of a contract or upon renewal; 3) establishing a process for network pharmacies to appeal its reimbursement for any drug subject to maximum allowable cost pricing; and 4) allowing a pharmacy services organization that is contracted with the manager to file an appeal of a drug on behalf of the organization's contracted pharmacies ([A.R.S. § 20-3331](#)).

The Department of Insurance and Financial Institutions (DIFI) regulates and monitors insurance companies and professionals operating in Arizona to protect the public and help ensure that these entities follow Arizona and federal laws ([Ariz. Const. art. 15 § 5](#)). The Director of DIFI (Director) may conduct examinations and investigations of insurance matters, including examinations and investigations of adjusters, producers and brokers and any other applicable regulated persons, in addition to examinations and investigations expressly authorized, as the Director deems proper in determining whether a person has violated any insurance laws or for the purpose of securing information useful in the lawful administration of insurance ([A.R.S. § 20-142](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

*Certificate*

1. Requires a PBM to apply for, obtain and maintain a valid certificate to operate as a PBM in Arizona.

2. States that a certificate is renewable biennially and is nontransferable.
3. Requires a PBM that applies for a certificate to submit a Director-prescribed application form and pay an application fee of \$500.
4. Requires an officer or individual who is responsible for the conduct of the activities of the PBM to sign the application and verify that the contents of the application and any attachments are correct.
5. Requires the application form to include:
  - a) the name, address and telephone number of the PBM;
  - b) a copy of all basic organizational documents of the PBM, including the articles of incorporation, bylaws, articles of association and trade name certificate, any other similar documents and all amendments to the documents;
  - c) a copy of a power of attorney that is duly executed by the PBM if the PBM is not domiciled in Arizona and that appoints a Director, the Director's successors in office and the Director's authorized deputies as the power of attorney for the PBM that may receive service of process;
  - d) the names, addresses, official positions and professional qualifications of each individual who is responsible for the conduct of the activities of the PBM;
  - e) a copy of recent financial statements showing the PBM's assets, liabilities and sources of financial support that the Director determines are sufficient to show that the PBM is financially viable;
  - f) a description of the PBM and its services, facilities and personnel; and
  - g) a document in which the PBM confirms that its business practices and each ongoing Arizona service contract comply with all Arizona laws.
6. Requires the Director, within 90 days after receipt of a completed application and application fee, to review the application and issue a certificate if the applicant is deemed qualified.
7. Requires the Director, if the Director determines that the applicant is not qualified, to notify the applicant and specify the reason for the denial and allow the applicant 60 days to remedy the stated reasons for denial.
8. Requires the PBM, within 30 days after any material modification of the information submitted with the certificate application, to file a notice of modification with the Director.
9. Stipulates that, if a PBM's financial statements are prepared by an independent public accountant, a copy of the most recent regular financial statement satisfies the financial statements requirement unless the Director determines that additional or more recent financial information is necessary.
10. Allows the Director to refuse to issue a certificate if the Director determines that the PBM had a PBM certificate or license denied or revoked for cause in another state or had a license denied or revoked for any individual responsible for the conduct of the activities of the PBM in another state.
11. Allows the Director to issue a cease and desist order if the PBM does not hold a valid certificate of authority.

***Denial, Suspension or Revocation of the Certificate***

12. Allows the Director to deny, suspend or revoke a PBM's certificate of authority if the Director finds, after notice and opportunity for hearing, that:
  - a) the PBM violated any applicable Director rule or order or any Arizona law;
  - b) the PBM refused to be examined or produce its accounts, records and files for examination or audit, or if any individual responsible for the conduct of the activities in Arizona of the PBM refused to provide the respective information or to perform any other Director-required legal obligation;
  - c) the PBM has, without just cause, refused to pay proper claims or perform services under its contract or has, without just cause, caused covered persons or enrollees to accept less than the amount due, which may result in an enrollee procuring legal counsel to bring a lawsuit against the PBM or a payor that it represents to secure full payment or settlement of claims;
  - d) the PBM has a certificate and fails at any time to meet any certificate qualifications, where the issuance of the certificate could have been refused had the failure existed at the time of issuance and been known to the Director, unless the Director issued a certificate with knowledge of the ground for disqualification and had the authority to waive it;
  - e) any individual who is responsible for the management of the PBM is convicted of or enters a plea of guilty or no contest to a felony related to their activities on behalf of the PBM; or
  - f) the PBM's certificate or license has been suspended or revoked in another state.
13. Stipulates that, if a PBM's certificate is suspended or restricted, the Director may allow the operation of the PBM for a limited time, not to exceed 120 days.
14. Allows the Director to allow a PBM whose certificate has been suspended or restricted to operate for a period that exceeds 120 days if the Director determines that the continued operation of the PBM is in the beneficial interests of the covered persons by ensuring minimal disruptions to the continuity of care.
15. Subjects a PBM whose certificate has been suspended or restricted to a fine, as determined by the Director in an amount not to exceed \$20,000 per month, until the PBM remedies the violation.
16. Allows the Director to revoke the certificate if the PBM has been operating under a suspended certificate for a period of more than 60 days.
17. Declares that a PBM has the same rights to notice and an administrative hearing as provided under statutory uniform administrative hearing procedures.
18. Allows the Director to investigate officers, directors and owners of a PBM to ensure compliance with PBM laws.

***Renewal of a Certificate***

19. Requires a PBM, in order to renew a certificate, to submit to the Director a:
  - a) renewal application in a Director-prescribed form and manner;
  - b) renewal schedule and a fee of \$500; and
  - c) retail PBM Network Adequacy Report.

20. Requires an officer or authorized representative of the PBM to sign the application and verify that the contents of the renewal form are correct.
21. Stipulates that a PBM's certificate of authority expires by operation of law if a complete renewal application and fee is not received by the due date.
22. Stipulates that, if a PBM and an insurer enter into a contractual agreement, the PBM must comply with the laws and rules that govern the contract, starting from the issuance date of the certificate.
23. Requires a PBM to comply with the prescribed records retention schedules rule.
24. Allows the Director to adopt rules to implement renewals of the certificate.

***Retail PBM Network Adequacy Report***

25. Requires a PBM to provide a reasonably adequate and accessible retail PBM network for the distribution of prescription drugs for a health care plan that provides convenient enrollee access to pharmacies within a reasonable distance from an enrollee's residence, as determined by the Director.
26. States that a retail PBM network does not include a mail-order pharmacy or specialty pharmacy.
27. Requires a PBM to submit to the Director a retail PBM network adequacy report that describes the retail PBM network and the retail PBM network's accessibility in Arizona.
28. Requires the report to categorize the network by urban, suburban and rural geographic areas and applicable zip codes.
29. Stipulates that, if the PBM is unable to meet the network adequacy requirements, a PBM may apply for a waiver.
30. Requires a PBM applying for a waiver to submit an application on a Director-prescribed form and manner that:
  - a) demonstrates with specific data why the PBM is not able to meet the network adequacy requirements; and
  - b) includes information as to the steps that the PBM has taken and will take to address network adequacy.
31. States that a network adequacy requirement waiver expires after two years.
32. Stipulates that, if a PBM seeks a renewal of the waiver, the Director must consider the steps taken by the PBM to address network adequacy before granting another waiver.

***PBM Audit***

33. Allows the Director to determine if the PBM is in compliance and to examine or audit relevant books and records of a PBM that provide claims processing services or other drug or device services for a health care plan.

34. Specifies that all of the following apply to the information or data that is obtained during an examination, audit or investigation:
- a) the information is considered and treated as proprietary and confidential;
  - b) the information is not a public record and is exempt from public records requirements; and
  - c) the information is to be used only for the purpose of ensuring a PBM's compliance.

#### ***Records Retention***

35. Requires the Director to establish a retention schedule for all records, books, documentation and other data on file with DIFI related to the records retention enforcement.
36. Prohibits the Director from ordering the destruction or other disposal of any record, book, document or other data that is:
- a) required by law to be maintained;
  - b) kept on file with DIFI until 10 years have passed; and
  - c) filed during the Director's administration.
37. Becomes effective on January 1, 2025.

#### **Amendments Adopted by Committee**

1. Replaces the Board-prescribed PMB certificate application fee with a \$500 application fee.
2. Requires the application form to include the name, address and telephone number of the PBM.
3. Requires the Director:
  - a) within 90 days after receipt of a completed application and application fee, to review the application and issue a certificate if the applicant is deemed qualified; and
  - b) if the Director determines that the applicant is not qualified, to notify the applicant and specify the reason for the denial and allow the applicant 60 days to remedy the stated reasons for denial.
4. Requires a PBM to file a notice of modification with the Director within 30 days after any material modification, rather than a significant modification.
5. Removes the authority of the Director to refuse to issue a certificate of authority to a PBM if the Director determines that the PBM is not financially viable.
6. Extends the limited operation time a PBM with a suspended or restricted certificate may operate from a period of no more than 60 days to 120 days.
7. Authorizes the Director to allow a PBM whose certificate has been suspended or restricted to operate for more than 120 days, rather than 60 days, if it is determined to be in the beneficial interests of covered persons.

#### **Senate Action**

HHS            2/14/23    DPA            5-2-0

Prepared by Senate Research

February 15, 2023

MM/MC/slp