

January 26, 2026

Chair Joylynn Fix
Pharmacy Benefit Management Working Group
National Association of Insurance Commissioners
Attention: Jolie Matthews, Senior Health and Life Policy Advisor & Counsel
Email: jmatthews@naic.org

RE: Pharmacy Benefit Manager (PBM) Exam Standards

Dear Chair Fix and distinguished members of the PBM Working Group:

Navitus Health Solutions respectfully provides comments regarding the Draft Pharmacy Benefit Manager Exam Standards, compiled by the NAIC Pharmacy Benefit Manager Working Group.

As background, Navitus Health Solutions is a pass-through, transparent, pharmacy benefit manager (PBM). Since the founding of our company in 2003, Navitus has worked to reduce the overall drug costs paid by our clients, while improving member health, providing superior customer service, and ensuring regulatory compliance. Navitus administers pharmacy benefits for over 13.5 million lives across our commercial, ACA/Exchange, Medicaid and Medicare Part D lines of business.

We believe that protecting consumers and ensuring compliance can be accomplished without such burdensome, extensive disclosure requirements as laid out in the PBM Exam Standards. We implore the committee to work with willing members of our industry to find that right balance of regulation which allows you to hold PBMs accountable when appropriate without overburdening the entire industry. We urge the working group to limit information requests exclusively to the markets state regulators are entrusted with overseeing. Below we provide comments on the following topics:

- **Jurisdictional Integrity**
- **Point of Sale Rebates**
- **Duplicative and Unnecessary Disclosure Requirements**
- **Redactions**

Jurisdictional Integrity

State insurance departments have limited authority regarding products and services that fall under the auspices of the Employee Retirement Income Security Act of 1974 (ERISA), Medicaid and the Medicare Part D programs. This is a position shared by the U.S. Supreme Court as evidenced by its decision to decline review of the 2023 ruling by the U.S. Court of Appeals for the Tenth Circuit in *PCMA v. Mulready*.

While the PBM Exam Standards Draft acknowledges preemption on page 4 with an instruction to determine the jurisdiction before conducting a market conduct exam, the remaining 57 pages seemingly drive across state lines, public programs and employer sponsored programs – all of which are out of scope.

As an example, the state does not have jurisdiction over core matters such as pharmaceutical manufacturer rebates. The draft report dedicates an entire section to applying a market exam to pharmaceutical manufacturer rebates beginning on page 24. This guidance goes into assiduous detail requesting policies & procedures, training manuals, copies of unredacted contracts between the PBM and the drug manufacturers and “an index of periodic reports, certifications, or real-time systems made available to health plans to monitor rebates received by the PBM and/or amounts remitted to health plans.” It might be worth clarifying that such disclosure requirements will be limited in scope to the markets that an insurance department has the authority to regulate.

Point of Sale Rebate Guidance

The document includes a section on page 25 to the enforcement of point-of-sale mandates. We have encountered several challenges in implementing point-of-sale rebate requirements worth noting. The state laws we have interacted with don’t seem to consider that negotiated discounts can only be estimates, as they are actually received by the PBM between 6 and 18 months after the drug purchase. Further, the rebates themselves may not actually happen or could be reduced severely based on multiple factors, including the type of pharmacy at which they are filled (340b) or formulary design selected by the client. Because of this dynamic, the actual rebate amounts may not be known at the time of a Market Conduct Exam. Limiting the time of the review to times where the point-of-sale rebates can be reconciled could help mitigate this challenge.

Duplicative and Unnecessary Disclosure Requirements

Many states already have extensive reporting requirements, in some cases requiring data submissions on a quarterly basis. As one of the regulated entities tasked with submitting these reports, we request guidance be provided to regulators as to whether to conduct an exam based upon these reports. Further, we would request that prior to data requests, examiners review previously filed materials via an appropriately secure, confidential manner so that they can tailor additional requests appropriately. This avoids overly broad requests which unnecessarily increase costs and often extend exams indefinitely without effectively protecting consumers. We recommend providing a structured appeal process when the entity being examined believes requests to be duplicative or overly broad.

Recognizing that information provided during exams has the potential to be highly confidential information and access to files or internal systems that could have patient information, we recommend that regulators require examiners to provide insurance departments with a written assurances that they comply with all state and federal data privacy, security, etc. laws and verify that they have the appropriate technologies and safeguards in place to do so. Additionally, we recommend such an agreement require examiners to limit use of any data acquired solely for the market conduct exam and destroy or retire any information after the exam is concluded, including supplying statements that such information has been destroyed and will not be used in any other capacity. The vendor should not be profiting additionally from studies compiling multiple entities’ data without consent from such entity.

Redactions

Requiring disclosure of unredacted documents of any sort including contracts is not an omission. Contracts may contain tables with plan-specific information for a plan that is not domiciled in the state conducting the market exam. Information might not be applicable to your state, and redaction should be permitted. We would recommend removing any requirements to disclose unredacted contracts or data that falls outside the scope of the exam being conducted.

Thank you for the opportunity to provide feedback on this proposed rule. If we can provide any additional information for your rule-making process, please let us know.

Sincerely,

Matt Schafer
Director of Government Relations