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## HOW TO GET WHAT YOU WANT IN PBM CONTRACTING & RFPs

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What do we want in our pharmacy benefit management contracts? How can we be sure that critical elements are included in contracts? As with any vendor contract there are specific elements that must be included to ensure that we are receiving the services and pricing that are consistent with our business requirements. A Pharmacy Benefit Management (PBM), third party administrator (TPA) or fiscal intermediary (FI) contract is no different. Provider contracts are frequently boilerplate and allow for minimal customization. Yet, as the client you must decide which elements are important and how you need to measure the performance of the vendor. This article provides recommendations for elements that should be considered in any contract, and how a request for proposal (RFP) should be constructed to ensure that you get what you want and need.

### Elements of a Pharmacy Vendor (PBM, TPA, FI) Contract

A contract with a PBM (used collectively for all PBMs, TPAs and FIs that administer pharmacy benefits) must consider the fundamental service portfolio that is offered, and how it fits with our service requirements. PBM service portfolios can be distilled into the following:

- ❑ Pharmacy and specialty injectable claim administration
- ❑ Pharmacy benefit administration
- ❑ Pharmacy network contracting and oversight including Mail Service and retail maintenance drug options
- ❑ Formulary construction and management (drug utilization review), and prior authorization support
- ❑ Rebate collection and management
- ❑ Data and reporting
- ❑ Value-added programs (e.g., disease management)

To administer a contract the vendor must have their incentives aligned with those of their client. Of particular concern is that pricing methodologies are well defined and transparent, services are delivered on a timely basis for both members and administrative issues, and that the network of providers is delivering optimal services as defined in the contract. Let us take each issue separately.

## **Pricing**

Pricing that is competitive with the marketplace requires clear definitions as to what price will be paid in each applicable situation. This requires that pricing should be clearly defined for each and every claim whether retail, direct member reimbursement (DMR), compounded prescription, or mail service. Pricing that is based on averages or effective prices do not allow for verification of pricing by claim. The average wholesale price (AWP) is usually used as the basis for all drug pricing. PBM contracts frequently refer to "Average AWP" or "Effective Average AWP" or averages that include the impact of usual and customary (U&C) charges. This language should be stricken and replaced with pricing on a "per-claim" basis. The language should also include "lesser or" language that allows for the client to pay the lesser of the guaranteed AWP discount, or the U&C, or the maximum allowable cost.

Generic prescriptions are frequently priced at the maximum allowable cost (MAC), which is estimated at an average AWP discounted rate. This pricing requires that the most current MAC is available for pricing validation for each invoice. PBMs frequently note that the MAC list is proprietary and not subject to review by the client. This language should be stricken so that all pricing can be verified. Guarantees are meaningless when the "guaranteed averages" are undefined and subject to multiple interpretations.

Rebates are collected for claims paid for rebatable brand name drugs. The rebate guarantees should be based on "paid", not "collected" rebates. If rebates are paid to the client as a percentage of total paid, then all applicable documentation must be available for verification of the basis for payment for each rebatable drug. Rebate receipts should include the payments by NDC and include the amounts earned, amounts collected, and inventory of unpaid rebates. If this cannot be contracted to the client's satisfaction, then rebate guarantees should be considered on an all brand drug or all claim basis. Then counting claims can determine the rebate amount due.

## **Network Oversight**

PBMs have contracts with retail networks of pharmacies, and either own or contact with mail service pharmacies for provision of oral and specialty injectable medications. These contracts provide price and service to the client. However, PBM contracts with clients frequently include language for "zero balance billing" and "pharmacy spreads". Pharmacy spreads refer to the difference between the price paid by the client and what is paid to the pharmacy. The issue is whether the client is receiving the best price from the network, or whether the PBM charges a price that is in excess of the contracted price and a reasonable network administration fee. If the client could receive a much lower price from direct contracting with the network, then pharmacy spreads are counter to best price criteria.

Zero balance billing occurs when the member pays the entire copay for a prescription that cost less than the copay. This practice is often used to return margin to the pharmacy, especially when the pharmacy has accepted a low AWP discount. This issue is discretionary for non-ERISA clients, but is a probable violation for those subject to ERISA.

## **Benefit Administration and Management**

As the fiduciary the client defines the benefit. The PBM must provide a plan design worksheet that defines how the PBM will administer benefits for the client and all of their plans. The client must sign off on this sheet, and the client must approve all subsequent changes to benefits in writing. To ensure compliance with all contract elements the contract must include performance and service guarantees with financial penalties for non-performance. These guarantees must cover all service and chargeable elements of the contract. There should be no soft opportunity costs where the outcomes cannot be measured in the claims data. The financial penalties should be all or a large percentage of the PBMs annual administrative fees to ensure that appropriate attention are paid to client concerns. This includes all non-claim administration fees where measurable parameters are defined in the contract along with guaranteed ROIs.

## **Elements of an RFP**

An RFP is issued to determine the current marketplace for access, service and price. In a competitive market the vendors offer their best pricing and service as well as an offer that is consistent with the RFP questions. All of the elements above should be considered for inclusion in an RFP. There are also standard elements that should be included; namely,

- ❑ Short description of the vendor, their business model, and disclosure of any conflicts of interest with the client or their customers
- ❑ Service portfolio required with guarantees and penalties
- ❑ Benefit design and member eligibility requirements
- ❑ Reporting and data requirements
- ❑ Pricing guarantees required on a claim basis
- ❑ Value-add programs of interest including performance measurement and ROI

The critical element is that the RFP must clearly define and guarantee the member access, service requirements (member and administrative) and pricing that are non-negotiable. Negotiable services can be added based on interest, discretion, and perceived value; however, the value must be clearly defined.

## **New Technology for Automating RFPs**

The typical RFP process involves an extensive list of questions followed by responses that require several three-ring binders to review. The process is time consuming, resource intensive, and requires further distillation for summary review. The process is cumbersome for clients and consultants, such that many have asked for a better solution. An optimal solution should contain:

- ❑ Ease of design and distribution
- ❑ Ease of collection of responses
- ❑ Head-to-head comparison of responses with word searching capabilities
- ❑ Modeling and projections of financial and service offerings
- ❑ Simulations of scenarios applicable to client experience

Today there is technology to help achieve the optimal solution. Technology can issue electronic RFPs with the most relevant questions. The new technology also collects RFP responses in electronic format (e.g., doc, xls, pdf, etc.) and places responses in sections where the results can be compared. Word searches and section-to-section comparisons are facilitated on the computer screen or printed for manual review. Financial proposals are placed in cost-accounting models to allow for actual comparisons of price guarantees and to project multi-year savings. "What if" scenarios and simulations allow for pricing and service comparisons. The ultimate test for the new technology is a more satisfying choice and experience based on prior analysis of each vendor.

The above discussion just scratches the surface on the issues incumbent in vendor selection and contracting. In PBM contracting, as in all contracting, it is well to obey the maxim "buyer beware"?

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