MEMORANDUM

To: Pharmacy Benefits Managers; All Carriers Licensed to Write Accident and Sickness Insurance in Virginia; All Health Services Plans and Health Maintenance Organizations Licensed in Virginia; and Life and Health Interested Parties

From: Stephen Hogge, Insurance Policy Advisor, Bureau of Insurance

Date: July 27, 2023

Subject: Updated Pharmacy Benefits Management Rebate Report General Guidance, and Revised Reporting Instructions and Forms

---

The Bureau of Insurance (Bureau) is updating its guidance and revising the reporting instructions and forms for the annual rebate report required by § 38.2-3468.B of the Code of Virginia (Code).

This updated guidance document, along with the revised reporting instructions and report forms, are available on the Pharmacy Benefits Management webpage on the State Corporation Commission's website. Any future updates will be posted to this webpage.

For the reporting period beginning January 1, 2023, the reporting cycle has changed from quarterly to annual. The report for calendar year 2023 is due on or before March 31. 2024.

Please email the completed form to BureauofInsurance@scc.virginia.gov and use the words "Rebate Report" in the subject line.

Email any questions or comments to BureauofInsurance@scc.virginia.gov or call (804) 371-9741.

General Guidance

1. Who must submit the pharmacy benefits management rebate report?

Any carrier that issues health benefit plans in Virginia and in connection with those plans contracts for pharmacy benefits management with one or more pharmacy benefit managers that are required to be licensed pursuant to § 38.2-3466 A of the Code of Virginia (Code), must submit the rebate report to the Bureau.

Please note:

- *The carrier may submit the report on its own or* through its contract for pharmacy benefits.
- *Although a pharmacy benefits manager may submit the report on behalf of a carrier, it is the carrier's responsibility to make sure the report is filed*.

Although licensed in Virginia to write health benefit plans as defined in the pharmacy benefits management law, a carrier that does not write any such business in Virginia is not required to submit a rebate report.

2. For carriers required to submit a rebate report, must rebates related to nonresident members covered by Virginia-based group health benefit plans be included in the information reported?

Yes. If pharmacy benefits are included for members located outside of Virginia, then the report must include the requested information specific to that plan.

3. Must a rebate report be filed if a carrier has not received any rebates during the annual reporting period?

If the carrier is subject to the rebate reporting requirement, then it (or its pharmacy benefits manager pursuant to contract) must file a rebate report even if zero.

4 The Excel reporting form includes separate tabs for carriers and pharmacy benefits managers. Does this mean that they both must submit a rebate report?

No. The report may be submitted by either the carrier or the pharmacy benefits manager on behalf of the carrier.

The Bureau has provided two versions of the reporting form. Form VAPBM-C-2023 is used for filing by the reporting carrier. Form VAPBM-PBM-2023 is used for filing by the reporting PBM. The same data should not be included on both forms. the forms are designed to accommodate a carrier that reports for more than one pharmacy benefits manager and a pharmacy benefits manager that reports for more than one carrier.

5. Is an employer that offers a self-funded health plan under ERISA or a government or church employer that offers a self-funded non-ERISA health plan considered a "carrier" for purposes of the rebate reporting requirement?

- No. An employer sponsor of a self-funded health plan under ERISA is not considered a "carrier" for this purpose
- No. A government or church employer offering a non-ERISA self-funded health plan is not considered a "carrier" for this purpose.

Therefore, these employer sponsors and any pharmacy benefits managers with which they have a contractual relationship for the performance of pharmacy benefits management are not subject to the rebate reporting requirement in connection with these health plans.

6. Which "rebates" must be reported?

Reporting is required only for a "rebate" as defined in § 38.2-3465 of the Code.

7. What rebate information must be reported?

Pursuant to § 38.2-3468 B, for each health benefit plan, the report must include the aggregate amount of rebates:

- received by the pharmacy benefits manager;
- distributed to the appropriate health benefit plan; and
- passed on (distributed) to the enrollees of each health benefit plan at the point of sale that reduced the enrollees' applicable deductible, copayment, coinsurance, or other cost-sharing amount.

8. On what basis is the rebate information required?

The rebate information must be aggregated for each health benefit plan. It should not be provided on an individual policy basis. Refer to § 38.2-3465 and § 38.2-3438 of the Code for the definition of a "health benefit plan." "Health benefit plan" does not include the "excepted benefits" as defined in § 38.2-3431.

9. Should the rebate amounts be reported on a paid or incurred basis?

The rebate amounts reported should be the amounts **paid** during the reporting period.

10. When must the rebate report be filed with the Bureau and how often must it be filed thereafter?

Carriers (either on their own or through their contract for pharmacy benefits) must file their first **annual** rebate report with the Bureau on or before March 31, 2024, covering the period calendar year 2023.The report is to be filed annually thereafter on or before March 31 each year.

# # #