

PBM Reverse Auction Legislation

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June 3, 2020 | 2020-R-0158

Issue

This report identifies legislation in Maryland, New Hampshire, and New Jersey concerning a state-held reverse auction for a pharmacy benefit manager (PBM) (hereafter “PBM reverse auction”) and notes any anticipated cost savings as a result of such an auction.

Summary

A PBM reverse auction is a competitive, online bidding process a state uses to select an entity to manage the state’s prescription drug program. The auction starts with an opening price and allows qualified bidders to counteroffer lower prices for multiple rounds of bidding until a bid is accepted. Reverse auctions are commonly used in the public sector procurement process and generally known for their potential to generate significant savings.

New Jersey enacted legislation in 2016 directing the state to conduct a PBM reverse auction. As a result of the auction, the state anticipates saving over \$2.5 billion by 2022. Maryland passed similar legislation in 2020 and New Hampshire has proposed legislation.

In Connecticut, the Office of the State Comptroller used a reverse auction process for several recent requests for proposal (RFPs), including a PBM RFP. According to office representatives, “Our reverse auction included not only pricing but also technical responses and helped us achieve both significant cost savings (approximately 10%) and increased transparency in our PBM contract.”

New Jersey

In 2016, New Jersey enacted a law that required the state to conduct an automated reverse auction to procure a PBM for the state health benefits plan or school employees health benefits plan (SB 2749, enacted as [2016 ch. 67](#)). (Subsequently, due to litigation unrelated to the reverse auction itself, New Jersey enacted a law in 2018 requiring another PBM reverse auction by January 15, 2019, but the governor [vetoed](#) it due to the short procurement times specified ([SB 3074](#)).)

At the time New Jersey enacted its 2016 law, the [Office of Legislative Services](#) was unable to determine the reverse auction's anticipated fiscal impact. Since then, New Jersey projects over \$2.5 billion in pharmacy program savings by 2022 due to the reverse auction process, as reported in this February 2020 National Governor's Association [slideshow](#) (p. 17).

Maryland

In May 2020, Maryland enacted a law that requires the state Department of Budget and Management to conduct a reverse auction to select a PBM or other entity to administer the state's prescription drug program ([HB 1150](#)). The law, which is effective June 1, 2020, requires the department, at least three months before conducting the auction, to procure the services of a technology platform to assist with it.

The following health plans may use the reverse auction process individually or collectively as a joint purchasing group with the State Employee and Retiree Health and Welfare Benefits Program: state-funded health plans; self-funded county, municipal, or other local government employee health plans; public school employee health plans; and public institution of higher education health plans.

A health plan that participates in a reverse auction purchasing group retains full autonomy over its prescription drug formulary (i.e., list of covered drugs) and pharmacy benefit designs but must agree to accept the prescription drug pricing plan selected through the auction process.

According to the [Department of Legislative Services](#), the bill's net fiscal impact on state expenditures is indeterminate. However, "to the extent a reverse auction reduces PBM contract and prescription drug costs relative to the current contract, ... expenditures for prescription drug coverage for the State Employee and Retiree Health and Welfare Benefits Program are reduced beginning as early as fiscal 2021."

New Hampshire

New Hampshire legislators proposed a bill in 2020 that, among other things, authorizes the Department of Administrative Services to conduct a PBM reverse auction for the state employee health plan ([SB 686](#)). The bill provides the criteria for procuring a technology platform and professional services for such an auction.

If the department conducts an auction for the state employee health plan, other health plans may use the process individually or collectively as a joint purchasing group, including any other state-funded health plan, self-funded municipal employee health plan, public school employee health plans, and the state university and community college system health plans. However, participating health plans retain full autonomy over their respective prescription drug formularies and pharmacy benefit designs. (The legislature was unable to predict the fiscal impact of a reverse auction process should the bill pass.)

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