

Despite the Law, PBM Steering Continues

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What can I do if I continue to see patient steering?

It is no secret that patient steering continues to be central practice of many PBMs with patients across the country being required to use PBM owned or affiliated pharmacies. Georgia enjoys the strongest anti-steering laws in the country with prohibitions on the PBMs, as well as on the pharmacies affiliated with PBMs and insurers. Additionally, those laws were strengthened this year to prohibit, amongst other things, steering via patients and plans being penalized financially when a patient chooses a non-affiliate in network pharmacy. These changes take effect January 1 of 2021.

However, despite Georgia's robust anti-steering laws, we continue to receive calls from pharmacies as well as patients regarding this practice and pharmacies continue to lose long-time patients as a result of PBM steering. In the event you have a patient who is being steered, below are suggested steps which can be taken.

Inform the pharmacy benefits manager of the law.

If a patient receives a communication from a PBM indicating that she or he must fill a prescription at a PBM affiliated pharmacy or a pharmacist receives such a message at the point of sale the pharmacist and/or patient can and should reach

out to the PBM and notify them of Georgia's anti-steering laws O.C.G.A.

33-64-11 and O.C.G.A.

26-4-119. We have heard many examples of patients and pharmacists calling, citing the laws, and the patient being able to continue to fill their prescriptions at the pharmacy of their choice.

If the patient is required to fill a prescription at a pharmacy affiliated with a PBM or insurer then the patient can file a complaint with the Georgia Board of Pharmacy.

First, it is important to remember that a PBM affiliated pharmacy doesn't violate the law (O.C.G.A. 26-4-119) when a PBM or insurer sends out a letter mandating the use of their affiliated pharmacy or when there is a point of sale rejection at your pharmacy counter. (The PBM or insurer may have violated another law and those complaints can be sent to the Commissioner of Insurance.) Rather, affiliate pharmacies violate the law when they have processed the referred prescription and submitted claims for payment.

If your patient receives a letter or email from a PBM ordering them to use a PBM or insurer owned pharmacy, or you receive a point of sale rejection, inform the patient of the new law and if the PBM has been informed of the law, but still



requires the patient to fill the prescription at an affiliated pharmacy:

1. Let the patient know that once they fill the prescription at the affiliate pharmacy there may have been a violation of the law and that, if they believe the law was violated, they can file a complaint with the Board of Pharmacy.
2. Provide the patient with steps for filing a complaint with the Board of Pharmacy set forth below and if there was a point of sale rejection provide them with a copy of it.
3. Maintain any records provided to you and keep track of patients you believe have been steered.
4. Do not file a complaint with the Board of Pharmacy yourself without seeking legal counsel. The touchstone to a violation is whether the affiliate pharmacy submitted a claim for payment and complaints will need to be patient specific.

Finally, these complaints will not be resolved quickly and could take many months. This is a new law with lots of nuance and the Board will take the time needed to investigate and assess complaints. We have every confidence that the Board will decide on an appropriate course of action in the event of any violation.

Suggested patient steps for filing complaint with the Board of Pharmacy

- Patients should have records reflecting the steering, such as letters, emails, or point of sale rejections from the PBM or insurer, as well as records showing they later filled a prescription at a PBM or insurer affiliated pharmacy after being steered. In the event that the steering is oral, the patient should write down as much as remembered about the call or communication, including what was said, the date and time, the name of the person he or she spoke with, the phone number used (if it's a call) and the place of the steering (if it is in person).
- Complaints can be filed with the Board of Pharmacy directly from their website at <https://gbp.georgia.gov/georgia-professional-licensure-complaint-form>
- For 'area of complaint' they can select "unprofessional conduct" or "other."

“DESPITE GEORGIA’S ROBUST ANTI-STEERING LAWS, WE CONTINUE TO RECEIVE CALLS FROM PHARMACIES AS WELL AS PATIENTS REGARDING THIS PRACTICE AND PHARMACIES CONTINUE TO LOSE LONG-TIME PATIENTS AS A RESULT OF PBM STEERING.”

– Greg Reybold

- In comment section they should offer a brief explanation such as the following example: “I was ordered by my pharmacy benefits manager to use _____ pharmacy located at _____ to fill my most recent prescription. I believe I was steered to the pharmacy and that it may have been in violation of O.G.G.A. 26-4-119. I do not believe I should be forced to use a pharmacy against my will and regardless of my plan type. I believe all pharmacies should be subject to Georgia's laws and Board of Pharmacy oversight. I have records, including communications steering me to the pharmacy as well as the pharmacy filling the prescription. Please contact me and I will provide these records to you.

Commissioner of Insurance Complaint

A patient can also file a complaint with the Commissioner of Insurance via the consumer complaint portal which can be found at <https://www.oci.ga.gov/ConsumerService/complaint-process.aspx>. The records set forth above would also be necessary for any Commissioner of Insurance investigation. It should be noted however, that while filling the prescription at a PBM affiliated pharmacy is necessary for affiliated pharmacies to be held accountable under the law, a PBM may violate the law based on its attempt to steer whether the patient fills a prescription at the PBM affiliated pharmacy or not.

Finally, it should be pointed out that PBMs often make preemption arguments to the Commissioner of Insurance when complaints are filed. [🔗](#)