

## **Ohio Ruling: PBM is a Fiduciary**

January 2006

The Ohio ruling that cost Medco \$7.8 million may open the flood gates for similar lawsuits against PBMs. An Ohio court decided that Medco has a fiduciary duty to clients. PBMs have historically denied fiduciary duty to clients to reduce this risk and exposure. Many plan sponsors are now wondering if they are deceived by their PBMs.

Fiduciaries are empowered to handle financial funds responsibly with the client's best interests in mind. They must also follow stringent rules regarding conflict of interest, financial disclosures and dealings. Maine's landmark PBM regulation law requires PBMs to operate as fiduciaries. Other states are looking to do likewise. The Ohio ruling is likely to set other lawsuits in motion which will force PBMs to become more transparent. As a fiduciary, a PBM will find it difficult to hide rebates and other secret deals they now use to boost their profits.

Many companies avoid dealing with the larger PBMs like Medco, Caremark and Express Scripts and choose to hire smaller, more transparent, PBMs. A group of 52 companies organized the HR Policy Association to accept bids from PBMs who are willing to offer full transparency, including disclosing what the PBM pays for medications. Medco, Caremark and Express Scripts dropped out of the bidding; turning down the potential to earn several million dollars from the 5 million employees of the coalition's members.

Source: Third Party Newslines (The Official Newsletter of PAAS National)