

PBM CONTRACT FIDUCIARY ANALYSIS REPORT

Capital Rx

10561489_Indianapolis Public Schools and Capital Rx_Second Amendment to PBMSA - signed (2) (2).pdf

43 **RED FLAG**

OUT OF 100

CAA 2026 Fiduciary Alignment Score
65 Issues · 13 Provisions Evaluated

\$1.6M

ESTIMATED
ANNUAL
SAVINGS

1

CRITICAL
FLAGS

12

ISSUES
NOT MET

4

PROTECTIONS
FOUND

5

PROVISIONS
ANALYZED

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SECTION 1

Executive Summary

This contract presents severe fiduciary risk. With a score of 43/100, it falls in the Red Flag tier — indicating that the PBM retains significant authority to act against the economic interests of the plan and its participants. Immediate renegotiation is warranted across all major provisions.

PROVISION RISK DISTRIBUTION



\$1.6M

Estimated annual savings opportunity if all identified gaps are remediated through renegotiation. This represents the cumulative financial impact of spread pricing, unreturned rebates, audit recovery potential, specialty pharmacy excess cost, and administrative fee reduction.

KEY FINDINGS

⊗ CRITICAL (1)

The PBM does not explicitly accept fiduciary status or fiduciary duty under ERISA standards.

⚠ WARNINGS (1)

Rebate and manufacturer revenue transparency provisions are insufficient for full compliance and auditing.

✓ EXISTING PROTECTIONS (1)

△ 59,824

Administrative fee structure includes disclosure of third-party fees and cost-sharing, though some gaps exist in transparency.

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FIDUCIARY OBLIGATION

ERISA §404(a)(1)(A) requires plan fiduciaries to act solely in the interest of plan participants and beneficiaries. The Consolidated Appropriations Act (CAA) of 2021, 2022, and 2026 layered specific PBM transparency and fiduciary requirements on top of ERISA. Failure to negotiate fiduciary protections into this contract may constitute a breach of the plan sponsor's own fiduciary duty under federal law. This report identifies specific gaps that should be remediated at or before the next contract renewal.

SECTION 2

Financial Impact Analysis

The following savings estimates represent the potential annual financial benefit to the plan if the identified contractual gaps in each provision are remediated through renegotiation. Estimates are derived from the provision score deficit (the gap between the contract's actual score and a fully-compliant score of 10/10) applied to industry-standard ranges for each provision type. Actual savings will vary based on plan size, drug mix, specialty spend, and negotiation outcomes.

TOTAL ESTIMATED ANNUAL SAVINGS OPPORTUNITY

\$1.6M

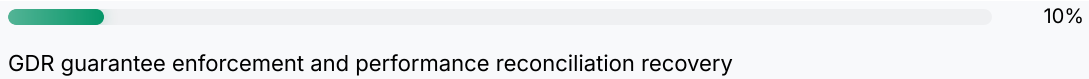
Across all 13 provisions · CAA 2026 Fiduciary Standard · Annual basis

SAVINGS BREAKDOWN BY PROVISION

02	Pass-Through Pharmacy Costs	Fair (5.5/10)	\$758K	46%	Spread pricing elimination and MAC pricing transparency
03	Rebate & Manufacturer Revenue	Concern (4.0/10)	\$510K	31%	Full manufacturer revenue pass-through including pooled rebates
01	Fiduciary Loyalty Commitment	Red Flag (1.5/10)	\$174K	11%	Legal exposure mitigation and ERISA fiduciary compliance
13	Performance Guarantees & Remedies	Concern (4.0/10)	\$160K		

59,824

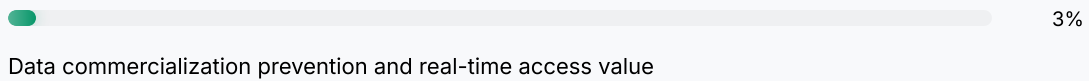
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04 Data Ownership & Access

Good (6.0/10)

\$46K



RETURN ON NEGOTIATION

The cost of PBM contract renegotiation — including legal counsel, consultant fees, and actuarial review — typically ranges from \$15,000 to \$75,000 for a mid-market plan. Against a total savings opportunity of \$1.6M, the return on investment for a rigorous renegotiation effort is substantial. Plans that implement pass-through pricing, full rebate capture, and meaningful audit rights consistently outperform market averages by 8–18% on total pharmacy spend.

△ 59,824

SECTION 3

Critical Issues Ranked by Priority

The following 12 unmet requirements are ordered by fiduciary risk and estimated financial impact. Items are ranked using a weighted formula incorporating provision severity rating, estimated annual savings per issue, and CAA 2026 compliance priority. Address items in this order for maximum fiduciary protection and financial recovery.

01	Pass-through ingredient costs at actual network rates FAIR Provision 2: Pass-Through Pharmacy Costs	\$379K EST. ANNUAL
GAP No explicit provision regarding the actual pass-through of ingredient costs.		
02	MAC pricing list transparency FAIR Provision 2: Pass-Through Pharmacy Costs	\$379K EST. ANNUAL
GAP The contract does not ensure MAC price transparency or appeal rights.		
03	100% of rebates passed through to the plan CONCERN Provision 3: Rebate & Manufacturer Revenue	\$170K EST. ANNUAL
GAP Contract does not confirm that all rebates are passed to the plan.		
04	Rebate reporting for auditing CONCERN Provision 3: Rebate & Manufacturer Revenue	\$170K 59,824 EST. ANNUAL
GAP KINCAID IQ — STRICTLY CONFIDENTIAL · ACCOUNT SHRACK-7742		

No specific language on detailed reporting for rebate audits.

05

Rebate pass-through timeline **CONCERN**

\$170K

Provision 3: Rebate & Manufacturer Revenue

EST. ANNUAL

GAP

Rebate remittance timeline is not specified to be quarterly or more frequent.

06

Generic dispensing rate guarantee with financial penalty

\$80K

CONCERN

Provision 13: Performance Guarantees & Remedies

EST. ANNUAL

GAP

No specified GDR guarantees or financial remedies.

07

Claims processing accuracy guarantee **CONCERN**

\$80K

Provision 13: Performance Guarantees & Remedies

EST. ANNUAL

GAP

Contract provides no guarantees for claims accuracy or remedies in the event of errors.

08

PBM explicitly accepting fiduciary status **RED FLAG**

\$43K

Provision 1: Fiduciary Loyalty Commitment

EST. ANNUAL

GAP

PBM must explicitly accept fiduciary status as aligned with ERISA standards.

09

Disclosure of conflicts of interest **RED FLAG**

\$43K

Provision 1: Fiduciary Loyalty Commitment

EST. ANNUAL

GAP

△ 59,824

Contract does not address the disclosure of all PBM conflicts of interest.

10

PBM commitment to act solely in the interest of plan participants

\$43K

EST. ANNUAL

RED FLAG

Provision 1: Fiduciary Loyalty Commitment

GAP

No provision ensuring PBM's loyalty to plan participants' interests.

11

Annual fiduciary compliance certification

RED FLAG

\$43K

EST. ANNUAL

Provision 1: Fiduciary Loyalty Commitment

GAP

No mechanism for certifying fiduciary compliance annually.

12

Commercial use restrictions for plan data

GOOD

\$46K

EST. ANNUAL

Provision 4: Data Ownership & Access

GAP

Contract does not explicitly restrict PBM from monetizing plan data.

△ 59,824

Fiduciary Loyalty Commitment

1.5

OUT OF 10

RED FLAG

0 of 4 requirements met

\$174K

SAVINGS OPPORTUNITY

WHY THIS PROVISION MATTERS

CAA 2026 §3101 requires PBM transparency and fiduciary alignment for group health plans. A fiduciary loyalty commitment is the foundational protection for all other contract provisions.

FINANCIAL CONTEXT

Without explicit fiduciary acceptance, the PBM can legally act in its own economic interest — routing volume to owned pharmacies, retaining undisclosed revenue, and making formulary decisions for profit. Plans facing regulatory audit under CAA 2026 without this clause carry significant legal exposure.

FIDUCIARY SIGNIFICANCE

ERISA §404 creates personal liability for plan fiduciaries who fail to monitor the PBM. A contractual fiduciary commitment shifts this burden and creates a private right of action.

ISSUE EVALUATION (4 ISSUES)

⊗ **NOT MET — 4 PROTECTIONS MISSING**

△ 59,824

⊗ **PBM explicitly accepting fiduciary status**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

PBM must explicitly accept fiduciary status as aligned with ERISA standards.

⚠ HOW PBMS EXPLOIT THIS GAP

- 1 Without a fiduciary loyalty clause, the PBM's contractual obligation is to itself — not the plan. This means every formulary decision, network design choice, and vendor routing decision can legally be made to maximize the PBM's own economic interest, even when a cheaper option exists for the plan.
- 2 PBMs exploit this absence by routing volume to their own owned pharmacies, retaining undisclosed manufacturer payments, favoring brand drugs with high rebate revenue over cheaper generics that would cost the plan less, and blocking plan access to claims data needed to discover these practices.
- 3 When the DOL or a plan participant's attorney asks 'how did you protect the plan's economic interest?', the absence of a fiduciary clause means the plan fiduciary has no contractual answer — creating personal liability for the HR Director, CFO, and any named plan administrator.

\$ DOLLAR IMPACT — HOW THIS COSTS YOUR PLAN

Fiduciary misalignment allows the PBM to legally capture an estimated 3–8% of total drug spend in undisclosed revenue. For a \$3M drug spend plan, this represents \$90,000–\$240,000 per year in value diverted from the plan to the PBM — all contractually permissible without a fiduciary clause.

► RED-FLAG LANGUAGE TO LOOK FOR IN YOUR CONTRACT

"PBM acts as an independent contractor and not as a fiduciary of the Plan"

"Nothing in this Agreement shall create a fiduciary relationship between PBM and Plan"

"PBM provides services in its capacity as a vendor, not as a fiduciary"

⦿ REQUIRED FIX — ADD THIS LANGUAGE TO THE CONTRACT

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Add: "PBM acknowledges it is acting as a functional fiduciary of the Plan within the meaning of ERISA §3(21) with respect to all formulary management, network design, and pricing decisions. PBM shall at all times act in the sole interest of Plan participants and beneficiaries and shall not place its own economic interests above those of the Plan."

⊗ Disclosure of conflicts of interest

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

Contract does not address the disclosure of all PBM conflicts of interest.

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⊗ **PBM commitment to act solely in the interest of plan participants**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

No provision ensuring PBM's loyalty to plan participants' interests.

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⊗ Annual fiduciary compliance certification

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

No mechanism for certifying fiduciary compliance annually.

⚠ HOW PBMS EXPLOIT THIS GAP

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🎯 GAP SUMMARY

PBM does not acknowledge fiduciary duties or obligations in the contract.

🔒 RECOMMENDED CONTRACT LANGUAGE

"PBM agrees to serve as a fiduciary for the Plan and its participants, disclosing conflicts of interest and adhering to ERISA fiduciary standards, with an annual compliance certification."

⚡ NEGOTIATION TALKING POINT

"Ensuring the PBM is held to fiduciary standards protects plan participants and ensures alignment with CAA 2026."

Pass-Through Pharmacy Costs

5.5

OUT OF 10

FAIR

1 of 3 requirements met

\$758K

SAVINGS OPPORTUNITY

WHY THIS PROVISION MATTERS

Spread pricing was banned in Medicaid by CMS in 2020. Self-funded ERISA plans must contractually prohibit it. Pass-through pricing means the plan pays exactly what the pharmacy is paid — no more.

FINANCIAL CONTEXT

Spread pricing is the practice of billing the plan more than the PBM pays the pharmacy, pocketing the difference. For a plan with \$3M in annual drug spend, spread pricing commonly adds 5–15% in hidden margin — \$150K to \$450K per year — with no clinical benefit.

FIDUCIARY SIGNIFICANCE

The Consolidated Appropriations Act (CAA 2022 §204) requires pass-through pricing for Medicaid managed care. ERISA fiduciaries in self-funded plans face similar expectations. Spread pricing in a negotiated contract is a primary driver of inflated pharmacy spend.

ISSUE EVALUATION (3 ISSUES)

⊗ **NOT MET — 2 PROTECTIONS MISSING**

△ 59,824

⊗ **Pass-through ingredient costs at actual network rates**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

No explicit provision regarding the actual pass-through of ingredient costs.

⚠ HOW PBMS EXPLOIT THIS GAP

- 1** Spread pricing is the most straightforward form of PBM profit extraction. The PBM reimburses the pharmacy \$4.80 for a generic metformin, then bills the plan \$8.20 for the same fill — pocketing the \$3.40 'spread' as undisclosed margin. Multiply this across thousands of generic fills per year, and the total hidden cost is staggering.
- 2** PBMs use Maximum Allowable Cost (MAC) lists as the mechanism for spread pricing. The PBM sets MAC prices paid to pharmacies at one level and bills the plan at a higher level. The MAC list itself is proprietary and not shared with the plan, making it impossible to detect without contractual transparency rights.
- 3** In 2020, CMS banned spread pricing in Medicaid managed care, citing documented overcharges averaging 9.1% of generic drug cost. Self-funded ERISA plans have no such federal protection — the only protection is contractual, through explicit pass-through pricing requirements.

\$ DOLLAR IMPACT — HOW THIS COSTS YOUR PLAN

For a plan with 500 members and \$3M in annual drug spend, generic drugs typically represent 35–40% of spend but 88% of fill volume. At an average spread of \$3–8 per generic fill and 15,000 generic fills/year, annual spread pricing cost ranges from \$45,000 to \$120,000. This is invisible without contractual pass-through pricing and MAC transparency requirements.

► RED-FLAG LANGUAGE TO LOOK FOR IN YOUR CONTRACT

"PBM pricing is based on its MAC list, which is proprietary and subject to change"

"Plan shall pay PBM the amounts set forth in the pricing schedule attached hereto"

⚠ 59,824

"PBM's ingredient cost reimbursement rates are confidential information"

🔒 **REQUIRED FIX — ADD THIS LANGUAGE TO THE CONTRACT**

Add: "PBM shall implement pass-through pricing for all pharmacy claims. The amount billed to the Plan for each claim shall not exceed the amount paid by PBM to the dispensing pharmacy for that claim. PBM shall provide Plan with access to the MAC list and pharmacy reimbursement rates upon request. Any retention of the difference between amounts billed to Plan and amounts paid to pharmacies constitutes a prohibited transaction under ERISA §406."

△ 59,824

⊗ **MAC pricing list transparency**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

The contract does not ensure MAC price transparency or appeal rights.

⚠ HOW PBMS EXPLOIT THIS GAP

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🕒 MET (1)

🕒 Network reimbursement rates available upon request

"Capital Rx agrees to provide Claims and related data to Consultant."

🎯 GAP SUMMARY

Unaddressed transparency in ingredient cost pass-through and MAC pricing practices.

🔒 RECOMMENDED CONTRACT LANGUAGE

"PBM shall pass all ingredient cost reimbursements and dispensing fees as paid to the pharmacy without markup or hidden spreads, and shall provide transparent MAC pricing methodologies with appeal rights."

⚡ NEGOTIATION TALKING POINT

"This ensures transparency in pharmacy cost management and prevents overpayments."

△ 59,824

Rebate & Manufacturer Revenue

4.0

OUT OF 10

CONCERN

0 of 3 requirements met

\$510K

SAVINGS OPPORTUNITY

WHY THIS PROVISION MATTERS

Manufacturer rebates are paid to PBMs as a percentage of drug list price (WAC). 100% pass-through contracts eliminate PBM incentives to favor high-list-price drugs. All forms of manufacturer revenue — not just rebates — must be captured.

FINANCIAL CONTEXT

Most PBMs retain a portion of manufacturer rebates in 'pooled' arrangements — averaging the rebate across all clients rather than passing through each client's earned amount. For a mid-size plan, the gap between pooled and actual rebates can be \$75K–\$300K/year. Admin fees, grants, data fees, and other manufacturer payments are rarely disclosed or remitted.

FIDUCIARY SIGNIFICANCE

The DOL Field Assistance Bulletin 2021-02 confirmed that failing to capture all manufacturer revenue is a breach of fiduciary duty. Rebates are often 20–40% of gross drug cost on brand medications.

ISSUE EVALUATION (3 ISSUES)

⊗ NOT MET — 3 PROTECTIONS MISSING

△ 59,824

⊗ **100% of rebates passed through to the plan**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

Contract does not confirm that all rebates are passed to the plan.

⚠ HOW PBMS EXPLOIT THIS GAP

- 1** Manufacturer rebates are not just one pool of money — they are a complex ecosystem of payments including per-unit rebates, market share bonuses, performance bonuses, administrative fees, data fees, and 'educational grants.' PBMs negotiate all of these in their own name, collect them from manufacturers, and the contract language that determines what passes through to the plan is almost always favorable to the PBM.
- 2** The most common exploitation technique is 'pooled rebate' arrangements, where the PBM averages rebates across its entire book of business rather than allocating the actual rebates earned by this plan's members. A plan with a high concentration of Humira or Ozempic users may have earned \$300,000 in actual manufacturer rebates but receive only \$180,000 under a pooled arrangement — with no visibility into the gap.
- 3** Beyond rebates, PBMs receive manufacturer payments they categorize as 'administrative fees,' 'data license fees,' 'pharmacy services fees,' and 'clinical programs support.' These are never rebates under the contract language — so a 100% rebate pass-through clause doesn't capture them. The total undisclosed manufacturer revenue flowing to PBMs is estimated at 15–40% of brand drug list price.

\$ DOLLAR IMPACT — HOW THIS COSTS YOUR PLAN

Specialty and brand drugs average 30–50% of drug spend for a mid-size plan. Manufacturer rebates on these drugs average 18–35% of list price (WAC). A plan with \$1.5M in brand/specialty drug spend generating 25% in manufacturer rebates = \$375,000 in manufacturer payments. A pooled arrangement that captures only 65% of earned rebates leaves \$131,250/year on the table. Non-rebate manufacturer payments add another estimated \$40,000–\$80,000 in unrecaptured revenue.

⚠ 59,824

► RED-FLAG LANGUAGE TO LOOK FOR IN YOUR CONTRACT

"Rebates" means the amounts received by PBM from manufacturers pursuant to
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formulary positioning agreements, net of PBM's administrative costs

"PBM shall pass through a portion of manufacturer rebates consistent with PBM's pooled rebate methodology"

"PBM retains administrative fees, data fees, and other non-rebate manufacturer payments as compensation for services"

○ REQUIRED FIX — ADD THIS LANGUAGE TO THE CONTRACT

Add: "PBM shall pass through 100% of all Manufacturer Revenue earned in connection with the Plan's claims to the Plan, not later than 90 days after the close of each calendar quarter. Manufacturer Revenue means all cash, credits, and other forms of compensation received by PBM from any pharmaceutical manufacturer in connection with Plan claims, including without limitation: (i) base rebates, (ii) market share bonuses, (iii) performance bonuses, (iv) administrative fees, (v) data license fees, (vi) educational grants, and (vii) any other amounts, regardless of how characterized by the manufacturer or PBM."

⊗ **Rebate reporting for auditing**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

No specific language on detailed reporting for rebate audits.

⚠ HOW PBMS EXPLOIT THIS GAP

- 1** Manufacturer rebates are not just one pool of money — they are a complex ecosystem of payments including per-unit rebates, market share bonuses, performance bonuses, administrative fees, data fees, and 'educational grants.' PBMs negotiate all of these in their own name, collect them from manufacturers, and the contract language that determines what passes through to the plan is almost always favorable to the PBM.
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formulary positioning agreements, net of PBM's administrative costs

"PBM shall pass through a portion of manufacturer rebates consistent with PBM's pooled rebate methodology"

"PBM retains administrative fees, data fees, and other non-rebate manufacturer payments as compensation for services"

○ REQUIRED FIX — ADD THIS LANGUAGE TO THE CONTRACT

Add: "PBM shall pass through 100% of all Manufacturer Revenue earned in connection with the Plan's claims to the Plan, not later than 90 days after the close of each calendar quarter. Manufacturer Revenue means all cash, credits, and other forms of compensation received by PBM from any pharmaceutical manufacturer in connection with Plan claims, including without limitation: (i) base rebates, (ii) market share bonuses, (iii) performance bonuses, (iv) administrative fees, (v) data license fees, (vi) educational grants, and (vii) any other amounts, regardless of how characterized by the manufacturer or PBM."

⊗ **Rebate pass-through timeline**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

Rebate remittance timeline is not specified to be quarterly or more frequent.

⚠ HOW PBMS EXPLOIT THIS GAP

- 1** Manufacturer rebates are not just one pool of money — they are a complex ecosystem of payments including per-unit rebates, market share bonuses, performance bonuses, administrative fees, data fees, and 'educational grants.' PBMs negotiate all of these in their own name, collect them from manufacturers, and the contract language that determines what passes through to the plan is almost always favorable to the PBM.
- 2** The most common exploitation technique is 'pooled rebate' arrangements, where the PBM averages rebates across its entire book of business rather than allocating the actual rebates earned by this plan's members. A plan with a high concentration of Humira or Ozempic users may have earned \$300,000 in actual manufacturer rebates but receive only \$180,000 under a pooled arrangement — with no visibility into the gap.
- 3** Beyond rebates, PBMs receive manufacturer payments they categorize as 'administrative fees,' 'data license fees,' 'pharmacy services fees,' and 'clinical programs support.' These are never rebates under the contract language — so a 100% rebate pass-through clause doesn't capture them. The total undisclosed manufacturer revenue flowing to PBMs is estimated at 15–40% of brand drug list price.

\$ DOLLAR IMPACT — HOW THIS COSTS YOUR PLAN

Specialty and brand drugs average 30–50% of drug spend for a mid-size plan. Manufacturer rebates on these drugs average 18–35% of list price (WAC). A plan with \$1.5M in brand/specialty drug spend generating 25% in manufacturer rebates = \$375,000 in manufacturer payments. A pooled arrangement that captures only 65% of earned rebates leaves \$131,250/year on the table. Non-rebate manufacturer payments add another estimated \$40,000–\$80,000 in unrecaptured revenue.

⚠ 59,824

► RED-FLAG LANGUAGE TO LOOK FOR IN YOUR CONTRACT

"Rebates" means the amounts received by PBM from manufacturers pursuant to
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formulary positioning agreements, net of PBM's administrative costs

"PBM shall pass through a portion of manufacturer rebates consistent with PBM's pooled rebate methodology"

"PBM retains administrative fees, data fees, and other non-rebate manufacturer payments as compensation for services"

REQUIRED FIX — ADD THIS LANGUAGE TO THE CONTRACT

Add: "PBM shall pass through 100% of all Manufacturer Revenue earned in connection with the Plan's claims to the Plan, not later than 90 days after the close of each calendar quarter. Manufacturer Revenue means all cash, credits, and other forms of compensation received by PBM from any pharmaceutical manufacturer in connection with Plan claims, including without limitation: (i) base rebates, (ii) market share bonuses, (iii) performance bonuses, (iv) administrative fees, (v) data license fees, (vi) educational grants, and (vii) any other amounts, regardless of how characterized by the manufacturer or PBM."

GAP SUMMARY

Rebate transparency and pass-through terms are inadequate.

RECOMMENDED CONTRACT LANGUAGE

"PBM shall remit 100% of rebates and other manufacturer revenue to the Plan no later than 60 days after receipt, accompanied by detailed rebate and revenue reporting to facilitate audits."

NEGOTIATION TALKING POINT

"Rebate transparency ensures the plan captures cost offsets consistent with fiduciary objectives and CAA 2026."

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Data Ownership & Access

GOOD

2 of 3 requirements met

\$46K

SAVINGS OPPORTUNITY

WHY THIS PROVISION MATTERS

Claims data is among the most valuable assets of a self-funded plan. Ownership, access, portability, and restrictions on commercial use are distinct rights that must each be explicitly negotiated.

FINANCIAL CONTEXT

PBMs routinely sell de-identified claims data to pharmaceutical companies, hedge funds, and health analytics firms. A self-funded plan's data has commercial value estimated at \$15–\$50 per member per year. Preventing PBM monetization preserves this value for the plan.

FIDUCIARY SIGNIFICANCE

Real-time data access enables fraud detection, specialty drug management, and clinical intervention — generating additional savings through early identification of high-cost claimants.

ISSUE EVALUATION (3 ISSUES)

⊗ **NOT MET — 1 PROTECTION MISSING**

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⊗ **Commercial use restrictions for plan data**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

Contract does not explicitly restrict PBM from monetizing plan data.

⚠ HOW PBMS EXPLOIT THIS GAP

- 1** Your plan's claims data is one of the most commercially valuable assets you own. Every prescription filled by a plan member contains diagnosis codes, drug names, dosages, prescribers, and patient identifiers — data that pharmaceutical manufacturers, hedge funds, data brokers, and academic institutions pay significant sums to access. Without contractual restrictions, the PBM owns or controls this data and sells it commercially.
- 2** PBMs typically insert language stating that de-identified data is their proprietary asset and can be used for 'PBM's business purposes.' This language permits the PBM to sell your members' drug utilization patterns to the manufacturers of the drugs they're taking — creating a deeply problematic conflict where the PBM profits from data generated by the plan's own members.
- 3** Beyond commercialization, lack of data access prevents the plan from conducting independent audits, benchmarking drug costs, identifying high-risk members for care management, or switching PBMs at contract end. PBMs routinely delay, restrict, or charge for data access to create switching costs and reduce plan oversight.

\$ DOLLAR IMPACT — HOW THIS COSTS YOUR PLAN

Commercial value of pharmaceutical claims data is estimated at \$15–\$50 per member per year for de-identified datasets, and significantly more for linked or longitudinal data. For a 500-member plan, this represents \$7,500–\$25,000/year in value that the PBM captures from your members' data. Beyond direct commercialization, data access restrictions cost plans an estimated \$8–\$25 per member in avoidable high-cost drug spend that targeted interventions would have prevented.

► RED-FLAG LANGUAGE TO LOOK FOR IN YOUR CONTRACT

⚠ 59,824

"De-identified claims data is proprietary to PBM and may be used for PBM's business purposes"

"Plan data will be provided in PBM's standard format upon written request within 30 business days"

"PBM shall provide plan performance reports as mutually agreed upon by the parties"

🔗 REQUIRED FIX — ADD THIS LANGUAGE TO THE CONTRACT

Add: "All claims data, including identifiable and de-identified data, generated in connection with Plan is and remains the exclusive property of Plan. PBM shall not sell, license, share, or otherwise transfer Plan data to any third party without Plan's prior written consent. PBM shall provide Plan with access to all claims data in machine-readable format within 5 business days of request, at no additional charge. Upon contract termination, PBM shall deliver a complete claims history file to Plan's designee within 30 days."

📌 MET (2)

✓ Plan ownership of claims, utilization, and member data

"Sponsor hereby authorizes Capital Rx to provide Claims and related data to Consultant."

✓ Data portability and transfer rights

"Sponsor shall notify Capital Rx, in writing, at least ten (10) days prior to any changes between Sponsor and Consultant."

📌 GAP SUMMARY

PBM's commercial use of plan data remains unaddressed.

🔒 RECOMMENDED CONTRACT LANGUAGE

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"Plan owns all data generated under the Agreement, and PBM is prohibited from monetizing or using plan data for commercial purposes without Sponsor's explicit written consent."

⚡ **NEGOTIATION TALKING POINT**

"Restricting PBM commercial data usage protects sensitive plan and member information."

4.0

OUT OF 10

\$160K

SAVINGS OPPORTUNITY

Performance Guarantees & Remedies

CONCERN

1 of 3 requirements met

WHY THIS PROVISION MATTERS

Performance guarantees are only as strong as the financial penalty backing them. GDR guarantees, formulary compliance rates, claims accuracy, and SLA metrics must each be backed by at-risk dollars, independently verifiable data, and retroactive reconciliation with no self-cure loopholes.

FINANCIAL CONTEXT

Generic dispensing rate (GDR) guarantees are the most commonly breached PBM performance commitment. A PBM that guarantees 85% GDR but delivers 82% across a plan's claims creates measurable excess cost — each 1% GDR miss represents approximately \$8–\$18 PMPM in brand drug overpayment. Without financial penalties and independent verification, the PBM has no economic incentive to meet its stated GDR targets.

FIDUCIARY SIGNIFICANCE

Annual performance reconciliation with retroactive financial adjustments is the mechanism that makes all performance guarantees enforceable. Without it, guarantees are aspirational benchmarks — not contractual obligations.

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ISSUE EVALUATION (3 ISSUES)

⊗ **NOT MET — 2 PROTECTIONS MISSING**

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⊗ **Generic dispensing rate guarantee with financial penalty**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

No specified GDR guarantees or financial remedies.

⚠ HOW PBMS EXPLOIT THIS GAP

- 1** Performance guarantee structures in PBM contracts are masterworks of apparent accountability with real-world unenforceability. The typical contract offers guarantees on generic dispensing rate (GDR), formulary compliance, claim processing accuracy, and member satisfaction — all of which sound meaningful and measurable. The exploitation is in the structure: guarantees are self-reported by the PBM using its own data systems, measurement methodology is defined by the PBM, cure periods allow the PBM to 'fix' performance after a breach is identified, and the total at-risk dollar amount is a fraction of actual PBM compensation.
- 2** The most common structural problem is at-risk dollar caps. A PBM charging \$2.50 PMPM administrative fee to a 500-member plan earns \$15,000/year in administrative revenue. A performance guarantee with 3% at-risk = \$450. When the GDR misses the target for six months, costing the plan \$30,000 in avoidable brand drug spend, the maximum recovery is \$450. This isn't a guarantee — it's a token obligation that creates no meaningful alignment.
- 3** Measurement games compound the problem. PBMs define GDR using their own formulary claims system, which allows them to exclude specialty claims, adjust for mail order fills, and average across different member populations in ways that inflate the measured GDR above what the plan actually experiences. Without independent data verification rights and a contractually defined measurement methodology, every guarantee metric can be manipulated.

\$ DOLLAR IMPACT — HOW THIS COSTS YOUR PLAN

For a 500-member plan on a traditional PBM model, a GDR guarantee miss of 3 percentage points (e.g., 82% actual vs. 85% guaranteed) represents approximately \$27,000–\$54,000 in avoidable brand drug overpayment.

Claims processing accuracy misses add \$5,000–\$15,000/year in overpayment errors. A performance reconciliation structure with 10–15% of total PBM compensation at risk — vs. the typical 2–5% — creates \$12,000–

59,824

\$25,000/year in additional recoverable value for the plan. Annual retroactive reconciliation vs. quarterly measurement with cure periods represents an average of \$8,000–\$20,000/year in deferred recovery.

► **RED-FLAG LANGUAGE TO LOOK FOR IN YOUR CONTRACT**

"Total performance guarantee at-risk amount shall not exceed 2% of annual administrative fees"

"Performance guarantee calculations are based on PBM's internal claims data and measurement methodology"

"PBM shall have a 90-day cure period to remediate any performance guarantee breach before financial penalties apply"

"Performance guarantees are the Plan's sole and exclusive remedy for PBM service failures"

○ **REQUIRED FIX — ADD THIS LANGUAGE TO THE CONTRACT**

Add: "Performance guarantees shall include a minimum generic dispensing rate (GDR) of 87%, formulary compliance rate of 92%, claims processing accuracy of 99.5%, and member satisfaction score of 85 or above, each measured quarterly based on independently verifiable data. No less than 12% of total annual PBM compensation shall be at risk across all performance guarantees. No cure period shall exceed 30 days. PBM shall provide Plan with quarterly performance reconciliation with retroactive financial adjustments for any guarantee miss, without Plan request."

⊗ **Claims processing accuracy guarantee**

AI ANALYSIS — WHAT WAS FOUND IN THIS CONTRACT

Contract provides no guarantees for claims accuracy or remedies in the event of errors.

⚠ HOW PBMS EXPLOIT THIS GAP

- 1** Performance guarantee structures in PBM contracts are masterworks of apparent accountability with real-world unenforceability. The typical contract offers guarantees on generic dispensing rate (GDR), formulary compliance, claim processing accuracy, and member satisfaction — all of which sound meaningful and measurable. The exploitation is in the structure: guarantees are self-reported by the PBM using its own data systems, measurement methodology is defined by the PBM, cure periods allow the PBM to 'fix' performance after a breach is identified, and the total at-risk dollar amount is a fraction of actual PBM compensation.
- 2** The most common structural problem is at-risk dollar caps. A PBM charging \$2.50 PMPM administrative fee to a 500-member plan earns \$15,000/year in administrative revenue. A performance guarantee with 3% at-risk = \$450. When the GDR misses the target for six months, costing the plan \$30,000 in avoidable brand drug spend, the maximum recovery is \$450. This isn't a guarantee — it's a token obligation that creates no meaningful alignment.
- 3** Measurement games compound the problem. PBMs define GDR using their own formulary claims system, which allows them to exclude specialty claims, adjust for mail order fills, and average across different member populations in ways that inflate the measured GDR above what the plan actually experiences. Without independent data verification rights and a contractually defined measurement methodology, every guarantee metric can be manipulated.

\$ DOLLAR IMPACT — HOW THIS COSTS YOUR PLAN

For a 500-member plan on a traditional PBM model, a GDR guarantee miss of 3 percentage points (e.g., 82% actual vs. 85% guaranteed) represents approximately \$27,000–\$54,000 in avoidable brand drug overpayment.

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🔒 **REQUIRED FIX — ADD THIS LANGUAGE TO THE CONTRACT**

Add: "Performance guarantees shall include a minimum generic dispensing rate (GDR) of 87%, formulary compliance rate of 92%, claims processing accuracy of 99.5%, and member satisfaction score of 85 or above, each measured quarterly based on independently verifiable data. No less than 12% of total annual PBM compensation shall be at risk across all performance guarantees. No cure period shall exceed 30 days. PBM shall provide Plan with quarterly performance reconciliation with retroactive financial adjustments for any guarantee miss, without Plan request."

🕒 **MET (1)**

🕒 Annual performance reconciliation with retroactive adjustments

"Capital Rx shall provide a reconciliation of the aggregate savings achieved and aggregate fees paid..."

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📌 **GAP SUMMARY**

Performance measurement lacks key financial penalties and guarantees.

 RECOMMENDED CONTRACT LANGUAGE

"PBM shall guarantee a minimum GDR of 85% and provide financial penalties for SLA failures in claims accuracy, timeliness, or member satisfaction."

 NEGOTIATION TALKING POINT

"Enforcing performance guarantees ensures quality service delivery and alignment with plan goals."

SECTION 9

Negotiation Playbook

The following is a consolidated negotiation roadmap, ordered by financial impact. Use this as your primary action document in PBM renegotiation meetings. Each item includes a talking point and the estimated financial value of resolution.

#1 Provision 2: Pass-Through Pharmacy Costs

FAIR \$758K

→ "This ensures transparency in pharmacy cost management and prevents overpayments."

Gap: Unaddressed transparency in ingredient cost pass-through and MAC pricing practices.

#2 Provision 3: Rebate & Manufacturer Revenue

CONCERN \$510K

→ "Rebate transparency ensures the plan captures cost offsets consistent with fiduciary objectives and CAA 2026."

Gap: Rebate transparency and pass-through terms are inadequate.

#3 Provision 1: Fiduciary Loyalty Commitment

RED FLAG \$174K

→ "Ensuring the PBM is held to fiduciary standards protects plan participants and ensures alignment with CAA 2026."

Gap: PBM does not acknowledge fiduciary duties or obligations in the contract.

#4 Provision 13: Performance Guarantees & Remedies

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CONCERN \$160K

→ "Enforcing performance guarantees ensures quality service delivery and alignment with plan goals."

Gap: Performance measurement lacks key financial penalties and guarantees.

#5 Provision 4: Data Ownership & Access

GOOD

\$46K

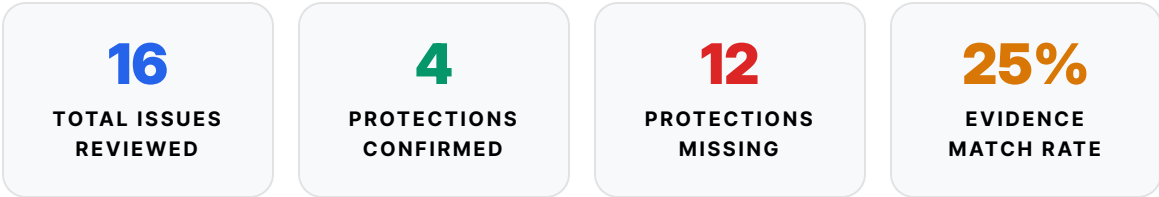
→ "Restricting PBM commercial data usage protects sensitive plan and member information."

Gap: PBM's commercial use of plan data remains unaddressed.

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Contract Evidence Register

Every issue evaluated during the AI contract review is listed below with its verbatim evidence — the exact language found in your contract (or a notation when no matching language was located). This register constitutes the primary audit trail for all scores in this report.



1

Fiduciary Loyalty Commitment

0 of 4 requirements confirmed · Score: 1.5/10

× 4 MISSING

Red Flag

01

× MISSING

PBM explicitly accepting fiduciary status*No matching language identified in contract text.***AI ANALYSIS**

PBM must explicitly accept fiduciary status as aligned with ERISA standards.

02

× MISSING

Disclosure of conflicts of interest*No matching language identified in contract text.***AI ANALYSIS**

Contract does not address the disclosure of all PBM conflicts of interest.

03

× MISSING

PBM commitment to act solely in the interest of plan participants*No matching language identified in contract text.***AI ANALYSIS**

No provision ensuring PBM's loyalty to plan participants' interests.

04

× MISSING

Annual fiduciary compliance certification*No matching language identified in contract text.***AI ANALYSIS**

No mechanism for certifying fiduciary compliance annually.

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2

Pass-Through Pharmacy Costs

1 of 3 requirements confirmed · Score: 5.5/10

✓ 1 FOUND

✗ 2 MISSING

Fair

01

✗ MISSING

Pass-through ingredient costs at actual network rates*No matching language identified in contract text.***AI ANALYSIS**

No explicit provision regarding the actual pass-through of ingredient costs.

02

✗ MISSING

MAC pricing list transparency*No matching language identified in contract text.***AI ANALYSIS**

The contract does not ensure MAC price transparency or appeal rights.

03

✓ FOUND

Network reimbursement rates available upon request**CONTRACT LANGUAGE CONFIRMING THIS PROTECTION***"Capital Rx agrees to provide Claims and related data to Consultant."*

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3

Rebate & Manufacturer Revenue

0 of 3 requirements confirmed · Score: 4.0/10

× 3 MISSING

Concern

01

× MISSING

100% of rebates passed through to the plan

No matching language identified in contract text.

AI ANALYSIS

Contract does not confirm that all rebates are passed to the plan.

02

× MISSING

Rebate reporting for auditing

No matching language identified in contract text.

AI ANALYSIS

No specific language on detailed reporting for rebate audits.

03

× MISSING

Rebate pass-through timeline

No matching language identified in contract text.

AI ANALYSIS

Rebate remittance timeline is not specified to be quarterly or more frequent.

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4

Data Ownership & Access

2 of 3 requirements confirmed · Score: 6.0/10

✓ 2 FOUND

✗ 1 MISSING

Good

01

✓ FOUND

Plan ownership of claims, utilization, and member data

CONTRACT LANGUAGE CONFIRMING THIS PROTECTION

"Sponsor hereby authorizes Capital Rx to provide Claims and related data to Consultant."

02

✓ FOUND

Data portability and transfer rights

CONTRACT LANGUAGE CONFIRMING THIS PROTECTION

"Sponsor shall notify Capital Rx, in writing, at least ten (10) days prior to any changes between Sponsor and Consultant."

03

✗ MISSING

Commercial use restrictions for plan data

No matching language identified in contract text.

AI ANALYSIS

Contract does not explicitly restrict PBM from monetizing plan data.

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Performance Guarantees &

13

Remedies

1 of 3 requirements confirmed · Score:
4.0/10

✓ 1 FOUND

✗ 2 MISSING

Concern

01

✗ MISSING

Generic dispensing rate guarantee with financial penalty

No matching language identified in contract text.

AI ANALYSIS

No specified GDR guarantees or financial remedies.

02

✗ MISSING

Claims processing accuracy guarantee

No matching language identified in contract text.

AI ANALYSIS

Contract provides no guarantees for claims accuracy or remedies in the event of errors.

03

✓ FOUND

Annual performance reconciliation with retroactive adjustments

CONTRACT LANGUAGE CONFIRMING THIS PROTECTION

"Capital Rx shall provide a reconciliation of the aggregate savings achieved and aggregate fees paid..."

Evidence Register Notes: All quotes above are extracted verbatim from the submitted contract document by AI analysis. "Found" means the AI identified language that satisfies the protection criterion. "Missing" means no sufficient language was located. This register should be reviewed by qualified ERISA counsel to confirm AI extraction accuracy before relying on it for legal or fiduciary decisions.

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Score Calculation Sheet

A complete audit of every issue match and weighted score calculation. This sheet shows exactly how each provision score was derived from individual issues, and how the overall contract score was computed from the weighted provision scores.

SCORING FORMULA

Provision Score (0-10)

$$\text{score} = (\text{issues_found} / \text{total_issues}) \times 10$$

Overall Contract Score (0-100)

$$\text{overall} = \Sigma(\text{provision_score} \times \text{weight}) / \Sigma(\text{weights}) \times 10$$

CAA 2026 priority weights assign higher importance to fiduciary alignment (Provision 1), spread pricing (Provision 2), and rebate pass-through (Provision 3) — reflecting the regulatory emphasis of the Consolidated Appropriations Act.

PROVISION SCORE SUMMARY

#	PROVISION	MET	TOTAL	SCORE	RATING	WEIGHT	EST. \$
1	Fiduciary Loyalty Commitment	0	4	1.5/10	Red Flag	10%	\$
2	Pass-Through Pharmacy Costs	1	3	5.5/10	Fair	12%	\$75
3	Rebate & Manufacturer Revenue	0	3	4.0/10	Concern	12%	\$
4	Data Ownership & Access	2	3	6.0/10	Good	7%	\$4
13	Performance Guarantees & Remedies	1	3	4.0/10	Concern	59,824%	\$

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OVERALL 4

16

43_{/100}

45%

\$1.6

FULL ISSUE MATCH LOG — ALL 16 ISSUES

Every issue evaluated in the AI analysis, showing the exact match result (✓ found / ✗ missing), the contribution to the provision score, and the score formula for each provision.

1	Fiduciary Loyalty Commitment	$(0/4) \times 10 = 0$
01	✗ PBM explicitly accepting fiduciary status	+0.00
02	✗ Disclosure of conflicts of interest	+0.00
03	✗ PBM commitment to act solely in the interest of plan participants	+0.00
04	✗ Annual fiduciary compliance certification	+0.00
2	Pass-Through Pharmacy Costs	$(1/3) \times 10 = 3.3$
01	✗ Pass-through ingredient costs at actual network rates	+0.00
02	✗ MAC pricing list transparency	+0.00
03	✓ Network reimbursement rates available upon request	+3.33
3	Rebate & Manufacturer Revenue	$(0/3) \times 10 = 0$
01	✗ 100% of rebates passed through to the plan	+0.00
02	✗ Rebate reporting for auditing	+0.00
03	✗ Rebate pass-through timeline	+0.00
4	Data Ownership & Access	$(2/3) \times 10 = 6.7$
01	✓ Plan ownership of claims, utilization, and member data	+3.33
02	✓ Data portability and transfer rights	+3.33
03	✗ Commercial use restrictions for plan data	+0.00
13	Performance Guarantees & Remedies	$(1/3) \times 10 = 3.3$ △ 59,824
01	✗ Generic dispensing rate guarantee with financial penalty	+0.00
02	✗ Claims processing accuracy guarantee	+0.00

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03



Annual performance reconciliation with retroactive adjustments

+3.33

OVERALL SCORE DERIVATION

$$(1.5 \times 10) + (5.5 \times 12) + (4.0 \times 12) + (6.0 \times 7) + (4.0 \times 4)$$

$$45 \text{ (total weight)} \times 10 = 42$$

43

OUT OF 100

△ 59,824

Methodology & Disclaimer

Scoring Framework

Each of the 13 provisions is evaluated against 4–6 specific issues (65 total). Each issue is scored as found (1) or not found (0). The provision score (0–10) is the weighted sum of issues met. The overall score (0–100) is the weighted average of all provision scores, adjusted for CAA 2026 priority weighting. 4 of 16 issues were found in this contract.

CAA 2026 Alignment

This framework is aligned with the Consolidated Appropriations Act of 2021, 2022, and 2026, which established PBM transparency requirements, fiduciary obligations, and pass-through pricing standards for self-funded group health plans. Provisions are weighted by their relevance to the CAA's core requirements.

Savings Methodology

Estimated savings are calculated using industry-standard ranges for each provision type, scaled by the provision score deficit (gap from a perfect score of 10). Ranges are derived from published studies, DOL enforcement actions, and actuarial analyses of PBM contract audits. Estimates assume full implementation of all recommended language.

AI Analysis

Contract text was analyzed using an AI language model trained on PBM contract standards, ERISA fiduciary requirements, and CAA 2026 compliance frameworks. The AI extracts relevant contract language, identifies gaps against each issue criterion, and scores each provision. Results are subject to the limitations of AI document analysis.

IMPORTANT DISCLAIMER

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This report is for informational purposes only and does not constitute legal advice. Savings estimates are projections based on industry data and should not be relied

upon as guarantees of actual savings. Plan fiduciaries should consult qualified ERISA counsel before making contractual decisions based on this analysis. Kincaid IQ and Kincaid RMC make no representation as to the legal enforceability of any model contract language provided herein. This analysis is based solely on the contract text submitted — oral representations, side agreements, and business practices are not evaluated. Scores reflect the analysis of AI systems and should be verified by qualified legal and actuarial professionals.



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Fiduciary-Grade PBM Contract Intelligence · CAA 2026 Aligned

April 15, 2026

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