

Pharmacy Benefit Managers

And the need for fair and reasonable standards over the practice of auditing pharmacies

SB 175

Establishes Procedures & Guidelines for the Auditing of Pharmacy Records & Requires Timely, Price Updates of Pricing Changes & an Appeals Process



PBM 101 – What's a PBM?

- PBMs are multi-billion dollar middlemen.
- Started in 1970 as claims processors and have since become intertwined in almost every aspect of the pharmaceutical/pharmacy supply chain.
- Virtually unregulated at either the state or federal levels – including in Alaska.
- Today, the top PBMs represent some of the largest companies in the nation.

PBM 101 – cont.

Examples of PBM's Market Power/Influence

- **CVS/Caremark (AK State Plan Pharmacy Benefit Manager)**
 1. 12th largest US company as identified by Fortune
 2. 2013 Revenue: \$127 billion
 3. CEO Compensation: \$20 million
- **Express Scripts (ESI)**
 1. ESI generated \$94 billion in revenue last year
 2. ESI's profits have grown from \$250 million a decade ago to \$1.8 billion
 3. ESI CEO Compensation: \$12.8 million and \$22 = million in stock
- **ESI, CVS Caremark, and OptumRX control 70% + / - of all US scripts**

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PBM 101- cont.

PBMs are designed to:

- reduce administrative costs for insurers,
- validate patient eligibility,
- administer plan benefits and,
- negotiate costs between pharmacies and health plans,
- audit pharmacies for fraud.

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PBM 101 – cont. PBM's Impact on Pharmacy & Patients

- PBMs develop pharmacy provider networks.
- Pharmacies must accept a PBM contract – Contracts are truly “take it or leave it.”
- PBM's influence what drugs are ultimately dispensed regardless of what a physician prescribes (a list of approved drugs known as formularies).
- PBMs collect money from drug manufacturers for putting their drugs on a given formulary (rebates).
- PBMs restrict pharmacies on how many pills they can dispense at a given time based on plan design.

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PBM 101 – cont. PBM's Impact on Pharmacy & Patients

- PBMs dictate how much pharmacies will be paid for the drugs they dispense regardless of the pharmacies' acquisition costs.
- PBMs have free reign to dictate what pharmacies are permitted to do in a given network thereby driving patients to particular pharmacy options.
- PBMs operate their own mail-order pharmacies and can incentivize or mandate that beneficiaries obtain their medications only through the mail-order option.
- PBMs audit pharmacies and in most cases there are no defined rules or regulations over what can be considered a recoupable offense.

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How It Works

Step
1

Insurer hires PBM to manage drug costs.

PBM acts as go-between for both insurers/manufacturers and insurers/pharmacies

Step
2

PBM negotiates prices with manufacturers
Manufacturers agree to prices and pay rebates to PBM for preferred placement on insurer's formulary
PBM splits rebate between self and insurer

Step
3

Pharmacy negotiates costs with manufacturers/wholesalers **(how much pharmacies will have to pay to get the drugs)**

Step
4

PBM negotiates insurer reimbursement for drugs and dispensing fees with pharmacies **(how much pharmacies will earn for dispensing the drugs)**

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SB 175 – What Does a Fair Audit Bill Do?

- Brings fairness to the unregulated and expanding practice of pharmacy audits.
- Does not allow audits during the first seven calendar days of each month because of the high patient volume, unless the pharmacy and auditor agree otherwise.
- Is designed to prevent the targeting of minor clerical or administrative errors where no true fraud, patient harm, or financial loss has occurred.
- Establishes submission of data/medical record standards to allow for clarification where discrepancies are identified.
- Establishes a reasonable time frame for the announcement of an audit to allow proper retrieval of records under review.

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SB 175 - What Does a Fair Audit Bill Do? – cont.

- Establishes an audit appeals process for pharmacies.
- Establishes guidelines for PBMs (Pharmacy Benefit Managers) to follow regarding patient confidentiality.
- Extrapolation cannot be used in assessing fees/penalties.
- Alaska pharmacists would not be penalized for providing mail-order service to their customers. Local mail-order service keeps Alaska dollars in Alaska.
- Legislation does not prevent the recoupment of funds where fraud, waste, and abuse exist.

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SB 175 - What Does a Fair Audit Bill Do? – cont.

- 33 states have already enacted fair audit legislation.
- 24 states have already enacted Maximum Allowable Cost (MAC) transparency legislation.

Bill will also include:

- Registration of PBMs with the State of Alaska Division of Insurance.
- Set-up guidelines for generic drug maximum allowable cost (MAC) pricing by PBMs.
- Establish a mechanism for pharmacy to appeal MAC pricing.
- **Bottom-line: Don't audit local pharmacists out of a job-keep these jobs in Alaska.**

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Alaska Example 1

- “In August 2012- two auditors arrived at our store and I spent the entire day answering their questions, pulling files, and finding documentation.
- They were not very knowledgeable in pharmacy practices so it took quite a long time.
- I was told we would be receiving a final report in a few weeks.
- The report arrived and I was very pleased when I read the first few pages. Out of over **\$103,000 in claims reviewed** - we had **only \$89 in errors** according to the auditors.”

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Alaska Example 1 – cont.

- “However, when I got to the last page – using the “one-sided confidence extrapolation method” (PBM’s name for this) - they said **I owed over \$7,300!**
- I called the auditors to no avail. I hired a lawyer to help in disputing this claim. Most companies only use extrapolation when the error rate is over 5%. Ours was less than 0.1%!
- Being told to repay over \$7,300 is just not right!”

Tom Hodel – former owner, Soldotna Professional Pharmacy

After years of frustration and no relief, Tom sold his pharmacy to an outside company

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Alaska Example 2

- “This past summer we receive a large desk audit from a PBM which generated over 100 pages of documentation.
- Our two choices from the PBM for material transmission was either unsecured email or Fax. Naturally, we chose Fax.
- Our fax machine will only hold/send 50 Faxes at a time, so we had to send two separate Faxes which were so noted on cover letters and also in an email to the auditor.
- Imagine our surprise when we received our audit results which showed we didn’t include half the claim’s documentation.”

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Alaska Example 2 – cont.

- “When we contacted the auditor she claimed they never received the second Fax (even though we had confirmation that the Fax went thru!).
- They eventually allowed us to resend Fax, but only allowed a five day period on the final audit findings for appeal.
- This included a \$400 claim for an RX that wasn’t even present in the original list of audited prescriptions claims that were sent to us.
- The auditor claimed that they randomly select claims to send to prescribers to verify. In this case, we checked with the prescriber’s office and they had no documentation asking to verify the prescription.”

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Alaska Example 2 – cont.

- “We received the final audit findings document from the PBM on a Thursday afternoon and were told any additional documentation needed to reach their office in the Midwest by the following Tuesday via USPS MAIL.
- This gave us less than 24 hours to get our documents (and the letter from prescriber mentioned above) in the mail so it would reach them in time.
- We do not believe that was a fair submission turn-around time and quite frankly it was a miracle we were able to make the deadline.”

Barry Christensen, RPH – Island Pharmacy (Family own business for 40 years) – Ketchikan, Ak

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Maximum Allowable Cost (MAC) - 101

What is MAC?

- A “maximum allowable cost” or “MAC” list refers to a payer or PBM-generated list of products that includes the upper limit or maximum amount that a plan will pay for generic drugs and brand-name drugs that have generic versions available (“multi-source brands”).
- Essentially, no two MAC lists are alike and each PBM has free reign to pick and choose products for their MAC lists.

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MAC 101 – cont.

PBM Use of MAC as Revenue Stream:

- Because of this lack of clarity, many PBMs use their MAC lists to generate significant revenue.
- Typically, they utilize an aggressively low MAC price list to reimburse their contracted pharmacies and a different, higher list of prices when they sell to their clients or plan sponsors.
- Essentially, the PBMs reimburse low and charge high with their MAC price lists, pocketing the significant spread between the two prices.
- ***Most plan sponsors are unaware that multiple MAC lists are being used and have no real concept of how much revenue the PBM retains.***

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MAC 101 - cont.

- When the PBMs fail to update MAC lists in a timely manner, pharmacies are forced to dispense at a loss, sometimes as high as \$100 or more, or not dispense at all.
- When prices increase, PBMs often wait weeks or even months before updating MAC lists and rarely, if ever, reimburse pharmacies retroactively, yet the PBMs act swiftly to update MAC cost when drug costs decrease.
- This significantly jeopardizes financial viability of community pharmacies.
- In fact, 84% of pharmacists said the acquisition price spike/lagging reimbursement trend is a **“very significant” impact on their ability to remain in business and to continue serving patients.**

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MAC 101 – cont.

MAC legislation is designed to reasonably address the above concerns by:

- Providing clarity to plan sponsors and pharmacies with/regard to how MAC pricing is determined and updated and establishing an appeals process in which a dispensing provider can contest a listed MAC price.
- Providing standardization for how products are selected for inclusion on a MAC list.
- *In summary, neither plan sponsors nor contracted retail network pharmacies have any transparency into the MAC process.*
- *They are required to blindly agree to contracts.*

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MAC 101- cont.

- Retail pharmacies are not informed how products are added or removed from a MAC list or the methodology that determines how reimbursement is ultimately calculated.
- However, pharmacies must contract with PBMs to provide services and participate in plans without having this critical information.
- **In other words, pharmacies are required to sign contracts not knowing how they will be paid.**
- **It is equivalent to agreeing to the services of a home builder, not knowing how you will be paid or what materials will be utilized in the home's construction.**

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SB 175

What Does A MAC Transparency Bill Do?

A MAC Transparency Bill Does:

- Set reasonable standard on what can be MAC'ed.
- Requires regular reporting of MACs to a pharmacy in a useable format.
- Provides for a defined MAC appeals process.

A MAC Transparency Bill Does Not:

- Mandate that a PBM reimburse a pharmacy at a higher amount.
- Represent an administrative burden on the PBM.
- Mandate that a PBM approve a pharmacy's MAC appeal.
- Result in increased costs to the healthcare system.

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Alaska MAC Example 1

- “During the last 2 weeks of February 2016 we had approximately 150 RX claims (excluding Medicaid claims) for generic drugs that were paid to us below invoice cost by the PBMs.
- These amounted to over \$1,500.
- Under the terms of our contract we are required to submit these claims.
- Yes, we can and do submit pricing appeals, but rarely do we receive a positive result.
- Obviously, any business cannot operate long under a payment system that reimburses below cost.”

Barry Christensen, RPH – Island Pharmacy (Family own business for 40 years) – Ketchikan, Ak

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Alaska MAC Example 2

- “I just sent off 4 MAC appeals to 3 different PBMs -- CVS Caremark, Alaska Medicaid and Med Impact.
- Out of the 39 MAC appeals we have sent off in the last 6 months--with proof showing our invoices and costs we have received only 2 positive rulings.
- We just lost over \$50 dollars on a prescription that we were told is available less expensively--maybe but not thru our wholesaler and not available to us in Sitka.”

Trish & Dirk White, RPH – White's and Harry Race Pharmacies (Family owned business for 31 years) Sitka, Alaska

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ALASKA PHARMACY INFRASTRUCTURE 2016

Alaska Pharmacy Infrastructure 2016

Total Pharmacies	84
Independent Pharmacies	20
Chain Pharmacies	64
Total Community Pharmacists	292
Independent Pharmacists	34
Chain Pharmacists	258
Total Employment	11,053
Independent Employment	381
Chain Employment	10,672

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NATIONAL COMMUNITY PHARMACISTS ASSOCIATION
2012–2015 NCPA State Legislative Update

Community Pharmacy Legislative Victories	
Issue	Number of States
MAC Transparency	24
Fair and Uniform Pharmacy Audits	33
Anti-Mandatory Mail Order	8 (PA, NY, HI, TX, CT, AR, MD, LA—Medicaid and state employees only)
Registration/Licensure/Reporting	17
Medication Synchronization	12
Contact If you wish to discuss community pharmacies legislative efforts in a particular state, please contact NCPA State Government Affairs at Matt.Diloreto@ncpanet.org or 703.600.1223.	

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Thank you!

PLEASE SUPPORT SB 175

Questions?

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