

Pharmacy Benefit Managers

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

HB 240 and SB 38

***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 most profitable companies in the nation

PBM 101 – cont.

Examples of PBM's Market Power/Influence

CVS/Caremark (AK State Plan Pharmacy Benefit Manager)

- 2017 - 7th most profitable U.S. company as identified by Fortune 500
- 2017 Revenue: \$177.5 Billion

Express Scripts Holding

- ESH generated \$100 billion in revenue in 2017 – Number 22 ranking
- 2017 Revenue - \$100.3 Billion

State of Alaska Health Care Plan



AK State Plan Pharmacy Benefit Manager - CVS/Caremark

PBM 101- cont.

PBMs are designed to:

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

PBM's Impact on Pharmacy & Patients

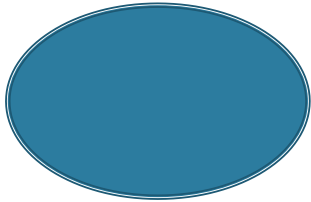
- PBMs develop pharmacy provider networks.
- Pharmacies must accept a PBM contract.
- Contracts truly are **“take it or leave it.”**
- PBMs influence what drugs are ultimately dispensed regardless of what a physician prescribes (a list of approved drugs known as formularies).
- PBMs collect money from 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.

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.

PAYER



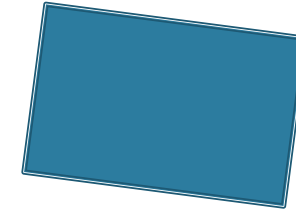
The Payer pays
\$100
to the PBM

PBM



The PBM pays \$50 to Pharmacy to dispense the drug, via their contract.
The remaining \$50 stays with the PBM as its profit.
This is known as *the spread*.

PHARMACY



Pharmacy pays \$60
for the drug, owing
\$10 out of pocket

The Payer

(insurer, corporation, plan, trust, union,
self-insurer, etc.)

contracts with the PBM
to manage their
pharmacy services and
prescriptions.

The PBM

contracts with a network of pharmacies to provide
services, dispense medications.

(on a per-member/ per-month basis; or bills the payer as services are
provided)

Contracts are “**take it or leave it**” contracts.

In other words, if a pharmacy doesn’t like the terms of the contract
and doesn’t sign on to be a part of the network, they know that by
not signing, it could negatively impact other contracts, negatively
affect their customers and ultimately lose business.

By not signing the contract, the pharmacy cannot bill the
PBM/insurer for the patient’s prescription - likely resulting in losing
patient and his/her future business.

*PBMs suggest that SB 38 /HB240
would cause an increase in costs to
the Payers, when in fact the Payer
has paid more for the actual cost of
the drug to begin with, due to the
kickbacks/rebates the PBM receives
from the pharmaceutical companies
when they negotiate their drug prices
with them.*

*The actual effect would be a lowering of
PBM’s profit margin.*

HB240/SB 38 – 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 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

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
- Prohibits Extrapolation 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.

What Does a Fair Audit Bill Do? – cont.

- 37 states have enacted fair audit legislation
- 32 states have 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 a pharmacy to appeal MAC pricing

Bottom-line: Don't audit local pharmacists out of business.

Keep these jobs in Alaska.

Map of the United States showing states that have passed legislation regarding PBM Audit Practices. States with red borders (PA, AK) indicate legislation passed. States with blue borders (ID, NV, AZ, HI, PR) indicate legislation not passed. Most other states are green.

Legend:

- Red border: Legislation passed regarding PBM Audit Practices
- Blue border: Legislation not passed regarding PBM Audit Practices

States with red borders: PA, AK.

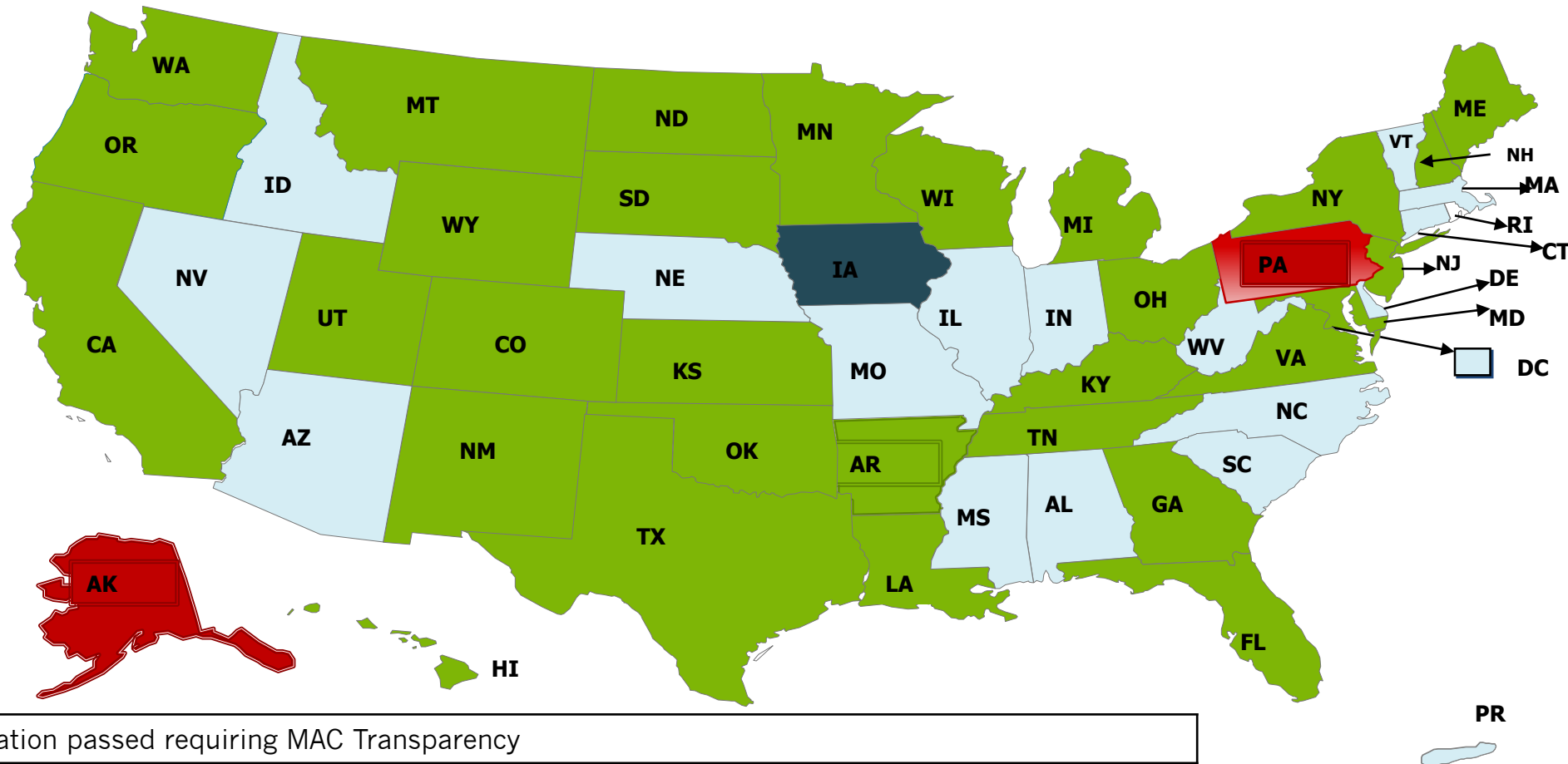
States with blue borders: ID, NV, AZ, HI, PR.

States with green borders: WA, OR, MT, ND, MN, WI, MI, NY, VT, NH, ME, MA, RI, CT, NJ, DE, MD, VA, WV, OH, IN, IL, IA, MO, KS, NE, WY, UT, CO, NM, OK, TX, AR, MS, AL, GA, SC, NC, TN, KY, WV, VA, NC, SC, GA, FL, LA, TX, NM, CO, UT, AZ, NV, ID, WA, OR, MT, ND, MN, WI, MI, NY, VT, NH, ME, MA, RI, CT, NJ, DE, MD, VA, WV, OH, IN, IL, IA, MO, KS, NE, WY, UT, CO, NM, OK, TX, AR, MS, AL, GA, SC, NC, TN, KY, WV, VA, NC, SC, GA, FL, LA.

36	Legislation passed regarding PBM Audit Practices
2	Legislation introduced - still in session
14	No legislation

Last Updated – March 2017

Maximum Allowable Cost (MAC) Legislation



32	Legislation passed requiring MAC Transparency
1	Legislation passed, litigation ongoing
2	Legislation introduced – state is still in session or awaiting Governor’s signature
19	No legislation passed

Last Updated - March 2017



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.”

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

Alaska Example 2

- “This past summer we received 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 pages 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.”

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 through!).
- They eventually allowed us to resend it, but only allowed a five-day period on the final audit findings for an 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.”

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 the 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-owned business for 41 years) – Ketchikan, Alaska

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.
- A **Formulary** is a list of drugs that are covered for a particular insurance plan. Generally it has no pricing attached to it. However, some drugs are chosen based on the cost of the medication. A formulary will usually contain both Brand and Generic Drugs.
- A **MAC list (Maximum Allowable Cost)** is a listing of specific prices for each **generically** available drug. Usually a specific insurance plan has a specific MAC listing issued by the PBM. However, a PBM may have several different MAC lists depending on the plan (i.e. one plan may have a different MAC list even though they utilize the same PBM).

MAC 101 – cont.

PBM Use of MAC as Revenue Stream:

- Because of this lack of clarity, PBMs can 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.**

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.
- (The MAC lists can be updated daily – usually decreased- so real time prices are often obsolete and less than what the pharmacist expected)
- 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.**

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 updates and established 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.

The MAC process provides no transparency for plan sponsors or contracted retail network pharmacies.

They are required to blindly agree to contracts.

MAC 101- cont.

- Retail pharmacies are not informed about 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.

SB 38: What Does A MAC Transparency Bill Do?

A MAC Transparency Bill:

- Sets reasonable standards 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

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 41 years) – Ketchikan, AK**

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 cost, 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 32 years) Sitka, Alaska

Thank you!

PLEASE SUPPORT HB 240/SB 38

Questions?