

Pharmacy Benefit Managers

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

SB 38

***Establishes Procedures & Guidelines
for the Auditing of Pharmacy Records***

***Requires Timely, Price Updates of
Pricing Changes
&
an Appeals Process***



SB 38 is a

- **consumer protection bill**

shines a light on PBM opaque auditing and MAC pricing practices to help drive prescription costs down

- **small-business protection bill**

components of this bill helps ensure viability of critical small-town Alaska pharmacies and access to health care

What's a PBM?

- PBMs are multi-billion dollar middlemen
- Started in 1970 as claims processors, now intertwined in almost every aspect of the pharmaceutical/pharmacy supply chain
- Virtually unregulated, state or federal level
- Today, the top PBMs represent some of the most profitable companies in the nation

Examples of PBM's Market Power/Influence

CVS/Caremark (AK State Plan Pharmacy Benefit Manager)

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

Express Scripts Holding

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

State of Alaska Health Care Plan



AK State Plan Pharmacy Benefit Manager - CVS/Caremark

PBMs were designed to:

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

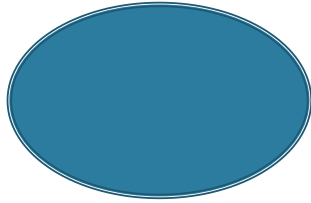
PBM's Impact on Pharmacy & Patients

- PBMs develop pharmacy provider networks with contracts
- Pharmacies must accept a PBM contract
- Many contracts truly are **“take it or leave it.”**
If they don't sign it, they lose all the customers covered by that plan
- PBMs influence what drugs are dispensed regardless of what a physician prescribes by using a list of PBM-approved drugs known as “formularies”
- PBMs receive rebates from drug manufacturers for putting their drugs on a given formulary

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 customers obtain their medications only through the mail-order option

PAYER



The Payer pays \$100 to the PBM, the amount agreed upon in their contractual plan.

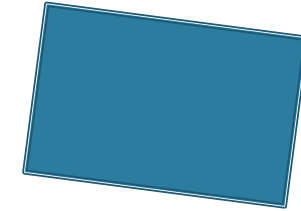
PBM



The PBM negotiates the \$100 price for the drug with the pharmaceutical company, and receives a rebate of \$50 for the drug. The PBM then pays \$50 to Pharmacy to dispense the drug, via their contract with the pharmacy.

The remaining \$50 stays with the PBM as its profit. This is known as *the spread*.

PHARMACY



Pharmacy buys its drugs from a drug wholesaler at best price they can find, pays \$60 for the drug. PBM only pays them \$50, and then the pharmacy loses \$10 on that prescription.

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.

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 will 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.

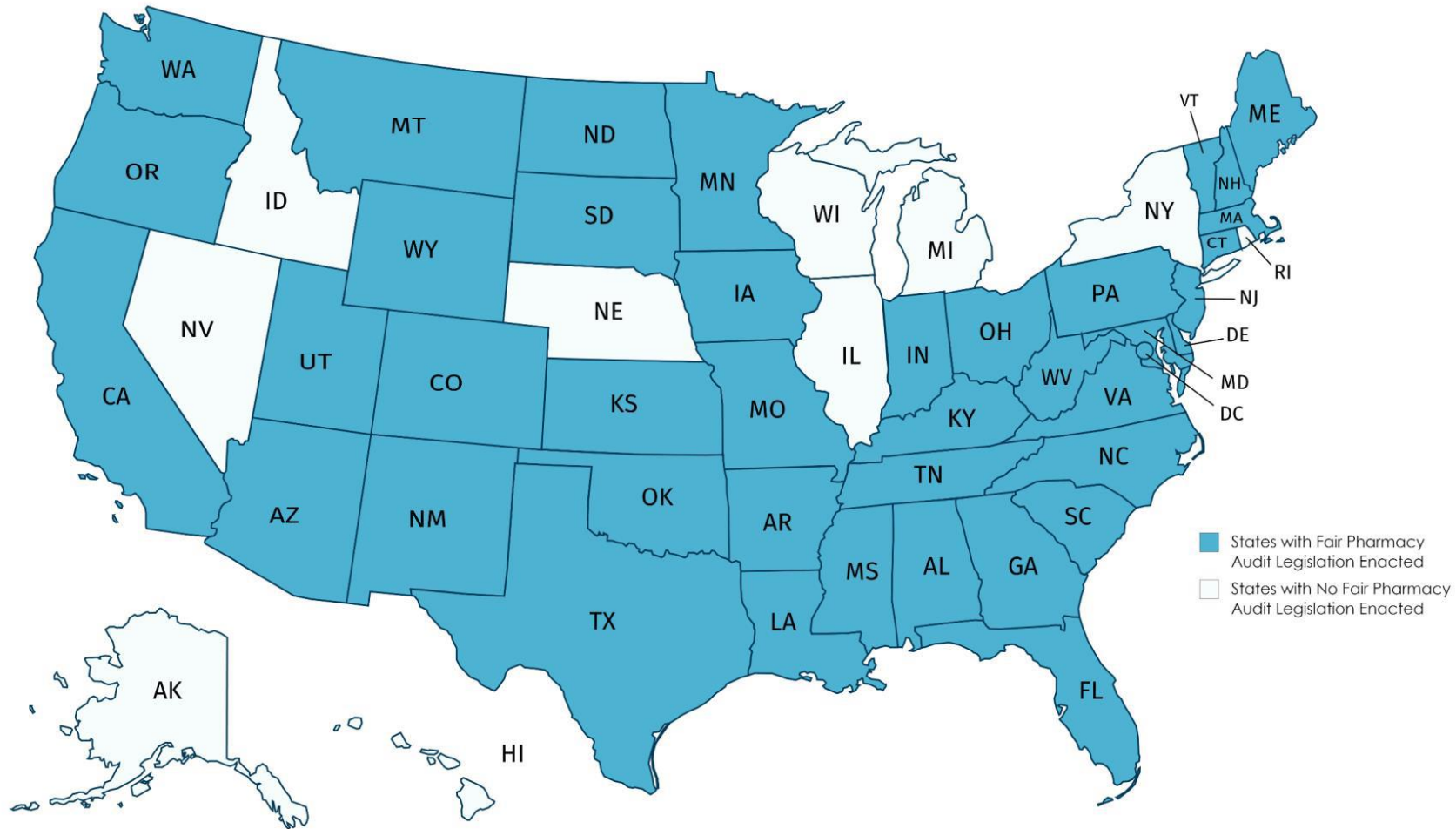
PBMs suggest that SB 38 would cause an increase in costs to the Payers, when in fact the Payer has paid more for the actual cost of the drug to begin with, due to the kickbacks/rebates the PBM receives from the pharmaceutical companies when they negotiate their drug prices with them.

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

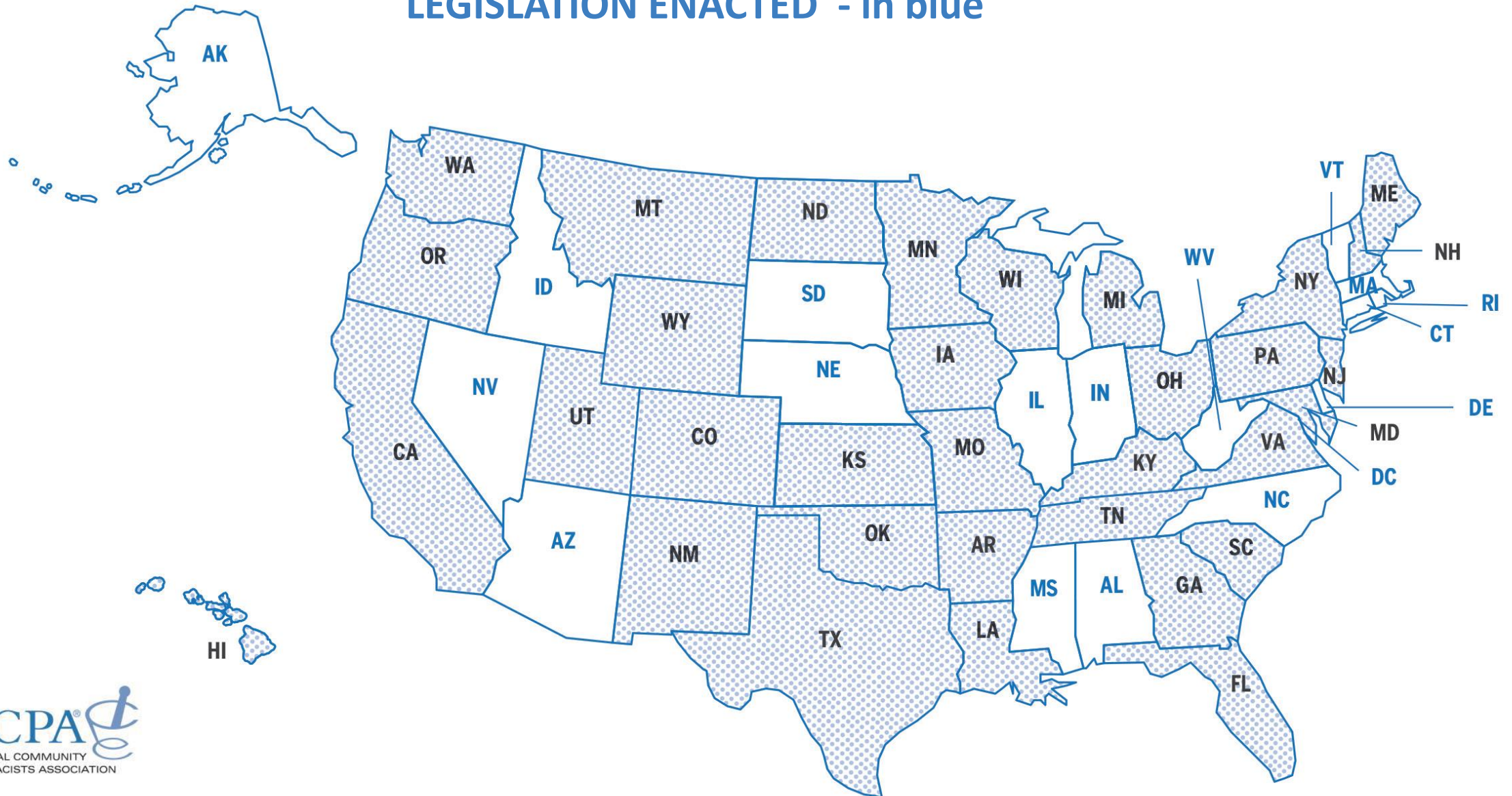
National Academy of State Health Policy:

- **80 pieces of legislation currently introduced in state legislatures across the country to regulate PBM practices. Even the White House is paying attention.**
- **The fair audit provisions of SB 38 are consistent with legislation in other states**
- **The PBM requirements for setting pharmacy drug reimbursement rates, including appeals, are similar to other states**

FAIR PHARMACY AUDIT LEGISLATION IN THE STATES



STATES WITH GENERIC DRUG PRICING TRANSPARENCY LEGISLATION ENACTED - in blue



Maximum Allowable Cost (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”).
 - A PBM may have several different MAC lists, depending on the plan
 - Essentially, no two MAC lists are alike and each PBM has free reign to pick and choose products for their MAC lists.
-
- Sometimes the MAC list is confused with the “formulary.”
 - A **Formulary** is a list of all the drugs that are covered by a particular insurance plan. Generally it has no pricing attached to it. A formulary will usual contain both Brand and Generic Drugs.

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 negotiate prices with 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 Pricing

- When the PBMs fail to update MAC lists in a timely manner, pharmacies are often forced to dispense at a loss, sometimes as high as \$100 or more on a single prescription, or not dispense at all
- (The MAC lists can be updated at any time – 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 list 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 Pricing

MAC legislation is designed to reasonably address concerns by:

- Providing clarity to plan sponsors and pharmacies with/regard to how MAC pricing is determined and updated
- Establishing an appeals process by which a dispensing pharmacist 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 Pricing

- 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?

- Sets reasonable standards
- Requires regular reporting of MACs to a pharmacy in 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

****** *There is no documented evidence or analysis nationally that MAC pricing legislation has increased healthcare costs.***

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
- **Prevents 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?

- Establishes an **audit appeals process** for pharmacies
- Establishes guidelines for PBMs to follow regarding patient confidentiality
- **Prohibits extrapolation** in assessing fees/penalties
- **Allows Alaska pharmacists to provide mail-order service** to their customers without penalization
- Local mail-order service keeps Alaska dollars in Alaska
- Legislation **does not** prevent the recoupment of funds where fraud, waste, and abuse exist

SB 38: Summary

- 40 states have enacted fair audit legislation
- 34 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 appeal denials

**Don't audit local pharmacies out of business.
Their services are crucial in our rural areas.**

This legislation has been the Alaska Pharmacists Association's *#1 Priority bill* for past 10 years.

~ Sponsored by Senator Kim Elton, Senator Dennis Egan, and now, Senator Giessel

In your packets you will see numerous articles. Those are just the tip of the iceberg. Nationally, the opaque “black box” practices of PBMs are now under intense scrutiny.

All one needs to do is Google “Pharmacy Benefit Manager” and you will see countless articles on this emerging concern. NCSL is now tracking these trends.

In a few states now, PBMs have sued states because of their PBM legislation and have lost.

It is even more crucial to support this legislation in Alaska because of the critical service that independent pharmacies provide to its rural clientele.

- Rich Holt – Chair, AK State Board of Pharmacy
- Barry Christensen - AK Pharmacist Association Legislative Chair
- Emily Ricci – Dept. of Administration, Retirement & Benefits
- Lori Wing-Heier – Director, Division of Insurance

Real Examples

- “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.”

“However, when I got to the last page – using the “one-sided confidence extrapolation method” (PBM’s name for this) - they said I owed \$7300 !!!

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

Examples continued

“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.”

“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.”

Examples continued

“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**

MAC Examples

“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-owned business for 41 years) –
Ketchikan, AK

“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