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

Senate Labor and Commerce
March 19, 2018

PBM 101 – What's a PBM?

- PBMs are multi-billion dollar middlemen
- Started in1970 as claims processers, 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 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

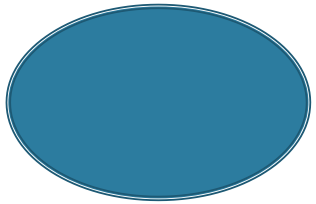
PBM's Impact on Pharmacy & Patients

- PBMs develop pharmacy provider networks
- Pharmacies must accept a PBM contract
- Contracts truly are **"take it or leave it."**
- PBMs influence what drugs are 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
- PBMs audit pharmacies and in most cases there are no defined rules or regulations over what can be considered a recoupable offense.

PAYER



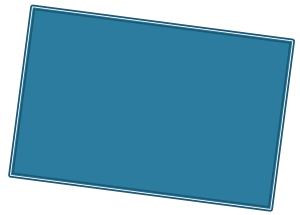
The Payer pays $100 to the PBM, the amount agreed upon in their contractual plan.

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 /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.

~ From Senator Giessel's office and AkPhA 2017

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
- **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? – cont.

- 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

What Does a Fair Audit Bill Do? – cont.

- 41 states have enacted fair audit legislation
- 36 states have enacted Maximum Allowable Cost (MAC) transparency legislation

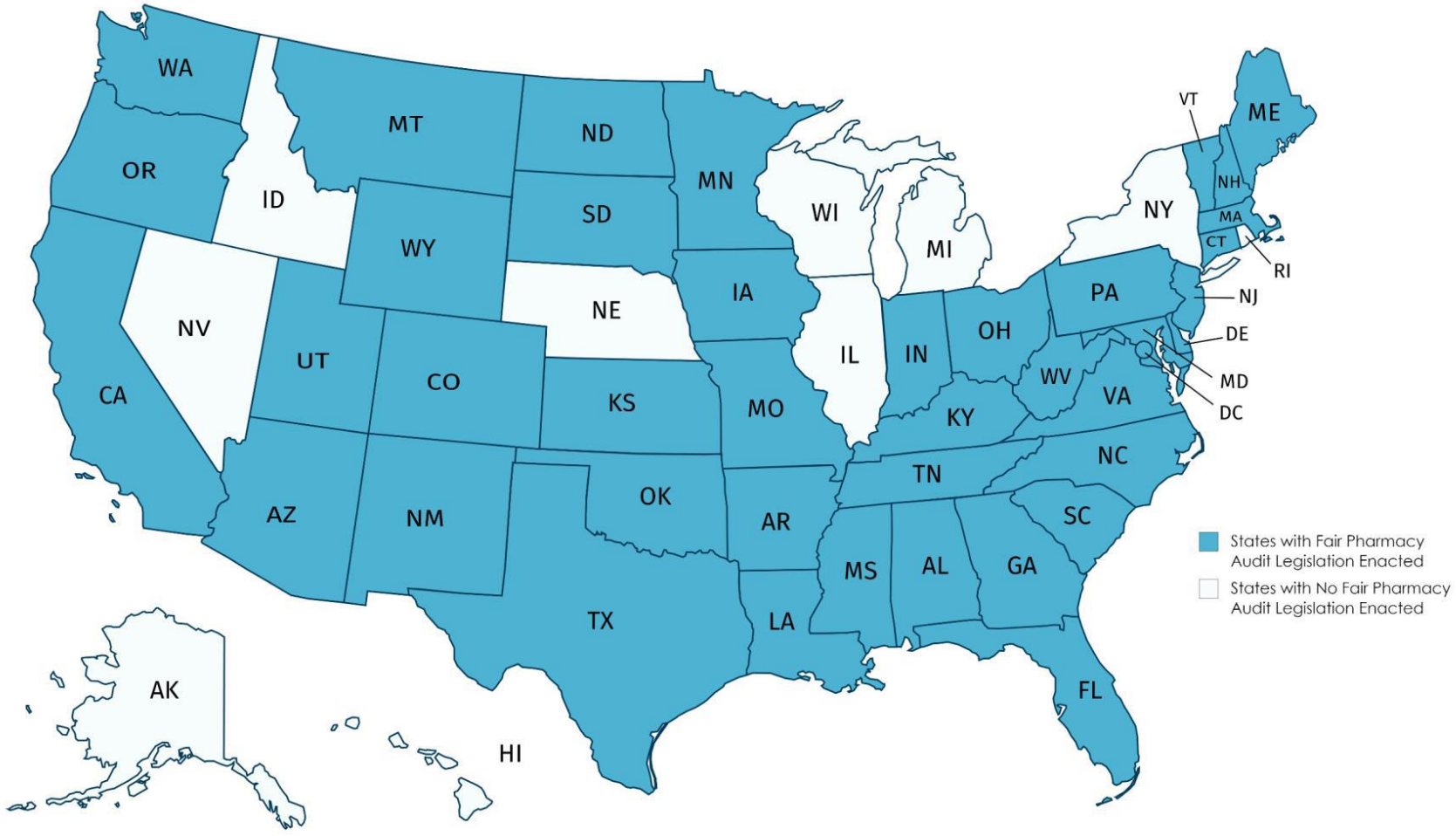
Bill will also include:

- 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

Don't audit local pharmacies out of business.

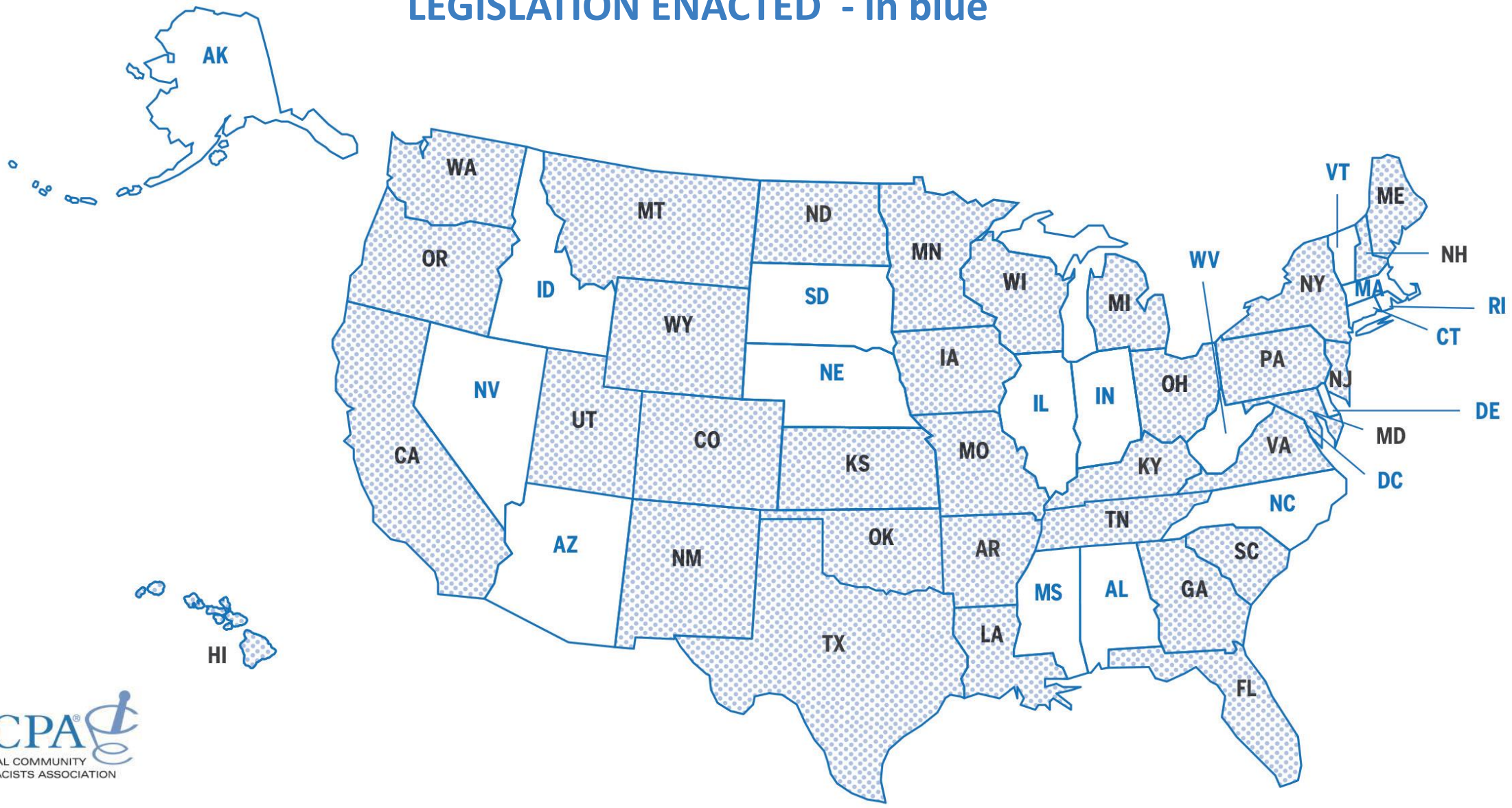
Their services are crucial in rural areas.

FAIR PHARMACY AUDIT LEGISLATION IN THE STATES



NCPA
NATIONAL COMMUNITY PHARMACISTS ASSOCIATION

STATES WITH GENERIC DRUG PRICING TRANSPARENCY LEGISLATION ENACTED - in blue



NCPA
NATIONAL COMMUNITY PHARMACISTS ASSOCIATION

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 $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

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)

- 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 usual 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).

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 101 - cont.

- 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 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
- 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 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 contacts 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.

HB 240/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 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?