



## American Pharmacies' Unequaled Legislative Track Record

Since it started its first advocacy efforts in 2009 in Texas, APRx has passed 20+ pro-pharmacy bills in four states, by far the best record of any state pharmacy advocacy group in the nation.

### TEXAS

**SB 704 by Nelson | Effective 9/1/2009:** Increased transparency in PBM contracts with the state and authorized interagency sharing of contract data; required TDI to conduct a study on how PBMs use prescription drug information to manage therapeutic drug interchanges. The bill also established mail-order price parity in the group insurance plan for state employees; established mail-order guidelines for both ERS and TRS health plans and required those plans to use a pharmacy reimbursement benchmark.



**SB 2423 by Deuell | Effective 9/1/2009:** Amended the Texas Insurance Code to require issuers and operators of pharmacy discount cards to disclose up front to patients if they sell or transfer personal patient information or patient drug history.

**SB 2292 by Hunter | Effective 9/1/2011:** Requires payment of an affirmatively adjudicated electronic pharmacy claim within 18 days; prohibits health plans or PBMs from using extrapolation in pharmacy audits or requiring an extrapolation audit as a condition of joining a provider network.

**SB 1106 by Schwertner | Effective 9/1/2013:** Comprehensive MAC pricing reforms in Medicaid managed care, requiring all PBMs to provide pharmacies online access to MAC pricing, update MAC prices weekly and establish a MAC appeals process.

**HB 1358 by Hunter | Effective 9/1/2013:** Established reasonable standards and procedures for desk and on-site audits of network pharmacies in commercial plans.

**SB 322 By Schwertner | HB 778 By Bell:** Would have strengthened enforcement of the state's 1991 Any Willing Pharmacy Law. Senate bill withdrawn after sponsor issues.

**SB 332 By Schwertner | Effective 1/1/2016:** Comprehensive MAC pricing reforms in commercial plans, requiring all PBMs to provide pharmacies online access to MAC pricing, update MAC prices weekly and establish a MAC appeals process.

**SB 94 By Hinojosa | Effective 9/1/2015:** The nation's first comprehensive ban on transaction fees. *After the session, TPBC convinced HHSC to modify MCO contract requirements to prohibit transaction fees in Texas Medicaid managed care.*

**SB 1076 By Schwertner | Effective 9/1/2017:** The nation's fourth anti-clawback law. Prohibits a health plan or PBM from charging a co-payment for a covered medication that exceeds the lesser of:

- The standard co-payment;
- The allowable claim amount for the drug; or
- The pharmacy's cash price.

**HB 1178 By Kuempel | Effective 9/1/2017:** Strengthened criminal penalties for burglaries and thefts that target controlled drugs in pharmacies, clinics, hospitals, nursing facilities, warehouses and wholesaler delivery/transport vehicles.

**HB 2817 By Lucio III | HB 778 By Hughes:** A far-reaching bill that would have prevented PBMS from reducing payments after a claim is adjudicated, except as a legitimate audit outcome. It would have barred them from paying PBM-owned or -affiliated pharmacies more for the same products and required them to clearly state reimbursement and fee schedules in contracts. It would have barred excessive certification and credentialing requirements and protected pharmacies' rights to deliver and mail medications. The bill was on the Senate intent calendar the final two days but not brought up for a vote, even with 26 Senate sponsors.

**HB 1455 by Hunter | Effective 9/1/2019:** Establishes common-sense standards and limits on wholesale invoice audits conducted by health plans or PBMs.

**HB 1763 By Oliverson | SB 528 By Hughes | Effective 9/1/2021:** The most impactful PBM bill ever passed in Texas, HB 1763 bars PBMs from assessing retroactive fees or payment reductions except for a legitimate audit outcome. It also bars restrictions on pharmacy delivery or mailing of medications, and prohibits PBMs from reimbursing affiliated pharmacies more than they pay non-affiliated pharmacies for the same drug. PBMs also must provide an easily accessible fee schedule that specifies each service/procedure a pharmacy may deliver and must allow pharmacies to deliver or mail drugs and to charge a fee for that service.

**HB 1919 by Harris | Effective 9/1/2021:** Targets self-dealing PBM practices that steer pharmacy patients to PBM-owned pharmacies and use patient-identifiable data to drive their pharmacy marketing efforts. It prohibits PBMs from transferring or sharing prescription records containing patient- and/or prescriber-identifiable data with any PBM-affiliated pharmacy, with limited exceptions.

A PBM cannot accept from an affiliated pharmacy the transfer of records containing patient- and/or prescriber-identifiable data. It also may not require or influence a patient to select an affiliate pharmacy through oral or written communication. PBMs operating in Texas also must file an annual disclosure statement with the Texas Dept. of Insurance.

**SB 844 by Schwertner & Hinojosa | HB 2787 by Middleton & Raney:**

In the wake of the U.S. Supreme Court's reduction of the scope of ERISA protections for PBMs in the 2020 *Rutledge v. PCMA* ruling, this bill would have removed ERISA exemption of self-funded plans from state laws governing audit practices by health plans and PBMs. HB 2787 passed the House on a 143-0 vote but was not referred to a Senate committee. SB 844 was left pending in the Senate Business & Commerce Committee.

*In addition to legislation passed, TPBC in 2015 secured income exclusions and a higher income floor for pharmacies under the state's franchise tax. We have defeated numerous attempts to expand physician dispensing and telepharmacy in Texas. In 2021, we played a major role in shaping and passing protections for healthcare providers for liability issues arising from the COVID-19 pandemic.*

## NEW MEXICO

**HB 165 by Armstrong, Brantley, Campos & Jaramillo | Effective 7/1/2024:** Requires Medicaid managed care organizations in New Mexico to reimburse independent pharmacies (“community-based pharmacies”) at the NADAC rate for ingredient cost and a dispensing fee equal to that paid in the state’s Fee for Service Medicaid program (currently \$10.30).

**SB 124 by Tallman and Neville | Effective 7/1/2021:** Requires that PBMs pay clean commercial claims within 14 days when filed electronically. A major improvement over the previous payment standard of 30 days, SB 124 passed the New Mexico Senate on a 42-0 vote and the House on a 65-5 vote. The bill was spearheaded by APRx’s New Mexico Pharmacy Business Council.

**SB 394 by Sanchez | Effective 7/1/2019:** Limits PBM and health plan audits to claims not more than two years old and allows recoupments only if financial harm occurred. An auditor cannot profit from the results of the audit and cannot charge for conducting the audit unless fraud is established. A pharmacy may resubmit a claim to correct clerical errors after an audit finding.

Requirements for valid prescriptions cannot be more stringent than federal or state standards. Units of prescriptions -- such as drops, topicals and inhalants -- cannot be limited beyond manufacturers’ recommendations. The amount of prescription product dispensed can be no smaller than the package size available.

If a pharmacy has billed a patient for a copayment, the amount of copayment not collected cannot be subtracted from the pharmacy’s reimbursement.

**SB 415 by O’Neill | Effective 7/1/2019:** increases oversight of PBMs by the Office of the Superintendent of Insurance (OSI), requiring annual licensure. It requires PBMs to develop an OSI-approved process to modify their MAC prices, update their MAC lists weekly, and establish an online MAC appeals process with a required response within 14 business days. The bill also ensures that a network pharmacy and a PBM affiliate pharmacy receive the same payment for equivalent products or services.

**HB 122 by Trujillo | Effective 6/17/2017**

**Makes it illegal for PBMs to charge a New Mexico pharmacy a fee for any action related to the processing of a claim, including:**

- adjudication of a pharmacy benefit claim;
- processing or transmission of a pharmacy benefit claim;
- development or management of a claim processing or adjudication network; or
- participation in a claim-processing or -adjudication network.

**Anti-Steering Rule Implemented by OSI:**

At the urging of the New Mexico Pharmacy Business Council, OSI in 2022 added the following language to state rules governing PBMs: **A PBM cannot “induce or attempt to induce, a health plan member to fill a prescription at a PBM affiliate or transfer a prescription to any PBM affiliate without an enrollee’s express and informed consent.”**



## ARIZONA

### SB1382 by Shamp | Effective Jan. 1, 2025

Requires PBMs to obtain a Certificate of Authority to operate in AZ and gives the Department of Insurance & Financial Institutions (DIFI) authority over PBMs. Gives DIFI authority for cease & desist orders, suspensions and certificate revocation; prescribes civil penalties for violations. Signed into law on April 18, 2023.

### SB 1356 by Barto | Effective Jan. 1, 2023

Amends the Arizona Insurance Code to prohibit PBMs operating in Arizona from holding a pharmacist or pharmacy responsible for a fee for any step or component of, or mechanism related to, the adjudication of a claim:

- Adjudicating a pharmacy benefit claim;
- Processing or transmitting a pharmacy benefit claim;
- Developing or managing a claim-processing or adjudication network;
- Participating in a claim-processing or claim-adjudication network.



## MICHIGAN

### HB 4348 by Calley | Effective Jan. 1, 2024

One of the farthest-reaching PBM reforms ever passed, HB 4348 licenses and regulates PBMs in Michigan through the Department of Insurance in four distinct areas:

- **Licensing & Transparency:** PBMs must register with the state; disclose financial assets and major officers and stockholders; submit pharmacy network adequacy reports and submit quarterly transparency reports.
- **Patient Protections for Payment & Access to Care:** The bill protects patients' right to receive information about drug coverage and pricing and to purchase lower-price alternative drugs, does not allow a prescription to be transferred to a PBM pharmacy without their prior consent and protects them from paying more for a drug than the established co-pay or amount of the pharmacy's reimbursement.
- **Good Faith and Fair Dealing:** The bill requires PBMs to exercise good faith and fair dealing in their contractual relationships with network pharmacies."
- **Pharmacy Reimbursement, Fees and Audits:** The bill requires PBMs to publish up-to-date MAC lists and allow appeals of MAC prices, and prohibits transaction fees, retroactive reductions to reimbursement and unfair audit practices.



The bill also prohibits clawbacks and transaction fees, protects patients' right to choose their pharmacy, prohibits retroactive cuts in reimbursements, bans unnecessary PBM-required accreditations and protects the right to deliver and mail prescriptions. It establishes major protections for pharmacies in PBM and health-plan audits and imposes substantial regulatory mandates in the form of licensure, transparency and network adequacy, while prohibiting spread pricing.

**NOTE:** Prior to American Pharmacies' engagement, there had never been a meaningful PBM reform bill filed in Michigan. We got involved in 2020, hiring a lobbyist and meeting

with key Michigan independents, Rep. Calley and House Speaker Jason Wentworth. APRx provided significant input on bill content. When the bill went to the House Health Policy Committee, VP of Government Affairs Michael Wright and General Counsel Miguel Rodriguez held multiple meetings with committee members and House leaders before the bill hearing. Three APRx representatives testified in support of the bill at the committee's March 10, 2021, meeting: members Grant Brown of Jackson and John Gross of Clare, as well as Rodriguez.

#### **HB 4276 by Farhat | Effective Feb. 13, 2024**

Requires that PBMs reimburse certain pharmacies at the lesser of NADAC, Wholesale Acquisition Cost (WAC) or the pharmacy's Usual & Customary Charge plus **a dispensing fee ranging from \$9 to \$10.80 for non-specialty drugs**. The dispensing fee for specialty drugs is set at \$20.02. The reimbursement standard applies to Michigan pharmacies with seven or fewer retail outlets.

The bill also requires PBMs to move to transparent, pass-through contracts with clearly stated administrative fees and file annual reports by January 15 of each year with the Michigan Dept. of Health and Human Services that disclose:

- Total prescriptions dispensed;
- Aggregate WAC for all dispensed drugs;
- Total rebates, admin fees and incentives received, and percentage retained;
- The aggregate amount the PBM paid to all contracted pharmacies.

