

ARKANSAS COMMUNITY PHARMACY – 2024 BROKEN PAYMENT MODELS

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Chief Executive Officer and Executive Vice President
Arkansas Pharmacists Association



2024 Arkansas PBM / Insurance

Commercial Arkansas based
pharmacy PBM inflicted DRASTIC
reimbursement cuts that are not fair
and not reasonable

BIG 3 - Fortune 15 – Trillion Dollar

▶ **CVS** - aetna

▶ **OptumRx** - United Health

▶ **Express Scripts** - Cigna

80 % of market as both price setters
and price takers

The Great American Pharmacy Meltdown – Magazine - Fortune 500: June 3, 2024

“A crisis is hitting your local drugstore”

<https://fortune.com/2024/06/03/rite-aid-pharmacy-bartells-health-care-retail/>

Arkansas Attorney General Tim Griffin

(leaders on the letter – Griffin, Yost, and Stein), National Association of Attorneys General, as well as 47 total state Attorney Generals

RE: Support for Reforming Pharmacy Benefit Managers, February 20, 2024 – to US Congress

“In recent years, our offices and other offices of state attorneys general have worked to hold Pharmacy Benefit Managers (PBMs) accountable. The PBMs’ original purpose was to protect and negotiate on behalf of employers and consumers after pharmaceutical manufacturers were criticized for overpricing medications. Unfortunately, in recent years, the PBMs have only made the pharmaceutical market more opaque and have been a cause of rising drug prices. A small number of PBMs hold significant market power and are reaping abundant profits at the expense of the patients, employers, and government payors the PBMs are supposed to help. Pharmaceutical buyers and sellers have little choice but to employ PBMs, allowing them to extract both monopoly profits from individuals and monopsony profits from the market. Moreover, PBMs often dictate reimbursement rates and rules to independent pharmacies, making it difficult for many to survive.”

2024 Arkansas PBM / Insurance Observations

- ▶ Arkansas Affiliate Pharmacy complaints of illegal anticompetitive rates where PBM pays itself higher
 - ▶ Similar to 2018 when CVS data investigated across top 200 drugs that CVS paid itself more than \$60 more than independent pharmacies per prescription
- ▶ Unfair and unreasonable payment cuts
 - ▶ Less than cost to operate and less than Medicaid cost recovery model done by a state hired accounting firm in 2015
 - ▶ Take it or leave it unilateral PBM rates set
- ▶ Examples of Chain being paid \$30 more per prescription on generics in state funded plan
- ▶ PBM owned pharmacy being paid \$14.37 dispensing fee by another PBM while local pharmacies are paid 0 to 50 cent dispensing fees
- ▶ Manufacturer coupons being exploited for PBM spread fat profits – 20%

Squeeze out Competition Guarantees Higher Prices

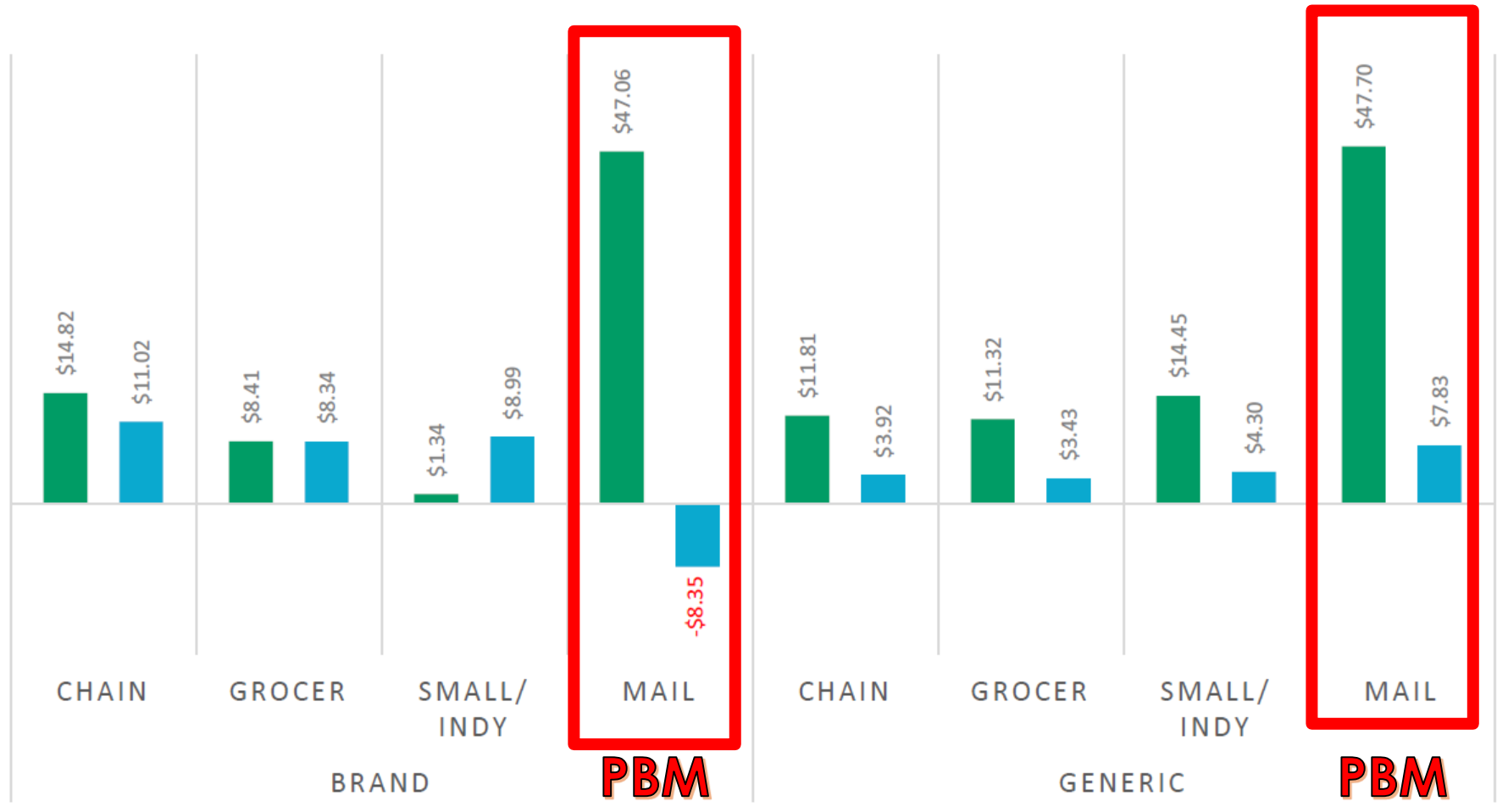
SMOKE AND MIRRORS
SMOKE AND MIRRORS



2024 Washington Breaking News

PLAN SPONSOR CLASS OF TRADE MARGIN ANALYSIS, COST OVER NADAC

■ Mean Margin ■ Median Margin



35 X - brands

3-4 X – generics

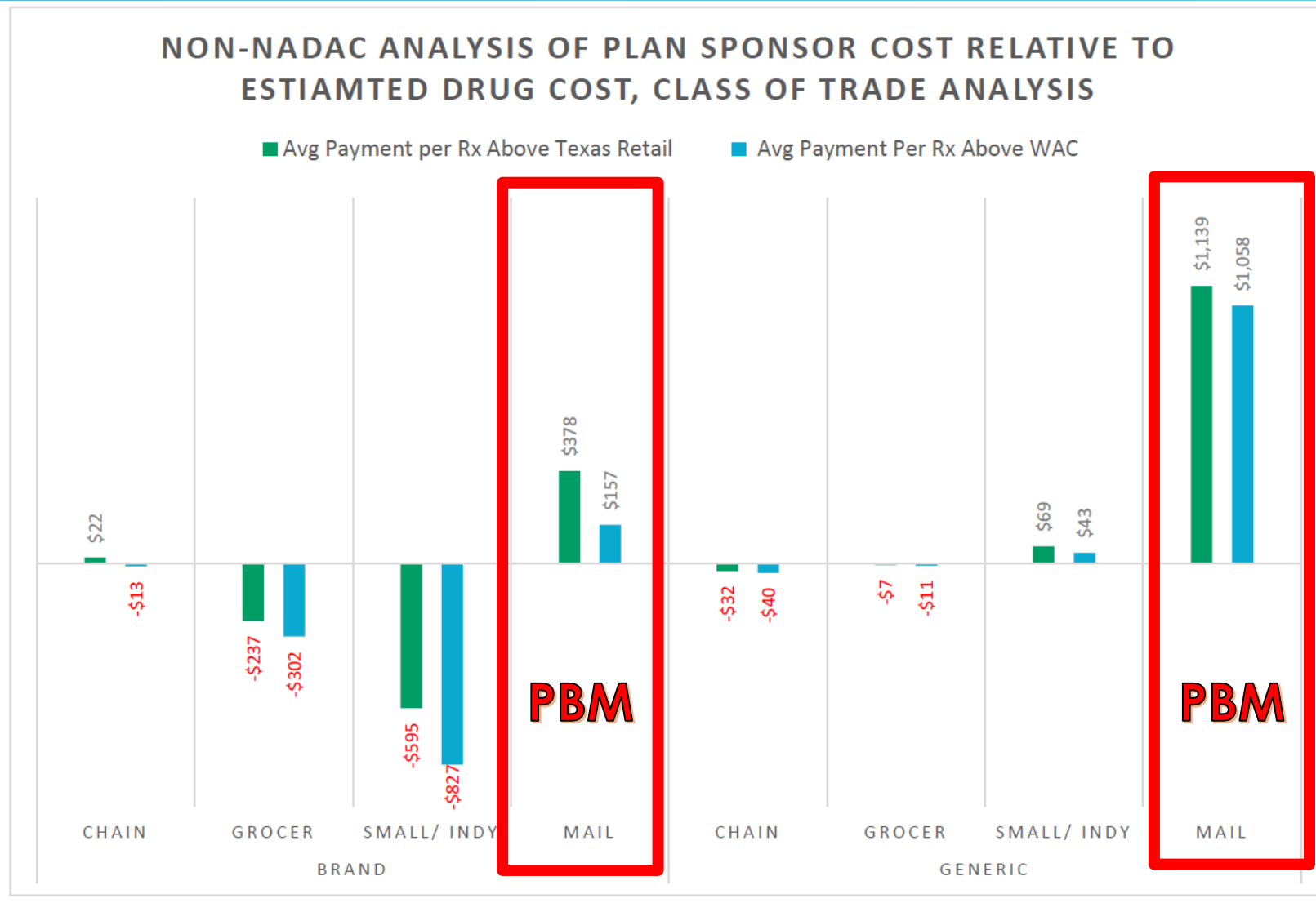
Rigged system to pay PBM mail pharmacies more

2024 Washington Breaking News

20 X - brands

1000 X – generics

Rigged system to pay PBM mail pharmacies more



Remarks of Chair Lina M. Khan Regarding the Federal Trade Commission

6(b) Study on Pharmacy Benefit Managers Commission File No. P221200

February 17, 2022:

▶ “We have also seen a troubling trend in the drug retailing and fulfillment sector, where small, local, and family-owned pharmacies—the backbone of so many communities across the nation—have been closing shop and vanishing at an alarming rate. This trend is especially concerning because these types of community institutions have at times proven themselves to be superior at delivering for their patients and customers. For example, during the early months of the COVID-19 vaccine rollout, community pharmacies in some cases proved to be more nimble, agile, and efficient than their large-chain counterparts in getting Americans vaccinated, with states like West Virginia quickly vaccinating the elderly (*nursing homes*) and those in need. Pharmacy benefit managers, the companies that manage prescription drug benefits on behalf of private health insurers, Medicare plans, employers, and other payers, have in recent decades vertically integrated with affiliated health insurance companies and retail and specialty pharmacies, potentially creating financial incentives for them to steer patients towards affiliated services.

▶ And for the last several years, independent pharmacies and other stakeholders across the drug supply chain have argued that these vertically integrated PBMs play a major role in the increased cost of drugs to patients and in the gradual elimination of independent pharmacies from the marketplace.”

▶ **Federal Trade Commission Chair Lina Khan on March 4, 2024**, said that middlemen known as pharmacy benefit managers haven't cooperated fully in an antitrust probe (6B study) her agency launched in June 2022. Speaking during a White House roundtable discussing abuses by the industry, Khan made a blunt promise. "So far, the PBMs have not fully complied with our orders to turn over documents and data," she said. "FTC orders are not suggestions, and we will not hesitate to use the full extent of our legal authorities to mandate compliance."

Vertical Business Relationships Among Insurers, PBMs, Specialty Pharmacies, Retail Pharmacies, Mail-Order Pharmacies and Providers, 2022



| | | | | | | | |
|-----------------------------|--------------|------|------|------|----------|--|------|
| INSURERS | | | | | | | |
| PBMs (GPO) | | | | | | | |
| SPECIALTY PHARMACIES | | | | | | | |
| PREFERRED RETAIL PHARMACIES | | | | | | | |
| MAIL-ORDER PHARMACIES | | | | | | | |
| PROVIDER SERVICES | | | | | | | |

Navitus PBM
Lumicera mail order-specialty pharmacy
Costco mail order pharmacy
Costco retail local pharmacy
Owned by SSM Health (non-profit hospital system and Costco)

¹ In September 2022, CVS Health announced its acquisition of Signify Health. The transaction is expected to close in 2023.
² Since January 2021, Prime's Blue Cross and Blue Shield plans have had the option to use Express Scripts or AllianceRx Walgreens Prime for mail and specialty pharmacy services. On Dec. 31, 2021, Walgreens purchased Prime Therapeutics' 45% interest in AllianceRx Walgreens Prime, so this business has no PBM ownership in 2022. Effective June 2022, the company has been known as AllianceRx Walgreens Pharmacy.
³ In 2021, Centene has announced its intention to consolidate all PBM operations onto a single platform and outsource its PBM operations to an external company.
⁴ In 2021, Centene sold a majority stake in its U.S. Medical Management to a group of private equity firms.
⁵ Since 2020, Prime has sourced formulary rebates via Ascent Health Services. In 2021, Humana began sourcing formulary rebates via Ascent Health Services for its commercial plans.
⁶ Cigna also partners with providers via its Cigna Collaborative Care program.
⁷ In 2022, Humana announced an agreement to divest its majority interest in Kindred at Home's Hospice and Personal Care Divisions to Clayton, Dubilier & Rice. In 2022, Kindred at Home was rebranded as CenterWell Home Health.
Sources: Drug Channels Institute research and Nephron; Companies are listed alphabetically by insurer name.
* CVS Pharmacy is owned by CVS/Caremark.

PBM Laws and Patient Access Emergency of 2024

- ▶ 1. **Safety Net Minimum for preventing contracts or individual claims from paying below cost to purchase a drug** (Still \$10 to \$15 below cost of operations)
 - ▶ Appeal Invoice Price
 - ▶ NADAC – National Average Drug Acquisition Cost
- ▶ 2. **PBMs / Vertically Integrated Insurance Companies can't pay affiliate pharmacy** that directly or indirectly owns or is owned by a pharmacy benefit manager a single penny **higher than other Arkansas local pharmacies** (generic product identifier level)
 - ▶ Defines and prohibits anticompetitive acts
 - ▶ 2015 Law
- ▶ 3. **Overall payment must be fair and reasonable** for Arkansas brick and mortar community pharmacy networks

- ▶ PBM Compensation, Prohibited Market Conduct, Enforcement Rule Making – Arkansas Insurance Department

EXISTING PBM LICENSURE LAW FROM 2018
GRANTED BROAD RULE MAKING AUTHORITY TO
DEFINE FAIR AND REASONABLE

► Rules

23-92-509. Rules.

(a)(1) The Insurance Commissioner may adopt rules regulating pharmacy benefits managers that are not inconsistent with this subchapter.

(2) Rules that the commissioner may adopt under this subchapter include without limitation rules relating to:

(A) Licensing;

(B) Application fees;

(C) Financial solvency requirements;

(D) Pharmacy benefits manager network adequacy;

(E) Prohibited market conduct practices;

(F) Data reporting requirements under § 4-88-803;

(G) Compliance and enforcement requirements under § 17-92-507 concerning Maximum Allowable Cost Lists;

(H) Rebates;

(I) Compensation; and

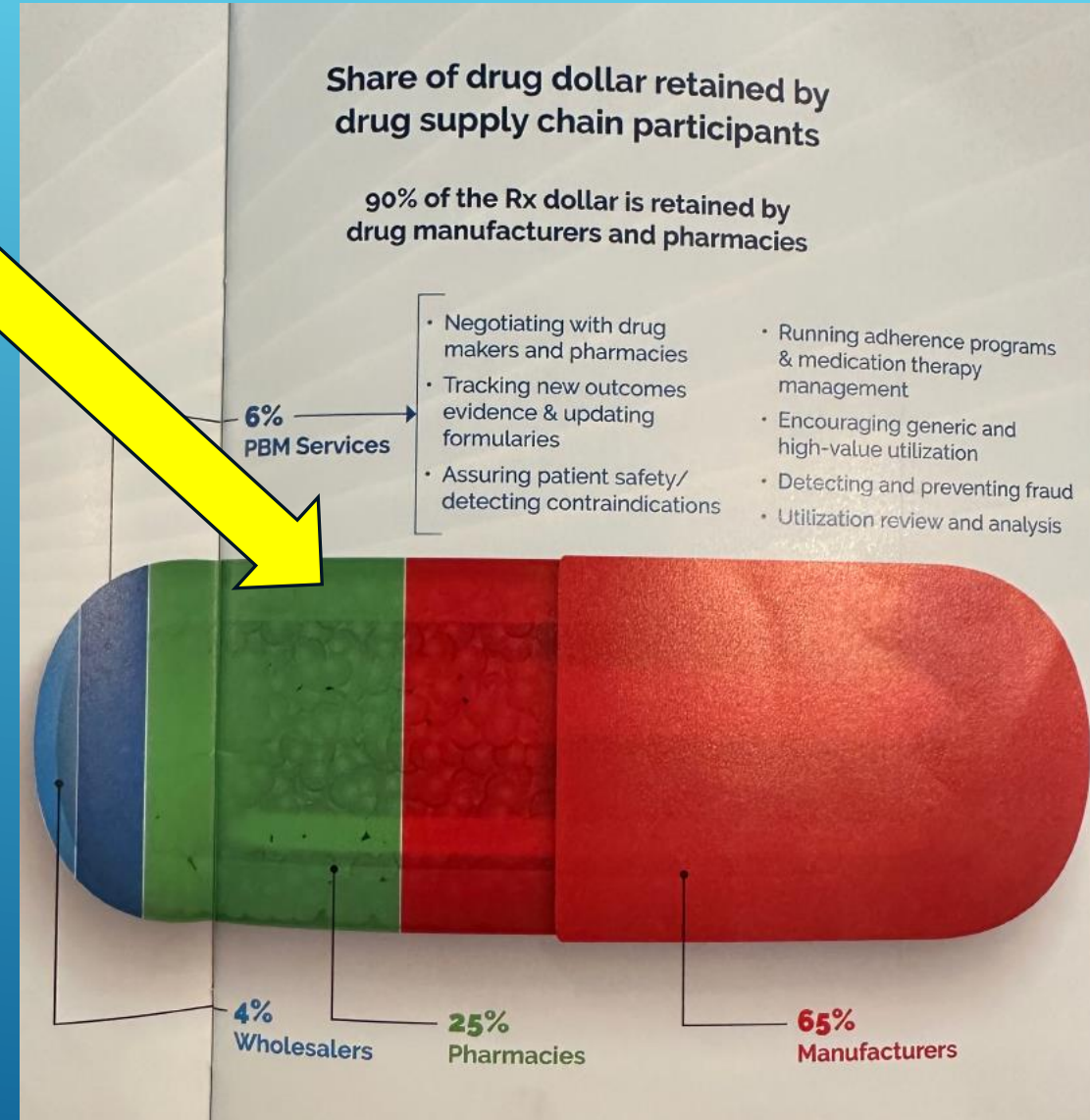
(J) Lists of health benefit plans administered by a pharmacy benefits manager in this state.

(b) Rules adopted under this subchapter shall set penalties or fines, including without limitation monetary fines, suspension of licensure, and revocation of licensure for violations of this subchapter and rules adopted under this subchapter.

PBM Emergency of 2024

▶ Math

- ▶ PCMA (PBM association) Says 25% is the national average gross margin per community pharmacy
- ▶ National Community Pharmacists Association 2023 NCPA Digest says 23.3% in 2022 down to 21% in 2023
- ▶ 2024 Commercial plans in AR cutting this to 0-1%, or cost of the drug plus 0 to 50 cents
- ▶ 2024 other commercial plans cutting this to 5-10% gross margin, or 50% of Medicaid average benchmark on the market basket



PBM Laws and Patient Access Emergency of 2024

▶ Math

- ▶ Typical Pharmacy \$70,000 to \$80,000 to Operate per month
 - ▶ Labor – 60% of this (also 11.8% of total Annual Prescription Sales)
 - ▶ $\$48,000 / 80,000 = 60\%$
 - ▶ Operational Expenses (Rent, Insurance, Equipment, Technology, Supplies, Biohazard Waste, Etc.) – 40%
- ▶ 250 scripts a day for 27 days a month = 6750 scripts
- ▶ Average Sales Price is \$60
 - ▶ $60 \times 6750 \times 12 = \4.86 million yearly sales on Rx
 - ▶ Labor is 4.86×0.118 divided by 12 = \$47,790 (\$48,000)
- ▶ $6750 \times \$12$ average gross profit per script = \$81,000

PBM Laws and Patient Access Emergency of 2024

▶ Math

- ▶ On that same example, every time the gross profit per script drops \$1 on average, the profit drops \$6750 per month
- ▶ \$4 drop from \$12 to \$8 overall is a \$27,000 per month hit,
- ▶ $81000 - 27000 = \$54,000$, when operating costs are \$70,000
- ▶ Close? / Lay off employees? / Cut Services? / Sell?

PBM Laws and Patient Access Emergency of 2024

- ▶ **Services to Consider**
 - ▶ **Hospice**
 - ▶ **Assisted Living / Nursing Home Services**
 - ▶ **Same Day Delivery**
 - ▶ **Opioids and Controlled Substances**
 - ▶ **Compounding (end of life, animals, children, allergies)**
 - ▶ **National Security - Supply Chain**
 - ▶ **Emergency Services / After Hours / Weekends / Evenings**
 - ▶ **Vaccines / Ear Pain / Test and Treat / Convenient Care**
- ▶ **Trusted Relationships for Healthcare Delivery**
- ▶ **Local jobs - \$5 - \$10 billion revenue, 15,000 jobs, all 75 counties**

The Arkansas Legislative Update Insurance / PBMs - Historical:

- ▶ 2009 (Act 769) – PBM Spread Pricing Transparency
- ▶ 2011 (Act 517)– Pharmacy Audit Law
- ▶ **2015 – PBM MAC law (Act 900):** Appeals process for below cost prescriptions and prohibition on PBM owned pharmacies paying themselves greater than competition
- ▶ 2015 (Act 1025) – PBM Clawback prohibition:

- ▶ **Act 900 - 2015**

- ▶ **US Supreme Court: Rutledge vs PCMA**

- ▶ Decision Issued on December 10, 2020

- ▶ #8-0

- ▶ 18-540 - Docket



Arkansas Attorney General - 2020

In the Supreme Court of the United States, On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, Brief for the Petitioner, February 24, 2020

Effects of PBM Reimbursement Practices: These methods of calculating drug reimbursements are rife with potential for abuse, both downstream and upstream. Downstream, nothing protects pharmacies from systematic under-reimbursement besides PBMs' good intentions. Whether at initial reimbursement or on appeal, PBMs set MACs unilaterally. And a discontented pharmacy is left with a Hobson's choice: accept a significant number of unprofitable reimbursements or exit a vast PBM network that provides a large proportion of their revenue. And because virtually all prescription-drug claims are processed by PBMs, pharmacies have no real choice but to participate in PBM networks. The result of these arrangements is systematic under-reimbursement.

The Arkansas Legislative Special Session PBMs - 2018:

▶ **Arkansas Pharmacy Benefit Licensure Act**

- ▶ Act 1 and 3 of 2018: Governor Hutchinson called **Special Session** of the Arkansas General Assembly
- ▶ To promote, preserve, and protect the public health, safety, and welfare through:
 - (1) effective regulation and licensure of pharmacy benefits managers;
 - (2) provide for powers and duties of the Insurance Commissioner, the State Insurance Department; and
 - (3) prescribe penalties and fines for violations of this Act.
- ▶ This law places a referee on the playing field to establish fairness in the marketplace by allowing the state insurance commissioner to establish rules regarding licensing, fees and other standards for pharmacy benefit managers (PBMs)

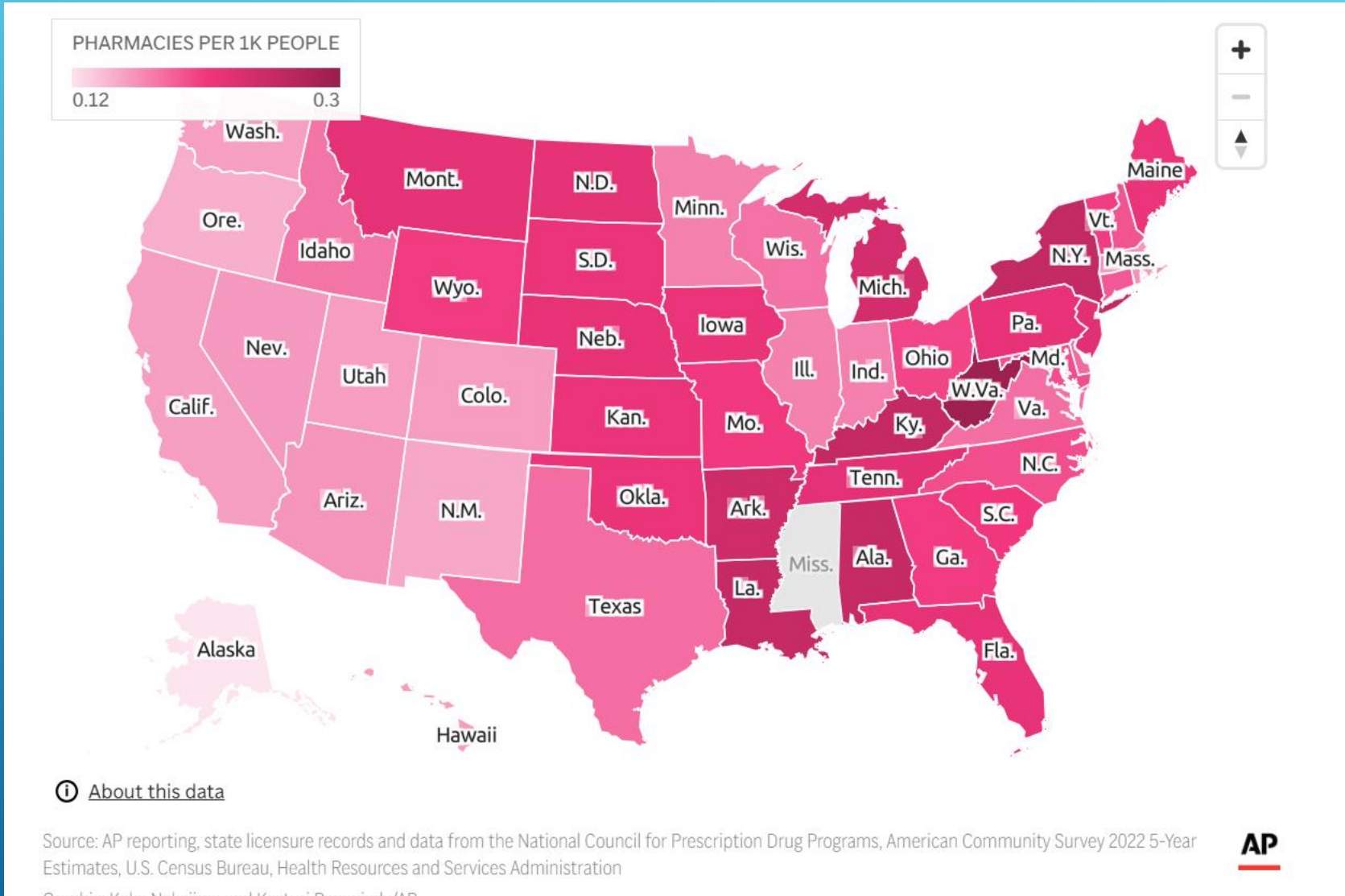
2018



2018



PBM Laws and Patient Access Emergency of 2024



AR - 69 Loss since 2020

Nation - 7000 retail closures since 2019

<https://apnews.com/article/pharmacy-closure-drugstore-cvs-walgreens-rite-aid-91967f18c0c059415b98fcf67ad0f84e> Accessed June 3, 2024

The Federal Government interference into this market

- ▶ **NADAC – National Average Drug Acquisition Cost**
 - ▶ Survey of either voluntary or mandatory surveys (depends on state) of actual invoice prices of community pharmacies – Myers and Stauffer Accounting
 - ▶ Takes actual cost to purchase drugs, averages this and posts weekly on a federal government, CMS, public facing website
 - ▶ This data is not meant to be used unless combined with a sufficient cost of professional dispensing fee or enough markup on ingredient cost from the PBM to safely operate a pharmacy
- ▶ **Medical Loss Ratios guaranteed gross profits to insurance companies** to keep up to 15% or 20% in administrative fees PLUS any revenue generated from being vertically integrated and providing medical or pharmacy services through affiliated owned companies

Medicaid Professional Dispensing Fees

| | | | | | |
|----|--------------------|--------------|-------|-------|-------|
| 1 | Missouri | Old method | | | |
| 2 | Alaska | 21.28 | 16.58 | 13.36 | 10.76 |
| 3 | Michigan | 20.02 | 10.80 | 10.64 | 9.00 |
| 4 | Wisconsin | 15.69 | 10.51 | | |
| 5 | Montana | 15.57 | 13.49 | 11.41 | |
| 6 | Illinois | 15.55 | 8.85 | | |
| 7 | Idaho | 15.11 | 12.35 | 11.51 | |
| 8 | Oregon | 14.30 | 11.91 | 9.80 | |
| 9 | Washington | 14.30 | 11.91 | 9.80 | |
| 10 | Colorado | 13.40 | 11.49 | 10.25 | |
| 11 | California | 13.20 | | | |
| 12 | Tennessee | 13.16 | 52.46 | 9.02 | |
| 13 | North Carolina | 13.00 | | | |
| 14 | North Dakota | 12.46 | | | |
| 15 | Maryland | 12.12 | 11.67 | 10.67 | |
| 16 | Maine | 11.89 | | | |
| 17 | Mississippi | 11.29 | | | |
| 18 | D.C. | 11.15 | | | |
| 19 | Vermont | 11.13 | 17.03 | | |
| 20 | Louisiana | 10.99 | | | |
| 21 | New Jersey | 10.92 | | | |
| 22 | Oklahoma | 10.87 | | | |

| | | | | | |
|----|-----------------|--------------|------|--|--|
| 23 | Ohio | 10.80 | 9.51 | | |
| 24 | Minnesota | 10.77 | | | |
| 25 | Hawaii | 10.76 | | | |
| 26 | Connecticut | 10.75 | | | |
| 27 | Virginia | 10.65 | | | |
| 28 | Wyoming | 10.65 | | | |
| 29 | Alabama | 10.64 | | | |
| 30 | Kentucky | 10.64 | | | |
| 31 | Georgia | 10.63 | | | |
| 32 | Arkansas | 10.50 | 9.00 | | |
| 33 | Kansas | 10.50 | | | |
| 34 | South Carolina | 10.50 | | | |
| 35 | South Dakota | 10.50 | | | |
| 36 | West Virginia | 10.49 | | | |
| 37 | Indiana | 10.48 | | | |
| 38 | New Hampshire | 10.47 | | | |
| 39 | Iowa | 10.38 | | | |
| 40 | New Mexico | 10.30 | | | |
| 41 | Florida | 10.24 | | | |
| 42 | New York | 10.18 | | | |
| 43 | Nevada | 10.17 | | | |
| 44 | Utah | 10.15 | 9.99 | | |
| 45 | Arizona | 10.11 | | | |
| 46 | Massachusetts | 10.02 | | | |
| 47 | Nebraska | 10.02 | | | |
| 48 | Delaware | 10.00 | | | |
| 49 | Pennsylvania | 10.00 | | | |
| 50 | Rhode Island | 8.96 | | | |

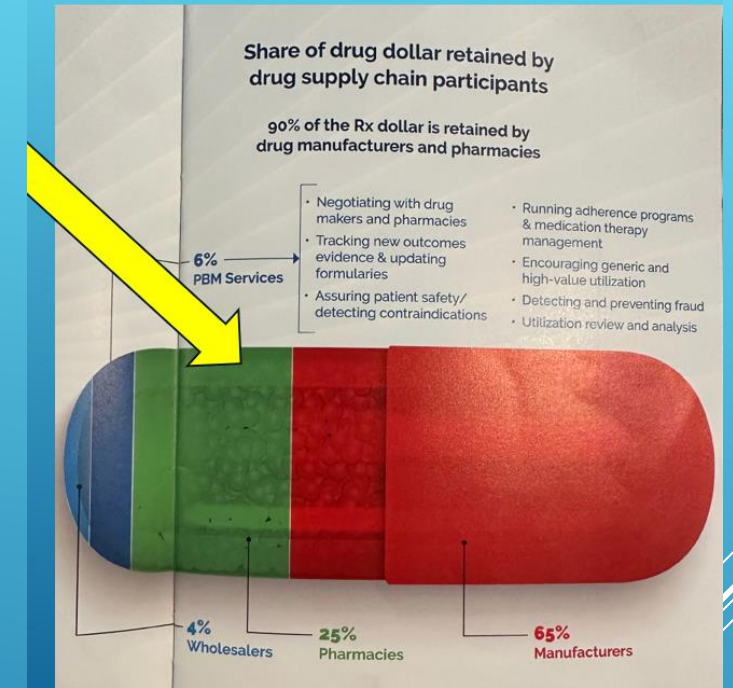
POLICY SOLUTIONS

- ▶ Define Fair and Reasonable Methodology and Range
 - ▶ Cost Plus state determined methodology – transparent
 - ▶ US House, Medicaid, West Virginia, Kentucky, Tennessee
- ▶ Savings Opportunities
 - ▶ Savings will be realized in brand and specialty at affiliated PBM owned pharmacies
 - ▶ Savings will be realized by eliminating overpayments and hidden PBM created spread in national contracts
 - ▶ Massive Savings in Manufacturer Coupon and Rebate Reform
- ▶ Enforcement

POLICY SOLUTIONS – NEWS

PCMA – Page 9, May 2023
PBM 101: A Reference Guide

- ▶ 1.1 X NADAC + \$10.50
- ▶ 1.1 X WAC + \$10.50
- ▶ \$45 NADAC X 1.1 = 49.50 + 10.50 = 60



▶ \$15 of Average sales price of \$60 is 25% gross profit (PCMA's definition of national pharmacy market in graphic page 9)

POLICY SOLUTIONS

- ▶ We Need a Rule Now – Insurance Department authorized under existing state law to define fair and reasonable
- ▶ We need enforcement, although without defining fair and reasonable, this will make the situation worse
- ▶ Anticompetitive Acts – PBM / Insurance owned pharmacies are a real problem for consumers

Questions