

# Extending Pharmacy Rights By Instituting Audit Protections

HB3285 – Representative Robert Rita, D-Blue Island

SB1844 – Senator Kwame Raoul, D-Chicago

## Please Vote Yes!

**HB3285 & SB1844** Amends the Illinois Insurance Code

**Background:** Pharmacies are being mistreated not only in preserving access to their patients, but also in one-sided auditing practices that benefit the pharmacy benefit manager (PBMs) and do not accomplish the goal of preventing fraud, waste, and abuse.

Pharmacists are taking critical time away from patient care to address unreasonable audit requests. These audits tend to focus on expensive drugs, identifying clerical errors which often result in total recoupment of drug costs when no harm was done to the patient.

PBMs use audits as potential revenue streams; and often incentivize their auditor with a percentage of the payment based on the amount they recovered.

*Illinois does not currently have any laws or oversight regarding Pharmacy Audits.*

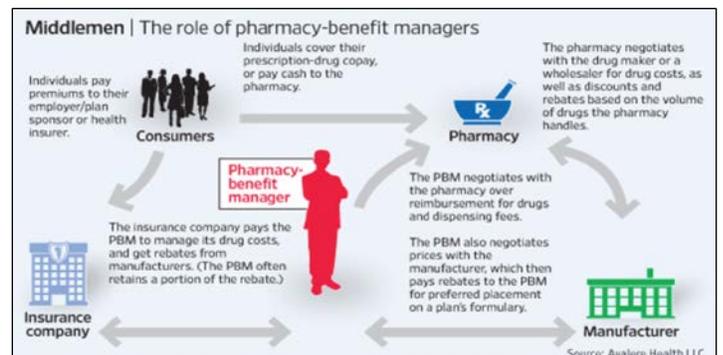
Pharmacies are currently having thousands of dollars reclaimed from them despite the right prescription being dispensed to the correct patient at the appropriate time.

**HB3285 & SB1844 would provide increased transparency in the auditing process and provide for a balanced approach to control costs to the sponsors of pharmacy and prescription health plans.** These audits are assumed to be designed to detect fraud, waste, and abuse, but these audits are conducted in a manner that are biased against the pharmacy provider and the recouped monies are not completely refunded to the plan sponsors that provide the needed coverage for their employees.

**HB3285 & SB1844 would establish fair guidelines on pharmacy audits such as:**

- Written notice be provided to the pharmacy prior of an onsite audit;
- No recoupment or charge-back payments for computer or clerical error;
- Prevent the PBMs from compensating their contractor based on a percentage of the amount recouped;
- Prevents the practice of extrapolation to be utilized in an audit;
- No more than 250 prescription records can be review during any single audit;
- Establishes that pharmacies may utilize all valid and available medical and pharmacy documentation and records to support appeals to an audit.

**Pharmacy benefit managers (PBMs)** are companies that specialize in developing and managing prescription drug benefits for a variety of private and public plan sponsors.



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### Pharmacy Benefit Managers – Controversial Business Practices

|                          |  |
|--------------------------|--|
| <b>Rebates</b>           | PBMs receive rebates from drug manufacturers for including their drugs in plan formularies and preferred drug lists (PDLs). However, they often fail to pass along these rebates and savings to the clients. This has been a key complaint in many lawsuits filed against PBMs.  |
| <b>Drug Switching</b>    | The practice of asking physicians to switch patients from cheaper generic drugs to newer, more expensive drugs to generate larger rebates from drug manufacturers.   |
| <b>Spreads</b>           | Spread pricing occurs when the PBM charges the sponsor a higher price for a drug than the PBM pays the pharmacy for the same drug.   |
| <b>Mail Order Abuses</b> | Allows further abuse of drug switching for rebate compensation. Also, it allows use of the mail order process to increase the price of drugs with direct mark-ups. They buy bulk packaging from the manufacturer, then repackage the drugs into smaller quantities, and sell it through mail order at elevated prices.   |
| <b>Clawbacks</b>         | Clawbacks occurs when PBMs assigns expensive copays to a drug, a price that may be significantly higher than the actual value and acquisition cost of the drug. Clawbacks occur when your pharmacy submits a claim for a prescription drug, and the pharmacist is directed to collect a specific dollar amount for the copay. The amount will likely be excessive and unrelated to the acquisition cost of the drug. Example: Patient was charged a \$50 copay for the drug, and \$38.35 was directed back to the PBM. The pharmacy received \$11.65. <sup>1</sup> |
| <b>Gag Clauses</b>       | The contract includes restrictions that mean a pharmacist is prohibited by a contract with a PBM from informing patients that their drug they want to buy has options, and could be purchased at a lower cost if the patients paid out of pocket rather than purchasing through their insurance plan. <sup>2</sup>   |

1) <https://www.pbahealth.com/pbm-clawbacks-what-your-pharmacy-needs-to-know/>

2) [http://www.ncsl.org/Portals/1/Documents/Health/Pharmacist\\_Gag\\_clauses-2018\\_14523.pdf](http://www.ncsl.org/Portals/1/Documents/Health/Pharmacist_Gag_clauses-2018_14523.pdf)



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