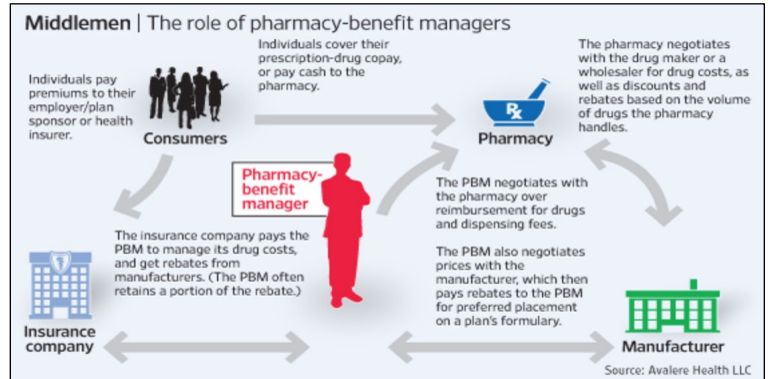


“...it’s not the state or the pharmacy’s fault that the PBMs have such byzantine procedures that affect drug prices.” - Chief Justice Roberts during the *Rutledge v PCMA* argument

Improving Patient Access and Pharmacy Fairness

SB2008 – Senator David Koehler (D-Peoria)

Background: Pharmacy benefit managers (PBMs) are intermediary firms that manage prescription drug benefits for health insurers. In recent years, PBMs have leveraged their market power to implement abusive policies and practices that pad PBMs’ profits at the direct expense of health plans, pharmacies and patients, driving many pharmacies out of business and jeopardizing patient access to essential care and creating pharmacy deserts. Those threats to access to care are even more serious in the face of the unrelenting COVID-19 pandemic.



On December 10, 2020, the Supreme Court issued an 8-0 decision in *Rutledge v. PCMA*.

"Most immediately, **Rutledge puts PBM regulations passed by more than 45 states on much firmer footing.** These laws do different things, but **they are all aimed at reigning in prescription drug costs.** Some ban PBM gag clauses that prevent pharmacies from telling consumers about lower-cost options. Others limit patient cost-sharing, require PBMs to disclose their price lists and manufacturer rebates to improve transparency, or prohibit so-called “spread pricing” where PBMs charge plans more than they reimburse pharmacies. **Justice Sotomayor’s opinion sweeps broadly enough that its reasoning is not limited to the particulars of the Arkansas law.** Applying the logic of *Rutledge*, **PBM laws are a form of health care cost regulation, and PBMs are not health plans** but rather their administrative contractors, so ERISA should not preempt states’ PBM regulations.”

The Implications of *Rutledge v. PCMA* For State Health Care Cost Regulation – *Health Affairs Blog*, December 17, 2020

SB2008 will help correct this imbalance of power and incorporates patient access policies recently upheld by the Supreme Court 8-0 decision in *Rutledge v. Pharmaceutical Care Management Association*, as well as other vital reforms. These key provisions summarized below:

- **Assuring Patient Choice:** Assures patient choice by requiring PBMs to accept claims from any licensed pharmacy that agrees to the PBM’s terms and conditions. It also prohibits PBMs from charging different copayments. Prevents PBMs from directly or indirectly pushing patients towards their own mail order affiliates by restricting advertising, prohibiting mail order mandates, and prohibiting cost incentives for choosing one pharmacy over another.
- **Allowing “Any Willing Provider” to Join PBM Networks:** Assures patient choice by requiring PBMs to accept claims from, and admit into their networks, any licensed pharmacy that agrees to the PBM’s terms and conditions. It also requires evenhanded treatment within networks by prohibiting PBMs from charging different copayments or assessing fees at some pharmacies and not others.
- **Restricting Abusive Audits:** Prevents audits from being conducted during times when the pharmacy will predictably be busier than normal. Restricting the number of audited prescriptions per 12-month period, and number of on-site audits per year. Prohibits auditors from being paid based on the amount recouped from pharmacies. Prohibits clerical errors being used as sole justification for recoupment.



Vote Yes for SB2008!



NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

RUTLEDGE, ATTORNEY GENERAL OF ARKANSAS *v.* PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION

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Pharmacy deserts in Chicago could make it tough for many to get COVID-19 vaccine

By NARA SCHOENBERG
CHICAGO TRIBUNE | DEC 30, 2020 AT 1:28 PM

By Chuck Goudie and Barb Markoff, Christine Tressel and Ross Weidner

Aetna drops Walgreens from its Medicaid plan, making it harder for low-income Chicagoans to get their prescriptions during the pandemic

September 30, 2021

Press Releases

ATTORNEY GENERAL RAOUL ANNOUNCES \$56 MILLION SETTLEMENT WITH PHARMACY BENEFIT MANAGER

Settlement Resolves Raoul's Investigation Into Centene Corp. Allegedly Submitting Inaccurate Reimbursement Requests

Chicago — Attorney General Kwame Raoul today announced a more than \$56 million settlement with the largest Medicaid managed care organization in the United States. The settlement resolves an investigation the Attorney General's office conducted into whether, as a pharmacy benefit manager for the state of Illinois, Centene Corp. (Centene) entities submitted inaccurate billing requests to the state.

"Pharmacy benefit managers are part of a larger issue, which is the accessibility and affordability of prescription drugs," Raoul said. "No one should have to choose between paying for basic necessities or costly but essential medications. My office is continuing to investigate pharmacy benefit managers operating in Illinois because I am committed to stopping unfair and unlawful conduct by PBMs and drug companies."

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Some people are reporting abnormal periods after a COVID-19 vaccine. U. of I. professor is looking for answers.

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The Lack of Neighborhood Pharmacies is Crippling Our Community.

Theresa Horton, Contributing Writer
April 9, 2021

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City of Rockford Vows to Fight on After Bankruptcy Court Stays Litigation Against Express Scripts

December 01, 2020 03:42 PM Eastern Standard Time

ROCKFORD, ILL.—(BUSINESS WIRE)—On November 23, the Delaware Federal Court handling the Mallinckrodt bankruptcy issued a sweeping injunction, putting a stay on Rockford's lawsuit against Express Scripts for its role in an unlawful pricing scheme.

"It is a travesty of the justice system that a bad drug company, like Mallinckrodt, could run to bankruptcy court for protection to avoid having to face the patients and payors it has defrauded for years," Don Haviland, Rockford's litigation counsel.

In 2015, two children of employees of the City of Rockford were diagnosed with rare infant epilepsy disorders. The most effective treatment of this life endangering condition has been the drug H.P. Acthar Gel, which cost just \$40 a vial in 2001. By 2015, Mallinckrodt had conspired with the pharmacy benefit manager Express Scripts to raise the price to more than \$34,000 per vial. Mallinckrodt now charges more than \$46,000 per vial, an increase of more than 100,000% since 2001.

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Advocates, Clinicians Urge CVS Caremark Reverse Dangerous Formulary Change

December 16, 2021 · 2 min read

Effective January 1, national pharmacy benefit manager would eliminate coverage for medications that prevent stroke and cardiovascular events

WASHINGTON, Dec. 16, 2021 /PRNewswire/ -- The nonprofit Partnership to Advance Cardiovascular Health, along with allied organizations, sent a [letter](#) urging CVS Caremark to reverse its "dangerously disruptive" decision to remove all but one direct oral anticoagulant from its commercial pharmacy benefit plan. The move would force stable patients to switch medications, a practice known as [non-medical switching](#), and increase their risk of stroke and death.

Yost: Health-care giant took tens of millions meant for Ohio's poor, disabled

Darrel Rowland The Columbus Dispatch
Published 12:19 p.m. ET Apr. 9, 2021

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Advocacy groups outraged after a PBM offers a \$500 gift card to persuade patients to switch drugs

By Ed Silverman April 19, 2021

The lobbying juggernaut the American Hospital Association is losing its top advocate at a critical moment for the industry

Advocacy groups outraged after a PBM offers a \$500 gift card to persuade patients to switch drugs

Pharmalittle: Biden aides meet with HHS health