

Pharmacy Benefit Manager Regulation



Joint Labor, Health and Social Services Committee

June 2021

2021 Interim Topic Request

Over 20 independent Wyoming pharmacists requested the Joint Labor, Health and Social Services Committee study **Pharmacy Benefit Manager (PBM) regulation** and the creation of legislation that mimics 2015 **Arkansas Act 900**, which amended Arkansas' PBM **Maximum Allowable Cost** statute.

(LSO Issue Brief p. 1)

Issue Brief Focus



Questions

What are Pharmacy Benefit Managers (PBMs)?

How are PBMs regulated?

How does Wyoming currently regulate PBMs?

What is Arkansas Act 900 and how does it regulate PBM maximum allowable costs?

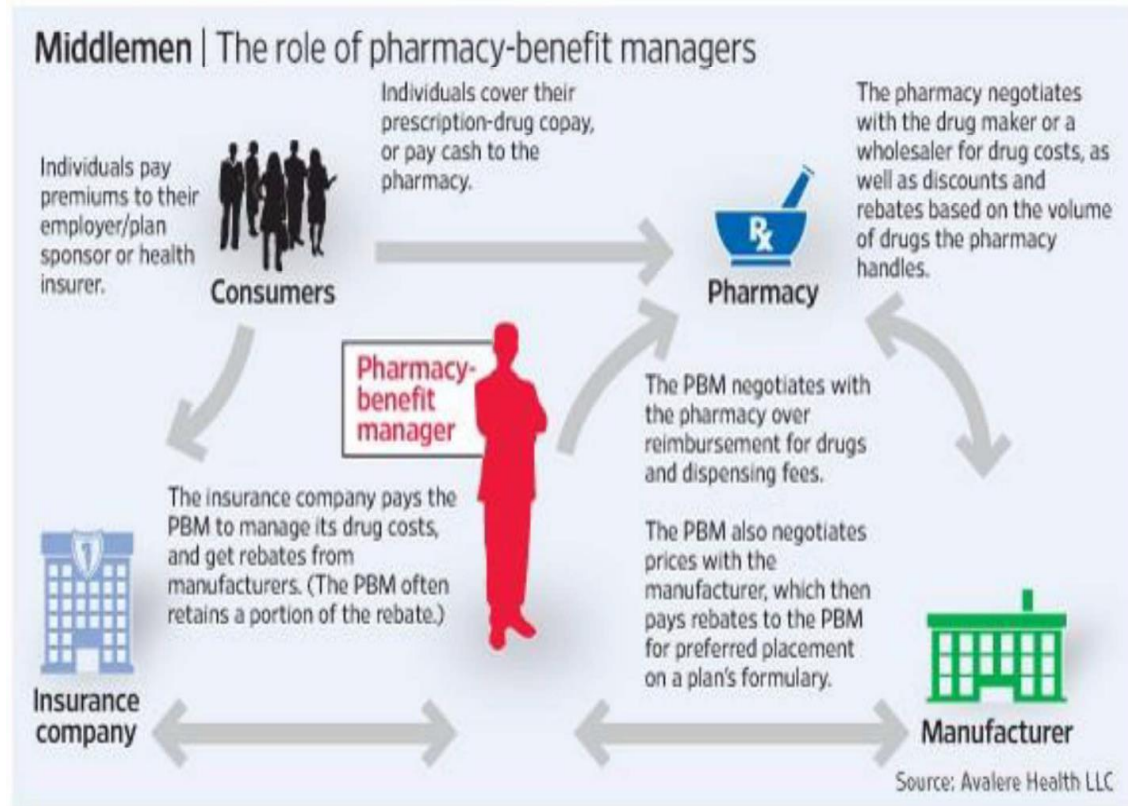
How does Wyoming's Maximum Allowable Cost statute compare with Arkansas Act 900?

What are Pharmacy Benefit Managers (PBMs)?

PBMs are companies that manage prescription drug benefits on behalf of health insurers with the goal of reducing or containing prescription drug costs.

(LSO Issue Brief pp. 1-2)

PBM act as intermediaries between the health insurer, drug manufacturers, and pharmacies by negotiating discounts, rebates, and reimbursements.



(LSO Issue Brief p. 2)

How are PBMs regulated?

- PBMs are largely regulated by states rather than the federal government.
- All 50 states and the District of Columbia have enacted legislation regulating PBMs.

(LSO Issue Brief p. 3)

How do States regulate PBMs?

State statutes regulating PBMs can be categorized into 12 areas of regulation.

- A few states (e.g. Louisiana, Maryland) regulate PBMs practices in all 12 areas.
- Other states (e.g. Massachusetts, Michigan, Nebraska) regulate PBMs in only one or two areas.
- Most states fall somewhere in between. Wyoming regulates 4 areas of PBM practices.

Wyoming PBM statutes (W.S. 26-52-101 through 26-52-104)

- The 2016 Legislature passed HB 35, sponsored by the Joint Corporations, Elections, and Political Subdivisions Committee, creating the first PBM statutes.
- Wyoming PBM statutes are part of the Insurance Code.

(LSO Issue Brief p. 4)

PBM Practice Areas regulated by Wyoming PBM statutes

The original 2016 PBM Act regulated 3 areas of PBM practices:

- PBMs must be **licensed** by the Wyoming Department of Insurance.
- PBMs must follow certain standards when **auditing pharmacies**.
- PBMs must meet certain requirements for reimbursing pharmacies according to PBM **maximum allowable cost** lists.

(LSO Issue Brief pp. 4-6)

PBM Practice Areas regulated by Wyoming PBM statutes

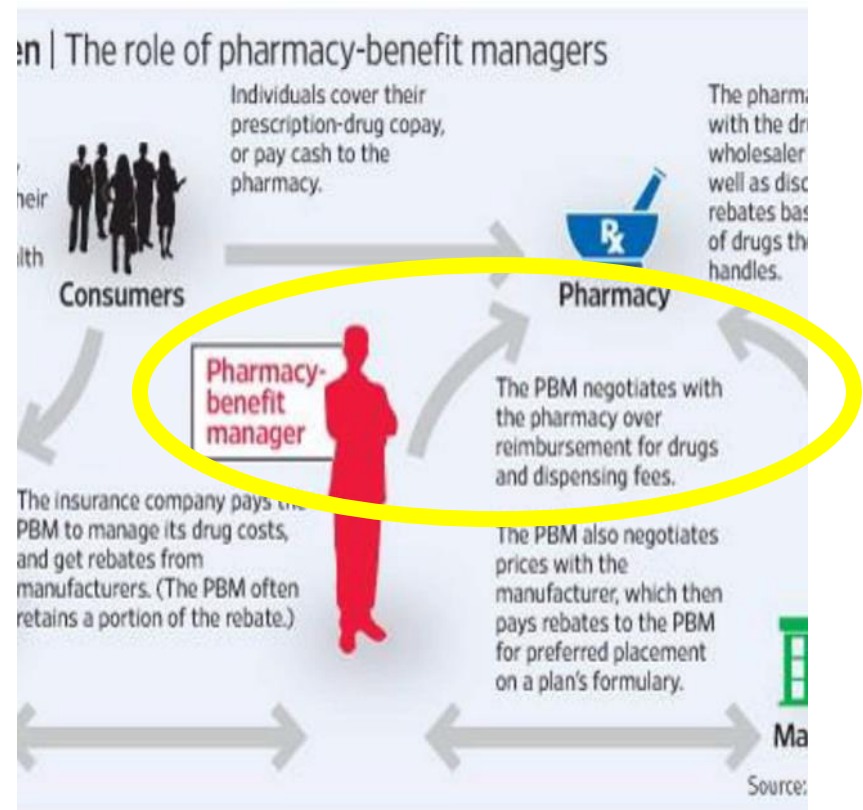
The 2019 Legislature passed HB 63 amending the statutes to add a 4th area of regulation:

- PBMs cannot prohibit or penalize a pharmacy for **disclosing prescription drug cost** information or offering a less expensive alternative to a customer.

(LSO Issue Brief pp. 5-6)

What are Maximum Allowable Costs?

- **Maximum Allowable Cost (MAC):** the maximum dollar amount PBMs will reimburse pharmacies for the cost of a prescription drug.
- PBMs typically negotiate reimbursements and develop unique MAC lists for each pharmacy network they administer.



(LSO Issue Brief p. 2)

How does Wyoming currently regulate Maximum Allowable Costs?

(LSO Issue Brief p. 5)

W.S. 26-52-104 requires that PBMs:

- Ensure that MAC list drugs meet national rating requirements and are available for purchase by Wyoming pharmacies.
- Consider “only the price” of the drug and any generic equivalent in setting MAC reimbursement price.
- Make MAC list and “sources” utilized to determine the MAC available to pharmacies.
- Update MAC list every 7 days to reflect changes.
- Provide pharmacies with a process to appeal the MAC reimbursement rate.

Wyoming MAC List Appeal Process requirements

(LSO Issue Brief p. 5)

- Pharmacy has up to 10 days to appeal a MAC reimbursement for a dispensed drug.
- PBM has up to 10 days to respond to the appeal.
- If the appeal is upheld, PBM shall adjust the MAC reimbursement with 1 day and allow the pharmacy to rebill the claim.
- If the appeal is denied, PBM shall provide the pharmacy with the reason for the denial and the National Drug Code (NDC) number for purchasing the drug from a wholesaler at or below the MAC.

Possible questions for further study

- Are Wyoming pharmacies utilizing the appeal process that PBMs are required to provide under current Wyoming statutes?
- What percentage of appeals are upheld? Denied?
- When appeals are upheld, are MAC costs adjusted sufficiently to cover pharmacy acquisition costs?
- When appeals are denied, are PBMs providing NDCs that allow pharmacies to obtain the prescription drug at or below the MAC price?

How do current Wyoming statutes regulating Maximum Allowable Costs compare to Arkansas Act 900?

Arkansas Act 900

- The 2015 Arkansas General Assembly passed **Act 900**, amending the Arkansas Maximum Allowable Cost statutes.
- The Act effectively requires PBMs to reimburse pharmacies at a Maximum Allowable Cost **equal to or greater than the pharmacy acquisition cost** and allows pharmacies to decline to provide a prescription drug to a patient if the MAC list reimbursement is less than the pharmacy acquisition cost.

(LSO Issue Brief pp. 6-7)

How does Arkansas' Maximum Allowable Cost statute differ from Wyoming's?

- If a pharmacy appeals a MAC reimbursement, Arkansas statute requires PBMs to **adjust the MAC to a price equal to or greater than the pharmacy acquisition cost.** Wyoming statute does not.
- Arkansas MAC statute is more stringent than Wyoming's MAC statute in other ways as well, including explicitly stating that a **violation of the statute is a violation of three other Arkansas laws.**
- Arkansas MAC statute is part of **more comprehensive regulation of PBMs by the state** than Wyoming statutes provide.

(LSO Issue Brief Appendix B)

Wyoming regulates 4 areas of PBM practices; Arkansas regulates 9 areas

(LSO Issue Brief Appendix B)

Category	Wyoming Statutes	Arkansas Statutes
Cost-disclosure/gag clause	Y	Y
Licensure/Registration	Y	Y
Maximum Allowable Costs	Y	Y
Pharmacy Auditing Standards/Appeals Process	Y	Y
Network Adequacy	N	Y
Pharmacy Reimbursement/Clawback	N	Y
Regulatory Agency Enforcement	N	Y
Spread Pricing	N	Y
Utilization Management Tools	N	Y

Regulatory Agency Enforcement: Wyoming vs Arkansas

(LSO Issue Brief pp. 4-5 and Appendix B)

Wyoming PBM statute provides Department of Insurance with licensing authority over PBMs

Regulatory Agency Enforcement: Wyoming vs Arkansas

(LSO Issue Brief pp. 7-8 and Appendix B)

- Arkansas statutes provide the state Commissioner of Insurance with authority to regulate licensure PLUS:
 - PBM financial standards and financial solvency
 - MAC practices
 - Pharmacy network adequacy
 - PBM rebates and compensation
 - PBM reporting requirements
- Arkansas Department of Insurance employs 3 F-T staff (2 investigators and 1 coordinator) dedicated to PBM regulation.

Model PBM Legislation

*(LSO Issue Brief
Appendix D)*

In addition to a comparative summary of Arkansas and Wyoming PBM statutes, the Issue Brief presents model PBM regulation legislation developed by:

- National Council of Insurance Legislators (NCOIL)
- National Association of Insurance Commissioners (NAIC)

Questions

