

Maximum Allowable Cost (MAC)

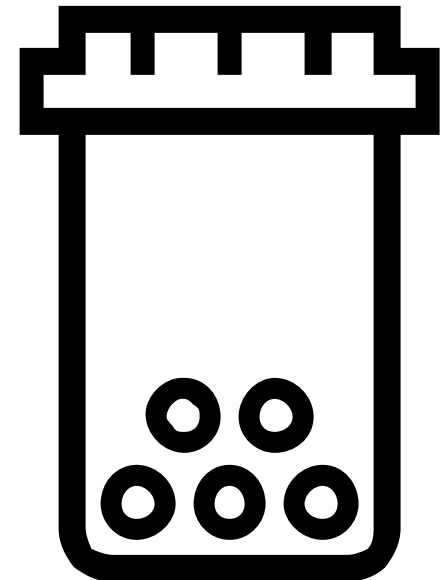
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Maximum Allowable Cost

- 1. Issue Overview**
- 2. MAC 1.0 – And so it begins....**
- 3. MAC 2.0 – Wait, there's more....**
- 4. MAC 3.0 and beyond – Wait, there's still more?**





The Issue: MAC Reimbursement

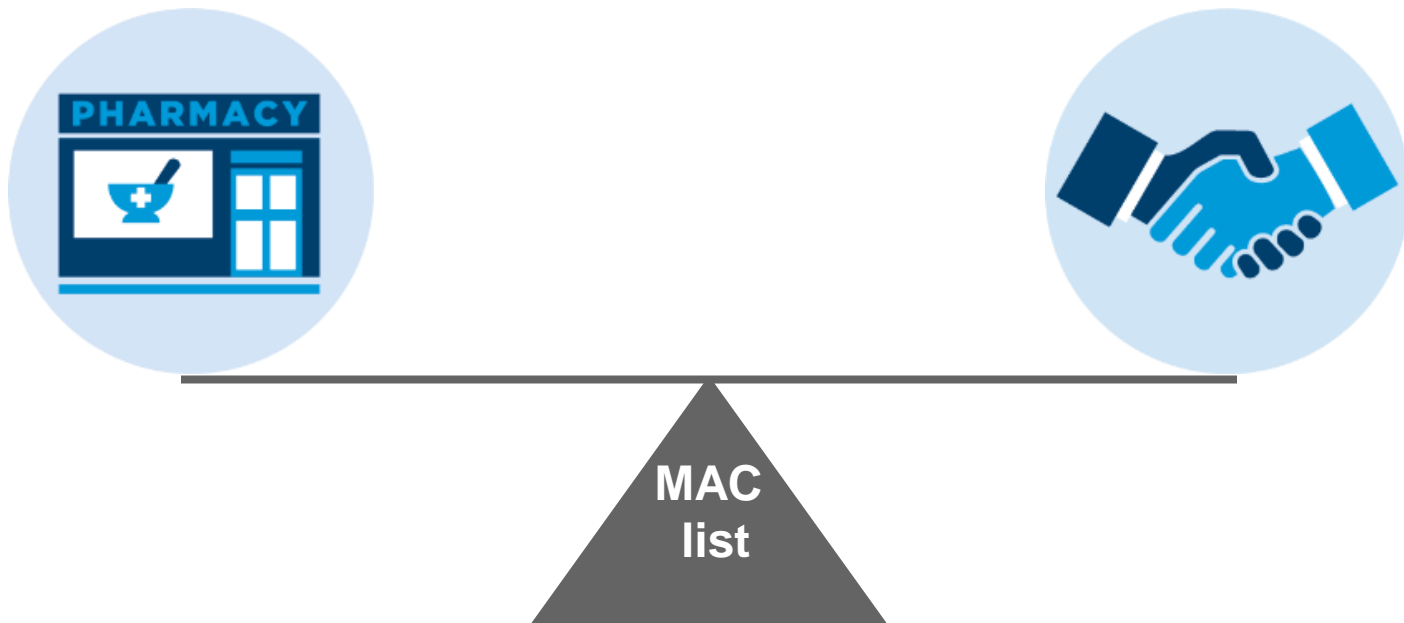
GENERIC DRUG REIMBURSEMENT

- **A maximum allowable cost (MAC) list specifies the maximum amount a PBM will reimburse a pharmacy for a particular generic drug**
- **Every manufacturer has its own price for a particular generic drug and these prices can differ extensively by manufacturer**
- **MAC lists standardize the reimbursement amount to pharmacies for identical products from various manufacturers, regardless of each manufacturer's price**



The Issue: MAC Reimbursement

- **PBMs develop and maintain their own confidential MAC lists, based on proprietary methodologies that include a number of factors, such as survey of existing wholesale prices in the marketplace**
- **MAC lists help PBMs fairly compensate pharmacies while providing cost-effective drug benefits to their health plan and employer clients**





The Issue: MAC Reimbursement

**PROPOSERS: INDEPENDENT PHARMACISTS AND PHARMACY SERVICES
ADMINISTRATION ORGANIZATIONS (PSAO)**

- **What were the proponents saying originally?**
- **What did they expect from the legislation?**
- **What are they saying now?**



The Legislation: MAC 1.0

TYPICAL PROVISIONS PROPOSED

- Disclosure of methodology and sources
- Limits on what can be MAC'd – 3 or more in the marketplace and not during the 180 exclusivity period
- Updating MAC lists
- Appeals processes

TYPICAL PROVISIONS ENACTED

- Disclose sources used to obtain drug price data
- Updating MAC list every 7 days
- Defining what can be on the MAC list “A”, “B”, “NR”, & “NA”, not obsolete, generally available
- Right to appeal & appeal response timeframes (prefer -14 days)
- Appeal approval: date of determination, retroactive, reverse and rebill
- Appeal denial: reason for denial and NDC of a drug that may be purchased at or below the price determined by the PBM

The Legislation – MAC 2.0

WHY?

- Proponents believed that MAC bills would make them more profitable
- Appeal denial – what is the PBM actually required to provide? Lack of understanding about drug supply chain
- PSAOs
- Taking next step to legislating private contracts
- Departments of Insurance (DOI) get involved– compliance/enforcement

WHAT?

- Guaranteed profits
 - Invoice cost
- Reimbursement corrections to all “similarly situated pharmacies”
- Disclosure of MAC reimbursement to plan sponsors
- MAC List update notifications
- Penalties for non-compliance
- Authority granted to DOIs to review/approve PBM appeals processes
- Added layer of appeal/review given to some DOIs



State Example: Arkansas, Ohio, Kentucky

GUARANTEED PROFITS, DISCLOSURE, AND DOI APPEALS

- **AR: A.R.S. 17-92-507 - Guaranteed Profits**
 - If the National Drug Code number provided by the pharmacy benefits manager is not available below the pharmacy acquisition cost from the pharmaceutical wholesaler from whom the pharmacy or pharmacist purchases the majority of prescription drugs for resale, then the PBM shall adjust the MAC List above the challenging pharmacy's pharmacy acquisition cost and permit the pharmacy to reverse and rebill each claim affected by the inability to procure the drug at a cost that is equal to or less than the previously challenged MAC.
- **OH: O.R.S. 3959.111 - Plan Sponsor Disclosure**
 - Disclose whether PBM uses same MAC list when billing a plan sponsor as it does when reimbursing a pharmacy.
 - If PBM uses multiple MAC lists, disclose in the aggregate to a plan sponsor any differences between the amount paid to a pharmacy and the amount charged to a plan sponsor. Disclosures on quarterly basis.
- **KY: K.R.S. 304-17A-162 - Department Involvement in Appeals**
 - Make available to the department, upon request, information that is needed to resolve an appeal. If the department is unable to obtain information from the pharmacy benefit manager that is necessary to resolve the appeal, the appeal shall be granted to the appealing pharmacy.

The Regulations – MAC 3.0

WHY?

- Pressure by independent pharmacies and PSAOs on DOI
- DOIs not familiar with PBMs
- Continued lack of understanding of drug supply chain
- DOIs don't typically get involved in “provider” contracting reimbursement issues

WHAT?

- DOI Rulemaking in handful of states:
 - Defining “generally available”
 - Requiring knowledge of specific wholesaler pricing and contracts
 - Allowing batch appeals
 - Requiring specific person of contact for appeals
 - Requiring notification to all network pharmacies of single granted appeal
 - DOI review of appeal – not protecting competitive information



State Example: Oregon & Washington

DEFINITION OF “GENERALLY AVAILABLE” & APPEAL TO INSURANCE DEPARTMENT

- **OR: Draft Rules:**
 - (1) A drug is “generally available for purchase” if the drug is available for purchase by similarly situated pharmacies in this state from a national or regional wholesaler at the time of claim submission. A drug is not “generally available for purchase” if the drug is:
 - (a) Restricted to hospital or institutional dispensing;
 - (b) Only available at or below the maximum allowable cost price if purchased in quantities that materially exceed the dispensing needs of similarly situated pharmacies;
 - (c) Only available at or below the maximum allowable cost price if purchased at a discount due to being short-dated; or,
 - (d) Subject to a notice of drug recall.
 - (2) If an appeal is denied for reason that the drug was generally available for purchase in this state at a price equal to or less than the maximum allowable cost at the time of claim submission, the pharmacy benefit manager shall specify where the drug was so available.
- **WA: R.W.C. 19.340.100 - OIC Appeals**
 - Applicable only to a pharmacy with fewer than 15 retail outlets
 - Beginning July 1, 2017, if a network pharmacy appeal to the pharmacy benefit manager is denied, or if the network pharmacy is unsatisfied with the outcome of the appeal, the pharmacy or pharmacist may dispute the decision and request review by the commissioner within thirty calendar days of receiving the decision.



PCMA LAWSUITS

IOWA –PCMA v. Gerhart

- On January 11, 2017 a three-judge panel of the Eighth Circuit Court of Appeals struck down Iowa's 2014 MAC/transparency law in its entirety.
- In its opinion, the Court said that under ERISA, states cannot dictate how plans structure and pay for plan benefits, including prescription drugs.

ARKANSAS –PCMA v. Rutledge

- On March 1, 2017, a Federal District Judge struck down the Arkansas law (Act 900) regulating how PBMs reimburse pharmacies for dispensing generic prescription drugs through MAC lists as applied to the administration of drug benefits for all health plans in the commercial marketplace (non-ERISA).
- The only part of the law the Arkansas Court upheld is its purported applicability to Medicare Part D plans. PCMA has appealed to the Eighth Circuit Court of Appeals.



Where does it go from here?

Thank You

