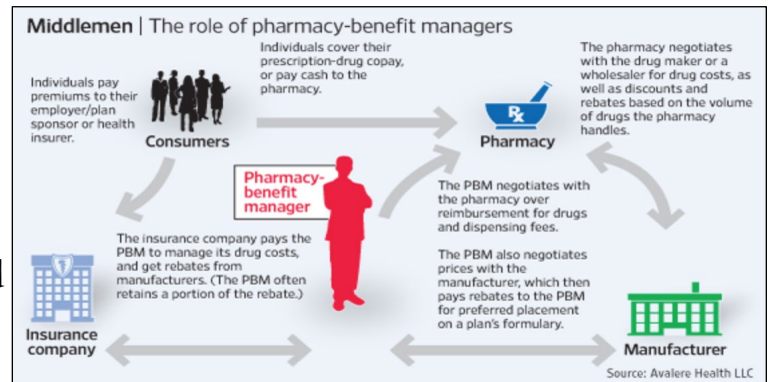


# Ensuring Pharmacist's Freedom of Speech and Protection from Pharmacy Benefit Manager Retaliation

HB3631 – Representative Hoan Huynh

**Background:** Pharmacy benefit managers (PBMs) are intermediary firms that facilitate prescription drug benefits claims 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. The policies and practices are driving many pharmacies out of business and jeopardizing patient access to essential care and creating pharmacy deserts. These threats to access to care are even more serious as we continue to emerge from the COVID-19 pandemic.



**HB3631** protects a pharmacist's *Freedom of Speech* and their right to be able to discuss with government representatives how Pharmacy Benefits Managers' business and operational practices are impacting the pharmacist's practice and their ability to provide needed patient care and medications.

- **Prohibits PBM retaliation** against pharmacists and pharmacies. Pharmacists who speak out against PBM business and operational practices experience retaliation measures as a punishment for enacting their protect *Freedom of Speech* rights (e.g. exponential increase in audits, refusal to access future contracts, removal from preferred provider networks).
- **Enables Pharmacists to be able to share experiences** examples of PBM business and operational practices that are having a negative impact on the pharmacist's practice, their community, and ability to care for their patients.
- **Provides Protection of Proprietary Information** that is shared with any governmental official that has authority to receive information from the pharmacist and protects contracts within the limits of the Illinois Insurance Code.

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

abc 7 EYEWITNESS NEWS WATCH LIVE Chicago & Suburban Cook Co. North Suburbs West Suburbs

SHARE I-TEAM TWEET EMAIL

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

By Chuck Goude 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

By NARA SCHOENBERG CHICAGO TRIBUNE | DEC 30, 2021

#### Press Releases

September 30, 2021

#### 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."

City

#### The Lack of Neighborhood Pharmacies is Crippling Our Community.

Theresa Horton, Contributing Writer April 9, 2021

#### 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.

#### FTC Launches Inquiry Into Prescription Drug Middlemen Industry

Agency to Scrutinize the Impact of Vertically Integrated Pharmacy Benefit Managers on the Access and Affordability of Medicine

June 7, 2022

Tags: [Competition](#) | [Office of Policy Planning](#) | [Nonmerger](#) | [generic drugs](#) | [Pharmacy Benefits Managers \(PBM\)](#) | [Health Care](#) | [Drug Stores and Pharmacies](#) | [Prescription Drugs](#)

The Federal Trade Commission announced today that it will launch an inquiry into the prescription drug middleman industry, requiring the six largest [pharmacy benefit managers](#) to provide information and records regarding their business practices. The agency's inquiry will scrutinize the impact of vertically integrated pharmacy benefit managers on the access and affordability of prescription drugs. As part of this inquiry, the FTC will send compulsory orders to [CVS Caremark](#); [Express Scripts, Inc.](#); [OptumRx, Inc.](#); [Humana Inc.](#); [Prime Therapeutics LLC](#); and [MedImpact Healthcare Systems, Inc.](#)

#### 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

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

By Ed Silverman April 19, 2021

businesswire A BERKSHIRE HATHAWAY COMPANY HOME SERVICES NEWS EDUCATION ABOUT US Search

#### 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 reverse it has

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