



# 2023 State Advocacy Preview



# Rising to the CHALLENGE

***Our Commitment, Unrelenting Focus  
Have Delivered Legislative Victories  
In the Face of Incredible Opposition***



American Pharmacies is fiercely committed to legislative advocacy and has passed the most bills of any purchasing group in the nation. In the last year, APRX-driven legislation was signed into law in Arizona, Michigan and New Mexico, building on a long record of success that started in Texas.

“Advocacy is in our blood,” APRx President Laird Leavoy said. “It has been every bit as important as purchasing economics in our value proposition since day one. To be totally committed to the economic welfare of our members, we have to put forth maximum effort in the legislative arena.”

Michael Wright, VP of government affairs, has spearheaded our expansion into multiple states with our trademark blend of hard work, decisive action, realistic incremental goals and key strategic partnerships. “We take a calculated, strategic approach to every state we engage in,” Wright said. “We build sustainable efforts with strong partners. That approach has helped us pass 9 of 11 bills filed in Texas and now seven bills in three other states.”

The latest was HB 4348, a sweeping Michigan PBM reform bill that prohibits clawbacks and transaction fees, protects patients' right to choose their pharmacy, bars retroactive reductions in reimbursements, requires MAC pricing transparency and creates major audit protections. Prior to American Pharmacies' engagement, there had never been a meaningful PBM reform bill in Michigan. We got involved in 2020, hiring a lobbyist and meeting with key independents, bill sponsor Rep. Julie Calley and House Speaker Jason Wentworth. Gen. Counsel Miguel Rodriguez provided significant input on bill content. Wright and Rodriguez met several times with House and Senate leaders to build support.

Our 2021 legislative session in Texas — spearheaded by our Texas Pharmacy Business Council — was one for the ages, as we passed both a major PBM reform bill and an anti-steering bill, adding to our strong legacy of success there, which includes audit and MAC reforms, a clawback ban and the nation's first ban on transaction fees.

Our reputation and achievements are hard-earned and have validated our way of doing things. We rely on a well-crafted strategic plan, strong legislative allies and the finest contract lobbyists we can find. We set reasonable, obtainable goals that drive well-crafted bills, and we adhere to a strict code of ethics. It's a game plan that has worked very well for us over the past decade and is the very core of our success.

## **We Need Your Help!**

We are well-prepared and have a talented advocacy team, but your grassroots support is vital. We need pharmacists to support the cause **Our allies value your input, so please submit the Grassroots Contact Form on page 8.**

### **BOARD OF DIRECTORS**

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# Budgets, Elections & Courts Shape 2023 Outlook

## Most States are Flu\$h Entering New Year

State budgets are generally in a far better position entering 2023 compared to 2022, following strong revenue performance in fiscal 2022 and a sound rebound from the disruptions of the coronavirus pandemic. Revenue recovery was driven by improved economic conditions, sales tax growth and stronger employment. But slower growth, rising inflation and a possible recession pose risks going forward, so many states will prepare for a potential downturn.



In Texas, lawmakers have an estimated \$27 billion surplus for the next biennium, which Republican leaders are eyeing for property tax relief or infrastructure improvements. Things are not so rosy in California, where legislators must deal with a projected shortfall of \$24 billion, which could eat up its estimated \$23 billion in reserves. Elsewhere, Minnesota has a \$17.6 billion surplus, Florida is up \$21.8 billion and Tennessee is about \$1 billion in the black. Michigan is sitting on a surplus of \$6 billion heading into 2023, while New Mexico has a \$2.5 billion windfall.

**In many states, there will never be a better opportunity to improve pharmacy reimbursement in managed care.**

## Elections Bring Big Changes in Key States



The 2022 midterm elections did not produce the predicted widespread Republican victories in the U.S. House and Senate, but they did deliver some big surprises at the state level. Democrats ended almost 40 years of Republican control of the Michigan Legislature by grabbing a 56-54 majority in the House and a 20-18 advantage in the Senate. Those tight margins will necessitate a lot of compromise. Republican House Speaker Jason Wentworth, a major architect of key American-Pharmacies backed PBM reforms passed in March, will be replaced by Rep. Joe Tate of Detroit, who will become the state's first black House speaker. Key allies and supporters of the legislation remain in both chambers.

In Minnesota, Democrats narrowly won the Senate from Republicans to take full control of the statehouse. In Pennsylvania, Democrats won a surprise narrow margin in the House, but the GOP still controls the Senate. In governorships, Democrats narrowed Republicans' nationwide advantage from 28-22 to 26-24. The tight margins in Michigan, Minnesota and a few other statehouses will necessitate a bipartisan approach to passing pro-pharmacy bills in those states.

## Momentum of Federal Rulings Will Drive PBM Reform Efforts

Since the U.S. Supreme Court's landmark December 2020 decision in *Rutledge v PCMA*, federal courts have largely continued to uphold states' right to regulate PBM conduct. PBMs had argued for years that a wide variety of state PBM-reform laws are preempted by the federal Employee Retirement Income Security Act (ERISA) and that states have little power to regulate PBM practices. The High Court's unanimous decision in 2020 put those arguments to rest and boosted states' hopes for passing PBM reforms that they would be able to effectively enforce.



Subsequent federal rulings continue to support state's rights to regulate PBMs within the scope of the *Rutledge* decision. Federal rulings in November 2021 and April 22 upheld the validity of PBM reforms previously enacted in North Dakota and Oklahoma, respectively.

Although PBMs may continue to challenge state-enacted reforms in federal court, states are emboldened by the rulings: at least 20 state legislatures addressed PBM reforms in 2022, a trend we expect to accelerate as state lawmakers continue their scrutiny of PBMs. (See a more detailed discussion of these issues on page 3).



# APRx Voice Grows in Court Challenges to PBM Laws

Fighting for independent pharmacies is not limited to just legislatures and Congress, and American Pharmacies joins other state and national organizations in federal court to support those defending state reforms from PBM challenges.

On Oct. 18, APRx joined four other pharmacy organizations in filing a joint amicus curiae (friend of the court) brief defending states' rights to pass and enforce laws protecting patients and community pharmacies from predatory PBM practices. The amicus brief was filed in the 10th Circuit Court of Appeals in cooperation with the American Pharmacists Association, the National Association of Chain Drug Stores, the National Community Pharmacists Association and the Oklahoma Pharmacists Association.



In 2019, the Oklahoma Legislature passed the Patient's Right to Pharmacy Choice Act to protect access to pharmacies and protect pharmacies from self-serving practices of PBMs. The new law was soon challenged in court by the Pharmaceutical Care Management Association (PCMA, the PBMs' trade lobby).

In early April, the U.S. District Court for the Western District of Oklahoma ruled largely in favor of the state in *PCMA v. Mulready*, upholding most of the Oklahoma law against a federal preemption challenge. In August, PCMA appealed that decision to the U.S. Court of Appeals for the Tenth Circuit, asserting that only four of the provisions are preempted by ERISA and Medicare Part D, retreating from the 14 it originally had challenged. No date has been set for oral arguments.

Last Nov. 29, American Pharmacies and key allies filed an amicus brief with a federal appeals court to defend a Louisiana law giving the state authority to regulate Medicare Part D claims. In July 2021, APRx filed an amicus brief (joined by the Alliance for Transparent and Affordable Prescriptions and the Community Oncologist Alliance) in *PCMA v. Wehbi* in defense of North Dakota's PBM reform laws.

## Federal Rulings Are Shifting the PBM Reform Landscape

American Pharmacies is proud to have helped pass several significant and innovative PBM reform laws across the country. But until recently, the effect of these laws was restricted to a narrow slice of the PBM market. The old precedent was that state PBM reform laws could not impact ERISA claims (health plans sponsored by employers) or Medicare Part D claims, both of which make up a very large part of the pharmacy market. The prevailing view was that only Congress could regulate PBM practices in these markets. **But federal court decisions have triggered the realization that state PBM reforms can apply to both ERISA and Medicare Part D claims.**



This sea change began with the U.S. Supreme Court's 2020 decision in *Rutledge v. PCMA* that an Arkansas PBM reform law could be enforced against PBMs when they administered ERISA claims. **The *Rutledge* decision had a cascading effect across the country, allowing courts and insurance departments to reshape the boundaries of power in favor of the states. APRx has closely followed this shift, adding our voice to the chorus of support wherever it is needed.**

A significant body of law has now emerged to support the expanded reach of state PBM reform laws. **But we remain vigilant, following court cases across the country that may impact the right of states to reform PBM practices.** We are closely following a Tennessee case brought by an ERISA plan to drive an American Pharmacies member, ThriftyMedPlus, from its network in violation of a Tennessee PBM reform law. We are also closely following a recent case by the Minnesota Department of Commerce against Caremark for violating Minnesota's anti-steering law. It is likely that Caremark will assert ERISA and/or Medicare Part D preemption in its defense.

In short, there is no shortage of activity in the courts to curb PBM abuses. While a strong decision like *Rutledge* can set a favorable precedent, a bad decision by another court could likewise set a bad precedent. Therefore, we will continue to closely monitor cases around the country and add our voice whenever possible so that we can have more decisions like *Rutledge*, *Wehbi*, and *Mulready* in the future. **We continue to educate regulators and policymakers so that all will understand that a new day has dawned and state laws can impact claims that they used to think were off limits.**

# Key State Legislatures at a Glance

## Texas Legislature



**Frequency:** Biennial (every other year) | 120 Days

**Number of Legislators:** 181 – 31 Senators | 150 Representatives

**2023 Session:** Convenes Jan. 10 | Adjourns May 29

**Bill Filing Deadline:** March 10

**Effective Date of Legislation:** 90 days after adjournment unless a different date is specified in the bill; bills with an emergency clause take effect immediately upon signing by the governor.



[capitol.texas.gov](http://capitol.texas.gov)

## New Mexico Legislature



**Frequency:** Annual — a 60-day session each odd-numbered year and a 30-day “fiscal” session each even-numbered year.

**Number of Legislators:** 112 – 42 Senators | 70 Representatives

**2023 Session:** Convenes Jan. 17 | Adjourns March 18

**Bill Filing Deadline:** Feb. 16

**Effective Date of Legislation:** June 16 (all bills that are not general appropriation bills or do not have a specified date or emergency clause)



[nmlegis.gov](http://nmlegis.gov)

## Tennessee General Assembly



**Frequency:** Biennial (every other year) | 90 days

**Number of Legislators:** 132 – 33 Senators | 99 Representatives

**Bill Filing Deadline:** None

**2023 Session:** Convenes Jan. 10 | Adjourns April 26

**Effective Date of Legislation:** 40 days after passage unless there is an emergency clause



[capitol.tn.gov](http://capitol.tn.gov)

## Michigan Legislature



**Frequency:** Year-round

**Number of Legislators:** 148 – 38 Senators | 110 Representatives

**2023 Session:** Convenes Jan. 11 | Adjourns Dec. 31

**Bill Filing Deadline:** March 10

**Effective Date of Legislation:** Most bills include an effective date. If not specified and if the bill passed by a two-thirds majority, then the bill takes effect immediately. Bills that do not pass by a two-thirds majority become effective 90 days after adjournment.



[legislature.mi.gov](http://legislature.mi.gov)

## Arizona Legislature



**Frequency:** Annual | 100 Days (can be extended by vote)

**Number of Legislators:** 90 – 30 Senators | 60 Representatives

**2023 Session:** Convenes Jan. 9 | Adjourns April 22

**Bill Filing Deadline:** Feb. 6

**Effective Date of Legislation:** 90 days after adjournment; bills with an emergency clause take effect immediately upon signing by the governor



[azleg.gov](http://azleg.gov)

## Florida Legislature



**Frequency:** Annual | 60 Days

**Number of Legislators:** 160 – 40 Senators | 120 Representatives

**2023 Session:** Convenes March 7 | Adjourns May 5

**Bill Filing Deadline:** March 7

**Effective Date of Legislation:** 60 days after adjournment unless otherwise specified in the bill



[leg.state.fl.us](http://leg.state.fl.us)

# APRx HOT LIST: Pharmacy Issues on Our Radar

## Audit Protections

American Pharmacies supports fair audit standards that require adequate notice and response times, limit lookback periods, restrict the scope of invoice audits and prohibit extrapolation.

## Expanded Immunization Authority

Pharmacists' immunization authority must expand to reflect their critical role as vaccine providers — especially during the COVID pandemic — and their growing role in patient care and disease prevention.

## Expanded Authority for Point-of-Care-Testing | Test & Treat

Recognizing that the pandemic has accelerated the decline in primary-care providers, we strongly support the expansion of categories of diagnostic testing allowed in properly credentialed pharmacies. **We also support the authorization of credentialed testing pharmacies to prescribe and dispense certain antibiotic and antiviral drugs if an authorized diagnostic test produces a positive result.**



## Expansion of Medical Marijuana Dispensing

We support the expansion of medical marijuana dispensing to include a broader variety of legitimate clinical conditions, such as cancer, palliative care, glaucoma, seizure disorders, rheumatological disease and pain management. We also support reasonable, uniform regulation and licensing requirements for medical dispensing pharmacies through the state board of pharmacy.

## Medicaid Formulary

Patients and taxpayers are better served when MCOs & PBMs do not each establish their own drug lists. **American Pharmacies supports a single state-managed formulary with a targeted increase in Medicaid's generic utilization.**

## NADAC Reimbursement Methodology

**We support a switch from MAC to NADAC as the pricing basis for pharmacy reimbursement in Medicaid managed care, but only with a statutory guarantee of an accompanying dispensing fee of \$10+. *We will fiercely oppose any state effort to adopt NADAC pricing that does not have an attached dispensing fee guarantee.***

## PBM Oversight & Monitoring

More bills will be filed to increase state regulation of PBMs including legislation to require licensing/registration, filing of disclosures and ownership, and more detailed reporting of rebates and spread amounts. **We support increased oversight of PBMs, but our larger focus is targeting PBM abuses that directly impact patient choice and pharmacy revenue.**

## Pharmacists' Scope of Practice

We support state-level authorization of collaborative drug therapy management with prescriptive authority.

## Provider Status & Compensation

We support expanded coverage and payment for patient-care services and expansion of compensable services delivered in the role of a health-care provider.

## Telemedicine Expansion

We are monitoring legislation that would expand the list of providers allowed to use telemedicine for patient consulting and to require that telemedicine services be reimbursed at the same level as in-person provider services.

## Telepharmacy Expansion

We recognize the important role that telepharmacy has played during the pandemic and its importance in states with extensive rural/small-town populations. **We support reasonable expansions of telepharmacy that do not abolish or significantly weaken existing density limits or degrade patient protection/safe dispensing provisions.**

## 340-B Reimbursement Protection

Legislation is being pushed in several states to prohibit health plans and PBMs from reimbursing 340-B hospitals and pharmacies less than non-340-B entities are reimbursed for the same drug.

## Resources for Monitoring State Legislatures & Congress

All the state websites below allow you to look up legislators, bills, committees, meetings and House/Senate calendars. The Texas site also allows you to create bill-tracking lists. Most also allow you to stream live sessions and committee meetings and access video of archived sessions/meetings.

Texas Legislature	<a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a>
New Mexico Legislature	<a href="http://www.nmlegis.gov">www.nmlegis.gov</a>
Arizona Legislature	<a href="http://www.tlc.state.tx.us">www.tlc.state.tx.us</a>
Michigan Legislature	<a href="http://legislature.mi.gov">legislature.mi.gov</a>
Tennessee General Assembly	<a href="http://capitol.tn.gov">capitol.tn.gov</a>
Florida Legislature	<a href="http://leg.state.fl.us">leg.state.fl.us</a>

[Congress.gov](http://Congress.gov)

A comprehensive site for finding and tracking federal legislation, House/Senate calendars, and members of Congress.

## Other Advocacy Resources

[Find Your Federal Representatives](#) [congress.gov/members/find-your-member](http://congress.gov/members/find-your-member)

Look up your U.S. House & Senate members along with their contact information

[Locate Your Legislator](#) [actioncenter.pharmacist.com](http://actioncenter.pharmacist.com)

This page on the APhA website allows you to look up both state and federal legislators

[Our Independent Voice](#) [ourindependentvoice.com](http://ourindependentvoice.com)

AmerisourceBergen, American Pharmacies' wholesale partner, provides extensive news on federal legislation and background information on advocacy issues, as well as resources and an advocacy toolkit to help grassroots efforts.



**Our  
Independent  
Voice**

[Pharmacists United for Truth & Transparency](#) [www.truthrx.org](http://www.truthrx.org)



PUTT is a non-profit advocacy organization founded by independent pharmacists and pharmacy owners devoted to exposing the truth about the anti-competitive tactics of PBMs. American Pharmacies is a proud member and partner of PUTT and works closely with the organization on advocacy issues.

[National Community Pharmacists Assn.](#) [www.ncpanet.org](http://www.ncpanet.org)

NCPA is a major national advocate for community pharmacists on public policy issues that affect their patients and pharmacies. NCPA advocates on issues ranging from PBM abuses to pharmacists' ability to practice at their full scope. All active American Pharmacies members receive a paid membership to NCPA.



[American Pharmacists Association](#) [actioncenter.pharmacist.com](http://actioncenter.pharmacist.com)



APhA represents all pharmacy practitioners nationwide and has extensive advocacy resources, especially on scope-of-practice issues. The APhA Action Center offers tools for creating customized communications to your legislators.

[46 Brooklyn](#) [46brooklyn.com](http://46brooklyn.com)

is an Ohio non-profit that works to improve accessibility and usability of U.S. drug pricing data. 46brooklyn takes the myriad data sources scattered across the web and stitches them together into data visualizations that can be used by pharmacists to better understand the drug supply chain. It's a great tool for comparing Medicaid/Medicare pricing across states.



[PBM Watch](#) [pbmwatch.com](http://pbmwatch.com)

Having trouble talking to your patients about PBM issues? Send them here — this valuable website is oriented toward consumers, not pharmacists, and provides extensive information on how PBM activities harm patients and raise costs.

[Drug Channels](#) [drugchannels.net](http://drugchannels.net)



**DRUG CHANNELS**  
Expert Insights on Pharmaceutical Economics  
and the Drug Distribution System

Some of the best industry analysis and insights available on PBMs, pharmacies, networks and the complexities of drug economics. Adam' Fein's remarks often surprise and occasionally irritate independent owners, but he's reliably factual.



# How to Work & Build Influence With Legislators

## Always...

1. Know your legislator — What are his/her major causes? Any expertise in health-care or pharmacy issues?
2. Make an appointment — Legislators are often unavailable if you drop in unannounced. If you meet with staff, treat them with respect.
3. **Be prepared** — Know your talking points so you can be clear, factual and to the point.
4. Be **focused & specific** — State your purpose up front and raise one issue at a time. If you are address specific legislation, identify the bill number.
5. Don't attack PBMs or regulators. **Talk about patient impacts instead.**
6. **Offer solutions** — Raise your concerns, but advocate a specific action.
7. Make your legislator's job easier — Leave a concise fact sheet or issue summary. Know the opposing arguments and frequently asked questions.
8. **Be courteous** — Thank the legislator up front for his/her valuable time. Do it again before you leave.
9. Send a prompt thank-you letter that reinforces your name, organization & issues. Include your business card.

## Never...

1. Interrupt a busy legislator — call again later.
2. Exaggerate your stature or connections — Your credibility will suffer.
3. Aggressively press for an answer or commitment.
4. Present a laundry list of issues — it dilutes the value of your key focus.
5. Moralize or question motivations — Stick to facts & objectives.
6. Use jargon — Few lawmakers know what "NADAC" or "MAC" mean.
7. Send form letters or e-mails — Personalize all communications.

## If You Testify...

1. Bring printed copies of your testimony with your name & contact info.
2. Identify yourself, who you represent, the bill number and your position in support or opposition.
3. **Be brief & accurate** — Use personal examples to make your point.
4. Do not make statements or claims you cannot substantiate.
6. Stick to the time limit. Thank the committee & chairperson when done.

## We'll Help You Engage!

As a business owner, you are a vital employer and taxpayer. As a pharmacy expert, you have vital knowledge and experience in how pharmacy care affects your patients and community. **You can be a great asset to legislators and we'll show you how.**

Just go to [aprx.org](http://aprx.org) and download our 10-page *Grassroots* guide. It's got lots of advice, resources and editable letters and documents to help you build a successful outreach effort.



## Want More Clout? Here's What It Takes

If you visit your representative or senator once every few years and send an occasional email or letter, that's fine. But that level of interaction won't bring optimal access or the ability to influence decisions. Here's what it takes to get to that next level:

### Know the Issues

Keep abreast of issues affecting independents and our position on them. Be sure to follow our newsletters, reports and resources at [aprx.org](http://aprx.org). We work year-round on pharmacy issues and will keep you in the loop.

### Be Part of the Team

Join our grassroots contact network so we can coordinate our efforts, provide you support and let you know when we need your help. You can use the form on the next page 10 to sign up.

### Be a Useful Resource

Don't call on your legislators only when you want something — stay in frequent contact so they know and value you as a resource on pharmacy issues. Host them at your store and invite the media. Offer to be a personal pharmacy adviser.

### Show Your \$upport

Nothing shows commitment and support to a legislator like a campaign contribution. Attending fund-raisers is an even better way to get on their radar. You could also host a fundraiser or campaign event at your pharmacy. It's also good publicity.



# Help Us Fight for Patient Choice & Fair Reimbursement



**Take**  
*Action*

## Join APRx's Pharmacy Grassroots Network

Community Pharmacy has many challenges. Powerful, well-funded interests work daily to cut payments to pharmacies, stifle competition and restrict patient's right to choose a pharmacy.

These vital issues are often decided by elected leaders who may not know the facts or appreciate your value to your community as a health-care provider.

**American Pharmacies is the strongest voice for independent pharmacy in the state advocacy arena. But we cannot succeed without your support, starting with the relationships you have with your elected state leaders. No one has more influence with legislators than their voting constituents, so your involvement is critical:**

- ▶ Can you testify effectively about the issues facing community pharmacy?
- ▶ Can we count on you to call, email or visit your elected officials when key issues are up for a vote?
- ▶ Can we depend on you to use any relationships or influence you have with legislators to help us defend the interests of community pharmacy and our patients?
- ▶ Can we count on you to financially support pharmacy-friendly political candidates?

Please fill out the form below to send us your contact information, including an "anytime" phone number that rings directly to you. Thanks for your support – your involvement and relationships will be a vital contributor to our legislative successes.

(Please print clearly)

Name: \_\_\_\_\_ Pharmacy Name: \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Primary Phone: \_\_\_\_\_ Alternative Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

Primary Email: \_\_\_\_\_

Do You contribute to a PAC? YES \_\_\_\_\_ NO \_\_\_\_\_ PAC Name: \_\_\_\_\_

Please indicate below any elected state or federal leaders with whom you have personal and/or professional relationships.

State Senator: \_\_\_\_\_ State Representative: \_\_\_\_\_

Statewide (Gov., Lt. Gov., etc.): \_\_\_\_\_

U.S. Senator: \_\_\_\_\_ U.S. Representative: \_\_\_\_\_

What independent pharmacy issues are most important to you? \_\_\_\_\_

\_\_\_\_\_

Please email or fax this form to:

[mwright@txrxCouncil.org](mailto:mwright@txrxCouncil.org)

FAX: 512-992-1391

**American**  
*Pharmacies*