

# SB1161:

## Puts patient safety and choice ahead of PBM and insurer profits by prohibiting anti-competitive steering practices



### WHAT IS PATIENT STEERING?

Patient steering is a common, anti-competitive practice that health insurers and pharmacy benefit managers (PBMs) use to steer patients to their own pharmacies. Patient steering occurs when a PBM directs, incentivizes, or otherwise steers patients away from in-plan/in-network providers to its own retail, specialty and/or mail pharmacies. Patient steering occurs with both self-administered and clinician-administered drugs (e.g., chemotherapy and other chronic pain infusion treatments). Unfortunately, the practice is becoming more common, as the largest health insurers vertically integrate with PBMs and PBM-owned pharmacies.

Originally intended to manage prescription drug benefits, PBMs are now in the pharmacy business, owning pharmacies that compete with other in-network pharmacies. PBMs create pharmacy networks to ensure adequate coverage, but don't treat all those in-network pharmacies equally. PBMs also set the price patients and their health plan sponsor (usually their employer) pay for prescriptions according to the terms of the benefit plan. Intentionally steering patients away from in-network pharmacies to pharmacies owned by the PBM is both anti-competitive and a conflict of interest. Further, it presents data privacy concerns because only the PBM has access to private patient data, which they can use for their own commercial purposes to select and target patients for steering. PBMs often specifically and contractually forbid other pharmacies from engaging in steering – even though they frequently use this anti-competitive practice themselves.

PBMs also use patient claim data to insert themselves into clinician-administered drug therapy. Historically, doctors have administered chemotherapy and/or other infusion medications in the clinic setting to monitor treatment and make real-time decisions about what regimen is best for an individual patient on any given treatment day. However, in the name of cost “savings,” PBMs are requiring patients to be treated at PBM-owned/affiliated specialty pharmacies – or have drugs shipped from PBM-owned pharmacies to the provider. PBMs' intrusion in patient treatment protocols often results in serious safety and quality concerns, including treatment delays due to:

- Questionable drug quality/integrity (usually caused by exposure to temperature extremes during shipping);
- Late medication delivery;
- Inappropriate or inaccurate dose that isn't in line with what the provider thinks is best on treatment day; and
- Medication non-adherence when patients are sent to new or unfamiliar providers.

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### WHAT DOES SB1161 DO?

- Prohibits PBMs from using private patient health data for commercial purposes other than claims management
- Allows patients to use their in-network pharmacy of choice without fear or risk of losing benefit coverage
- Prohibits PBMs from using marketing tactics or incentives on patients that PBMs contractually forbid other in-network pharmacies to use
- Requires the patient's written consent if someone other than the patient authorizes a prescription transfer
- Prohibits PBMs or insurers from requiring a clinician-administered drug be filled at their pharmacy instead of with the provider
- Prohibits a PBM or insurer from covering a clinician-administered drug under a different benefit, on a different tier, or with higher cost-sharing requirements if the drug is administered by the provider instead of PBM owned/affiliated pharmacy or provider

### WHAT DOES SB1161 NOT DO?

- Apply to AHCCCS or ERISA plans. SCOTUS ruled in *Rutledge v. PCMA* that states could regulate PBM reimbursement practices, but not self-insured plan design. The floor amendment eliminates D5, the only PBM reimbursement provision in the bill, eliminating applicability to ERISA plans.
- Apply to workers compensation, which is under Title 23. The floor amendment eliminates "third party payor," and therefore concerns about applicability to workers compensation.
- Bar PBMs and insurers from creating networks, preferred networks or using mail. SB1161 eliminates practices that compel patients to use PBM-owned/affiliated pharmacies and exclude pharmacies from "preferred networks."