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3 SENATE HEALTH COMMITTEE SUBSTITUTE FOR SB73
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8 SYNOPSIS: Under existing law, pharmacy benefit
9 managers are neither authorized nor prohibited from
10 preventing a pharmacy or pharmacist from disclosing
11 information on the amount an individual would pay
12 for a prescription drug if he or she does not have
13 an insurance plan, benefits, discounts, or if the
14 individual paid for the prescription without using
15 their pharmacy benefits.

16 This bill would prohibit pharmacy benefit
17 managers from prohibiting pharmacies and
18 pharmacists from disclosing prescription drug costs
19 under certain circumstances.

20 This bill would require pharmacy managers to
21 register with the Department of Insurance.
22

23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To prohibit pharmacy benefit managers from
2 preventing pharmacies and pharmacists from disclosing
3 information on the amount an individual would pay for a
4 prescription drug if he or she does not have an insurance
5 plan, benefits, discounts, or if an individual paid for a
6 prescription without using their pharmacy benefits; and to
7 require pharmacy benefit managers to register with the
8 Department of Insurance.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known as and may be
11 cited as the Alabama Pharmacy Benefits Manager Licensure and
12 Regulation Act.

13 Section 2. (a) This act establishes the standards
14 and criteria for the regulation and licensure of pharmacy
15 benefits managers providing claims processing services or
16 other prescription drug or device services for health benefit
17 plans.

18 (b) The purpose of this act is to:

19 (1) Promote, preserve, and protect the public
20 health, safety, and welfare through effective regulation and
21 licensure of pharmacy benefits managers;

22 (2) Provide for powers and duties of the Insurance
23 Commissioner, the State Insurance Department; and

24 (3) Prescribe penalties and fines for violations of
25 this act.

26 Section 3. For purposes of this act, the following
27 words shall have the following meanings:

1 (1) Claims processing services means the
2 administrative services performed in connection with the
3 processing and adjudicating of claims relating to pharmacist
4 services that include:

- 5 a. Receiving payments for pharmacist services;
- 6 b. Making payments to pharmacists or pharmacies for
7 pharmacist services; or
- 8 c. Both subdivisions a. and b. of this section.

9 (2) Commissioner means the Commissioner of Insurance
10 of this state.

11 (3) Other prescription drug or device services means
12 services other than claims processing services, provided
13 directly or indirectly, whether in connection with or separate
14 from claims processing services, including without limitation:

- 15 a. Negotiating rebates, discounts, or other
16 financial incentives and arrangements with drug companies;
- 17 b. Disbursing or distributing rebates;
- 18 c. Managing or participating in incentive programs
19 or arrangements for pharmacist services;
- 20 d. Negotiating or entering into contractual
21 arrangements with pharmacists or pharmacies, or both;
- 22 e. Developing formularies;
- 23 f. Designing prescription benefit programs; or
- 24 g. Advertising or promoting services.

25 (4) Pharmacist means an individual licensed as a
26 pharmacist by the State Board of Pharmacy.

1 (5) Pharmacist services means products, goods, and
2 services, or any combination of products, goods, and services,
3 provided as a part of the practice of pharmacy.

4 (6) Pharmacy means the place licensed by the State
5 Board of Pharmacy in which drugs, chemicals, medicines,
6 prescriptions, and poisons are compounded, dispensed, or sold
7 at retail.

8 (7) a. Pharmacy benefits manager means a person,
9 business, or entity, including a wholly or partially owned or
10 controlled subsidiary of a pharmacy benefits manager, that
11 provides claims processing services or other prescription drug
12 or device services, or both, for health benefit plans.

13 b. Pharmacy benefits manager does not include any:

14 (i) Healthcare facility licensed in Alabama;

15 (ii) Healthcare professional licensed in Alabama; or

16 (iii) Consultant who only provides advice as to the
17 selection or performance of a pharmacy benefits manager.

18 Section 4. (a) (1) Effective January 1, 2020, to
19 conduct business in this state, a pharmacy benefit manager
20 must be licensed by the Commissioner. To initially obtain a
21 license or renew a license, a pharmacy benefits manager shall
22 submit:

23 a. A nonrefundable fee not to exceed \$500;

24 b. A copy of the licensee's corporate charter,
25 articles of incorporation, or other charter document; and

26 c. A completed licensure form adopted by the
27 Commissioner containing:

1 1. The name and address of the licensee; and
2 2. The name, address, and official position of an
3 employee who will serve as the primary contact for the
4 Department of Insurance.

5 (2) The licensee shall report any change in
6 information required by this subsection to the office in
7 writing annually.

8 (3) Upon receipt of a completed licensure form and
9 the licensure fee, the office shall issue a license. The
10 license may be in paper or electronic form and shall clearly
11 indicate the expiration date of the licensure. Licenses are
12 nontransferable. Notwithstanding any provision of law to the
13 contrary, the licensure form and license shall be public
14 records.

15 (4) A license is valid for 2 years after its date of
16 issue. The Commissioner shall adopt by rule an initial
17 licensure fee not to exceed \$500 and a licensure renewal fee
18 not to exceed \$500, both of which shall be nonrefundable.
19 Total fees may not exceed the cost of administering this
20 section.

21 (5) The Commissioner shall adopt rules necessary to
22 implement this section.

23 (6) Any documents, materials, or other information
24 in the control or possession of the department furnished by a
25 licensee or an employee or agent acting on behalf of a
26 licensee pursuant to this section which are designated by the
27 providing entity to the department as confidential shall be

1 presumed to be confidential by law and privileged, shall not
2 be subject to any open records, freedom of information,
3 sunshine, or other public record disclosure laws, shall not be
4 subject to subpoena, and shall not be subject to discovery or
5 admissible in evidence in any private civil action. The
6 commissioner shall not otherwise make the documents,
7 materials, or other information public without the prior
8 written consent of the licensee.

9 Section 5. (a) A pharmacy or pharmacist shall have
10 the right to provide a covered person with information
11 regarding the amount of the covered person's cost share for a
12 prescription drug. Neither a pharmacy nor a pharmacist shall
13 be proscribed by a pharmacy benefits manager from discussing
14 any such information or for selling a more affordable
15 alternative to the covered person if such an alternative is
16 available.

17 (b) A health benefit plan that covers prescription
18 drugs may not include a provision that requires an enrollee to
19 make a payment for a prescription drug at the point of sale in
20 an amount that exceeds the lesser of: (1) the contracted
21 co-payment amount; or (2) the amount an individual would pay
22 for a prescription if that individual were paying with cash.

23 Section 6. (a) The Commissioner may make reasonable
24 rules and regulations necessary for the effectuation of
25 Section 5 of this act.

26 (b) Rules adopted under this act shall set penalties
27 or fines, including without limitation monetary fines,

1 suspension of licensure, and revocation of licensure for
2 violations of Section 5 and rules adopted implementing Section
3 5.

4 Section 7. (a) This act is applicable to a contract
5 or health benefit plan issued, renewed, recredentialled,
6 amended, or extended on and after January 1, 2020.

7 (b) A contract existing on the date of licensure of
8 the pharmacy benefits manager shall comply with the
9 requirements of this act as a condition of licensure for the
10 pharmacy benefits manager.

11 (c) Nothing in this act is intended or shall be
12 construed to be in conflict with existing relevant federal
13 law.

14 Section 8. This act shall be effective immediately
15 following its passage and approval by the Governor, or its
16 otherwise becoming law.