

1 SB236  
2 203482-2  
3 By Senators Butler, Beasley, Orr, Scofield, Livingston, Jones,  
4 Givhan, Holley, Allen, Gudger, Whatley, Chambliss, Waggoner,  
5 Albritton, Price, Melson, Sessions, Stutts, Ward, Smitherman,  
6 Chesteen, Barfoot, Roberts, Reed and Marsh  
7 RFD: Banking and Insurance  
8 First Read: 25-FEB-20

1  
2  
3  
4  
5  
6  
7  
8       SYNOPSIS:               Under existing law, pharmacy benefits  
9                               managers must be licensed by the Department of  
10                              Insurance. Pharmacy benefits managers provide  
11                              claims processing services or prescription drug and  
12                              other pharmacist services, or both, to health  
13                              benefit plans.

14                             This bill would prohibit pharmacy benefits  
15                             managers and health benefit plans from transferring  
16                             and sharing certain patient information with  
17                             certain affiliates of the pharmacy benefits manager  
18                             for purposes of steering or referring a patient  
19                             toward using a specific pharmacy.

20                             This bill would prohibit a health benefit  
21                             plan from requiring an insured to obtain pharmacist  
22                             services, including prescription drugs, exclusively  
23                             from a mail-order pharmaceutical distributor or  
24                             affiliated pharmacy.

25                             This bill would prohibit a pharmacy benefits  
26                             manager from limiting certain powers of a  
27                             pharmacist to provide pharmacist services to

1 insureds, from steering insured patients toward an  
2 affiliated pharmacy, and from sharing patient data  
3 with an affiliated pharmacy.

4 This bill would require pharmacy benefits  
5 managers to report annually to clients information  
6 on pharmacy manufacturer rebates they received.

7 This bill would also provide conforming  
8 changes to definitions and would provide civil  
9 penalties for violations.

10  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT  
14

15 Relating to pharmacy benefits managers; to amend  
16 Sections 3 through 5 of Act 2019-457, 2019 Regular Session,  
17 now appearing as Sections 27-45A-3, 27-45A-4, and 27-45A-5,  
18 and 27-45A-6, Code of Alabama 1975; to amend and renumber  
19 Section 6 of Act 2019-457, 2019 Regular Session, now appearing  
20 as Section 27-45A-6, Code of Alabama 1975; to renumber Section  
21 7 of Act 2019-457, 2019 Regular Session, now appearing as  
22 Section 27-45A-7, Code of Alabama 1975; and to add Sections  
23 27-45A-6, 27-45A-7, 27-45A-8, 27-45A-9, 27-45A-10, and  
24 27-45A-12 to the Code of Alabama 1975; to prohibit pharmacy  
25 benefits managers and health benefit plans from steering or  
26 referring a patient toward using a specific pharmacy; to  
27 prohibit health benefits plans from requiring the use of

1 mail-order pharmaceutical distributor or affiliated pharmacies  
2 for prescription drugs; to restrict pharmacy benefits managers  
3 from steering patients to affiliated pharmacies; to restrict  
4 pharmacy benefits managers from mining patient data; to  
5 require certain reporting of drug rebates by pharmacy benefits  
6 managers; to make conforming changes to definitions; and to  
7 provide civil penalties for certain violations.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 3, 4, and 5 of Act 2019-457,  
10 2019 Regular Session, now appearing as Sections 27-45A-3,  
11 27-45A-4, and 27-45A-5 of the Code of Alabama 1975, are  
12 amended to read as follows:

13 "§27-45A-3.

14 "For purposes of this chapter, the following words  
15 shall have the following meanings:

16 "(1) AFFILIATE. A pharmacy benefits manager that,  
17 either directly or indirectly through one or more  
18 intermediaries, has an investment or ownership interest in a  
19 pharmacy or shares common ownership with a pharmacy.

20 "(2) AFFILIATED PHARMACY. A pharmacy that, directly  
21 or indirectly, through one or more intermediaries, is owned or  
22 controlled by or is under common ownership or control with a  
23 pharmacy benefits manager.

24 "~~(1)~~ (3) CLAIMS PROCESSING SERVICES. The  
25 administrative services performed in connection with the  
26 processing and adjudicating of claims relating to pharmacist  
27 services that include any of the following:

1 "a. Receiving payments for pharmacist services.

2 "b. Making payments to pharmacists or pharmacies for  
3 pharmacist services.

4 "c. Both paragraphs a. and b.

5 "(4) COMMUNITY RETAIL PHARMACY. A pharmacy that is  
6 open to the public, dispenses prescription drugs to the  
7 general public, and makes available face-to-face consultations  
8 between the pharmacists and the general public to whom  
9 prescription drugs are dispensed.

10 "(5) COVERED PERSON. Any individual or family member  
11 covered under a health benefit plan.

12 "(6) ENROLLEE. An individual named on a policy or  
13 certificate of coverage under a health benefit plan.

14 "(7) HEALTH BENEFIT PLAN. As defined in Section  
15 27-54A-2.

16 "~~(2)~~(8) OTHER PRESCRIPTION DRUG OR DEVICE SERVICES.  
17 Services, other than claims processing services, provided  
18 directly or indirectly, whether in connection with or separate  
19 from claims processing services, including without limitation  
20 any of the following:

21 "a. Negotiating rebates, discounts, or other  
22 financial incentives and arrangements with drug companies.

23 "b. Disbursing or distributing rebates.

24 "c. Managing or participating in incentive programs  
25 or arrangements for pharmacist services.

26 "d. Negotiating or entering into contractual  
27 arrangements with pharmacists or pharmacies, or both.

1 "e. Developing formularies.

2 "f. Designing prescription benefit programs.

3 "g. Advertising or promoting services.

4 "~~(3)~~ (9) PHARMACIST. ~~An individual licensed as a~~  
5 ~~pharmacist by the State Board of Pharmacy. As defined in~~  
6 ~~Section 34-23-1.~~

7 "~~(4)~~ (10) PHARMACIST SERVICES. Products, goods, and  
8 services, or any combination of products, goods, and services,  
9 provided as a part of the practice of pharmacy.

10 "~~(5)~~ (11) PHARMACY. ~~The place licensed by the State~~  
11 ~~Board of Pharmacy in which drugs, chemicals, medicines,~~  
12 ~~prescriptions, and poisons are compounded, dispensed, or sold~~  
13 ~~at retail. As defined in Section 34-23-1.~~

14 "~~(6)~~ (12) PHARMACY BENEFITS MANAGER. a. A person,  
15 ~~business, or entity,~~ including a wholly or partially owned or  
16 controlled subsidiary of a pharmacy benefits manager, that  
17 provides claims processing services or other prescription drug  
18 or device services, or both, for health benefit plans.

19 "b. Pharmacy benefits manager does not include any  
20 of the following:

21 "1. A healthcare facility licensed in Alabama.

22 "2. A healthcare professional licensed in Alabama.

23 "3. A consultant who only provides advice as to the  
24 selection or performance of a pharmacy benefits manager.

25 "§27-45A-4.

26 "(a) (1) Effective January 1, 2020, to conduct  
27 business in this state, a pharmacy benefits manager must be

1 licensed by the commissioner. To initially obtain a license or  
2 renew a license, a pharmacy benefits manager shall submit all  
3 of the following:

4 "a. A nonrefundable fee not to exceed \$500.

5 "b. A copy of the licensee's corporate charter,  
6 articles of incorporation, or other charter document.

7 "c. A completed licensure form adopted by the  
8 commissioner containing:

9 "1. The name and address of the licensee.

10 "2. The name, address, and official position of an  
11 employee who will serve as the primary contact for the  
12 Department of Insurance.

13 "3. Any additional contact information deemed  
14 appropriate by the commissioner or reasonably necessary to  
15 verify the information contained in the application.

16 "(2) The licensee shall inform the commissioner by  
17 any means acceptable to the commissioner of any change in the  
18 information required by this subsection within 30 days of the  
19 change. Failure to timely inform the commissioner of a change  
20 shall result in a civil penalty against the licensee in the  
21 amount of fifty dollars (\$50).

22 "(3) Upon receipt of a completed licensure form and  
23 the licensure fee, the commissioner shall issue a license. The  
24 license may be in paper or electronic form and shall clearly  
25 indicate the expiration date of the licensure. Licenses are  
26 nontransferable. Notwithstanding any provision of law to the

1 contrary, the licensure form and license shall be public  
2 records.

3 "(4) The license shall be initially renewed in  
4 accordance with a schedule prescribed by the commissioner and  
5 shall thereafter be subject to renewal on a biennial basis.  
6 The commissioner shall adopt by rule an initial licensure fee  
7 not to exceed five hundred dollars (\$500) and a renewal fee  
8 not to exceed five hundred dollars (\$500), both of which shall  
9 be nonrefundable.

10 "(5) All documents, materials, or other information,  
11 and copies thereof, in the possession or control of the  
12 department that are obtained by or disclosed to the  
13 commissioner or any other person in the course of an  
14 application, examination, or investigation made pursuant to  
15 this chapter shall be confidential by law and privileged,  
16 shall not be subject to any open records, freedom of  
17 information, sunshine, or other public record disclosure laws,  
18 and shall not be subject to subpoena or discovery. This  
19 subdivision only applies to disclosure of confidential  
20 documents by the department and does not create any privilege  
21 in favor of any other party.

22 "(b) Fees collected pursuant to this section shall  
23 be deposited in the State Treasury to the credit of the  
24 Insurance Department Fund.

25 "§27-45A-5.

26 "(a) A pharmacy or pharmacist may provide a covered  
27 person with information regarding the amount of the covered



1 person's cost share for a prescription drug. Neither a  
2 pharmacy nor a pharmacist shall be ~~proscribed~~ prohibited by a  
3 pharmacy benefits manager from discussing any such information  
4 or for selling a more affordable alternative to the covered  
5 person if such an alternative is available.

6 "(b) A health benefit plan that covers prescription  
7 drugs may not include a provision that requires an enrollee to  
8 make a payment for a prescription drug at the point of sale in  
9 an amount that exceeds the lessor of the following:

10 "(1) ~~the~~ The contracted co-payment amount, ~~or~~

11 "(2) ~~the~~ The amount an individual would pay for a  
12 prescription if that individual were paying with cash.

13 ~~"(c) For purposes of this section, the following~~  
14 ~~words have the following meanings:~~

15 ~~"(1) COVERED PERSON. Any individual, family, or~~  
16 ~~family member on whose behalf third-party payment or~~  
17 ~~prepayment of health or medical expenses is provided under a~~  
18 ~~health benefit plan.~~

19 ~~"(2) ENROLLEE. A person named on a policy or~~  
20 ~~certificate of coverage under a health benefit plan.~~

21 ~~"(3) HEALTH BENEFIT PLAN. As defined in Section~~  
22 ~~27-54A-2."~~

23 Section 2. Sections 27-45A-6, 27-45A-7, 27-45A-8,  
24 27-45A-9, and 27-45A-10 are added to the Code of Alabama 1975,  
25 to read as follows:

26 §27-45A-6.

1           (a) (1) A pharmacy benefits manager may not do any of  
2 the following:

3           a. Order a covered person to an affiliated pharmacy  
4 for the filling of a prescription or the provision of pharmacy  
5 services.

6           b. Offer or implement plan designs that require  
7 patients to use an affiliated pharmacy.

8           c. Advertise, market, or promote a pharmacy by an  
9 affiliate to patients or prospective patients.

10          (2) Subject to subdivision (1), a pharmacy benefits  
11 manager may include an affiliated pharmacy in communications  
12 to patients, including patient and prospective patient  
13 specific communications, regarding network pharmacies and  
14 prices, provided the pharmacy benefits manager includes  
15 information regarding eligible nonaffiliated pharmacies in the  
16 communications and the information provided is accurate.

17          (3) This subdivision may not be construed to  
18 prohibit a pharmacy benefits manager from entering into an  
19 agreement with an affiliated pharmacy to provide pharmacy care  
20 to patients.

21          (b) A pharmacy benefits manager may not transfer or  
22 share records relative to prescription information containing  
23 patient-identifiable data to an affiliated pharmacy for any  
24 commercial purpose; provided, however, that this subdivision  
25 shall not be construed to prohibit the exchange of  
26 prescription information between a pharmacy benefits manager  
27 and an affiliated pharmacy for the limited purposes of

1 pharmacy reimbursement, formulary compliance, pharmacy care,  
2 or utilization review.

3 §27-45A-7.

4 A pharmacy benefits manager may not do any of the  
5 following:

6 (1) Prohibit a pharmacist or pharmacy from providing  
7 a covered person individual information on the amount of the  
8 covered person's cost share for the covered person's  
9 prescription drug and the clinical efficacy of a more  
10 affordable alternative drug if one is available. A pharmacist  
11 or pharmacy may not be penalized by a pharmacy benefits  
12 manager for disclosing the information to a covered person or  
13 for selling to a covered person a more affordable alternative  
14 if one is available.

15 (2) Prohibit a pharmacist or pharmacy from offering  
16 and providing store direct delivery services to a covered  
17 person as an ancillary service of the pharmacy.

18 (3) Charge or collect from a covered person a  
19 co-payment that exceeds the total submitted charges by the  
20 network pharmacy for which the pharmacy is paid.

21 (4) Charge or hold a pharmacist or pharmacy  
22 responsible for a fee or penalty relating to the adjudication  
23 of a claim or an audit conducted pursuant to The Pharmacy  
24 Audit Integrity Act, provided this prohibition does not  
25 restrict recoupments made in accordance with The Pharmacy  
26 Audit Integrity Act.

1           (5) Recoup funds from a pharmacy in connection with  
2 claims for which the pharmacy has already been paid, unless  
3 the recoupment is made pursuant to an audit conducted in  
4 accordance with The Pharmacy Audit Integrity Act or the  
5 recoupment is otherwise permitted or required by law.

6           (6) Penalize or retaliate against a pharmacist or  
7 pharmacy for exercising rights under this chapter or The  
8 Pharmacy Audit Integrity Act.

9           (7) Knowingly make a misrepresentation to an  
10 insured, pharmacist, pharmacy, dispenser, or dispenser  
11 service.

12           §27-45A-8.

13           (a) A health benefit plan may not require a covered  
14 person to obtain pharmacist services, including prescription  
15 drugs, exclusively from a mail-order pharmaceutical  
16 distributor or affiliated pharmacy. Covered persons who do not  
17 use a mail-order pharmaceutical distributor or affiliated  
18 pharmacy shall not be required to pay a different co-payment  
19 fee or have imposed any varying conditions for the receipt of  
20 pharmacist services, including prescription drugs, when that  
21 payment or condition is not imposed upon those covered persons  
22 who use a mail-order pharmaceutical distributor or affiliated  
23 pharmacy for the pharmacist services if the provider of  
24 pharmacist services used by the covered person has agreed to  
25 the same terms and conditions as applicable to the mail-order  
26 pharmaceutical distributor or affiliated pharmacy and has  
27 agreed to accept payment or reimbursement from the health

1 benefit plan at no more than the same amount that would have  
2 been paid to the mail-order pharmaceutical distributor or  
3 affiliated pharmacy of the same pharmacist services.

4 (b) A health benefit plan that provides coverage for  
5 pharmacist services, including prescription drugs obtained by  
6 a mail-order pharmaceutical distributor or affiliated  
7 pharmacy, shall issue to each enrollee under the plan an  
8 explanation of the payment or reimbursement method applicable  
9 to mail-order distributors as compared to other providers of  
10 pharmacist services. For those health benefit plans that  
11 provide benefit booklets to their enrollees, the inclusion of  
12 such an explanation in a benefit booklet shall constitute  
13 compliance with this section.

14 (c) Any health benefit plan that contracts with a  
15 mail-order pharmaceutical distributor or affiliated pharmacy  
16 to provide pharmacist services, including prescription drugs,  
17 under the plan shall include in the contract a provision  
18 requiring the mail-order pharmaceutical distributor or  
19 affiliated pharmacy in its initial written correspondence with  
20 a covered person to include a notice that the covered person  
21 may obtain pharmacist services, including prescription drugs,  
22 from other providers of pharmacist services and that the  
23 exclusive use of the mail-order pharmaceutical distributor or  
24 affiliated pharmacy is not required.

25 (d) A provider of pharmacist services who desires to  
26 provide services to covered persons in its service area, upon  
27 written request to the health benefit plan, shall be provided

1 information pertaining to the terms and conditions applicable  
2 to mail-order pharmaceutical services available in the service  
3 area. If the provider of pharmacist services agrees to the  
4 terms and conditions in writing and agrees to be paid or  
5 reimbursed at no more than the same amount that would be paid  
6 to a mail-order pharmaceutical distributor or affiliated  
7 pharmacy for the same services, the provider of pharmacist  
8 services shall be paid or reimbursed at no more than the same  
9 amount paid to the mail-order pharmaceutical distributor or  
10 affiliated pharmacy for the same services.

11 (e) A pharmacy benefits manager shall administer  
12 claims in compliance with this section and may not require  
13 covered persons to use a mail-order pharmaceutical distributor  
14 or affiliated pharmacy, including a mail-order pharmacy, for  
15 pharmacist services, including prescription drugs.

16 §27-45A-9.

17 (a) A community retail pharmacy that requests to  
18 enter into a contractual retail pharmacy network agreement  
19 with a pharmacy benefits manager accepting the standard terms,  
20 conditions, formularies, and requirements relating to  
21 dispensing fees, payments, reimbursement amounts, or other  
22 pharmacist services shall be considered part of a pharmacy  
23 benefits manager's retail pharmacy network for purposes of a  
24 covered person's right to choose where to purchase covered  
25 prescription drugs under Section 25-45A-6.

26 (b) It shall be a violation of this section for a  
27 health benefit plan or pharmacy benefits manager to refuse to

1 accept a community retail pharmacy as part of a pharmacy  
2 benefits manager's retail pharmacy network.

3 §27-45A-10.

4 (a) For purposes of this section, client means an  
5 insurer, payor, or health benefit plan.

6 (b) A pharmacy benefits manager shall report  
7 annually to each of its clients both of the following:

8 (1) The aggregate amount of all rebates that the  
9 pharmacy benefits manager received from pharmaceutical  
10 manufacturers in connection with claims if administered on  
11 behalf of the client.

12 (2) The aggregate amount of the rebates the pharmacy  
13 benefits manager received from pharmaceutical manufacturers  
14 that did not pass through to the client.

15 Section 3. Section 6 of Act 2019-457, 2019 Regular  
16 Session, now appearing as Section 27-45A-6 of the Code of  
17 Alabama 1975, is amended and renumbered to read as follows:

18 "~~§27-45A-6.~~ §27-45A-11.

19 "(a) The commissioner may adopt reasonable rules  
20 necessary to implement ~~Sections 27-45A-4 and 27-45A-5~~ this  
21 chapter.

22 "~~(b) The rules adopted under this chapter shall set~~  
23 ~~penalties or civil fines for violations of Sections 27-45A-4~~  
24 ~~and 27-45A-5 and the rules implementing this chapter~~  
25 ~~including, without limitation, monetary fines and the~~  
26 ~~suspension or revocation of a license.~~

1           ~~"(c) The fees collected pursuant to this chapter~~  
2 ~~shall be deposited in the State Treasury to the credit of the~~  
3 ~~Insurance Department Fund. Any civil fine or penalty collected~~  
4 ~~shall be deposited in the State Treasury to the credit of the~~  
5 ~~State General Fund.~~

6           "(b) The powers and duties set forth in this chapter  
7 shall be in addition to all other authority of the  
8 commissioner."

9           Section 4. Section 27-45A-12 is added to the Code of  
10 Alabama 1975, to read as follows:

11           §27-45A-12.

12           (a) A person claiming to be adversely affected by an  
13 act or practice prohibited by this chapter may file a  
14 complaint with the commissioner for individual relief seeking  
15 remedies and civil penalties authorized by this section.

16           (b) The commissioner shall conduct a reasonable  
17 investigation based on a written and signed complaint received  
18 by the commissioner and shall issue a prompt determination as  
19 to whether a pharmacy benefits manager has violated this  
20 chapter.

21           (c) If the commissioner finds from the investigation  
22 that a violation has occurred, the commissioner shall promptly  
23 begin proceedings to address the violation through means such  
24 as imposition of injunctive relief, requiring restitution,  
25 and, in cases of repeated violation after previous findings or  
26 warnings of violations from the commissioner, suspension or  
27 revocation of licenses. In addition, a pharmacy benefits



1 manager or health benefit plan that is found by the  
2 commissioner to have violated this chapter may be ordered by  
3 the commissioner to pay a civil penalty not to exceed five  
4 thousand dollars (\$5,000) for each act or violation. Each  
5 violation shall be a separate offense.

6 (d) Penalties collected pursuant to this chapter  
7 shall be deposited in the State Treasury to the credit of the  
8 state General Fund.

9 Section 5. Section 7 of Act 2019-457, 2019 Regular  
10 Session, now appearing as Section 27-45A-7 of the Code of  
11 Alabama 1975, is renumbered as follows:

12 ~~"§27-45A-7. §27-45A-13.~~

13 "(a) This chapter is applicable to a contract or  
14 health benefit plan issued, renewed, recredentialed, amended,  
15 or extended on and after January 1, 2020.

16 "(b) A contract existing on the date of licensure of  
17 the pharmacy benefits manager shall comply with the  
18 requirements of this chapter as a condition of licensure for  
19 the pharmacy benefits manager.

20 "(c) Nothing in this chapter is intended or shall be  
21 construed to be in conflict with existing relevant federal  
22 law."

23 Section 6. This act shall become effective on the  
24 first day of the third month following its passage and  
25 approval by the Governor, or its otherwise becoming law.