



House Insurance Reported Substitute for SB252

A BILL
TO BE ENTITLED
AN ACT

Relating to pharmacy benefits managers; to amend Sections 27-45A-3, 27-45A-5, 27-45A-6, 27-45A-8, and 27-45A-10, Code of Alabama 1975; to further provide for regulation of pharmacy benefits managers by the Commissioner of Insurance; to add Section 27-45A-13 to the Code of Alabama 1975, to provide a minimum reimbursement amount for independent pharmacies; and to add Section 27-45A-14 to the Code of Alabama 1975, to regulate rebates from drug manufacturers to pharmacy benefits managers.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as "The Community Pharmacy Relief Act."

Section 2. Sections 27-45A-3, 27-45A-5, 27-45A-6, 27-45A-7, 27-45A-8, and 27-45A-10, Code of Alabama 1975, are amended to read as follows:

"§27-45A-3

For purposes of this chapter, the following words ~~shall~~ have the following meanings:

(1) AFFILIATE or PBM AFFILIATE. An entity, including, but not limited to, a pharmacy, health insurer, or group purchasing organization that directly or indirectly, through

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one or more intermediaries, has one of the following affiliations:

a. Owns, controls, or has an investment interest in a pharmacy benefits manager.

b. Is owned, controlled by, or has an investment interest holder who is a pharmacy benefits manager.

c. Is under common ownership or corporate control with a pharmacy benefits manager.

~~(1)~~ (2) CLAIMS PROCESSING SERVICES. The administrative services performed in connection with the processing and adjudicating of claims relating to pharmacist services that include any of the following:

a. Receiving payments for pharmacist services.

b. Making payments to pharmacists or pharmacies for pharmacist services.

c. Both paragraphs a. and b.

~~(2)~~ (3) COVERED INDIVIDUAL. A member, policyholder, subscriber, enrollee, beneficiary, dependent, or other individual participating in a health benefit plan.

~~(3)~~ (4) HEALTH BENEFIT PLAN. A policy, contract, certificate, or agreement entered into, offered, or issued by a health insurer to provide, deliver, arrange for, pay for, or reimburse any of the costs of physical, mental, or behavioral health care services, including pharmaceutical services.

~~(4)~~ (5) HEALTH INSURER. An entity subject to the insurance laws of this state and rules of the department, or subject to the jurisdiction of the department, that contracts or offers to contract to provide, deliver, arrange for, pay



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for, or reimburse any of the costs of health care services, including, but not limited to, a sickness and accident insurance company, a health maintenance organization operating pursuant to Chapter 21A, a nonprofit hospital or health service corporation, a health care service plan organized pursuant to Article 6, Chapter 20 of Title 10A, or any other entity providing a plan of health insurance, health benefits, or health services, including a nonprofit agricultural organization that provides a plan for health care services to its members.

(6) INDEPENDENT PHARMACY. A pharmacy in the state as defined in Section 34-23-1 that holds an active permit from the Alabama State Board of Pharmacy and is classified by the Alabama State Board of Pharmacy as a community pharmacy.

(7) IN-NETWORK or NETWORK. A network of pharmacists or pharmacies that are paid for pharmacist services pursuant to an agreement with a health benefit plan or a pharmacy benefits manager.

(8) MEDICAID REIMBURSEMENT RATE. The total payment amount for an outpatient drug dispensed by a pharmacy as set by rule adopted by the Alabama Medicaid Agency which is in effect on the effective date of this act.

~~(5)~~ (9) OTHER PRESCRIPTION DRUG OR DEVICE SERVICES. Services, other than claims processing services, provided directly or indirectly, whether in connection with or separate from claims processing services, including, but not limited to, any of the following:

a. Negotiating rebates, ~~discounts, or other financial~~

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~~incentives and arrangements~~ with drug companies.

b. Disbursing or distributing rebates.

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

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

e. Developing formularies.

f. Designing prescription benefit programs.

g. Advertising or promoting services.

~~(6)~~ (10) PHARMACIST. As defined in Section 34-23-1.

~~(7)~~ (11) PHARMACIST SERVICES. Products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy.

~~(8)~~ (12) PHARMACY. As defined in Section 34-23-1.

~~(9)~~ (13) PHARMACY BENEFITS MANAGER. a. A person, including a wholly or partially owned or controlled subsidiary of a pharmacy benefits manager, that provides claims processing services or other prescription drug or device services, or both, to covered individuals who are employed in or are residents of this state, for health benefit plans. The term includes any person that administers a prescription discount program directly for or on behalf of a pharmacy benefits manager or health benefit plan for drugs to covered individuals which are not reimbursed by a pharmacy benefits manager or are not covered by a health benefit plan.

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

1. A ~~healthcare~~ health care facility licensed in this

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state.

2. A ~~healthcare~~health care professional licensed in this state.

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

~~(10) PBM AFFILIATE. A pharmacy or pharmacist that, directly or indirectly, through one or more intermediaries, is owned or controlled by, or is under common control by, a pharmacy benefits manager.~~

~~(11)~~ (14) PRESCRIPTION DRUGS. Includes, but is not limited to, certain infusion, compounded, and long-term care prescription drugs. The term does not include specialty drugs.

(15) REBATE. Any payments or price concessions that accrue to a pharmacy benefits manager or its health benefit plan client, directly or indirectly, including through its PBM affiliate or its subsidiary, third party, or intermediary, including an off-shore purchasing organization, from a pharmaceutical manufacturer or its affiliate, subsidiary, third party, or intermediary. The term includes, but is not limited to, payments, discounts, administration fees, credits, incentives, or penalties associated, directly or indirectly, in any way with claims administered on behalf of a health benefit plan.

~~(12)~~ (16) SPECIALTY DRUGS. Prescription medications that require special handling, administration, or monitoring and are used for the treatment of patients with serious health conditions requiring complex therapies, and that are eligible for specialty tier placement by the Centers for Medicare and

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Medicaid Services pursuant to 42 C.F.R. § 423.560.

(17) SPREAD PRICING. A prescription drug pricing model used by a pharmacy benefits manager in which the pharmacy benefits manager charges a health benefit plan a contracted price for a prescription drug which is higher than the amount the pharmacy benefits manager pays the pharmacy for the prescription drug.

(18) STEERING. The term includes all of the following practices by a pharmacy benefits manager:

a. Directing, ordering, or requiring a covered individual to use a specific pharmacy, including a PBM affiliate pharmacy, for the purpose of filling a prescription or receiving pharmacist services.

b. Inducing a covered individual to use a designated pharmacy, including a PBM affiliate pharmacy, by increasing costs to the health benefit plan or charging the covered individual up to the full cost for a prescription drug if the covered individual fails to use the pharmacy designated by the pharmacy benefits manager.

c. Advertising, marketing, or promoting a pharmacy, including a PBM affiliate pharmacy, over another in-network pharmacy.

d. Engaging in any practice that results in excluding, restricting, or inhibiting an in-network pharmacy from providing prescription drugs to beneficiaries under a health benefit plan, which may involve, but not be limited to, the use of credentialing or accreditation standards, day supply limitations, or delivery method limitations.

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e. Engaging in any practice aimed at directly or indirectly influencing a pharmaceutical manufacturer to limit its distribution of a prescription drug to certain pharmacies or to restrict distribution of the drug to non-PBM affiliate pharmacies."

"§27-45A-5

(a) ~~The commissioner may adopt rules necessary to implement this chapter~~It shall be the responsibility of the commissioner to enforce this chapter and any conduct arising from any action taken by a pharmacy benefits manager or PBM affiliate pursuant to an audit conducted under Article 8, Chapter 23, Title 34, which violates this chapter.

(b) The commissioner shall adopt rules necessary to implement and enforce this chapter, both independently and in conjunction with the conduct of an audit by a pharmacy benefits manager or PBM affiliate under Article 8, Chapter 23, Title 34, to include the authority to set a complaint filing fee of no more than one hundred dollars (\$100) to be paid by a pharmacy or pharmacist with any complaint alleging a violation of Article 8, Chapter 23, Title 34, which fee shall be repaid to the complaining pharmacy or pharmacist by the pharmacy benefits manager or PBM affiliate in the event the violation is proven. The commissioner may waive the complaint filing fee at his or her discretion.

(c) The commissioner shall set and impose civil penalties of not less than one thousand dollars (\$1,000) per violation for violations of this chapter, including conduct arising from an action taken by a pharmacy benefits manager or

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197 PBM affiliate pursuant to Article 8, Chapter 23, Title 34,
198 which violates this chapter.

199 ~~(b)~~ (d) The powers and duties set forth in this chapter
200 shall be in addition to all other authority of the
201 commissioner.

202 ~~(e)~~ (e) The commissioner shall enforce compliance with
203 the requirements of this chapter and rules adopted thereunder.

204 ~~(d)~~ (f) (1) The commissioner may examine or audit, ,
205 including on an annual basis, any books and records of a
206 pharmacy benefits manager providing claims processing services
207 or other prescription drug or device services for a health
208 benefit plan as may be deemed relevant and necessary by the
209 commissioner to determine compliance with this chapter and
210 Article 8, Chapter 23, Title 34.

211 (2) Examinations conducted by the commissioner shall be
212 pursuant to the same examination authority of the commissioner
213 relative to insurers as provided in Chapter 2, including, but
214 not limited to, the confidentiality of documents and
215 information submitted as provided in Section 27-2-24;
216 examination expenses shall be processed in accordance with
217 Section 27-2-25; and pharmacy benefits managers shall have the
218 same rights as insurers to request a hearing in accordance
219 with Sections 27-2-28 et seq., and to appeal as provided in
220 Section 27-2-32.

221 (3) The commissioner may contract the services of a
222 third party to perform an examination or audit under this
223 subsection.

224 ~~(e)~~ (g) The commissioner's examination expenses shall be

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collected from pharmacy benefits managers in the same manner as those collected from insurers."

"§27-45A-6

~~(a)~~ Nothing in this chapter is intended or shall be construed to do any of the following:

(1) Be in conflict with existing relevant federal law.

(2) Apply to any specialty drug.

(3) Impact the ability of a hospital to mandate its employees' use of a hospital-owned pharmacy.

~~(b) The following provisions shall not apply to the administration by a person of any term, including prescription drug benefits, of a self-funded health benefit plan that is governed by the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 et. seq.:~~

~~(1) Subdivisions (1) and (5) of Section 27-45A-8.~~

~~(2) Subdivisions (2), (3), (6), and (7) of Section 27-45A-10."~~

"§27-45A-8

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

(1) Require a covered individual, as a condition of payment or reimbursement, to purchase pharmacist services, including, but not limited to, prescription drugs, exclusively through a mail-order pharmacy or pharmacy benefits manager affiliate.

(2) Prohibit or limit any covered individual from selecting an in-network pharmacy or pharmacist of his or her choice who meets and agrees to the terms and conditions,

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including reimbursements, in the pharmacy benefits manager's contract.

(3) Impose a monetary advantage or penalty under a health benefit plan that would affect a covered individual's choice of pharmacy among those pharmacies that have chosen to contract with the pharmacy benefits manager under the same terms and conditions, including reimbursements. For purposes of this subdivision, "monetary advantage or penalty" includes, but is not limited to, a higher copayment, a waiver of a copayment, a reduction in reimbursement services, a requirement or limit on the number of days of a drug supply for which reimbursement will be allowed, or a promotion of one participating pharmacy over another by these methods.

(4)a. Use a covered individual's pharmacy services data collected pursuant to the provision of claims processing services for the purpose of soliciting, marketing, or referring the covered individual to a mail-order pharmacy or PBM affiliate.

b. This subdivision shall not limit a health benefit plan's use of pharmacy services data for the purpose of administering the health benefit plan.

c. This subdivision shall not prohibit a pharmacy benefits manager from notifying a covered individual that a less costly option for a specific prescription drug is available through a mail-order pharmacy or PBM affiliate, provided the notification shall state that switching to the less costly option is not mandatory. The commissioner, by rule, may determine the language of the notification

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authorized under this paragraph made by a pharmacy benefits manager to a covered individual.

(5) Require a covered individual to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of the following:

a. The contracted cost share amount.

b. An amount an individual would pay for a prescription if that individual were paying without insurance.

(6) Otherwise seek to limit, control, or influence the utilization of a pharmacy or pharmacist services by a covered individual through any of the practices of steering.

(b) If any of the practices prohibited under subsection (a), including activities that qualify as other prescription drug or device services, are required of a pharmacy benefits manager pursuant to its contractual duties under a health benefits plan, the pharmacy benefits manager shall not be subject to this section."

"§27-45A-10

With respect to a pharmacist or pharmacy, a pharmacy benefits manager, directly or through an affiliate or a contracted third party, may not do any of the following:

(1) Reimburse an in-network pharmacy or pharmacist in the state an amount less than the amount that the pharmacy benefits manager reimburses a similarly situated PBM affiliate for providing the same pharmacist services to covered individuals in the same health benefit plan.

(2) Practice spread pricing in this state unless required under the health benefit plan. If spread pricing is

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practiced pursuant to the health benefit plan, the pharmacy benefits manager shall submit an annual report to the commissioner which discloses the differences between the amount the health benefit plan is charged and the amount network pharmacies are reimbursed.

~~(2)~~ (3) Deny a pharmacy or pharmacist the right to participate as a ~~contract~~network provider if the pharmacy or pharmacist meets and agrees to the terms and conditions, including reimbursements, in the pharmacy benefits manager's contract, including an independent pharmacy that qualifies for reimbursement at the minimum rate established in Section 27-45A-13(a) (1), notwithstanding any term to the contrary in the pharmacy benefits manager's contract.

~~(3)~~ (4) Impose credentialing standards on a pharmacist or pharmacy beyond or more onerous than the licensing standards set by the Alabama State Board of Pharmacy or charge a pharmacy or pharmacist ~~a any~~ fee ~~in connection with~~ in regard to, without limitation, network enrollment, network participation, credentialing or recredentialing, change of ownership, submission of claims, transmission of claims, adjudication of claims, claims processed through discount card programs, or otherwise, if not in conjunction with an audit conducted pursuant to Article 8, Chapter 23, Title 34; provided, however, this subdivision shall not prohibit a pharmacy benefits manager from setting minimum requirements for participating in a pharmacy network.

~~(4)~~ (5) Prohibit a pharmacist or pharmacy from providing a covered individual ~~specific information on the amount of the~~

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~~covered individual's cost share for the covered individual's prescription drug and the clinical efficacy of a more affordable alternative drug if one is available, or penalize a pharmacist or pharmacy for disclosing this information to a covered individual or for selling to a covered individual a more affordable alternative if one is available~~ with any relevant information about a prescription drug, including the following:

a. The cost and reimbursement amount of the drug.

b. An alternative drug.

c. Any other information considered to be necessary in the professional judgment of the pharmacist.

~~(5)~~ (6) Prohibit a pharmacist or pharmacy from offering and providing delivery services to a covered individual as an ancillary service of the pharmacy, provided all of the following requirements are met:

a. The pharmacist or pharmacy can demonstrate quality, stability, and safety standards during delivery.

b. The pharmacist or pharmacy does not charge any delivery or service fee to a pharmacy benefits manager or health insurer.

c. The pharmacist or pharmacy alerts the covered individual that he or she will be responsible for any delivery service fee associated with the delivery service, and that the pharmacy benefits manager or health insurer will not reimburse the delivery service fee.

~~(6)~~ (7) Charge or hold a pharmacist or pharmacy responsible for a fee or penalty relating to an audit

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conducted pursuant to ~~The Pharmacy Audit Integrity Act~~,
Article 8~~of~~, Chapter 23~~of~~, Title 34, provided this
prohibition does not restrict recoupments made in accordance
with the Pharmacy Audit Integrity Act.

~~(7)~~ (8) Charge a pharmacist or pharmacy a point-of-sale
or retroactive fee or otherwise recoup funds from a pharmacy
in connection with claims for which the pharmacy has already
been paid, unless the recoupment is made pursuant to an audit
conducted in accordance with ~~the Pharmacy Audit Integrity~~
~~Act~~ Article 8, Chapter 23, Title 34.

~~(8)~~ (9) Except for a drug reimbursed, directly or
indirectly, by the Medicaid program, vary the amount a
pharmacy benefits manager reimburses an entity for a drug,
including each and every prescription medication that is
eligible for specialty tier placement by the Centers for
Medicare and Medicaid Services pursuant to 42 C.F.R. §
423.560, regardless of any provision of law to the contrary,
on the basis of whether:

a. The drug is subject to an agreement under 42 U.S.C.
§ 256b; or

b. The entity participates in the program set forth in
42 U.S.C. § 256b.

~~(9)~~ (10) If an entity participates, directly or
indirectly, in the program set forth in 42 U.S.C. § 256b, do
any of the following:

a. Assess a fee, charge-back, or other adjustment on
the entity.

b. Restrict access to the pharmacy benefits manager's

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pharmacy network.

c. Require the entity to enter into a contract with a specific pharmacy to participate in the pharmacy benefits manager's pharmacy network.

d. Create a restriction or an additional charge on a patient who chooses to receive drugs from the entity.

e. Create any additional requirements or restrictions on the entity.

~~(10)~~ (11) Require a claim for a drug to include a modifier to indicate that the drug is subject to an agreement under 42 U.S.C. § 256b.

~~(11)~~ (12) Penalize or retaliate against a pharmacist or pharmacy for exercising rights under this chapter or ~~the Pharmacy Audit Integrity Act~~ Article 8, Chapter 23, Title 34.
For purposes of this subdivision, the conduct prohibited includes any written or verbal communication that a reasonable individual would construe as a threat of penalty or retaliation received before or in the course of exercising rights under this chapter or Article 8, Chapter 23, Title 34.

(13) Prohibit a pharmacist or pharmacy from declining to dispense a drug to a covered individual, or directing a covered individual to another pharmacy, if the reimbursement amount would be lower than the dispensing cost of the pharmacist or pharmacy.

(14) Take retaliatory action against, or impose any penalty on, a pharmacist or pharmacy who declines to dispense a drug to a covered individual under subdivision (13), including cancellation or nonrenewal of a contract, or suit

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for breach of contract."

Section 3. Section 27-45A-13 is added to the Code of Alabama 1975, to read as follows:

§27-45A-13

(a) Notwithstanding any other provision of this chapter or any form of a contract to the contrary, with respect to an independent pharmacy, a pharmacy benefits manager, directly or through an affiliate or a contracted third party, may not do any of the following:

(1) Reimburse for dispensing a prescription drug in an amount that is less than the Medicaid reimbursement rate.

(2) Impose a fee or otherwise adjust or lower the reimbursement of a drug at the time the claim is adjudicated, or after the claim is adjudicated, that in any way reduces the amount of reimbursement for the drug as regulated pursuant to subdivision (1).

(3) Increase a covered individual's cost-sharing percentage or ratio at or after the point of sale by raising the deductible, copayment, or coinsurance, or by requiring any other out-of-pocket payment as a means to recoup the dispensing cost portion of the reimbursement required pursuant to subdivision (1).

(4) Reject payment of a claim for a drug that is submitted by an independent pharmacy when the drug is available to a covered individual at a different in-network pharmacy; provided, however, if the drug is dispensed by the different in-network pharmacy, the pharmacy benefits manager shall pay the independent pharmacy a surcharge equal to the

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reimbursement that would have been paid pursuant to subdivision (1) had the independent pharmacy dispensed the drug.

(b) A health benefit plan that covers individuals who are public employees and which reimburses independent pharmacies for dispensing prescription drugs during its plan year in an aggregate amount that is higher than would otherwise be calculated using the rate set in subdivision (a) (1), upon proof of the same submitted to the commissioner, shall be exempt from this section.

Section 4. Section 27-45A-14 is added to the Code of Alabama to read as follows:

§27-45A-14

A pharmacy benefits manager, either directly or through a PBM affiliate, when performing pharmacy benefits management services or other prescription drug or device services for a health benefit plan client, shall pass on 100 percent of all rebates received, directly or indirectly, from a pharmaceutical manufacturer unless the health benefit plan client directs the pharmacy benefits manager or PBM affiliate to apply the rebates to purchases of prescription drugs by covered individuals at the point of sale.

Section 5. In the event of an enactment by the United States Congress of a law that preempts the operation of any provision of this act, it is the intent of the Legislature that any remaining provision of this act that is unaffected by the congressional enactment remain in effect.

Section 6. This act shall become effective immediately,



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477 except Section 3 shall take effect October 1, 2025.