

HB238 INTRODUCED



1 HB238
2 8JMSH22-1
3 By Representative Rigsby
4 RFD: Insurance
5 First Read: 27-Feb-24



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SYNOPSIS:

Pharmacy benefits managers are third-party administrators of prescription drug benefits in a health insurance plan. They are primarily responsible for processing and paying prescription drug claims. They typically negotiate price discounts and rebates from manufacturers and determine how pharmacies get reimbursed for dispensing prescriptions. Under state law, pharmacy benefits managers are licensed and regulated by the Department of Insurance.

This bill would prohibit pharmacy benefits managers from reimbursing a pharmacy less than the actual acquisition cost paid by the pharmacy or from contracting with a health insurer to receive payment amounts for prescription drug benefits that are different from the amounts the pharmacy benefits managers pay pharmacies. This bill would also prohibit pharmacy benefits manufacturers from starting an investigation against a pharmacy for fraud, waste, or abuse without reasonable suspicion.

This bill would further specify the powers that the Commissioner of Insurance may use to investigate pharmacy benefits managers and would make pharmacy benefits managers subject to the Pharmacy Audit Integrity Act in cases involving fraud, waste, or



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29 abuse.

30 This bill would require pharmacy benefits
31 managers to pass on 100 percent of the rebates that
32 they receive from pharmaceutical manufacturers and
33 would provide reporting requirements on rebates
34 received by pharmacy benefits managers to both the
35 commissioner and health insurers.

36 This bill would also prohibit pharmacy benefits
37 managers from penalizing health insurers when they
38 transfer claims processing services and related
39 functions to a different pharmacy benefits manager.

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A BILL

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TO BE ENTITLED

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AN ACT

45

46 Relating to pharmacy benefits managers; to amend
47 Sections 27-45A-3, 27-45A-4, 27-45A-5, 27-45A-6, 27-45A-7,
48 27-45A-8, 27-45A-9, and 27-45A-10, Code of Alabama 1975; to
49 further provide for regulation of pharmacy benefits managers
50 in relation to third-party payors and pharmacies; to prohibit
51 pharmacy benefits managers from paying pharmacies less than
52 the actual acquisition cost for prescription drugs and from
53 paying to pharmacies less than the amounts reimbursed by
54 third-party payors; to permit pharmacists to discuss drug
55 prices with covered individuals; to prohibit pharmacy benefits
56 managers from charging pharmacies certain fees or from



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57 initiating a fraud, waste, or abuse investigation without
58 reasonable suspicion; to require pharmacy benefits managers to
59 report rebate amounts received to the Commissioner of
60 Insurance and to third-party payors; to provide for
61 examination of pharmacy benefits managers by the Commissioner
62 of Insurance; to add Section 27-45A-13 to the Code of Alabama
63 1975, to require pharmacy benefits managers to pass on 100
64 percent of the rebates received from pharmaceutical
65 manufacturers to third-party payors and to prohibit pharmacy
66 benefits managers from penalizing third-party payors for
67 switching pharmacy benefits managers; and to amend Section
68 34-23-187, Code of Alabama 1975, to provide that an
69 investigation into fraud, waste, or abuse by a pharmacy
70 benefits manager falls under the Pharmacy Audit Integrity Act.
71 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

72 Section 1. Sections 27-45A-3, 27-45A-4, 27-45A-5,
73 27-45A-6, 27-45A-7, 27-45A-8, 27-45A-9, and 27-45A-10, Code of
74 Alabama 1975, are amended to read as follows:

75 "§27-45A-3

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

78 (1) ACTUAL ACQUISITION COST. The Average Acquisition
79 Cost (AAC) of a drug for the State of Alabama, as published by
80 the Alabama Medicaid Agency. If no AAC is available, the term
81 means the wholesale acquisition cost (WAC + 0%).

82 (2) CLAIMS PROCESSING SERVICES. The administrative
83 services performed in connection with the processing and
84 adjudicating of claims relating to pharmacist services that



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85 include any of the following:

86 a. Receiving payments for pharmacist services.

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

89 c. Both paragraphs a. and b.

90 ~~(2)~~ (3) COVERED INDIVIDUAL. A member, policyholder,
91 subscriber, enrollee, beneficiary, dependent, or other
92 individual participating in a health benefit plan.

93 ~~(3)~~ (4) HEALTH BENEFIT PLAN. A policy, contract,
94 certificate, or agreement entered into, offered, or issued by
95 a payor or health insurer to provide, deliver, arrange for,
96 pay for, or reimburse any of the costs of physical, mental, or
97 behavioral health care services, including pharmacist
98 services.

99 ~~(4)~~ (5) HEALTH INSURER. An entity subject to the
100 insurance laws of this state and rules of the department, or
101 subject to the jurisdiction of the department, that contracts
102 or offers to contract to provide, deliver, arrange for, pay
103 for, or reimburse any of the costs of health care services,
104 including, but not limited to, a sickness and accident
105 insurance company, a health maintenance organization operating
106 pursuant to Chapter 21A, a nonprofit hospital or health
107 service corporation, a health care service plan organized
108 pursuant to Article 6, Chapter 20 of Title 10A, or any other
109 entity providing a plan of health insurance, health benefits,
110 or health services.

111 (6) IN-NETWORK or NETWORK. A network of pharmacists or
112 pharmacies that are paid for pharmacist services pursuant to



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113 an agreement with a health benefit plan or a pharmacy benefits
114 manager.

115 ~~(5)~~ (7) OTHER PRESCRIPTION DRUG OR DEVICE SERVICES.

116 Services, other than claims processing services, provided
117 directly or indirectly, whether in connection with or separate
118 from claims processing services, including, but not limited
119 to, any of the following:

120 a. Negotiating rebates, ~~discounts, or other financial~~
121 ~~incentives and arrangements~~ with drug companies.

122 b. Disbursing or distributing rebates.

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

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

127 e. Developing formularies.

128 f. Designing prescription benefit programs.

129 g. Advertising or promoting services.

130 (8) PAYOR. Any entity other than a health insurer
131 involved in the financing or payment of pharmacist services.

132 (9) PBM AFFILIATE. An entity, including, but not
133 limited to, a pharmacy, health insurer, or group purchasing
134 organization that directly or indirectly, through one or more
135 intermediaries, has one of the following affiliations:

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

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

140 c. Is under common ownership or corporate control with



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141 a pharmacy benefits manager.

142 ~~(6)~~ (10) PHARMACIST. As defined in Section 34-23-1.

143 ~~(7)~~ (11) PHARMACIST SERVICES. Products, goods, and
144 services, or any combination of products, goods, and services,
145 provided as a part of the practice of pharmacy.

146 ~~(8)~~ (12) PHARMACY. As defined in Section 34-23-1.

147 ~~(9)~~ (13) PHARMACY BENEFITS MANAGER. a. A person,
148 including a wholly or partially owned or controlled subsidiary
149 of a pharmacy benefits manager, that provides claims
150 processing services or other prescription drug or device
151 services, or both, to covered individuals who are employed in
152 or are residents of this state, for health benefit plans. The
153 term includes any person that administers a prescription
154 discount program directly or on behalf of a pharmacy benefits
155 manager or health benefit plan for drugs to covered
156 individuals which are not reimbursed by a pharmacy benefits
157 manager or are not covered by a health benefit plan.

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

160 1. A ~~healthcare~~ health care facility licensed in this
161 state.

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

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

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



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169 ~~pharmacy benefits manager.~~

170 (14) PRESCRIPTION DRUG FILE. Any electronic and
171 computer data files maintained by a pharmacy benefits manager
172 in connection with administering prescription drug benefits on
173 behalf of a health benefit plan, including, but not limited
174 to, claims history files, drug utilization review files, prior
175 authorization files, EDI 834 eligibility files, accumulator
176 files, step therapy files, and other records pertaining to
177 covered individuals.

178 ~~(11)~~ (15) PRESCRIPTION DRUGS. Includes, but is not
179 limited to, certain infusion, compounded, and long-term care,
180 and specialty prescription drugs. The term does not include
181 specialty drugs.

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

193 ~~(12)~~ (17) SPECIALTY DRUGS. Prescription medications that
194 require special handling, administration, or monitoring and
195 are used for the treatment of patients with serious health
196 conditions requiring complex therapies, and that are eligible



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197 for specialty tier placement by the Centers for Medicare and
198 Medicaid Services pursuant to 42 C.F.R. § 423.560.

199 (18) SPREAD PRICING. A prescription drug pricing model
200 used by a pharmacy benefits manager in which the pharmacy
201 benefits manager charges a health benefit plan a contracted
202 price for prescription drugs that differs from the amount the
203 pharmacy benefits manager pays the pharmacy for the
204 prescription drug, including any post-sale or
205 post-adjudication fees, discounts, or adjustments where not
206 prohibited by law."

207 "§27-45A-4

208 (a) A person may not establish or operate as a pharmacy
209 benefits manager in this state without first obtaining a
210 license from the commissioner.

211 (b) Effective through December 31, 2021, to initially
212 obtain a license or renew a license, a pharmacy benefits
213 manager shall submit all of the following:

214 (1) A nonrefundable fee not to exceed five hundred
215 dollars (\$500).

216 (2) A copy of the licensee's corporate charter,
217 articles of incorporation, or other charter document.

218 (3) A completed licensure form adopted by the
219 commissioner containing:

220 a. The name and address of the licensee.

221 b. The name, address, and official position of an
222 employee who will serve as the primary contact for the
223 Department of Insurance.

224 c. Any additional contact information deemed



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225 appropriate by the commissioner or reasonably necessary to
226 verify the information contained in the application.

227 (c) Not later than January 1, 2022, the commissioner
228 shall adopt rules for licensure of pharmacy benefits managers
229 to operate in this state. The rules shall establish all of the
230 following:

231 (1) The licensing procedure and application form.

232 (2) Requirements for licensure.

233 (3) Reporting requirements.

234 (4) A fee schedule for a nonrefundable application fee
235 and a nonrefundable license renewal fee, set to allow the
236 regulation and oversight activities of the department to be
237 self-supporting.

238 (d) On and after January 1, 2022, a person applying for
239 a pharmacy benefits manager license shall submit an
240 application for licensure in the form and manner prescribed by
241 the commissioner by rule, along with the application fee.

242 (e) The commissioner may refuse to issue or renew a
243 license if the commissioner determines that the applicant has
244 been found to have violated this chapter, [Article 8 of Chapter](#)
245 [23 of Title 34](#), or the insurance laws of this state or any
246 other jurisdiction, or has had an insurance or other
247 certificate of authority or license denied or revoked for
248 cause by any jurisdiction.

249 (f) Unless denied licensure pursuant to subsection (e),
250 a person who meets the requirements of this chapter and rules
251 adopted by the commissioner shall be issued a pharmacy
252 benefits manager license. The license may be in paper or



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253 electronic form and shall clearly indicate the expiration date
254 of the license. Licenses are nontransferable. Notwithstanding
255 any provision of law to the contrary, the application and
256 license shall be public records.

257 (g) The license shall be initially renewed in
258 accordance with a schedule prescribed by the commissioner and
259 shall thereafter be subject to renewal on an annual basis
260 along with the nonrefundable license renewal fee.

261 (h) A licensee shall inform the commissioner by any
262 means acceptable to the commissioner of any material change in
263 the information required by this section or rules adopted
264 pursuant to this section within 30 days of the change. Failure
265 to timely inform the commissioner of a change shall result in
266 a penalty against the licensee in the amount of fifty dollars
267 (\$50).

268 (i) The commissioner may suspend or revoke a license or
269 may impose civil penalties for a violation of this chapter, [Article 8 of Chapter 23 of Title 34](#), or the insurance laws of
270 this state or any other jurisdiction, as determined by the
271 commissioner in accordance with rules adopted by the
272 commissioner, provided a pharmacy benefits manager shall have
273 the same rights as insurers to request a hearing in accordance
274 with Sections 27-2-28, et seq., [and to appeal as provided in](#)
275 [Section 27-2-32](#).

277 (j) Unless surrendered, suspended, or revoked by the
278 commissioner, a license issued under this section shall remain
279 valid as long as the pharmacy benefits manager continues to do
280 business in this state and remains in compliance with this



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281 chapter and applicable rules, including the payment of an
282 annual license renewal fee as set forth in subsection (g).

283 (k) All documents, materials, or other information, and
284 copies thereof, in the possession or control of the department
285 that are obtained by or disclosed to the commissioner or any
286 other person in the course of an application, examination, or
287 investigation made pursuant to this chapter shall be
288 confidential by law and privileged, shall not be subject to
289 any open records, freedom of information, sunshine, or other
290 public record disclosure laws, and shall not be subject to
291 subpoena or discovery. This ~~subdivision~~ subsection only
292 applies to disclosure of confidential documents by the
293 department and does not create any privilege in favor of any
294 other party.

295 (1) (1) Fees collected pursuant to this section shall be
296 deposited in the State Treasury to the credit of the Insurance
297 Department Fund.

298 (2) Civil penalties collected pursuant to this chapter
299 shall be deposited in the State Treasury to the credit of the
300 ~~state~~ State General Fund.

301 (m) Commencing January 1, 2022, a pharmacy benefits
302 manager licensed by the commissioner prior to January 1, 2022,
303 shall submit an application for a new license in accordance
304 with subsection (d). The pharmacy benefits manager's previous
305 license shall expire on the date the commissioner issues a new
306 license or April 1, 2022, whichever occurs earlier."

307 "§27-45A-5

308 (a) The commissioner may adopt rules necessary to



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309 implement this chapter and Article 8 of Chapter 23 of Title
310 34.

311 (b) The powers and duties set forth in this chapter
312 shall be in addition to all other authority of the
313 commissioner.

314 (c) The commissioner shall enforce compliance with the
315 requirements of this chapter and rules adopted thereunder.

316 (d) The commissioner shall require the pharmacy
317 benefits manager to submit a report for each health insurer,
318 on a periodic basis, which may include, but not be limited to,
319 the following information:

320 (1) The aggregate amount of rebates received by the
321 pharmacy benefits manager.

322 (2) The aggregate amount of rebates distributed to the
323 health insurer.

324 (3) The aggregate amount of rebates the health insurer
325 passed on to the insurer's covered individuals which reduced
326 applicable cost-sharing amounts at the point-of-sale,
327 including deductibles, copayments, and coinsurance.

328 (4) The aggregate amount paid to the pharmacy benefits
329 manager for pharmacist services in categories for pharmacy,
330 drug product, medical devices, and other products, goods, or
331 services.

332 (5) The aggregate amount paid to a pharmacy for
333 pharmacist services in categories for drug product, medical
334 devices, and other products, goods, or services.

335 ~~(d)~~ (e) (1) The commissioner may examine or audit any
336 books and records of a pharmacy benefits manager providing



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337 claims processing services or other prescription drug or
338 device services for a health benefit plan as may be deemed
339 relevant and necessary by the commissioner to determine
340 compliance with this chapter.

341 (2) Examinations conducted by the commissioner shall be
342 pursuant to the same examination authority of the commissioner
343 relative to insurers as provided in Chapter 2, including, but
344 not limited to, the confidentiality of documents and
345 information submitted as provided in Section 27-2-24;
346 examination expenses shall be processed in accordance with
347 Section 27-2-25; and pharmacy benefits managers shall have the
348 same rights as insurers to request a hearing in accordance
349 with Sections 27-2-28, et seq., and to appeal as provided in
350 Section 27-2-32.

351 (3) Any examination or audit by the commissioner may
352 include production by the pharmacy benefits manager of the
353 following:

354 a. Contracts with any pharmaceutical manufacturers,
355 health insurers, payors, and pharmacies.

356 b. Data on plan utilization, plan pricing, pharmacy
357 utilization, and pharmacy pricing.

358 c. Documents created pursuant to network development,
359 including contract negotiations, and decisions on network
360 membership.

361 ~~(e)~~ (f) The commissioner's examination expenses shall be
362 collected from pharmacy benefits managers in the same manner
363 as those collected from insurers."

364 "§27-45A-6



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

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

368 ~~(2) Apply to any specialty drug.~~

369 ~~(3)~~ (2) Impact the ability of a hospital to mandate its
370 employees' use of a hospital-owned pharmacy.

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

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

377 ~~(2) Subdivisions (2), (3), (6), and (7) of Section~~
378 ~~27-45A-10."~~

379 "§27-45A-7

380 ~~Reserved.~~ (a) A pharmacy benefits manager shall do all
381 of the following:

382 (1) Designate the pharmacy benefits manager's point of
383 contact for any in-network pharmacist and pharmacy.

384 (2) Respond to a request from an in-network pharmacist
385 or pharmacy within two business days.

386 (b) A pharmacy benefits manager may establish a process
387 whereby a pharmacist or pharmacy may appeal a reimbursement
388 decision that fails to pay the actual acquisition cost for any
389 prescription drug or device, provided that nothing herein
390 shall be construed to prohibit a pharmacy from filing a
391 complaint with the commissioner if the pharmacy is not
392 reimbursed in accordance with Section 27-45A-10."



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393 "§27-45A-8

394 With respect to a covered individual, Aa pharmacy
395 benefits manager, directly or through an affiliate or a
396 contracted third party, may not do any of the following:

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

402 (2) Prohibit or limit any covered individual from
403 selecting an in-network pharmacy or pharmacist of his or her
404 choice who meets and agrees to the terms and conditions,
405 including reimbursements, in the pharmacy benefits manager's
406 contract.

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

418 (4)a. Use a covered individual's pharmacy services data
419 collected pursuant to the provision of claims processing
420 services for the purpose of soliciting, marketing, or



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421 referring the covered individual to a mail-order pharmacy or
422 PBM affiliate.

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

426 c. This subdivision shall not prohibit a pharmacy
427 benefits manager from notifying a covered individual that a
428 less costly option for a specific prescription drug is
429 available through a mail-order pharmacy or PBM affiliate,
430 provided the notification shall state that switching to the
431 less costly option is not mandatory. The commissioner, by
432 rule, may determine the language of the notification
433 authorized under this paragraph made by a pharmacy benefits
434 manager to a covered individual.

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

438 a. The contracted cost share amount.

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

441 (6) Charge a covered individual a copayment or a
442 cost-sharing amount that is greater than the amount paid to
443 the pharmacy that dispenses the prescription drug."

444 "§27-45A-9

445 (a) For purposes of this section, ~~elient~~ "client" means
446 a health insurer, payor, or health benefit plan.

447 (b) If requested by a client under subsection (d), a
448 pharmacy benefits manager shall prepare an annual report by



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449 June 1 which discloses ~~all of the following with respect to~~
450 ~~that client:~~

451 ~~(1) The~~the aggregate amount of all rebates that the
452 pharmacy benefits manager received from pharmaceutical
453 manufacturers on behalf of the client.

454 ~~(2) The aggregate amount of the rebates the pharmacy~~
455 ~~benefits manager received from pharmaceutical manufacturers~~
456 ~~that did not pass through to the client.~~

457 ~~(3) If a pharmacy benefits manager or any consultant~~
458 ~~providing pharmacy benefits management services engages in~~
459 ~~spread pricing, the aggregated amount of the difference~~
460 ~~between the amount paid by the client for prescription drugs~~
461 ~~and the actual amount paid to the pharmacy or pharmacist for~~
462 ~~pharmacist services. For purposes of this subdivision, "spread~~
463 ~~pricing" means the model of prescription drug reimbursement in~~
464 ~~which a pharmacy benefits manager charges a client a~~
465 ~~contracted price for prescription drugs, and the contract~~
466 ~~price for the prescription drugs differs from the amount the~~
467 ~~pharmacy benefits manager, directly or indirectly, pays the~~
468 ~~pharmacy or pharmacist for pharmacist services.~~

469 (c) Confidentiality of a report submitted under this
470 section shall be governed by contract between the pharmacy
471 benefits manager and the client.

472 (d) A pharmacy benefits manager shall annually notify
473 all its clients in a timely manner that a report described in
474 subsection (b) will be made available to the client by the
475 pharmacy benefits manager if requested by the client."

476 "§27-45A-10



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

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

485 (2) Reimburse an in-network pharmacy for a prescription
486 drug in an amount that is less than or exceeds the actual
487 acquisition cost to the pharmacy for the prescription drug
488 plus a professional dispensing fee that is equal to the
489 professional dispensing fee paid by the state under Title XIX
490 of the Social Security Act.

491 (3) Practice spread pricing in this state.

492 ~~(2)~~ (4) Deny a pharmacy or pharmacist the right to
493 participate as a ~~contract~~network provider if the pharmacy or
494 pharmacist meets and agrees to the terms and conditions,
495 including reimbursements, in the pharmacy benefits manager's
496 contract.

497 ~~(3)~~ (5) Impose credentialing standards on a pharmacist
498 or pharmacy beyond or more onerous than the licensing
499 standards set by the Alabama State Board of Pharmacy or charge
500 a pharmacy a fee in connection with network enrollment,
501 provided this subdivision shall not prohibit a pharmacy
502 benefits manager from setting minimum requirements for
503 participating in a pharmacy network.

504 ~~(4)~~ (6) Prohibit a pharmacist or pharmacy from providing



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505 a covered individual specific information on the amount of the
506 covered individual's cost share for the covered individual's
507 prescription drug, the acquisition cost and reimbursement
508 amount for the prescription drug, and the clinical efficacy of
509 a more affordable alternative drug or therapy if one is
510 available, or penalize a pharmacist or pharmacy for disclosing
511 this information to a covered individual as deemed necessary
512 in the professional judgment of the pharmacist or for selling
513 to a covered individual a more affordable alternative if one
514 is available in the completion of a business transaction.

515 ~~(5)~~ (7) Prohibit a pharmacist or pharmacy from offering
516 and providing delivery services to a covered individual as an
517 ancillary service of the pharmacy, provided all of the
518 following requirements are met:

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

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

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

529 ~~(6)~~ (8) Charge or hold a pharmacist or pharmacy
530 responsible for a fee or penalty relating to an audit
531 conducted pursuant to ~~The Pharmacy Audit Integrity Act,~~
532 Article 8 of Chapter 23 of Title 34, provided this prohibition



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533 does not restrict recoupments made in accordance with ~~the~~
534 ~~Pharmacy Audit Integrity Act~~ that article.

535 ~~(7)~~ (9) Charge a pharmacist or pharmacy a point-of-sale
536 or retroactive fee or otherwise recoup funds from a pharmacy
537 in connection with claims for which the pharmacy has already
538 been paid, unless the recoupment is made pursuant to an audit
539 conducted in accordance with ~~the Pharmacy Audit Integrity~~
540 ~~Act~~ Article 8 of Chapter 23 of Title 34.

541 (10) Charge a pharmacy a fee in regard to enrollment,
542 credentialing or re-credentialing, change of ownership,
543 submission of claims, adjudication of claims, or otherwise if
544 not in conjunction with an audit conducted pursuant to Article
545 8 of Chapter 23 of Title 34.

546 (11) Initiate a fraud, waste, or abuse investigation
547 without first notifying the pharmacist or pharmacy and
548 receiving approval from the commissioner on the basis of
549 information that supports an articulable suspicion of fraud,
550 waste, or abuse by the pharmacist or pharmacy to be
551 investigated.

552 (12) Impose additional terms on a pharmacy unless the
553 pharmacy or its representative agrees to the terms in writing.

554 ~~(8)~~ (b) (1) Except for a drug reimbursed, directly or
555 indirectly, by the Medicaid program, a pharmacy benefits
556 manager may not vary the amount ~~at~~ the pharmacy benefits manager
557 reimburses an entity for a drug, including each and every
558 prescription medication that is eligible for specialty tier
559 placement by the Centers for Medicare and Medicaid Services
560 pursuant to 42 C.F.R. § 423.560, regardless of any provision



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561 of law to the contrary, on the basis of whether:

562 a. The drug is subject to an agreement under 42 U.S.C.
563 § 256b; or

564 b. The entity participates in the program set forth in
565 42 U.S.C. § 256b.

566 ~~(9)~~ (2) If an entity participates, directly or
567 indirectly, in the program set forth in 42 U.S.C. § 256b, a
568 pharmacy benefits manager may not do any of the following:

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

571 b. Restrict access to the pharmacy benefits manager's
572 pharmacy network.

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

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

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

580 ~~(10)~~ (3) A pharmacy benefits manager may not

581 ~~Require~~require a claim for a drug to include a modifier to
582 indicate that the drug is subject to an agreement under 42
583 U.S.C. § 256b.

584 ~~(11)~~ (c) A pharmacy benefits manager may not

585 ~~Penalize~~penalize or retaliate against a pharmacist or pharmacy
586 for exercising rights under this chapter or ~~the Pharmacy Audit~~
587 ~~Integrity Act~~Article 8 of Chapter 23 of Title 34."

588 Section 2. Section 27-45A-13 is added to the Code of



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589 Alabama 1975, to read as follows:

590 §27-45A-13

591 (a) For the purposes of this section, the following
592 terms have the following meanings:

593 (1) CLIENT. A health insurer or a payor.

594 (2) PHARMACY BENEFIT. The part of a health benefit plan
595 that reimburses for pharmacist services, including
596 prescription drugs and devices.

597 (b) A pharmacy benefits manager, directly or through an
598 affiliate or contracted third party, shall pass on to a client
599 100 percent of all rebates the pharmacy benefits manager
600 receives, directly or indirectly, from pharmaceutical
601 manufacturers in connection with claims the pharmacy benefits
602 manager administers on behalf of the client's health benefit
603 plan unless the client directs the pharmacy benefits manager
604 to apply the rebates to purchases of prescription drugs by
605 covered individuals at the point-of-sale. Notwithstanding the
606 foregoing, nothing shall be construed to allow a rebate from a
607 pharmaceutical manufacturer, directly or indirectly, to a
608 pharmacy benefits manager, or its PBM affiliate, or its client
609 where otherwise prohibited by law.

610 (c) When a client makes a written request to a pharmacy
611 benefits manager to reassign or transfer a pharmacy benefit to
612 another pharmacy benefits manager, within 30 days, the
613 pharmacy benefits manager, directly or through an affiliate or
614 contracted third party, shall do both of the following:

615 (1) Provide the client with the prescription drug file.

616 (2) Establish all electronic data interchange (EDI)



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617 connections necessary for the client to transfer the pharmacy
618 benefit to the new pharmacy benefits manager and maintain the
619 EDI for the six-month period following the transfer of the
620 pharmacy benefit.

621 (d) A pharmacy benefits manager, directly or through a
622 PBM affiliate or contracted party, may not do any of the
623 following:

624 (1) Engage in spread pricing.

625 (2) Charge a client more for a drug at a pharmacy
626 affiliated with the pharmacy benefits manager than the actual
627 acquisition cost for the ingredient cost of the drug.

628 (3) Enter into any agreement with a client which
629 defines "rebate" more narrowly than the definition in this
630 article or that in any way circumvents the requirement of this
631 section to pass 100 percent of the rebates back to the client.

632 (4) Enter into any agreement with a pharmaceutical
633 manufacturer that, directly or indirectly, allocates rebates
634 earned under one health benefit plan to a different health
635 benefit plan.

636 (5) Enter any agreement with a pharmaceutical
637 manufacturer for a rebate that is not attributable to a
638 specific drug covered under a specific health benefit plan.

639 (6) Charge a client a fee for access to a prescription
640 drug file that exceeds the pharmacy benefits manager's
641 reasonable cost of providing access.

642 (7) Deny or delay or take any action calculated to
643 inhibit the transfer of a prescription drug file to a client
644 when the client requests the transfer of the file.



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645 (8) Take any action calculated to penalize a client for
646 switching to a new pharmacy benefits manager, including, but
647 not limited to, charging the prospective pharmacy benefits
648 manager a fee to access the prescription drug file or
649 withholding rebates due to a client which are earned during
650 the period before an agreement with the new pharmacy benefits
651 manager takes effect.

652 (9) Contract with any party, including a health insurer
653 or third-party administrator, that engages in any of the
654 practices prohibited in this section.

655 Section 3. Section 34-23-187, Code of Alabama 1975, is
656 amended to read as follows:

657 "§34-23-187

658 This article ~~does not~~ shall apply to any audit, review,
659 or investigation that involves alleged fraud, willful
660 misrepresentation, or waste abuse that is initiated by a
661 pharmacy benefits manager."

662 Section 4. This act shall become effective on October
663 1, 2024.