

Proposed: Pharmacy and Pharmacy Patient Protection Act
Sponsored by Sen. Nancy Barto (AZ)

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Section 1. Title

This Act shall be known and may be cited as the “Pharmacy and Pharmacy Patient Protection Act.”

Section 2. Purpose

- (a) This Act establishes the standards and criteria for the elimination of certain pharmacy benefits manager practices that have been found to hinder the practice of pharmacy and increase costs to the end payer while also obstructing patient care for health benefit plans.
- (b) The purpose of this Act is to:
 - (1) Promote, preserve, and protect the public health, safety, and welfare through effective management and/or elimination of certain practices of pharmacy benefits managers
 - (2) Provide for powers and duties of the Insurance Commissioner, the State Insurance Department.
 - (3) Prescribe penalties and fines for violations of this Act.

Section 3. Definitions

For purposes of this Act:

- (a) "Claims processing services" means the administrative services performed in connection with the processing and adjudication of claims relating to pharmacist services that include:
 - (1) Receiving payments for pharmacist services
 - (2) Making payments to pharmacists or pharmacies for pharmacist services; or
 - (3) Both subdivisions (a)(1) and (2) of this section.

- (b) "Other prescription drug or device services" means services other than claims processing services, provided directly or indirectly, whether in connection with or separate from claims processing services, including without limitation:
- (1) Negotiating rebates, discounts, or other financial incentives and arrangements with drug companies;
 - (2) Disbursing or distributing rebates;
 - (3) Managing or participating in incentive programs or arrangements for pharmacist services;
 - (4) Negotiating or entering into contractual arrangements with pharmacists or pharmacies, or both;
 - (5) Developing formularies;
 - (6) Designing prescription benefit programs; or
 - (7) Advertising or promoting services.
- (c) "Pharmacist" means an individual licensed as a pharmacist by the State Board of Pharmacy
- (d) "Pharmacist services" means products, goods, and services, or any combination of products, goods, and services, provided as a part of the practice of pharmacy
- (e) "Pharmacy" means the place licensed by the State Board of Pharmacy in which drugs, chemicals, medicines, prescriptions, and poisons are compounded, dispensed, or sold at retail.
- (f) (1) "Pharmacy benefits manager" means a person, business, or entity, 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, for health benefit plans
- (2) "Pharmacy benefits manager" does not include any:
 - (i) Healthcare facility licensed in [this State];
 - (ii) Healthcare professional licensed in [this State];
 - (iii) Consultant who only provides advice as to the selection or performance of a pharmacy benefits manager;
 - (iv) Prescription drug manufacturer or prescription drug buying group or cooperative; or
 - (v) Independently licensed insurance agent or person, business or entity not owned by or directly or indirectly affiliated with a pharmacy benefit manager as defined in (f) (1).
- (g) "Affiliate pharmacy" means a pharmacy which, either directly or indirectly through one or more intermediaries:

- (1) Has an investment or ownership interest in a pharmacy benefits manager
- (2) Shares common ownership with a pharmacy benefits manager
- (3) Has an investor or ownership interest holder which is a pharmacy benefits manager

(h) "Steering" means:

- (1) Ordering an insured to use its affiliate pharmacy for the filling of a prescription or the provision of pharmacy care;
 - (2) Ordering an insured to use an affiliate pharmacy of another pharmacy benefits manager licensed under this chapter pursuant to an arrangement or agreement for the filling of a prescription or the provision of pharmacy care;
 - (3) Offering or implementing plan designs that require an insured to utilize its affiliate pharmacy or an affiliate pharmacy of another pharmacy benefits manager licensed under this chapter or that increases plan or insured costs, including requiring an insured to pay the full cost for a prescription when an insured chooses not to use any affiliate pharmacy; or
 - (4) Advertising, marketing, or promoting its affiliate pharmacy or an affiliate pharmacy of another pharmacy benefits manager licensed under this chapter to insureds. Subject to the foregoing, a pharmacy benefits manager may include its affiliated pharmacy/pharmacies or an affiliate pharmacy of another pharmacy benefits manager licensed under this chapter in communications to patients, including patient and prospective patient specific communications, regarding network pharmacies and prices, provided that the pharmacy benefits manager includes information regarding eligible nonaffiliated pharmacies in such communications and that the information provided is accurate.
- (i) "Point of sale fee" means all or a portion of a drug reimbursement to a pharmacy or other dispenser withheld at the time of adjudication of a claim for any reason.
- (j) "Retroactive fee" means all or a portion of a drug reimbursement to a pharmacy or other dispenser recouped or reduced following adjudication of a claim for any reason, except pursuant to a lawful audit.

Section 4. Prohibited activities of pharmacy benefits managers

(a) A pharmacy benefits manager shall be proscribed from:

- (1) Requiring an insured to obtain any drug via the mail or to use any mail order or specialty pharmacy and excluding a pharmacist, pharmacy or other dispenser or dispenser practice as long as the provider is willing to accept the plan's rates as payment for services;
- (2) Prohibiting or penalizing a pharmacist, pharmacy, or other dispenser or dispenser practice from providing an insured individual information on the amount of the insured's cost share for such insured's prescription drug and the clinical efficacy of a more affordable alternative drug if one is available.

- (3) Prohibiting a pharmacist, pharmacy, or other dispenser or dispenser practice from offering and providing delivery services to an insured as an ancillary service of the pharmacy or dispenser practice;
- (4) Charging or collecting from an insured a copayment that exceeds the total submitted charges by the network pharmacy or other dispenser practice for which the pharmacy or dispenser practice is paid;
- (5) Imposing a point-of-sale fee or retroactive fee on a pharmacy;
- (6) Charging or holding a pharmacist or pharmacy or dispenser or dispenser practice responsible for a fee or penalty relating to the adjudication of a claim or an audit conducted pursuant to (state code), provided that this shall not restrict recoupments made in accordance with an audit pursuant to (state code);
- (7) Penalizing or retaliating against a pharmacist or pharmacy for exercising rights under this (state chapter or code);
- (8) Steering. This paragraph shall not be construed to prohibit a pharmacy benefits manager from entering into an agreement with an affiliated pharmacy or an affiliated pharmacy of another pharmacy benefits manager licensed pursuant to this chapter to provide pharmacy care to patients;

Section 5. Enforcement

- (a) The Insurance Commissioner shall enforce this Act.
- (b) (1) The commissioner may examine or audit the books and records of a pharmacy benefits manager providing claims processing services or other prescription drug or device services for a health benefit plan to determine if the pharmacy benefits manager is in compliance with this Act.
 - (2) The information or data acquired during an examination under subdivision (b)(1) of this section is:
 - (A) Considered proprietary and confidential; and
 - (B) Not subject to the [Freedom of Information Act]¹ of this State

Section 6. Rules

- (a) The Insurance Commissioner may adopt rules regulating pharmacy benefits managers that are not inconsistent with this Act.
- (b) Rules adopted under this Act shall set penalties or fines, including without limitation monetary fines, suspension of licensure, and revocation of licensure for violations of this Act and rules adopted under this Act.

¹ DRAFTING NOTE: State FOIAs have different names in different states, often called Open Records Acts, Public Records Act, Public Records Law, etc. and thus the specific title used in this subsection needs to be tailored accordingly

Drafting Note: Although Section 7(a) expressly authorizes rules not inconsistent with this Act, as opposed to those merely implementing it, states may also wish to consider providing the Insurance Commissioner with specific guidance to adopt regulations relating to:

- (1) *Pharmacy benefits manager network adequacy;*
- (2) *Prohibited market conduct practices;*
- (3) *Data reporting requirements under State price-gouging laws;*
- (4) *Rebates;*
- (5) *Prohibitions and limitations on the corporate practice of medicine (CPOM);²*
- (6) *Compensation;*
- (7) *Procedures for pharmacy audits conducted by or on behalf of a pharmacy benefits manager;*
- (8) *Medical loss ratio (MLR) abuses;*
- (9) *Affiliate information sharing; and*
- (10) *Lists of health benefit plans administered by a pharmacy benefits manager in this state.*

Section 7. Applicability

- (a) This Act is applicable to a contract or health benefit plan issued, renewed, recredentialed, amended, or extended on and after _____.
- (b) A contract existing on the date of licensure of the pharmacy benefits manager shall comply with the requirements of this Act as a condition of licensure for the pharmacy benefits manager.
- (c) Nothing in this Act is intended or shall be construed to be in conflict with existing relevant federal law.

Section 8. Severability Clause

If any provision of this act or the application of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this act are declared severable.

Section 9. Effective Date

This Act is effective immediately.

² Commissioners may wish to evaluate whether PBMs disregarding of physicians' prescribing practices and substituting of their (PBMs') own judgement through the use of mandated step therapy constitutes the practice of medicine