SB73

200173-6

By Senator Orr

RFD: Healthcare

First Read: 05-MAR-19
To prohibit pharmacy benefit managers from preventing pharmacies and pharmacists from disclosing information on the amount an individual would pay for a prescription drug if he or she does not have an insurance plan, benefits, discounts, or if an individual paid for a prescription without using their pharmacy benefits; and to require pharmacy benefit managers to register with the Department of Insurance.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

Section 2. (a) This act establishes the standards and criteria for the regulation and licensure of pharmacy benefits managers providing claims processing services or other prescription drug or device services 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 regulation and licensure of pharmacy benefits managers;
(2) Provide for powers and duties of the Insurance Commissioner, the State Insurance Department; and
(3) Prescribe penalties and fines for violations of this act.

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

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

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

(3) 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:
   a. Negotiating rebates, discounts, or other financial 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; or
g. Advertising or promoting services.

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

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

(6) 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.

(7) a. 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.

b. Pharmacy benefits manager does not include any:

(i) Healthcare facility licensed in Alabama;

(ii) Healthcare professional licensed in Alabama; or

(iii) Consultant who only provides advice as to the selection or performance of a pharmacy benefits manager.
Section 4. (a) (1) Effective January 1, 2020, to conduct business in this state, a pharmacy benefit manager must be licensed by the Commissioner. To initially obtain a license or renew a license, a pharmacy benefits manager shall submit:

a. A nonrefundable fee not to exceed $500;  
b. A copy of the licensee’s corporate charter, articles of incorporation, or other charter document; and  
c. A completed licensure form adopted by the Commissioner containing:
   1. The name and address of the licensee.  
   2. The name, address, and official position of an employee who will serve as the primary contact for the Department of Insurance.  
   3. Any additional contact information deemed appropriate by the commissioner or reasonably necessary to verify the information contained in the application.

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

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

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

(6) All documents, materials, or other information, and copies thereof, in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an application, examination or investigation made pursuant to this Act shall be confidential by law and privileged, shall not be subject to any open records, freedom of information, sunshine or other public record disclosure laws, and shall not be subject to subpoena or discovery. This provision only applies to disclosure of said confidential documents by the Department of Insurance and does not create any privilege in favor of any other party.
Section 5. (a) A pharmacy or pharmacist shall have the right to provide a covered person with information regarding the amount of the covered person’s cost share for a prescription drug. Neither a pharmacy nor a pharmacist shall be proscribed by a pharmacy benefits manager from discussing any such information or for selling a more affordable alternative to the covered person if such an alternative is available.

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

(c) For purposes of this section, the following words have the following meanings:

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

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

(3) HEALTH BENEFIT PLAN. As defined in Section 27-54A-2, Code of Alabama 1975.
Section 6. (a) The commissioner may adopt reasonable rules necessary to implement Sections 4 and 5 of this act.

(b) The rules adopted under this act shall set penalties or civil fines for violations of Section 4 and 5 of this act and the rules implementing this act including, without limitation, monetary fines and the suspension or revocation of a license.

(c) The fees collected pursuant to this act shall be deposited in the State Treasury to the credit of the Insurance Department Fund. Any civil fine or penalty collected shall be deposited in the State Treasury to the credit of the State General Fund.

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

(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. This act shall be effective immediately following its passage and approval by the Governor, or its otherwise becoming law.
President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB73
Senate 15-MAY-19
I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Passed: 29-MAY-19

By: Senator Orr