SB236

203482-2

By Senators Butler, Beasley, Orr, Scofield, Livingston, Jones, Givhan, Holley, Allen, Gudger, Whatley, Chambliss, Waggoner, Albritton, Price, Melson, Sessions, Stutts, Ward, Smitherman, Chesteen, Barfoot, Roberts, Reed and Marsh

RFD: Banking and Insurance

First Read: 25-FEB-20
SYNOPSIS: Under existing law, pharmacy benefits managers must be licensed by the Department of Insurance. Pharmacy benefits managers provide claims processing services or prescription drug and other pharmacist services, or both, to health benefit plans.

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

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

This bill would prohibit a pharmacy benefits manager from limiting certain powers of a pharmacist to provide pharmacist services to...
insureds, from steering insured patients toward an
affiliated pharmacy, and from sharing patient data
with an affiliated pharmacy.

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

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

A BILL
TO BE ENTITLED
AN ACT

Relating to pharmacy benefits managers; to amend
Sections 3 through 5 of Act 2019-457, 2019 Regular Session,
now appearing as Sections 27-45A-3, 27-45A-4, and 27-45A-5,
and 27-45A-6, Code of Alabama 1975; to amend and renumber
Section 6 of Act 2019-457, 2019 Regular Session, now appearing
as Section 27-45A-6, Code of Alabama 1975; to renumber Section
7 of Act 2019-457, 2019 Regular Session, now appearing as
Section 27-45A-7, Code of Alabama 1975; and to add Sections
27-45A-12 to the Code of Alabama 1975; to prohibit pharmacy
benefits managers and health benefit plans from steering or
referring a patient toward using a specific pharmacy; to
prohibit health benefits plans from requiring the use of
mail-order pharmaceutical distributor or affiliated pharmacies
for prescription drugs; to restrict pharmacy benefits managers
from steering patients to affiliated pharmacies; to restrict
pharmacy benefits managers from mining patient data; to
require certain reporting of drug rebates by pharmacy benefits
managers; to make conforming changes to definitions; and to
provide civil penalties for certain violations.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 3, 4, and 5 of Act 2019-457,
2019 Regular Session, now appearing as Sections 27-45A-3,
27-45A-4, and 27-45A-5 of the 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. A pharmacy benefits manager that,
either directly or indirectly through one or more
intermediaries, has an investment or ownership interest in a
pharmacy or shares common ownership with a pharmacy.

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

"(3) 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.

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

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

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

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

"(2)(8) 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 without limitation any of the following:

"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.

"g. Advertising or promoting services.

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

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

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

"(6)(12) PHARMACY BENEFITS MANAGER. a. 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 of the following:

"1. A healthcare facility licensed in Alabama.

"2. A healthcare professional licensed in Alabama.

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

"§27-45A-4.

"(a) (1) Effective January 1, 2020, to conduct business in this state, a pharmacy benefits manager must be
licensed by the commissioner. To initially obtain a license or renew a license, a pharmacy benefits manager shall submit all of the following:

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

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

"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 civil 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.

"(5) All documents, materials, or other information, and copies thereof, in the possession or control of the department 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 chapter 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 subdivision only applies to disclosure of confidential documents by the department and does not create any privilege in favor of any other party.

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

"§27-45A-5.

"(a) A pharmacy or pharmacist may 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 **prohibited** 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 the following:

"(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."

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

§27-45A-6.
(a) (1) A pharmacy benefits manager may not do any of the following:

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

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

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

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

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

   (b) A pharmacy benefits manager may not transfer or share records relative to prescription information containing patient-identifiable data to an affiliated pharmacy for any commercial purpose; provided, however, that this subdivision shall not be construed to prohibit the exchange of prescription information between a pharmacy benefits manager and an affiliated pharmacy for the limited purposes of
§27-45A-7. A pharmacy benefits manager may not do any of the following:

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

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

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

(4) Charge or hold a pharmacist or pharmacy responsible for a fee or penalty relating to the adjudication of a claim or an audit conducted pursuant to The Pharmacy Audit Integrity Act, provided this prohibition does not restrict recoupments made in accordance with The Pharmacy Audit Integrity Act.
(5) 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 or the recoupment is otherwise permitted or required by law.

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

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

§27-45A-8.

(a) A health benefit plan may not require a covered person to obtain pharmacist services, including prescription drugs, exclusively from a mail-order pharmaceutical distributor or affiliated pharmacy. Covered persons who do not use a mail-order pharmaceutical distributor or affiliated pharmacy shall not be required to pay a different co-payment fee or have imposed any varying conditions for the receipt of pharmacist services, including prescription drugs, when that payment or condition is not imposed upon those covered persons who use a mail-order pharmaceutical distributor or affiliated pharmacy for the pharmacist services if the provider of pharmacist services used by the covered person has agreed to the same terms and conditions as applicable to the mail-order pharmaceutical distributor or affiliated pharmacy and has agreed to accept payment or reimbursement from the health
benefit plan at no more than the same amount that would have been paid to the mail-order pharmaceutical distributor or affiliated pharmacy of the same pharmacist services.

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

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

(d) A provider of pharmacist services who desires to provide services to covered persons in its service area, upon written request to the health benefit plan, shall be provided
information pertaining to the terms and conditions applicable to mail-order pharmaceutical services available in the service area. If the provider of pharmacist services agrees to the terms and conditions in writing and agrees to be paid or reimbursed at no more than the same amount that would be paid to a mail-order pharmaceutical distributor or affiliated pharmacy for the same services, the provider of pharmacist services shall be paid or reimbursed at no more than the same amount paid to the mail-order pharmaceutical distributor or affiliated pharmacy for the same services.

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


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

(b) It shall be a violation of this section for a health benefit plan or pharmacy benefits manager to refuse to
accept a community retail pharmacy as part of a pharmacy
benefits manager's retail pharmacy network.

§27-45A-10.

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

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

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

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

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


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

"(b) The rules adopted under this chapter shall set
penalties or civil fines for violations of Sections 27-45A-4
and 27-45A-5 and the rules implementing this chapter
including, without limitation, monetary fines and the
suspension or revocation of a license."
"(c) The fees collected pursuant to this chapter 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.

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

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

§27-45A-12.

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

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

(c) If the commissioner finds from the investigation that a violation has occurred, the commissioner shall promptly begin proceedings to address the violation through means such as imposition of injunctive relief, requiring restitution, and, in cases of repeated violation after previous findings or warnings of violations from the commissioner, suspension or revocation of licenses. In addition, a pharmacy benefits
manager or health benefit plan that is found by the
commissioner to have violated this chapter may be ordered by
the commissioner to pay a civil penalty not to exceed five
thousand dollars ($5,000) for each act or violation. Each
violation shall be a separate offense.

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

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


"(a) This chapter 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 chapter as a condition of licensure for
the pharmacy benefits manager.

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

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