

1 HB492
2 208556-1
3 By Representatives Ledbetter, Sanderford, Crawford, Sorrell,
4 Isbell, Stringer, McMillan, Shiver, Brown (K), Faust, Shaver,
5 Nordgren, Lovvorn, Hanes, Fincher, Hurst, Farley, Rowe,
6 Oliver, Estes, Smith, Sells, McCutcheon and Meadows
7 RFD: Ways and Means Education
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8 SYNOPSIS: Under existing law, pharmacy benefits
9 managers must be licensed by the Department of
10 Insurance. Pharmacy benefits managers provide
11 claims processing services or prescription drug and
12 other pharmacist services, or both, to health
13 benefit plans.

14 This bill would require insureds to receive
15 certain prescription drug rebates and discounts.

16 This bill would prohibit a pharmacy benefits
17 manager from reimbursing a pharmacy in an amount
18 less than the amount the pharmacy benefits manager
19 reimburses an affiliated pharmacy of the pharmacy
20 benefits manager and from paying a pharmacy for
21 prescription drugs an amount different than the
22 amount the pharmacy benefits manager contracted
23 with the health benefit plan to charge the health
24 benefit plan for those same prescription drugs.

25 This bill would prohibit a pharmacy benefits
26 manager from requiring or steering an insured to

1 use a mail-order pharmacy or a pharmacy affiliated
2 with a pharmacy benefits manager.

3 This bill would require a pharmacy benefits
4 manager to act as a fiduciary and annually report
5 drug rebate information to health insurers and
6 health benefit plans.

7 This bill would prohibit a pharmacy benefits
8 manager from imposing conditions to influence an
9 insured in selecting a certain pharmacy or
10 otherwise limiting an insured's ability to select a
11 pharmacy of his or her choice.

12 This bill would prohibit a pharmacy benefits
13 manager from limiting certain powers of a pharmacy
14 or pharmacist to provide pharmacist services to
15 insureds.

16 This bill would provide further for the
17 Commissioner of Insurance to enforce laws relating
18 to pharmacy benefits managers and would provide
19 civil penalties for violations.

20 This bill would also provide conforming
21 changes to definitions.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to health care; to amend Sections 3 through
2 5 of Act 2019-457, 2019 Regular Session, now appearing as
3 Sections 27-45A-3, 27-45A-4, and 27-45A-5, Code of Alabama
4 1975; to amend and renumber Section 6 of Act 2019-457, 2019
5 Regular Session, now appearing as Section 27-45A-6, Code of
6 Alabama 1975; and to add Sections 27-45A-6, 27-45A-7,
7 27-45A-8, 27-45A-9, 27-45A-10, 27-45A-11, and 27-45A-13 to the
8 Code of Alabama 1975; to renumber Section 7 of Act 2019-457,
9 2019 Regular Session, now appearing as Section 27-45A-7, Code
10 of Alabama 1975; to require insureds to receive certain
11 prescription drug rebates and discounts; to prohibit a
12 pharmacy benefits manager from reimbursing a pharmacy in an
13 amount less than the amount the pharmacy benefits manager
14 reimburses an affiliated pharmacy of the pharmacy benefits
15 manager and from paying a pharmacy for prescription drugs an
16 amount different than the contracted amount; to prohibit
17 pharmacy benefits managers from steering an insured to use a
18 mail-order pharmacy or a pharmacy benefits manager affiliate;
19 to require a pharmacy benefits manager to act as a fiduciary
20 to its clients and report certain drug rebates; to prohibit
21 pharmacy benefits managers from limiting an insured's ability
22 to select a pharmacy of his or her choice; to prohibit a
23 pharmacy benefits manager from limiting certain powers of a
24 pharmacy or pharmacist; to revise definitions; to provide
25 further for the Commissioner of Insurance to enforce laws
26 relating to pharmacy benefits managers; and to provide civil

1 penalties for certain violations; and to make conforming
2 changes to definitions.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 3 through 5 of Act 2019-457,
5 2019 Regular Session, now appearing as Sections 27-45A-3,
6 27-45A-4, and 27-45A-5, Code of Alabama 1975, are amended to
7 read as follows:

8 "§27-45A-3.

9 "For purposes of this chapter, the following words
10 shall have the following meanings:

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

15 "a. Receiving payments for pharmacist services.

16 "b. Making payments to pharmacists or pharmacies for
17 pharmacist services.

18 "c. Both paragraphs a. and b.

19 "(2) CLIENT. A health insurer, payor, or health
20 benefit plan.

21 "(3) COVERED INDIVIDUAL. Any individual or family
22 member covered under a health benefit plan.

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

25 "(5) HEALTH BENEFIT PLAN. As defined in Section
26 27-54A-2.

1 "~~(2)~~ (6) OTHER PRESCRIPTION DRUG OR DEVICE SERVICES.
2 Services, other than claims processing services, provided
3 directly or indirectly, whether in connection with or separate
4 from claims processing services, including ~~without limitation,~~
5 but not limited to, any of the following:

6 "a. Negotiating rebates, discounts, or other
7 financial incentives and arrangements with drug companies.

8 "b. Disbursing or distributing rebates.

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

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

13 "e. Developing formularies.

14 "f. Designing prescription benefit programs.

15 "g. Advertising or promoting services.

16 "~~(3)~~ (7) PHARMACIST. ~~An individual licensed as a~~
17 ~~pharmacist by the State Board of Pharmacy~~ As defined in
18 Section 34-23-1.

19 "~~(4)~~ (8) PHARMACIST SERVICES. Products, goods, and
20 services, or any combination of products, goods, and services,
21 provided as a part of the practice of pharmacy.

22 "~~(5)~~ (9) PHARMACY. ~~The place licensed by the State~~
23 ~~Board of Pharmacy in which drugs, chemicals, medicines,~~
24 ~~prescriptions, and poisons are compounded, dispensed, or sold~~
25 ~~at retail~~ As defined in Section 34-23-1.

26 "~~(6)~~ (10) PHARMACY BENEFITS MANAGER. a. A person,
27 ~~business, or entity,~~ including a wholly or partially owned or

1 controlled subsidiary of a pharmacy benefits manager, that
2 provides claims processing services or other prescription drug
3 or device services, or both, to covered individuals who are
4 employed in or are residents of this state, for health benefit
5 plans.

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

8 "1. A healthcare facility licensed in ~~Alabama~~ this
9 state.

10 "2. A healthcare professional licensed in ~~Alabama~~
11 this state.

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

14 "(11) PHARMACY BENEFITS MANAGER AFFILIATE. A
15 pharmacy or pharmacist that, directly or indirectly, through
16 one or more intermediaries, is owned or controlled by, or is
17 under common ownership or control with a pharmacy benefits
18 manager.

19 "§27-45A-4.

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

25 "~~a.~~ (1) A nonrefundable fee not to exceed ~~\$500~~ five
26 hundred dollars (\$500).

1 "~~b.~~(2) A copy of the licensee's corporate charter,
2 articles of incorporation, or other charter document.

3 "~~c.~~(3) A completed licensure form adopted by the
4 commissioner containing:

5 "~~1.~~a. The name and address of the licensee.

6 "~~2.~~b. The name, address, and official position of an
7 employee who will serve as the primary contact for the
8 Department of Insurance.

9 "~~3.~~c. Any additional contact information deemed
10 appropriate by the commissioner or reasonably necessary to
11 verify the information contained in the application.

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

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

25 "~~(4)~~(c) The license shall be initially renewed in
26 accordance with a schedule prescribed by the commissioner and
27 shall thereafter be subject to renewal on a biennial basis.

1 The commissioner shall adopt by rule an initial licensure fee
2 not to exceed five hundred dollars (\$500) and a renewal fee
3 not to exceed five hundred dollars (\$500), both of which shall
4 be nonrefundable.

5 "(d) The licensee shall inform the commissioner by
6 any means acceptable to the commissioner of any change in the
7 information required under subsection (a) within 30 days of
8 the change. Failure to timely inform the commissioner of a
9 change shall result in a civil penalty against the licensee in
10 the amount of fifty dollars (\$50).

11 "(e) The commissioner may revoke or suspend a
12 license or may impose civil penalties for a violation of this
13 chapter, as determined by the commissioner in accordance with
14 rules adopted by the commissioner.

15 ~~"(5)~~ (f) All documents, materials, or other
16 information, and copies thereof, in the possession or control
17 of the department that are obtained by or disclosed to the
18 commissioner or any other person in the course of an
19 application, examination, or investigation made pursuant to
20 this chapter shall be confidential by law and privileged,
21 shall not be subject to any open records, freedom of
22 information, sunshine, or other public record disclosure laws,
23 and shall not be subject to subpoena or discovery. This
24 subdivision only applies to disclosure of confidential
25 documents by the department and does not create any privilege
26 in favor of any other party.

1 "(g) (1) Fees collected pursuant to this section
2 shall be deposited in the State Treasury to the credit of the
3 Insurance Department Fund.

4 "(2) Civil penalties collected pursuant to this
5 chapter shall be deposited in the State Treasury to the credit
6 of the State General Fund.

7 "§27-45A-5.

8 "~~(a) A pharmacy or pharmacist may provide a covered~~
9 ~~person with information regarding the amount of the covered~~
10 ~~person's cost share for a prescription drug. Neither a~~
11 ~~pharmacy nor a pharmacist shall be proscribed by a pharmacy~~
12 ~~benefits manager from discussing any such information or for~~
13 ~~selling a more affordable alternative to the covered person if~~
14 ~~such an alternative is available.~~

15 "~~(b)~~ A health benefit plan that covers prescription
16 drugs may not include a provision that requires an enrollee to
17 make a payment for a prescription drug at the point of sale in
18 an amount that exceeds the lessor of the following:

19 "(1) ~~the~~ The contracted ~~co-payment~~ copayment amount;
20 ~~or.~~

21 "(2) ~~the~~ The amount an individual would pay for a
22 prescription if that individual were paying with cash.

23 "~~(c) For purposes of this section, the following~~
24 ~~words have the following meanings:~~

25 "~~(1) COVERED PERSON. Any individual, family, or~~
26 ~~family member on whose behalf third-party payment or~~

1 ~~prepayment of health or medical expenses is provided under a~~
2 ~~health benefit plan.~~

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

5 ~~"(3) HEALTH BENEFIT PLAN. As defined in Section~~
6 ~~27-54A-2."~~

7 Section 2. Sections 27-45A-6, 27-45A-7, 27-45A-8,
8 27-45A-9, 27-45A-10, and 27-45A-11, are added to the Code of
9 Alabama 1975, to read as follows:

10 §27-45A-6.

11 (a) A pharmacy or pharmacist may provide a covered
12 individual with information regarding the amount of the
13 covered individual's cost share for a prescription drug.

14 (b) (1) When calculating an enrollee's contribution
15 to any applicable cost sharing requirement, a pharmacy benefit
16 manager shall include any cost sharing amounts paid by the
17 enrollee or on behalf of the enrollee by another person.

18 (2) If the requirement in subdivision (1) is invalid
19 or incapable of being enforced against a pharmacy benefit
20 manager due to a conflict with federal law requirements, the
21 requirement in subdivision (1) shall remain in full force and
22 effect with respect to all pharmacy benefit managers and in
23 all situations where no such conflict exists. If the
24 application of this requirement would be the sole cause of a
25 state-regulated high deductible health benefit plan's failure
26 to qualify as such a plan under §223, Internal Revenue Code,

1 this requirement shall not apply to such a plan to the extent
2 necessary to avoid that result.

3 (c) Enrollees shall directly receive at the pharmacy
4 counter at least 80 percent of the benefit of rebates and
5 discounts for prescription drugs that accrue directly or
6 indirectly to health benefit plans.

7 §27-45A-7.

8 A pharmacy benefits manager may not do either of the
9 following:

10 (1) Reimburse a pharmacy or pharmacist in the state
11 an amount less than the amount that the pharmacy benefits
12 manager reimburses a pharmacy benefits manager affiliate for
13 providing the same pharmacist services.

14 (2) Conduct spread pricing in this state. For
15 purposes of this subdivision, "spread pricing" means the model
16 of prescription drug pricing in which a pharmacy benefits
17 manager charges a health benefit plan a contracted price for
18 prescription drugs, and the contract price for the
19 prescription drugs differs from the amount the pharmacy
20 benefits manager, directly or indirectly, pays the pharmacy or
21 pharmacist for pharmacist services.

22 §27-45A-8.

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

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

6 (3) Order a covered individual, orally or in
7 writing, including through online messaging, to a mail-order
8 pharmacy or pharmacy benefits manager affiliate.

9 (4) Offer or implement plan designs that require a
10 covered individual to use a mail-order pharmacy or pharmacy
11 benefits manager affiliate.

12 (5) Offer or implement plan designs that increase
13 plan or patient costs if the covered individual chooses not to
14 use a mail-order pharmacy or pharmacy benefits manager
15 affiliate. The prohibition in this subdivision includes
16 requiring a covered individual to pay the full cost for a
17 prescription drug when the covered individual chooses not to
18 use a mail-order pharmacy or pharmacy benefits manager
19 affiliate.

20 §27-45A-9.

21 (a) A pharmacy benefits manager is a fiduciary to
22 its clients and shall do all of the following:

23 (1) Discharge the duty as a fiduciary in accordance
24 with federal and state law.

25 (2) Disclose to its clients all direct or indirect
26 payments relating to the dispensing of prescription drugs or
27 classes or brands of drugs.

1 (3) Notify its clients in writing of any activity,
2 policy, or practice of the pharmacy benefits manager that
3 directly or indirectly presents any conflict of interest or
4 inability to comply with the duties imposed by this section,
5 but in no event does the notification exempt the pharmacy
6 benefits manager from compliance with all other provisions of
7 this chapter.

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

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

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

17 §27-45A-10.

18 A pharmacy benefits manager may not do any of the
19 following:

20 (1) Prohibit or limit any covered individual from
21 selecting a pharmacy or pharmacist of his or her choice who
22 has agreed to participate in the health benefit plan according
23 to the plan's terms.

24 (2) Deny a pharmacy or pharmacist the right to
25 participate as a contract provider under a health benefit plan
26 if the pharmacy or pharmacist agrees to provide pharmacist
27 services, including, but not limited to, prescription drugs,

1 which meet the terms and requirements in the health benefit
2 plan and agrees to the terms of reimbursement in the plan.

3 (3) Impose upon a covered individual any copayment,
4 fee, or any other condition that is not equally imposed upon
5 all covered individuals in the same benefit category, class,
6 or copayment level under the health benefit plan when
7 receiving services from a contract provider.

8 (4) Order a covered individual to any pharmacy
9 benefits manager affiliate of that pharmacy benefits manager
10 or another pharmacy benefits manager.

11 (5) Impose a monetary advantage, incentive, or
12 penalty under a health benefit plan which would affect or
13 influence a covered individual's choice among those pharmacies
14 or pharmacists who have agreed to participate in the health
15 benefit plan according to the plan's terms.

16 (6) Impose upon a covered individual any copayment,
17 amount of reimbursement, number of days of a drug supply for
18 which reimbursement will be allowed, or any other payment,
19 restriction, limitation, or condition relating to purchasing
20 pharmacist services from any pharmacy or pharmacist, including
21 prescription drugs, that is more costly or more restrictive
22 than that which would be imposed upon the covered individual
23 if the same pharmacist services were purchased from a
24 mail-order pharmacy, a pharmacy benefits manager affiliate, or
25 any other pharmacy or pharmacist that is willing to provide
26 the same pharmacist services for the same cost and copayment
27 as any mail-order service.

1 §27-45A-11.

2 A pharmacy benefits manager may not do any of the
3 following:

4 (1) Prohibit a pharmacist or pharmacy from providing
5 a covered individual specific information on the amount of the
6 covered individual's cost share for the covered individual's
7 prescription drug and the clinical efficacy of a more
8 affordable alternative drug if one is available, or penalize a
9 pharmacist or pharmacy for disclosing this information to a
10 covered individual or for selling to a covered individual a
11 more affordable alternative if one is available.

12 (2) Prohibit a pharmacist or pharmacy from offering
13 and providing delivery services to a covered individual as an
14 ancillary service of the pharmacy.

15 (3) Charge or collect from a covered individual a
16 copayment that exceeds the total submitted charges by the
17 network pharmacy for which the pharmacy is paid.

18 (4) Charge or hold a pharmacist or pharmacy
19 responsible for a fee or penalty relating to an audit
20 conducted pursuant to The Pharmacy Audit Integrity Act,
21 Article 8 of Chapter 23 of Title 34, provided this prohibition
22 does not restrict recoupments made in accordance with the
23 Pharmacy Audit Integrity Act.

24 (5) Charge a pharmacist or pharmacy a point-of-sale
25 or retroactive fee or otherwise recoup funds from a pharmacy
26 in connection with claims for which the pharmacy has already

1 been paid, unless the recoupment is made pursuant to an audit
2 conducted in accordance with the Pharmacy Audit Integrity Act.

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

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

9 (8) Withhold coverage or require a prior
10 authorization for a lower cost therapeutically equivalent
11 prescription drug available to a covered individual or fail to
12 reduce a covered individual's copayment or cost share when a
13 covered individual selects a lower cost therapeutically
14 equivalent prescription drug.

15 (9) Impose credentialing or accreditation standards
16 on a pharmacist or pharmacy beyond or more onerous than those
17 set by the Alabama State Board of Pharmacy or charging a
18 pharmacy a fee in connection with network enrollment.

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

22 "~~§27-45A-6.~~ §27-45A-12.

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

26 "~~(b) The rules adopted under this chapter shall set~~
27 ~~penalties or civil fines for violations of Sections 27-45A-4~~

1 and ~~27-45A-5~~ and the rules implementing this chapter
2 including, without limitation, monetary fines and the
3 suspension or revocation of a license.

4 ~~"(c) The fees collected pursuant to this chapter~~
5 ~~shall be deposited in the State Treasury to the credit of the~~
6 ~~Insurance Department Fund. Any civil fine or penalty collected~~
7 ~~shall be deposited in the State Treasury to the credit of the~~
8 ~~State General Fund.~~

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

12 Section 4. Section 27-24A-13 is added to the Code of
13 Alabama 1975, to read as follows:

14 §27-45A-13.

15 (a) A person claiming to be adversely affected by an
16 act or practice prohibited by the Pharmacy Audit Integrity
17 Act, Article 8 of Chapter 23 of Title 34 or this chapter may
18 file a complaint with the Commissioner of Insurance.

19 (b) If, upon investigation, the commissioner finds
20 that a violation of the Pharmacy Audit Integrity Act or this
21 chapter has occurred, either on his or her own initiative or
22 in response to a complaint filed under subsection (a), the
23 commissioner shall take appropriate enforcement action which
24 may include suspending or revoking a license or imposing a
25 civil penalty not to exceed five thousand dollars (\$5,000) for
26 each act or violation, or both. Each violation shall be a
27 separate offense.

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

4 "~~§27-45A-7.~~ §27-45A-14.

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

8 "(b) A contract existing on the date of licensure of
9 the pharmacy benefits manager shall comply with the
10 requirements of this chapter as a condition of licensure for
11 the pharmacy benefits manager.

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

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