SB227

208556-1

By Senators Butler, Beasley, Allen, Scofield, Barfoot, Holley, Orr, Stutts, Livingston, Smitherman, Marsh, Roberts and Gudger

RFD: Banking and Insurance

First Read: 11-FEB-21
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 require insureds to receive certain prescription drug rebates and discounts.

This bill would prohibit a pharmacy benefits manager from reimbursing a pharmacy in an amount less than the amount the pharmacy benefits manager reimburses an affiliated pharmacy of the pharmacy benefits manager and from paying a pharmacy for prescription drugs an amount different than the amount the pharmacy benefits manager contracted with the health benefit plan to charge the health benefit plan for those same prescription drugs.

This bill would prohibit a pharmacy benefits manager from requiring or steering an insured to
use a mail-order pharmacy or a pharmacy affiliated
with a pharmacy benefits manager.

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

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

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

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

This bill would also provide conforming
changes to definitions.

A BILL
TO BE ENTITLED
AN ACT
Relating to health care; 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, 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; and to add Sections 27-45A-6, 27-45A-7, 27-45A-8, 27-45A-9, 27-45A-10, 27-45A-11, and 27-45A-13 to the 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; to require insureds to receive certain prescription drug rebates and discounts; to prohibit a pharmacy benefits manager from reimbursing a pharmacy in an amount less than the amount the pharmacy benefits manager reimburses an affiliated pharmacy of the pharmacy benefits manager and from paying a pharmacy for prescription drugs an amount different than the contracted amount; to prohibit pharmacy benefits managers from steering an insured to use a mail-order pharmacy or a pharmacy benefits manager affiliate; to require a pharmacy benefits manager to act as a fiduciary to its clients and report certain drug rebates; to prohibit pharmacy benefits managers from limiting an insured's ability to select a pharmacy of his or her choice; to prohibit a pharmacy benefits manager from limiting certain powers of a pharmacy or pharmacist; to revise definitions; to provide further for the Commissioner of Insurance to enforce laws relating to pharmacy benefits managers; and to provide civil
penalties for certain violations; and to make conforming
changes to definitions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. 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, 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) 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.

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

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

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

"(5) HEALTH BENEFIT PLAN. As defined in Section
27-54A-2."
"(2)(6) 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, but not limited to, 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)(7) PHARMACIST. An individual licensed as a pharmacist by the State Board of Pharmacy As defined in Section 34-23-1.

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

"(5)(9) 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)(10) 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, to covered individuals who are
employed in or are residents of this state, for health benefit
plans.

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

"1. A healthcare facility licensed in Alabama this
state.

"2. A healthcare professional licensed in Alabama
this state.

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

"(11) PHARMACY BENEFITS MANAGER AFFILIATE. A
pharmacy or pharmacist 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.

"§27-45A-4.

"(a) 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. (1) A nonrefundable fee not to exceed $500 five
hundred dollars ($500).
(2) A copy of the licensee's corporate charter, articles of incorporation, or other charter document.

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

a. The name and address of the licensee.

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

c. 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)(b) 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)(c) 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.

"(d) The licensee shall inform the commissioner by any means acceptable to the commissioner of any change in the information required under subsection (a) 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).

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

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

"(2) Civil penalties collected pursuant to this chapter shall be deposited in the State Treasury to the credit of the State General 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 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 the following:

"(1) the The contracted copayment copayment amount; or

"(2) the 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, 27-45A-10, and 27-45A-11, are added to the Code of Alabama 1975, to read as follows:

§27-45A-6.

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

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

(2) If the requirement in subdivision (1) is invalid or incapable of being enforced against a pharmacy benefit manager due to a conflict with federal law requirements, the requirement in subdivision (1) shall remain in full force and effect with respect to all pharmacy benefit managers and in all situations where no such conflict exists. If the application of this requirement would be the sole cause of a state-regulated high deductible health benefit plan’s failure to qualify as such a plan under §223, Internal Revenue Code,
this requirement shall not apply to such a plan to the extent
necessary to avoid that result.

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


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

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

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

§27-45A-8.

(1) Require a covered individual, as a condition of
payment or reimbursement, to purchase pharmacist services,
including, but not limited to, prescription drugs, exclusively
through a mail-order pharmacy or pharmacy benefits manager
affiliate.
(2) Use a covered individual's pharmacy services data collected pursuant to the provision of claims processing services for the purpose of soliciting, marketing, or referring the covered individual to a mail-order pharmacy or pharmacy benefits manager affiliate.

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

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

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


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

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

(2) Disclose to its clients all direct or indirect payments relating to the dispensing of prescription drugs or classes or brands of drugs.
(3) Notify its clients in writing of any activity, policy, or practice of the pharmacy benefits manager that directly or indirectly presents any conflict of interest or inability to comply with the duties imposed by this section, but in no event does the notification exempt the pharmacy benefits manager from compliance with all other provisions of this chapter.

(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.

§27-45A-10. A pharmacy benefits manager may not do any of the following:

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

(2) Deny a pharmacy or pharmacist the right to participate as a contract provider under a health benefit plan if the pharmacy or pharmacist agrees to provide pharmacist services, including, but not limited to, prescription drugs,
which meet the terms and requirements in the health benefit plan and agrees to the terms of reimbursement in the plan.

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

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

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

(6) Impose upon a covered individual any copayment, amount of reimbursement, number of days of a drug supply for which reimbursement will be allowed, or any other payment, restriction, limitation, or condition relating to purchasing pharmacist services from any pharmacy or pharmacist, including prescription drugs, that is more costly or more restrictive than that which would be imposed upon the covered individual if the same pharmacist services were purchased from a mail-order pharmacy, a pharmacy benefits manager affiliate, or any other pharmacy or pharmacist that is willing to provide the same pharmacist services for the same cost and copayment as any mail-order service.
A pharmacy benefits manager may not do any of the following:

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

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

(3) Charge or collect from a covered individual a copayment 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 an audit conducted pursuant to The Pharmacy Audit Integrity Act, Article 8 of Chapter 23 of Title 34, provided this prohibition does not restrict recoupments made in accordance with the Pharmacy Audit Integrity Act.

(5) Charge a pharmacist or pharmacy a point-of-sale or retroactive fee or otherwise 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.

(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.

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

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

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


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

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