

1 SB227  
2 208556-1  
3 By Senators Butler, Beasley, Allen, Scofield, Barfoot, Holley,  
4 Orr, Stutts, Livingston, Smitherman, Marsh, Roberts and Gudger  
5 RFD: Banking and Insurance  
6 First Read: 11-FEB-21

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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.