

1 SB344
2 211975-1
3 By Senators Butler and Beasley
4 RFD: Banking and Insurance
5 First Read: 16-MAR-21

1
2
3
4
5
6
7
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
27 use a mail-order pharmacy or a pharmacy affiliated

1 with a pharmacy benefits manager, with certain
2 exceptions.

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 with certain exceptions; to require a pharmacy benefits
20 manager to act as a fiduciary to its clients and report
21 certain drug rebates; to prohibit pharmacy benefits managers
22 from limiting an insured's ability to select a pharmacy of his
23 or her choice; to prohibit a pharmacy benefits manager from
24 limiting certain powers of a pharmacy or pharmacist; to revise
25 definitions; to provide further for the Commissioner of
26 Insurance to enforce laws relating to pharmacy benefits

1 managers; and to provide civil penalties for certain
2 violations; and to make conforming 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 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 §27-45A-7.

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

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

21 (2) Conduct spread pricing in this state. For
22 purposes of this subdivision, "spread pricing" means the model
23 of prescription drug pricing in which a pharmacy benefits
24 manager charges a health benefit plan a contracted price for
25 prescription drugs, and the contract price for the
26 prescription drugs differs from the amount the pharmacy

1 benefits manager, directly or indirectly, pays the pharmacy or
2 pharmacist for pharmacist services.

3 §27-45A-8.

4 (a) A pharmacy benefits manager may not do any of
5 the following:

6 (1) Require a covered individual, as a condition of
7 payment or reimbursement, to purchase pharmacist services,
8 including, but not limited to, prescription drugs, exclusively
9 through a mail-order pharmacy or pharmacy benefits manager
10 affiliate.

11 (2) Use a covered individual's pharmacy services
12 data collected pursuant to the provision of claims processing
13 services for the purpose of soliciting, marketing, or
14 referring the covered individual to a mail-order pharmacy or
15 pharmacy benefits manager affiliate, provided this subdivision
16 shall not limit a health benefit plan's use of pharmacy
17 services data for the purpose of administering the health
18 benefit plan.

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

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

25 (5) Offer or implement plan designs that increase
26 plan or patient costs if the covered individual chooses not to
27 use a mail-order pharmacy or pharmacy benefits manager

1 affiliate. The prohibition in this subdivision includes
2 requiring a covered individual to pay the full cost for a
3 prescription drug when the covered individual chooses not to
4 use a mail-order pharmacy or pharmacy benefits manager
5 affiliate.

6 (b) Subsection (a) shall not apply to limited
7 distribution drugs and specialty drugs.

8 §27-45A-9.

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

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

13 (2) Disclose to its clients all direct or indirect
14 payments relating to the dispensing of prescription drugs or
15 classes or brands of drugs.

16 (3) Notify its clients in writing of any activity,
17 policy, or practice of the pharmacy benefits manager that
18 directly or indirectly presents any conflict of interest or
19 inability to comply with the duties imposed by this section,
20 but in no event does the notification exempt the pharmacy
21 benefits manager from compliance with all other provisions of
22 this chapter.

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

25 (1) The aggregate amount of all rebates that the
26 pharmacy benefits manager received from pharmaceutical

1 manufacturers in connection with claims if administered on
2 behalf of the client.

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

6 §27-45A-10.

7 A pharmacy benefits manager may not do any of the
8 following:

9 (1) Prohibit or limit any covered individual from
10 selecting a pharmacy or pharmacist of his or her choice who
11 meets and agrees to the terms and requirements in the pharmacy
12 benefits manager's contract.

13 (2) Deny a pharmacy or pharmacist the right to
14 participate as a contract provider if the pharmacy or
15 pharmacist meets and agrees to the terms and requirements in
16 the pharmacy benefits manager's contract and agrees to the
17 terms of reimbursement in the contract.

18 (3) Order a covered individual to any pharmacy
19 benefits manager affiliate of that pharmacy benefits manager
20 or another pharmacy benefits manager, provided this
21 subdivision shall not apply to limited distribution drugs and
22 specialty drugs.

23 (4) Impose upon a covered individual any copayment,
24 amount of reimbursement, number of days of a drug supply for
25 which reimbursement will be allowed, or any other payment,
26 restriction, limitation, or condition relating to purchasing
27 pharmacist services from any pharmacy or pharmacist, including

1 prescription drugs, that is more costly or more restrictive
2 than that which would be imposed upon the covered individual
3 if the same pharmacist services were purchased from a
4 mail-order pharmacy, a pharmacy benefits manager affiliate, or
5 any other pharmacy or pharmacist that is willing to provide
6 the same pharmacist services for the same cost and copayment
7 as any mail-order service, provided this subdivision shall not
8 apply to limited distribution drugs and specialty drugs.

9 §27-45A-11.

10 A pharmacy benefits manager may not do any of the
11 following:

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

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

23 (3) Charge or hold a pharmacist or pharmacy
24 responsible for a fee or penalty relating to an audit
25 conducted pursuant to The Pharmacy Audit Integrity Act,
26 Article 8 of Chapter 23 of Title 34, provided this prohibition

1 does not restrict recoupments made in accordance with the
2 Pharmacy Audit Integrity Act.

3 (4) Charge a pharmacist or pharmacy a point-of-sale
4 or retroactive fee or otherwise recoup funds from a pharmacy
5 in connection with claims for which the pharmacy has already
6 been paid, unless the recoupment is made pursuant to an audit
7 conducted in accordance with the Pharmacy Audit Integrity Act.

8 (5) Penalize or retaliate against a pharmacist or
9 pharmacy for exercising rights under this chapter or the
10 Pharmacy Audit Integrity Act.

11 (6) Knowingly make a misrepresentation to an
12 insured, pharmacist, pharmacy, dispenser, or dispenser
13 service.

14 (7) Impose credentialing or accreditation standards
15 on a pharmacist or pharmacy beyond or more onerous than those
16 set by the Alabama State Board of Pharmacy or charging a
17 pharmacy a fee in connection with network enrollment, provided
18 this subdivision shall not prohibit a pharmacy benefits
19 manager from setting minimum requirements for participating in
20 a pharmacy network.

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

24 "~~§27-45A-6.~~ §27-45A-12.

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

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

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

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

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

16 §27-45A-13.

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

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

1 each act or violation, or both. Each violation shall be a
2 separate offense.

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

6 "~~§27-45A-7.~~ §27-45A-14.

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

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

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

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