

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1000 Session of 2024

INTRODUCED BY J. WARD, TARTAGLIONE, KEARNEY, DUSH, HUTCHINSON, BREWSTER, COLEMAN, MASTRIANO, CULVER, PENNYCUICK, LAUGHLIN, FLYNN, STEFANO, ARGALL, AUMENT, BARTOLOTTA, A. WILLIAMS, FONTANA, BOSCOLA, CAPPELLETTI, HAYWOOD, SANTARSIERO, HUGHES, L. WILLIAMS, COLLETT, ROBINSON, LANGERHOLC, KANE, FARRY, SAVAL, YAW, STREET, DILLON, ROTHMAN, COMMITTA, MUTH AND SCHWANK, JANUARY 8, 2024

SENATOR BROOKS, HEALTH AND HUMAN SERVICES, AS AMENDED, JUNE 4, 2024

AN ACT

1 Amending the act of November 21, 2016 (P.L.1318, No.169),
2 entitled "An act providing for pharmacy audit procedures, for
3 registration of pharmacy benefits managers and auditing
4 entities, for maximum allowable cost transparency and for
5 prescription drugs reimbursed under the PACE and PACENET
6 program; and making related repeals," further providing for
7 title of act; in preliminary provisions, further providing
8 for short title and for definitions; in pharmacy audits, <--
9 further providing for limitations; and providing for pharmacy
10 benefits BENEFIT manager contract requirements and prohibited <--
11 acts.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 ~~Section 1. The title and section 101 of the act of November <--
15 21, 2016 (P.L.1318, No.169), known as the Pharmacy Audit
16 Integrity and Transparency Act, are amended to read:~~

17 SECTION 1. THE TITLE OF THE ACT OF NOVEMBER 21, 2016 <--
18 (P.L.1318, NO.169), KNOWN AS THE PHARMACY AUDIT INTEGRITY AND
19 TRANSPARENCY ACT, IS AMENDED TO READ:

AN ACT

Providing for pharmacy audit procedures, for registration of pharmacy benefits managers and auditing entities, for maximum allowable cost transparency and for prescription drugs reimbursed under the PACE and PACENET program and for pharmacy benefit ~~managers~~ MANAGER contract requirements and ~~prohibited activities~~; and making related repeals.

~~Section 101. Short title.~~

~~This act shall be known and may be cited as the [Pharmacy Audit Integrity and Transparency] Community Pharmacy Protection Act.~~

Section 2. Section 103 of the act is amended by adding definitions to read:

Section 103. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

~~* * *~~

~~"Brand effective rate." The reimbursement rate paid to the pharmacy based on a percentage of the average wholesale cost for brand name drugs dispensed by the pharmacy under the contract with the pharmacy benefit manager.~~

~~* * *~~

~~"Effective rate contract." A contract that sets a specific discount rate for all prescriptions filled by a member pharmacy during the term of the contract.~~

~~* * *~~

~~"Generic effective rate." The reimbursement rate paid to the pharmacy based on a percentage of the average wholesale cost for generic drugs dispensed by the pharmacy under the contract with~~

1 ~~the pharmacy benefit manager.~~

2 * * *

3 "Patient steering." One of the following:

4 (1) When a pharmacy benefit manager directs a patient to
5 use a preferred pharmacy through mandatory mail order
6 requirements or the creation by the PBM PHARMACY BENEFIT <--
7 MANAGER of a restricted network that consists only of
8 pharmacies approved by the PBM PHARMACY BENEFIT MANAGER. <--

9 (2) The use of co-pay differentials between PBM <--
10 affiliated pharmacies and nonaffiliated pharmacies. FOR <--
11 PHARMACIES CONTRACTED WITH THE PHARMACY BENEFIT MANAGER AND
12 PHARMACIES THAT ARE NOT CONTRACTED WITH THE PHARMACY BENEFIT
13 MANAGER. <--

14 * * *

15 "Spread pricing." An act of A PRACTICE USED BY a pharmacy <--
16 benefit manager reimbursing TO REIMBURSE a pharmacy for a <--
17 prescription and then billing BILL an insurer or an employer <--
18 that provides health insurance at a higher price THAN WAS <--
19 REIMBURSED for the same prescription.

20 Section 3. Section 303 of the act is amended by adding a
21 subsection to read:

22 Section 303. Limitations.

23 * * *

24 (c) Scrivener error.--A scrivener error made by a pharmacy
25 not attributed to fraud, waste or abuse that is discovered
26 during an audit of the pharmacy by the PBM PHARMACY BENEFIT <--
27 MANAGER shall result in the PBM PHARMACY BENEFIT MANAGER <--
28 recouping the dispensing fee for that particular transaction,
29 not the entire amount of the medication DRUG received by the <--
30 patient.

1 Section 4. The act is amended by adding a chapter to read:

2 CHAPTER 6 <--

3 PHARMACY BENEFITS MANAGER CONTRACT

4 REQUIREMENTS AND PROHIBITED ACTS

5 Section 601. Contract provisions.

6 A contract between a pharmacy benefit manager or a designee
7 of the pharmacy benefit manager and a pharmacy may not:

8 (1) Require participation in the PBM's network
9 contingent on the pharmacy signing either an effective rate
10 contract or a contract based on the National Average Drug
11 Acquisition Cost guidelines.

12 (2) Include provisions allowing for retroactive
13 recoupment of money paid to a pharmacy by the PBM, unless
14 both parties agree to that provision.

15 (3) Base reimbursement upon general effective rate or
16 the brand effective rate as a condition of entering a
17 network, unless both parties agree to that provision. Any
18 additional fees must be disclosed and applied at the time of
19 the adjudication of the claim. Fees may include:

20 (i) Transaction fees.

21 (ii) Chargebacks due to recalculation of the cost of
22 the ingredients used in a prescription drug.

23 (iii) Adjustments in the general effective rate,
24 brand effective rates or direct and indirect remuneration
25 fees made by the PBM.

26 Section 602. Spread pricing participation prohibited.

27 A pharmacy benefit manager may not conduct or participate in
28 spread pricing.

29 Section 603. Patient steering prohibited.

30 A pharmacy benefit manager may not conduct or participate in

1 ~~patient steering.~~

2 ~~Section 604. Duties of the department.~~

3 ~~The department shall:~~

4 ~~(1) Develop a process for receiving, hearing and~~
5 ~~resolving complaints a pharmacy filed against a PBM.~~

6 ~~(2) Have the ability to set fixed amounts for PBM claim~~
7 ~~processing fees and administrative fees.~~

8 ~~(3) Develop a Statewide National Average Drug~~
9 ~~Acquisition Cost guideline that uses wholesale pricing based~~
10 ~~on manufacturer's invoices of those manufacturers who ship~~
11 ~~drugs to this Commonwealth.~~

12 ~~Section 605. Duties of pharmacy benefit managers.~~

13 ~~Pharmacy benefit managers shall:~~

14 ~~(1) Approve a request from a pharmacy to be a member of~~
15 ~~the PBM's network within 30 days of the initial request to~~
16 ~~join the network.~~

17 ~~(2) Provide a dedicated telephone number and email~~
18 ~~address for handling network admission requests.~~

19 ~~Section 606. PBM for State Employee Health Plan.~~

20 ~~A PBM hired for the State Employee Health Plan shall have a~~
21 ~~transparent reimbursement methodology based on the National~~
22 ~~Average Drug Acquisition Cost guidelines developed under~~
23 ~~section 604(3) and a dispensing fee equal to or greater than the~~
24 ~~maximum prevailing fee for service or PACE rate in this~~
25 ~~Commonwealth.~~

26 ~~Section 607. Reports by PBM.~~

27 ~~A PBM shall report to the department the amount of rebates~~
28 ~~and payments received from drug manufacturers and how the~~
29 ~~rebates and payments were distributed by the PBM.~~

30

CHAPTER 6

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1 PHARMACY BENEFIT MANAGER CONTRACT

2 REQUIREMENTS AND PROHIBITED ACTS

3 SECTION 601. CONTRACT PROVISIONS.

4 A CONTRACT BETWEEN A PHARMACY BENEFIT MANAGER OR A DESIGNEE
5 OF THE PHARMACY BENEFIT MANAGER AND A PHARMACY MAY NOT:

6 (1) REQUIRE PARTICIPATION IN THE PHARMACY BENEFIT
7 MANAGER'S NETWORK CONTINGENT ON THE PHARMACY RECEIVING LESS
8 THAN THE NATIONAL AVERAGE DRUG ACQUISITION COST AS
9 REIMBURSEMENT FOR PURCHASING A DRUG.

10 (2) REQUIRE RETROACTIVE RECOUPMENT OF MONEY PAID TO A
11 PHARMACY BY THE PHARMACY BENEFIT MANAGER.

12 (3) INCLUDE ADDITIONAL FEES UNLESS DISCLOSED AND APPLIED
13 AT THE TIME OF THE ADJUDICATION OF THE CLAIM, INCLUDING, BUT
14 NOT LIMITED TO:

15 (I) TRANSACTION FEES.

16 (II) CHARGEBACKS DUE TO RECALCULATION OF THE COST OF
17 THE INGREDIENTS USED IN A PRESCRIPTION DRUG.

18 (III) ADJUSTMENTS IN THE RATES OR DIRECT AND
19 INDIRECT REMUNERATION FEES MADE BY THE PHARMACY BENEFIT
20 MANAGER.

21 (4) REQUIRE CONTRACTED PHARMACIES TO PARTICIPATE IN
22 PATIENT STEERING SOLELY BASED ON COST SAVINGS TO THE PHARMACY
23 BENEFIT MANAGER RATHER THAN TO REIMBURSE THE PHARMACY AT COST
24 PLUS A DISPENSING FEE AS IS OTHERWISE REQUIRED BY A PHARMACY
25 CONTRACT.

26 SECTION 602. SPREAD PRICING.

27 A PHARMACY BENEFIT MANAGER MAY NOT CONDUCT OR PARTICIPATE IN
28 SPREAD PRICING.

29 SECTION 603. PATIENT STEERING.

30 A PHARMACY BENEFIT MANAGER MAY NOT CONDUCT OR PARTICIPATE IN

1 PATIENT STEERING, INCLUDING REQUIRING THAT PATIENTS OR ANY OR
2 ALL OF THE PATIENTS' PRESCRIPTIONS BE REFERRED TO A MAIL-ORDER
3 PHARMACY OR AN AFFILIATE PHARMACY OF THE PHARMACY BENEFIT
4 MANAGER.

5 SECTION 604. DUTIES OF THE DEPARTMENT.

6 THE DEPARTMENT SHALL:

7 (1) DEVELOP A PROCESS FOR RECEIVING, HEARING AND
8 RESOLVING COMPLAINTS A PHARMACY FILES AGAINST A PHARMACY
9 BENEFIT MANAGER.

10 (2) ESTABLISH LICENSURE REQUIREMENTS AND REGULATE
11 PHARMACY BENEFIT MANAGERS, NOTWITHSTANDING OWNERSHIP OR
12 AFFILIATION WITH ANY OTHER ENTITY ALREADY LICENSED BY THIS
13 COMMONWEALTH, OPERATING OR EXERCISING CONTRACTS IN THIS
14 COMMONWEALTH.

15 (3) ESTABLISH A REIMBURSEMENT RATE NO LESS THAN THE
16 MEDICARE DISPENSING FEE ESTABLISHED BY THE CENTERS FOR
17 MEDICARE AND MEDICAID SERVICES TO BE REIMBURSED TO PHARMACIES
18 CONTRACTING WITH PHARMACY BENEFIT MANAGERS, NOTWITHSTANDING
19 SPECIALTY STATUS, OWNERSHIP OR SALE OF BRAND-NAME PRODUCTS.

20 (4) ENSURE, THROUGH REGULATION AND AUDITING, THAT NO
21 PHARMACY BE REIMBURSED LESS THAN THE COST OF A DRUG.

22 SECTION 605. DUTIES OF PHARMACY BENEFIT MANAGERS.

23 PHARMACY BENEFIT MANAGERS SHALL:

24 (1) REVIEW REQUESTS FROM A PHARMACY TO JOIN THE NETWORK
25 OF THE PHARMACY BENEFIT MANAGERS AND APPROVE OR DENY THE
26 REQUESTS IN WRITING WITHIN 30 DAYS OF THE DATE OF EACH
27 REQUEST. IF A PHARMACY'S REQUEST IS DENIED, THE PHARMACY
28 BENEFIT MANAGER MUST PROVIDE ITS REASONING FOR THE DENIAL
29 WITHIN THE CORRESPONDENCE ISSUED TO THE PHARMACY.

30 (2) PROVIDE A DEDICATED TELEPHONE NUMBER AND EMAIL

1 ADDRESS FOR HANDLING NETWORK REQUESTS AND CUSTOMER SERVICE
2 NEEDS THAT IS STAFFED DURING NORMAL BUSINESS HOURS FOR THE
3 BENEFIT OF PHARMACIES.

4 SECTION 606. REPORTS BY PHARMACY BENEFIT MANAGER.

5 A PHARMACY BENEFIT MANAGER SHALL SUBMIT A QUARTERLY REPORT TO
6 THE DEPARTMENT OF THE TOTAL NUMBER OF REBATES, REBATE AMOUNTS
7 AND PAYMENTS RECEIVED FROM DRUG MANUFACTURERS AND AN EXPLANATION
8 OF HOW THE REBATES AND PAYMENTS WERE DISTRIBUTED BY THE PHARMACY
9 BENEFIT MANAGER. IF AUDITS REQUIRED UNDER SECTION 604(4)
10 DETERMINE THAT A PHARMACY WAS REIMBURSED LESS THAN THE COST OF
11 ACQUIRING AND DISPENSING A DRUG, THE DEPARTMENT SHALL HAVE THE
12 AUTHORITY TO REQUIRE THE PHARMACY BENEFIT MANAGER TO RECOUP THE
13 LOSS FROM THE MANUFACTURER REBATES RECEIVED AND REQUIRE THAT THE
14 AMOUNT OF THE LOSS BE PAID TO THE PHARMACY WITHIN 30 DAYS OF THE
15 AUDIT SUBMISSION.

16 SECTION 5. THIS ACT APPLIES TO CONTRACTS ENTERED INTO OR
17 RENEWED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION.

18 Section 5 6. This act shall take effect in 60 days.

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