



PBM Enhancement Act

A BILL TO BE ENTITLED THE “PBM ENHANCEMENT ACT,” RELATING TO PHARMACY BENEFITS MANAGERS, AMENDING _____.

PURPOSE: More than 270 million Americans receive pharmacy benefits provided through pharmacy benefit managers. A pharmacy benefits manager (PBM) is an entity that contracts with plan sponsors, including but not limited to insurers, employers, labor unions, and government programs to administer the prescription drug portion of the health care benefit. Due to the wide impact of PBMs in the healthcare delivery system, this Act is designed to formalize best practices for PBMs.

BE IT ENACTED:

SECTION 1. Definitions. Section _____ is amended to read:

For purposes of this Act, the following definitions shall apply.

- (1) “Pharmacy Benefits Manager” shall have the same meaning as defined in Section _____.
- (2) “Health Benefit Plan” shall have the same meaning as defined in Section _____.
- (3) “Insurance Carrier” shall have the same meaning as defined in Section _____.

SECTION 2. Pharmacy Benefits Managers. Section _____ is amended to read:

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(1) Network. A pharmacy benefits manager shall provide a reasonably adequate and accessible network of pharmacies for the provision of prescription drugs, which provides for convenient access to pharmacies within a reasonable distance from a patient's residence. A mail-order pharmacy may be included in the calculations for determining pharmacy benefits manager network adequacy under this section. The requirements in this section shall not be applicable to exclusive specialty networks or mandatory mail order arrangements.

(2) Prohibited Practices. A pharmacy benefits manager or representative of a pharmacy benefits manager may not do any of the following:

a) Knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

b) Knowingly permit the use of any promotional and non-educational advertisement for a specific drug. Nothing in this section shall prohibit a pharmacy benefits manager from providing necessary communications that the pharmacy benefits manager reasonably believes to be general, educational, and non-promotional to plan members regarding topics including but not limited to formulary changes; disease states, available treatments, and their related costs; and preferred formulary products.

(3) Point of Sale. A pharmacy benefits manager is prohibited from requiring a covered person to make a payment at the point of sale for a covered prescription medication in an amount that exceeds the lesser of:

a) The applicable copayment for the prescription medication;

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- b) The allowable claim amount for the prescription medication;
- c) The amount a covered person would pay for the prescription medication if the covered person purchased the prescription medication without using a health benefit plan or any other source of prescription medication benefits or discounts; or
- d) The amount the pharmacy will be reimbursed for the drug from the pharmacy benefit manager or health carrier.

This subsection does not prohibit the adjudication of claims in accordance with the state employee plan administered by a pharmacy benefits manager. The covered individual is not liable for any additional charges or entitled to any credits as a result of the adjudicated claim.

SECTION 3. Pharmacy Audits. Section _____ is amended to read:

(1) Pharmacy benefits managers must comply with requirements under this section when auditing pharmacy records.

- a) Notice. An auditing pharmacy benefits manager must notify the pharmacy being audited at least 7 calendar days prior to the onsite audit for each audit cycle, except when the audit is being performed due to reasonably suspected fraud.
- b) Time Limit. An audit period must be limited to 24 months after the date a claim is submitted to or settled.
- c) Appeals. After receipt of a final audit report issued by an insurance carrier, health maintenance organization, or pharmacy benefits manager, a

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pharmacy may appeal the findings of the final audit to determine whether a claim payment is due and as to the amount of a claim payment.

d) Clinical Judgement. Any audit that may require clinical judgment must be conducted in consultation with a pharmacist.

SECTION 4. Pharmacists. Section _____ is amended to read:

(1) A pharmacy or pharmacist may not decline to dispense a prescription drug or provide a pharmacy service to a patient on the basis of a discrepancy between the pharmacy's cost and the contractually agreed-upon reimbursement rate from the PBM or health plan for that drug or treatment.

SECTION 5. Rule Promulgation and Effective Date. Section _____ is amended to read:

(1) Pursuant to Section _____, the Commissioner is empowered to promulgate rules to enforce the provisions of this Act.

(2) This Act shall go into effect on _____.

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