



## A MODEL ACT RELATING TO PHARMACY BENEFIT MANAGERS

1    *Whereas:* It is essential to understand the drivers and impacts of prescription drug costs, and  
2    transparency is the first step toward that understanding and can lead to better cost containment and  
3    greater consumer access to prescription drugs.

4    *Whereas:* Pharmacy benefit managers are companies that contract with health plans to administer the  
5    health plan prescription drug benefit.

6    *Whereas:* Nearly all health plans require some level of cost sharing either via a fixed copayment or some  
7    percentage of the cost of care. Pharmacy benefit managers may require patient drug cost sharing that  
8    exceeds the pharmacy's actual cost of the medication.

9    *Whereas:* Pharmacy benefit manager business operations are not transparent.

10   *Whereas:* Some pharmacy benefit manager business practices appear to benefit the business at the cost  
11   of the patient, the health plan, and the pharmacist.

12   *Therefore:* The legislature finds that there is a need to ensure the health and welfare of residents who  
13   access prescription drugs managed by pharmacy benefit managers.

### 14    **General Description:**

15    The purpose of this act is to improve the business practice and transparency of pharmacy benefit  
16    managers.

### 17    **Section 1. Definitions**

18        A.   *Pharmacy Benefit Manager:* "Pharmacy Benefit Manager" means a person, business, or other  
19        entity that, pursuant to a contract or under an employment relationship with a health carrier, a  
20        self-insurance plan, or other third-party payer, either directly or through an intermediary,  
21        manages the prescription drug coverage provided by the health carrier, self-insurance plan, or  
22        other third-party payer including, but not limited to, the processing and payment of claims for

23 prescription drugs, the performance of drug utilization review, the processing of drug prior  
24 authorization requests, the adjudication of appeals or grievances related to prescription drug  
25 coverage, contracting with network pharmacies, and controlling the cost of covered prescription  
26 drugs.

27 B. *Health Carrier*: “Health Carrier” means an entity subject to the insurance laws and regulations of  
28 this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract,  
29 or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the  
30 cost of health care services, including a health insurance company, a health maintenance  
31 organization, a hospital and health services corporation, or any other entity providing a plan of  
32 health insurance, health benefits, or health care services.

33 C. *Health Benefit Plan*: “Health Benefit Plan” means a policy, contract, certificate or agreement  
34 offered or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of  
35 the costs of healthcare services.

36 D. *Covered Person*: “Covered Person” means a policyholder, subscriber, enrollee or other individual  
37 participating in a health benefit plan. A covered person includes the authorized representative  
38 of the covered person.

39 E. *Pharmacy*: “Pharmacy” means an established location, either physical or electronic that is  
40 licensed by the State and that has entered into a network contract with a pharmacy benefit  
41 manager and/or health carrier.

42 F. *Network Pharmacy*: “Network Pharmacy” means a retail or other licensed pharmacy provider  
43 that contracts with a pharmacy benefit manager.

44 G. *Retail Pharmacy*: “Retail Pharmacy” means a chain pharmacy, a supermarket pharmacy, a mass  
45 merchandiser pharmacy, an independent pharmacy, or a network of independent pharmacies  
46 that is licensed as a pharmacy by the State of \_\_\_\_\_ and that dispenses medications to the  
47 public.

48 H. *Mail Order Pharmacy*: “Mail Order Pharmacy” means a pharmacy whose primary business is to  
49 receive prescriptions by mail, telefax or through electronic submissions and to dispense  
50 medication to covered persons through the use of the United States mail or other common or  
51 contract carrier services and that provides any consultation with patients electronically rather  
52 than face to face.

53 I. *Aggregate Retained Rebate Percentage*: “Aggregate Retained Rebate Percentage” means the  
54 percentage of all rebates received from a manufacturer or other entity to a Pharmacy Benefit  
55 Manager for prescription drug utilization which is not passed on to Pharmacy Benefit Mangers’  
56 health carrier clients. The percentage shall be calculated for each health carrier for rebates in

57 the prior calendar years as follows: a) the sum total dollar amount of rebates received from all  
58 pharmaceutical manufacturers for all utilization of covered persons of a health carrier that was  
59 not passed through to the health carrier; and b) divided by the sum total dollar amount of all  
60 rebates received from all pharmaceutical manufacturers for covered persons of a health carrier.

61 J. *Rebates*: “Rebates” means all price concessions paid by a manufacturer to a Pharmacy Benefit  
62 Manager or health carrier, including rebates, discounts, and other price concessions that are  
63 based on actual or estimated utilization of a prescription drug. Rebates also include price  
64 concessions based on the effectiveness a drug as in a value-based or performance-based  
65 contract.

66 K. *Trade Secrets*: “Trade Secrets” has the meaning found in [state law citation].

67 L. *Cost Share/Cost Sharing*: “Cost Share/Cost Sharing” means the amount paid by a covered person  
68 as required under the covered person’s health benefit plan.

## 69 **Section 2. Required Pharmacy Benefit Manager Licensure**

70 A. A Pharmacy Benefit Manager shall be licensed by [State Agency] before conducting business in  
71 the State.

72 B. Licensure pursuant to this section is not transferable.

73 C. The license may be granted only when the [State Agency] is satisfied that the entity possesses  
74 the necessary organization, background expertise, and financial integrity to supply the services  
75 sought to be offered.

76 D. The [State Agency] may issue a license subject to restrictions or limitations upon the  
77 authorization, including the type of services that may be supplied or the activities in which the  
78 entity may be engaged.

79 E. All licenses are valid for a period of three years.

80 F. The [State Agency] shall develop an application for licensure that includes at least the following  
81 information:

82 a. The name of the Pharmacy Benefit Manager;

83 b. The address and contact telephone number for the Pharmacy Benefit Manager;

84 c. The name and address of the Pharmacy Benefit Manager agent for service of process in  
85 the State;

86 d. The name and address of each person beneficially interested in the Pharmacy Benefit  
87 Manager; and

88 e. The name and address of each person with management or control over the Pharmacy  
89 Benefit Manager.

90 G. The [State Agency] may suspend, revoke, or place on probation a Pharmacy Benefit Manager  
91 license under any of the following circumstances:

- 92 a. The Pharmacy Benefit Manager has engaged in fraudulent activity that constitutes a
- 93 violation of state or federal law;
- 94 b. The [State Agency] received consumer complaints that justify an action under this
- 95 subdivision to protect the safety and interests of consumers;
- 96 c. The Pharmacy Benefit Manager fails to pay an application fee for the license; or
- 97 d. The Pharmacy Benefit Manager fails to comply with a requirement set forth in this
- 98 section.

99 H. If a Pharmacy Benefit Manager acts without registering, it will be subject to a fine of \$5,000 per  
100 day for the period they are found to be in violation.

101 **Section 3. Pharmacy Benefit Manager Business Practices**

102 A. A Pharmacy Benefit Manager has a fiduciary duty to a health carrier client and shall discharge  
103 that duty in accordance with the provisions of state and federal law.

104 B. A Pharmacy Benefit Manager shall perform its duties with care, skill, prudence, diligence, and  
105 professionalism.

106 C. A Pharmacy Benefit Manager shall notify a health carrier client in writing of any activity, policy,  
107 or practice of the Pharmacy Benefit Manager that directly or indirectly presents any conflict of  
108 interest with the duties imposed in this section.

109 D. A Pharmacy Benefit Manager or health carrier shall not enter into a contract with a pharmacy or  
110 pharmacist that prohibits or penalizes a pharmacy or pharmacist for disclosure of information to  
111 a covered person regarding:

- 112 I. The cost of a prescription medication to the covered person; or
- 113 II. The availability of any therapeutically-equivalent alternative medications or alternative  
114 methods of purchasing the prescription medication, including but not limited to, paying  
115 a cash price that is less expensive to the customer than the cost of the prescription  
116 under a covered person's health benefit plan.

117 E. A Pharmacy Benefit Manager shall not require pharmacy or other provider accreditation  
118 standards or certification requirements inconsistent with, more stringent than, or in addition to  
119 requirements of the [State] Pharmacy Board or other state or federal entity.

120 F. A health carrier or Pharmacy Benefit Manager may not require a covered person to make a  
121 payment at the point of sale for a covered prescription medication in an amount greater than  
122 the lesser of:  
123 I. The applicable copayment for the prescription medication;  
124 II. The allowable claim amount for the prescription medication;  
125 III. The amount a covered person would pay for the prescription medication if the covered  
126 person purchased the prescription medication without using a health benefit plan or  
127 any other source of prescription medication benefits or discounts; or  
128 IV. The amount the pharmacy will be reimbursed for the drug from Pharmacy Benefit  
129 Manager or health carrier.

130 G. A health carrier or Pharmacy Benefit Manager is prohibited from penalizing, requiring, or  
131 providing financial incentives, including variations in premiums, deductibles, copayments, or  
132 coinsurance, to covered persons as incentives to use specific retail, mail order pharmacy, or  
133 other network pharmacy provider in which a Pharmacy Benefit Manager has an ownership  
134 interest or that has an ownership interest in a Pharmacy Benefit Manager.

135 **Section 4. Pharmacy Benefit Manager Transparency**

136 A. Beginning June 1, 2020, and annually thereafter, each licensed Pharmacy Benefit Manager shall  
137 submit a transparency report containing data from the prior calendar year to the [State Agency].  
138 The transparency report shall contain the following information:

139 I. The aggregate amount of all rebates that the Pharmacy Benefit Manager received from  
140 all pharmaceutical manufacturers for all health carrier clients and for each health carrier  
141 client;  
142 II. The aggregate administrative fees that the Pharmacy Benefit Manager received from all  
143 manufacturers for all health carrier clients and for each health carrier client;  
144 III. The aggregate retained rebates that the Pharmacy Benefit Manager received from all  
145 pharmaceutical manufacturers and did not pass through to health carriers;  
146 IV. The aggregate retained rebate percentage as defined in Sec.(2)(I); and  
147 V. The highest, lowest, and mean aggregate retained rebate percentage for all health  
148 carrier clients and for each health carrier client.

149 B. A Pharmacy Benefit Manager r providing information under this section may designate that  
150 material as a trade secret. Disclosure, however, may be ordered by a court of this State for good  
151 cause shown or made in a court filing.

152 C. Within sixty (60) days of receipt, the [State Agency] shall publish the transparency report of each  
153 Pharmacy Benefit Manager on the agency's website in a way that does not violate State trade  
154 secrets law.

155 D. The state Attorney General may impose civil fines and penalties of not more than \$1,000 per  
156 day per violation of this section.

157 **Section 5. Severability Clause**

158 If any provision of this act or the application of this act to any person or circumstance is held invalid, the  
159 invalidity shall not affect other provisions or applications of this act which can be given effect without  
160 the invalid provision or application, and to this end, the provisions of the act are declared severable.

161 **Except as otherwise provided, this Act is effective six months after enactment.**