



PBM MODEL A

A MODEL ACT RELATING TO PHARMACY BENEFIT MANAGERS*

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

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

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

Whereas: Pharmacy benefit manager business operations are not transparent.

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

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

General Descriptions

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

Section 1. Definitions

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

** This February 2019 update includes additional language prohibiting spread pricing. See Sec. (1)(A)(I) and Sec. (3)(G). The update also removes language prohibiting "gag clauses." Gag clauses were prohibited by federal law as of October 10, 2018.*

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

- B. *Health Carrier*: “Health Carrier” means an entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the commissioner, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the cost of health care services, including a health insurance company, a health maintenance organization, a hospital and health services corporation, or any other entity providing a plan of health insurance, health benefits or health care services.
- C. *Health Benefit Plan*: “Health Benefit Plan” means a policy, contract, certificate or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for or reimburse any of the costs of healthcare services.
- D. *Covered Person*: “Covered Person” means a policyholder, subscriber, enrollee or other individual participating in a health benefit plan. A covered person includes the authorized representative of the covered person.
- E. *Pharmacy*: “Pharmacy” means an established location, either physical or electronic, that is licensed by the State and that has entered into a network contract with a pharmacy benefit manager and/or health carrier.
- F. *Network Pharmacy*: “Network Pharmacy” means a retail or other licensed pharmacy provider that contracts with a pharmacy benefit manager.
- G. *Retail Pharmacy*: “Retail Pharmacy” means a chain pharmacy, a supermarket pharmacy, a mass merchandiser pharmacy, an independent pharmacy, or a network of independent pharmacies that is licensed as a pharmacy by the State of _____ and that dispenses medications to the public.
- H. *Mail Order Pharmacy*: “Mail Order Pharmacy” means a pharmacy whose primary business is to receive prescriptions by mail, telefax or through electronic submissions and to dispense medication to covered persons through the use of the United States mail or other common to contract carrier services and that provides any consultation with patients electronically rather than face to face.
- I. *Spread Pricing*: “Spread Pricing” means any amount charged or claimed by a Pharmacy Benefit Manager to a health carrier that is in excess of the amount the Pharmacy Benefit Manager paid to the pharmacy that filled the prescription.
- J. *Aggregate Retained Rebate Percentage*: “Aggregate Retained Rebate Percentage” means the percentage of all rebates received from a manufacturer or other entity to a Pharmacy Benefit Manager for prescription drug utilization which is not passed on to the Pharmacy Benefit

Manager's health carrier clients. The percentage shall be calculated for each health carrier for rebates in the prior calendar years as follows: a) the sum total dollar amount of rebates received from all pharmaceutical manufacturers for all utilization of covered persons of a health carrier that was not passed through to the health carrier; and b) divided by the sum total dollar amount of all rebates received from all pharmaceutical manufacturers for covered persons of a health carrier.

- K. *Rebates*: "Rebates" means all price concessions paid by a manufacturer to a Pharmacy Benefit Manager or health carrier, including rebates, discounts, and other price concessions that are based on actual or estimated utilization of a prescription drug. Rebates also include price concessions based on the effectiveness of a drug as in a value-based or performance-based contract.
- L. *Trade Secrets*: "Trade Secrets" has the meaning found in [state law citation].
- M. *Cost Share/Cost Sharing*: "Cost Share/Cost Sharing" means the amount paid by a covered person as required under the covered person's health benefit plan.

Section 2. Required Pharmacy Benefit Manager Licensure

- A. A Pharmacy Benefit Manager shall be licensed by [State Agency] before conducting business in the State.
- B. Licensure pursuant to this section is not transferable.
- C. The license may be granted only when the [State Agency] is satisfied that the entity possesses the necessary organization, background expertise, and financial integrity to supply the services sought to be offered.
- D. The [State Agency] may issue a license subject to restrictions or limitations upon the authorization, including the type of services that may be supplied or the activities in which the entity may be engaged.
- E. All licenses are valid for a period of three years.
- F. The [State Agency] shall develop an application for licensure that includes at least the following information:
 - a. The name of the Pharmacy Benefit Manager;
 - b. The address and contact telephone number for the Pharmacy Benefit Manager;
 - c. The name and address of the Pharmacy Benefit Manager agent for service of process in the State;
 - d. The name and address of each person beneficially interested in the Pharmacy Benefit Manager; and
 - e. The name and address of each person with management or control over the Pharmacy Benefit Manager.

- G. The [State Agency] may suspend, revoke, or place on probation a Pharmacy Benefit Manager license under any of the following circumstances:
 - a. The Pharmacy Benefit Manager has engaged in fraudulent activity that constitutes a violation of state or federal law;
 - b. The [State Agency] received consumer complaints that justify an action under this subdivision to protect the safety interests of consumers;
 - c. The Pharmacy Benefit Manager fails to pay an application fee for the license; or
 - d. The Pharmacy Benefit Manager fails to comply with a requirement set forth in this section.

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

Section 3. Pharmacy Benefit Manager Business Practices

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

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

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

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

- E. A health carrier or Pharmacy Benefit Manager may not require a covered person to make a payment at the point of sale for a covered prescription medication in an amount greater than the lesser of:
 - I. The applicable copayment for the prescription medication;
 - II. The allowable claim amount for the prescription medication;
 - III. 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
 - IV. The amount the pharmacy will be reimbursed for the drug from the Pharmacy Benefit Manager or health carrier.

- F. A health carrier or Pharmacy Benefit Manager is prohibited from penalizing, requiring, or providing financial incentives, including variations in premiums, deductibles, copayments, or coinsurance, to covered persons as incentives to use specific retail, mail order pharmacy, or

other network pharmacy provider in which a Pharmacy Benefit Manager has an ownership interest or that has an ownership interest in a Pharmacy Benefit Manager.

G. No Pharmacy Benefit Manager may retain any portion of spread pricing.

Section 4. Pharmacy Benefit Manager Transparency

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

- I. The aggregate amount of all rebates that the Pharmacy Benefit Manager received from all pharmaceutical manufacturers for all health carrier clients and for each health carrier client;
- II. The aggregate administrative fees that the Pharmacy Benefit Manager received from all manufacturers for all health carrier clients and for each health carrier client;
- III. The aggregate retained rebates that the Pharmacy Benefit Manager received from all pharmaceutical manufacturers and did not pass through to health carriers;
- IV. The aggregate retained rebate percentage as defined in Sec. (1)(J); and
- V. The highest, lowest, and mean aggregate retained rebate percentage for all health carrier clients and for each health carrier client.

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

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

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

Section 5. Severability Clause

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

Section 6. Effective Date

Except as otherwise provided, this Act is effect six months after enacted.