

Pharmacy Patient Protection Act

Section 1. Title.

This Act shall be known as the Pharmacy Patient Protection Act.

Section 2. Purpose and Intent.

The purpose of this Act is to require registration of Pharmacy Benefit Managers. This Act is intended to promote, preserve, and protect the public health, safety, and welfare through oversight of Pharmacy Benefit Managers.

Section 3. Definitions.

For purposes of this Act:

- A. "Board of Pharmacy" or "Board" means the State Board of Pharmacy.
- B. "Commissioner" means the Commissioner of Insurance.
- C. "Covered Entity" means a nonprofit hospital or medical service organization, insurer, health coverage plan or health maintenance organization, a health program administered by the department or the State in the capacity of provider of health coverage; or an employer, labor union or other group of persons organized in the State that provides health coverage to covered individuals who are employed or reside in the State. "Covered entity" does not include a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care or other limited benefit health insurance policies and contracts.
- D. "Covered Person" means a member, participant, enrollee, contract holder or policy holder or beneficiary of a covered entity who is provided health coverage by the covered entity. "Covered individual" includes a dependent or other person provided health coverage through a policy, contract or plan for a covered individual.
- E. "Department" means Department of Insurance.
- F. "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 cost of health care services including prescription drug benefits.
- G. "Pharmacist" means any individual properly licensed as a pharmacist by the Board.
- H. "Pharmacist Services" includes drug therapy and other patient care services provided by a licensed pharmacist intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the Rules of the Board.

DRAFTING NOTE: Use "the practice of pharmacy" definition in the state code.
- I. "Pharmacy" means any appropriately licensed place within this state where drugs are dispensed and pharmacist services are provided.

DRAFTING NOTE: Use the definition of "pharmacy" in the state code.

J. "Pharmacy Benefits Management" means the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals.

K. "Pharmacy Benefits Manager" or "PBM" means a person, business or other entity that performs pharmacy benefits management. The term includes a person or entity acting for a PBM in a contractual or employment relationship in the performance of pharmacy benefits management for a covered entity.

L. "Pharmacy Network Provider" means a pharmacist or pharmacy that has a contractual relationship with a health benefit plan or pharmacy benefit manager to provide prescription drugs to covered persons.

Section 4. Applicability and Scope.

This Act applies to a PBM that provides claims processing services, other prescription drug or device services, or both to covered persons who are residents of this state.

Section 5. Certificate of Registration to act as a PBM.

A. No person or organization shall act or operate as a PBM in this state without a valid certificate of registration issued by the Department. If a PBM acts without registering, it shall be subject to a fine of not less than \$1,500.

B. Each person seeking a certificate of registration to act as a PBM shall file with the Department an application form and include the following information:

(1) All basic organizational documents of the PBM, such as the articles of incorporation, articles of association, bylaws, and other applicable documents and all amendments to those documents.

(2) The names, addresses, official positions and professional qualifications of the individuals who are responsible for the conduct of the affairs of the PBM, including all members of the board of directors, board of trustees, executive committee, other governing board or committee, the principal officers in the case of a corporation, the partners or members in the case of a partnership or association and any other person who exercises control or influence over the affairs of the PBM.

(3) The name and address of the agent for service of process in the state.

(4) A detailed description of the claims processing services, pharmacy services, insurance services, other prescription drug or device services, audit procedures for network pharmacies and other administrative services to be provided.

(5) Such other information as the Commissioner may require.

(6) A filing fee of \$1,000.

C. The applicant shall make available for review by the Department copies of all contract forms used by the PBM to contract with insurers, pharmaceutical manufacturers, pharmacies or other persons utilizing the PBM for pharmacy benefit management services.

D. The PBM's plan of operation must be consistent with the Pharmacy Practice Act and its regulations.

E. A PBM shall maintain a fidelity bond equal to at least 1 percent of the amount of the funds handled or managed annually by the PBM.

F. The PBM must renew its registration on an annual basis and the Commissioner will promulgate rules to set forth the requirements for renewals.

Section 6. PBM Responsibilities to Covered Persons

A. A PBM shall not intervene in the delivery or transmission of prescriptions from the prescriber to the pharmacist or pharmacy for the purpose of: influencing the prescriber's choice of therapy; influencing the patient's choice of pharmacist or pharmacy; or altering the prescription information, including but not limited to, switching the prescribed drug without the express authorization of the prescriber.

B. With regard to the dispensation of a substitute prescription drug for a prescribed drug to a covered individual the following provisions apply:

1. If a PBM makes a substitution in which the substitute drug costs more than the prescribed drug, the PBM shall disclose to the covered entity and covered person the cost of both drugs and any benefit or payment directly or indirectly accruing to the PBM as a result of the substitution.
2. The PBM shall transfer in full to the covered entity any benefit or payment received in any form by the PBM either as a result of a prescription drug substitution under subparagraph (1) or as a result of the PBM's substituting a lower-priced generic and therapeutically equivalent drug for a higher-priced prescribed drug.

C. A pharmacy network provider may not be terminated or penalized because it expresses disagreement with the PBM's decision to deny or limit benefits to a Covered Person or because the pharmacy network provider assists a Covered Person to seek reconsideration of the PBM's decision or because the pharmacy network provider discusses alternative medications with the Covered Person.

Section 7. PBM Responsibilities to Covered Entities

A. A PBM owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with the provisions of state and federal law.

B. A PBM shall perform its duties with care, skill, prudence and diligence and in accordance with the standards of conduct applicable to a fiduciary in an enterprise of a like character and with like aims.

C. A PBM shall notify the covered entity in writing of any activity, policy, practice ownership interest or affiliation of the PBM that directly or indirectly presents any conflict of interest.

D. A PBM that derives any payment or benefit for the dispensation of prescription drugs within the State based on volume of sales for certain prescription drugs or classes or brands of drugs within the State shall pass that payment or benefit on in full to the covered entity.

E. A PBM shall provide to a covered entity all financial and utilization information requested by the covered entity relating to the provision of benefits to covered individuals through that covered entity and all financial and utilization information relating to services to that covered entity.

F. A PBM shall disclose to the covered entity all financial terms and arrangements for remuneration of any kind that apply between the PBM and any prescription drug manufacturer or labeler, including, without limitation, formulary management and drug-switch programs, educational support, claims processing and pharmacy network fees that are charged from retail pharmacies and data sales fees. A PBM shall disclose to the covered entity whether there is a difference between the price paid to retail pharmacy and the amount billed to the covered entity for said purchase.

G. A PBM providing information under paragraphs E and F may designate that material as confidential. Information designated confidential by a PBM and provided to a covered entity under this paragraph may not be disclosed to any person without the consent of the PBM, except that disclosure may be ordered by a court of this State for good cause shown or made in a court filing under seal. Nothing in this paragraph limits the Attorney Generals' use of civil investigative demand authority under the state's Unfair Trade Practices Act or Consumer Protection Act to investigate violations of this Act.

H. The covered entity may audit the PBM's books and records related to the rebates or other information provided in this paragraph.

I. Compliance with this paragraph is required in all contracts for pharmacy benefit management entered into in this State or by a covered entity in this State.

Section 8. PBM Duties to Pharmacy Network Providers

A. No PBM may mandate basic record keeping that is more stringent than that required by state laws including the Pharmacy Practice Act or federal laws or regulations.

B. When a PBM receives notice from a covered entity that it is terminating its contract, the PBM must notify within 10 business days all pharmacy network providers of the effective date of said termination.

C. Within 24 hours of a price increase notification by a manufacturer or supplier, the PBM must adjust its payment to the pharmacy network provider consistent with the price increase.

Section 9. Regulations.

The Commissioner may promulgate regulations to carry out the provisions of this Act.

Section 10. Enforceability.

This Act shall be enforced under the Unfair Trade Practices Act and the Consumer Protection Act. Any Covered Person or Pharmacy Network Provider who suffers as a result of an act or practice declared unlawful herein may bring a private right of action individually, but not in a representative capacity, to recover actual damages under this Act.

Section 11. Separability.

If any provision of this Act, or the application of the provision to any person or circumstance shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Section 12. Effective Date.

This Act shall be effective (insert date). In order to continue to do business in this state, a PBM must register with the Department within ninety (90) days after the effective date of this Act.