

AMENDMENTS TO HOUSE BILL NO. 1993

Sponsor: REPRESENTATIVE BENHAM

Printer's No. 2833

1 Amend Bill, page 1, line 9, by striking out "and" and  
 2 inserting  
 3 in registration, further providing for PBM and auditing entity  
 4 registration;

5 Amend Bill, page 1, line 10, by striking out the period after  
 6 "acts" and inserting  
 7 ; in PBM cost transparency requirements, providing for  
 8 transparency report required; and, in enforcements, further  
 9 providing for scope of enforcement authority and providing  
 10 for regulations and for construction.

11 Amend Bill, page 2, line 7, by striking out "Community  
 12 Pharmacy Protection" and inserting  
 13 Pharmacy Benefit Reform

14 Amend Bill, page 2, lines 9 and 10, by striking out all of  
 15 said lines and inserting

16 Section 2. The definitions of "covered entity" and "health  
 17 insurance policy" in section 103 of the act are amended and the  
 18 section is amended by adding definitions to read:

19 Amend Bill, page 2, by inserting between lines 20 and 21  
 20 "Covered entity." A contract holder or policy holder  
 21 providing pharmacy benefits to a covered individual under a  
 22 health [insurance policy] benefit plan pursuant to a contract  
 23 administered by a pharmacy benefit manager.  
 24 \* \* \*

25 Amend Bill, page 2, line 30; page 3, lines 1 through 11; by  
 26 striking out all of said lines on said pages and inserting

27 "Health benefit plan." A policy, contract, certificate or  
 28 agreement entered into, offered, issued or renewed by a health  
 29 insurer to provide, deliver, arrange for, pay for or reimburse

1 any of the costs of physical, mental or behavioral health care  
2 services. The term does not include Medicare supplement or  
3 Civilian Health and Medical Program of the Uniformed Services  
4 (CHAMPUS) supplement insurance.

5 \* \* \*

6 ["Health insurance policy." A policy, subscriber contract,  
7 certificate or plan that provides prescription drug coverage.  
8 The term includes both comprehensive and limited benefit health  
9 policies.]

10 \* \* \*

11 "Licensee." An entity subject to oversight of the department  
12 under this act. The term includes:

13 (1) An auditing entity.

14 (2) A health insurer.

15 (3) A pharmacy benefit manager.

16 \* \* \*

17 "Monetary advantage or penalty." An incentive or deterrent  
18 imposed under a health benefit plan that affects a beneficiary's  
19 choice of pharmacy. The term includes, but is not limited to, a  
20 higher copayment, a waiver of a copayment, a reduction in  
21 reimbursement for services, a requirement or limit on the number  
22 of days of a drug supply for which reimbursement will be allowed  
23 or a promotion of one participating pharmacy over another by  
24 these methods.

25 \* \* \*

26 "Spread pricing." A model of prescription drug pricing in  
27 which the PBM charges a health benefit plan or health insurer a  
28 contracted price for prescription drugs and the contracted price  
29 for the prescription drugs differs from the amount the PBM  
30 directly or indirectly pays the pharmacist or pharmacy for  
31 prescription drugs and related pharmacist services.

32 Amend Bill, page 3, line 16, by striking out "Scrivener  
33 error.--A scrivener" and inserting

34 Scrivener's error.--A scrivener's

35 Amend Bill, page 3, line 20, by striking out "of" and  
36 inserting

37 for

38 Amend Bill, page 3, by inserting between lines 21 and 22

39 Section 4. Section 501(b) (3) of the act is amended to read:  
40 Section 501. PBM and auditing entity registration.

41 \* \* \*

42 (b) Term and fee.--

43 \* \* \*

44 (3) The amount of the initial application fee and  
45 renewal application fee shall be sufficient to fund the  
46 department's duties in relation to its responsibilities under

1 this chapter but may not exceed [\$1,000] \$10,000.

2 \* \* \*

3 Amend Bill, page 3, line 22, by striking out "4" and  
4 inserting

5 5

6 Amend Bill, page 3, line 27, by striking out "pharmacy  
7 benefit manager" and inserting

8 PBM

9 Amend Bill, page 3, line 28, by striking out "pharmacy  
10 benefit manager" and inserting

11 PBM

12 Amend Bill, page 4, line 17, by striking out "participation"

13 Amend Bill, page 4, lines 18 through 30; page 5, lines 1  
14 through 20; by striking out all of said lines on said pages and  
15 inserting

16 A health benefit plan, health insurer or PBM contracting with  
17 a health benefit plan or health insurer may not utilize any form  
18 of spread pricing in this Commonwealth.

19 Section 603. Patient steering prohibited.

20 A health benefit plan, health insurer or PBM contracting with  
21 a health benefit plan or health insurer may not:

22 (1) Require a covered individual, as a condition of  
23 payment or reimbursement, to purchase pharmacist services,  
24 including, but not limited to, prescription drugs,  
25 exclusively through a mail-order pharmacy or PBM affiliate.

26 (2) Prohibit or limit any covered individual from  
27 selecting an in-network pharmacy or in-network pharmacist of  
28 the covered individual's choice who meets and agrees to the  
29 terms and conditions, including reimbursements, in the PBM's  
30 contract.

31 (3) Impose a monetary advantage or penalty under a  
32 health benefit plan that affects a covered individual's  
33 choice of pharmacy among those pharmacies that have chosen to  
34 contract with the PBM under the same terms and conditions,  
35 including reimbursements.

36 (4) Use a covered individual's pharmacy services data  
37 collected under claims processing services for the purpose of  
38 soliciting, marketing or referring the covered individual to  
39 a mail-order pharmacy or PBM affiliate, except that a health  
40 benefit plan or health insurer may use pharmacy services data  
41 for the purpose of administering the health benefit plan.

1 Section 604. Clawbacks prohibited.

2 (a) General rule.--A health benefit plan, health insurer or  
3 PBM contracting with a health benefit plan or health insurer may  
4 not require cost-sharing in an amount or direct a pharmacy to  
5 collect cost-sharing in an amount, greater than the lesser of  
6 either of the following from an individual purchasing a  
7 prescription drug:

8 (1) The amount an individual would pay for the  
9 prescription drug if the prescription drug were to be  
10 purchased without coverage under a health benefit plan.

11 (2) The net reimbursement paid to the pharmacy for the  
12 prescription drug by the health insurer or PBM.

13 (b) Duty when filling a prescription.--When filling a  
14 prescription, if a pharmacist, pharmacy intern or technician  
15 determines that information indicating that the cost-sharing  
16 amount required by the patient's health benefit plan exceeds the  
17 amount that may otherwise be charged for the same prescription  
18 drug, both of the following shall apply:

19 (1) The pharmacist, pharmacy intern or technician shall  
20 notify the patient.

21 (2) The patient may not be charged the higher amount.

22 Section 605. Network adequacy.

23 (a) General rule.--A PBM shall establish a reasonably  
24 adequate and accessible PBM network for the provision of  
25 prescription drugs under a health benefit plan that shall  
26 provide for convenient patient access to pharmacies within a  
27 reasonable distance from a patient's residence in accordance  
28 with the following requirements:

29 (1) A mail-order pharmacy shall not be included in the  
30 calculations determining PBM network adequacy.

31 (2) The network may not be limited to affiliated  
32 pharmacies only.

33 (3) The network shall meet or exceed the requirements of  
34 42 CFR 423.120(a)(1) (relating to access to covered Part D  
35 drugs) or successor regulation.

36 (b) Report requirement.--Beginning April 1, 2026, and  
37 annually thereafter, a PBM shall file with the department a  
38 network adequacy report describing the PBM network and the PBM  
39 network's accessibility in this Commonwealth on a form  
40 prescribed by the department, which shall be posted on the  
41 department's publicly accessible Internet website.

42 Section 606. Regulations.

43 The department may promulgate regulations as necessary and  
44 appropriate to carry out this chapter.

45 Section 607. Applicability.

46 If a contract is in effect on the effective date of this  
47 section that conflicts with this chapter, the provision of this  
48 chapter shall not apply until the date the contract is amended,  
49 extended or renewed.

50 Section 6. The act is amended by adding a section to read:

51 Section 703.1. Transparency report required.

1 (a) General rule.--Beginning July 1, 2026, and annually  
2 thereafter, each licensed PBM shall submit a transparency report  
3 containing data from the prior calendar year to the department.  
4 The transparency report shall contain the following information:

5 (1) The aggregate amount of all rebates that the PBM  
6 received from all pharmaceutical manufacturers for all health  
7 benefit plan and health insurer clients and for each health  
8 benefit plan or health insurer client.

9 (2) The aggregate administrative fees that the PBM  
10 received from all manufacturers for all health benefit plan  
11 and health insurer clients and for each health benefit plan  
12 or health insurer client.

13 (3) The aggregate retained rebates that the PBM received  
14 from all pharmaceutical manufacturers and did not pass  
15 through to health benefit plan or health insurer clients.

16 (4) The highest, lowest and mean aggregate retained  
17 rebate percentage for all health benefit plan or health  
18 insurer clients and for each health benefit plan or health  
19 insurer client.

20 (5) For a PBM that controls or is affiliated with a  
21 pharmacy, a description of any differences between what the  
22 PBM reimburses or charges affiliated and nonaffiliated  
23 pharmacies.

24 (b) Publication.--Within 60 days of receipt, the department  
25 shall publish the transparency report under this section on the  
26 department's publicly accessible Internet website in a form that  
27 does not disclose the identity of a specific health benefit plan  
28 or health insurer, the prices charged for specific drugs or  
29 classes of drugs or the amount of any rebates provided for  
30 specific drugs or classes of drugs.

31 (c) Additional categories.--The department may, by  
32 regulation, direct PBMs to include additional categories for  
33 aggregated data from health benefit plan or health insurer  
34 clients in the annual transparency report submitted under this  
35 section.

36 Section 7. Section 901 of the act is amended to read:  
37 Section 901. Scope of enforcement authority.

38 (a) Scope.--The department may investigate and enforce the  
39 provisions of this act only insofar as the actions or inactions  
40 being investigated relate to prescription drug coverage under a  
41 health [insurance policy] benefit plan.

42 [(b) Remedy.--Actions or inactions within the scope of the  
43 department's investigative and enforcement authority under  
44 subsection (a) found to violate this act constitute "unfair  
45 methods of competition" and "unfair or deceptive acts or  
46 practices" within the meaning of section 5 of the act of July  
47 22, 1974 (P.L.589, No.205), known as the Unfair Insurance  
48 Practices Act. A proceeding under this section shall be  
49 conducted in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating  
50 to practice and procedure of Commonwealth agencies).]

51 (b.1) Examination and access to records.--

1           (1) The department may order a PBM, a health insurer and  
2 a PBM's or health insurer's affiliates to produce records,  
3 books or other information as reasonably necessary to  
4 ascertain compliance with this act.

5           (2) The department may examine or audit the books and  
6 records of a PBM, a health insurer and a PBM's or health  
7 insurer's affiliates to ascertain compliance with this act.  
8 The examination shall be conducted in accordance with Article  
9 IX of the act of May 17, 1921 (P.L.789, No.285), known as the  
10 Insurance Department Act of 1921.

11           (c) Penalties.--Upon the determination, after notice and  
12 hearing, that this act has been violated, the commissioner may  
13 impose the following penalties:

14           (1) Suspension or revocation of the licensee's license,  
15 authorization to operate or registration.

16           (2) Refusal to issue or renew a license, authorization  
17 to operate or registration.

18           (3) A cease and desist order.

19           (4) Order reimbursement to an insured, pharmacy or  
20 dispenser that has incurred a monetary loss as a result of a  
21 violation of this act.

22           (5) For each violation of this act that a licensee knew  
23 or reasonably should have known was a violation, a penalty of  
24 not more than \$100,000, not to exceed an aggregate penalty of  
25 \$1,000,000 in a single calendar year.

26           (6) For each violation of this act that a licensee did  
27 not know nor reasonably should have known was a violation, a  
28 penalty of not more than \$50,000, not to exceed an aggregate  
29 penalty of \$500,000 in a single calendar year.

30           Section 8. The act is amended by adding sections to read:  
31 Section 902. Regulations.

32           The department may promulgate regulations as necessary and  
33 appropriate to carry out this chapter.

34 Section 903. Construction.

35           Nothing in this act shall be construed to apply to the  
36 conduct of a PBM in connection with a contract with a self-  
37 funded group health plan subject to 29 U.S.C. Ch. 18 (relating  
38 to Employee Retirement Income Security Program).

39           Amend Bill, page 5, line 21, by striking out "5" and  
40 inserting