

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1993 Session of 2024

INTRODUCED BY BENHAM, GAYDOS, KENYATTA, BURGOS, HARKINS, DONAHUE, MADDEN, MAJOR, SANCHEZ, CERRATO, HILL-EVANS, D'ORSIE, CIRESI, GREEN, DALEY, MATZIE, SOLOMON, MIHALEK, ECKER, McNEILL, SCHLOSSBERG, PICKETT, PISCIOTTANO, WEBSTER, HOHENSTEIN, KRUEGER, BOROWSKI, NEILSON, FEE, KIM, KHAN, BERNSTINE, MENTZER, O'MARA, FLEMING, GROVE, MULLINS, KOSIEROWSKI, ISAACSON, HEFFLEY, OBERLANDER, ARMANINI, GREGORY, E. NELSON, STAATS, WAXMAN, STEELE, SALISBURY, KINKEAD, McANDREW, KAUFFMAN, GIRAL, DELOZIER, FRITZ, MUSTELLO, POWELL, D. WILLIAMS, HOGAN, CAUSER, FRIEL, SIEGEL, WARNER, COOPER, SAMUELSON, KRAJEWSKI, SHUSTERMAN, FRANKEL, KRUPA, MADSEN, ABNEY, BRIGGS AND HANBIDGE, APRIL 3, 2024

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 27, 2024

AN ACT

1 Amending the act of November 21, 2016 (P.L.1318, No.169),
2 entitled "An act providing for pharmacy audit procedures, for
3 registration of pharmacy benefits managers and auditing
4 entities, for maximum allowable cost transparency and for
5 prescription drugs reimbursed under the PACE and PACENET
6 program; and making related repeals," further providing for
7 title of act; in preliminary provisions, further providing
8 for short title and for definitions; in pharmacy audits,
9 further providing for limitations; in registration, further
10 providing for PBM and auditing entity registration; providing
11 for pharmacy benefits manager contract requirements and
12 prohibited acts; in PBM cost transparency requirements,
13 providing for transparency report required; and, in
14 enforcements, further providing for scope of enforcement
15 authority and providing for regulations and for construction.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. The title and section 101 of the act of November
19 21, 2016 (P.L.1318, No.169), known as the Pharmacy Audit

1 Integrity and Transparency Act, are amended to read:

2 AN ACT

3 Providing for pharmacy audit procedures, for registration
4 of pharmacy benefits managers and auditing entities, for
5 maximum allowable cost transparency and for prescription
6 drugs reimbursed under the PACE and PACENET program and for
7 pharmacy benefit managers contract requirements and
8 prohibited activities; and making related repeals.

9 Section 101. Short title.

10 This act shall be known and may be cited as the [Pharmacy
11 Audit Integrity and Transparency] Pharmacy Benefit Reform Act.

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

15 Section 103. Definitions.

16 The following words and phrases when used in this act shall
17 have the meanings given to them in this section unless the
18 context clearly indicates otherwise:

19 * * *

20 "Brand effective rate." The reimbursement rate paid to the
21 pharmacy based on a percentage of the average wholesale cost for
22 brand-name drugs dispensed by the pharmacy under the contract
23 with the pharmacy benefit manager.

24 * * *

25 "Covered entity." A contract holder or policy holder
26 providing pharmacy benefits to a covered individual under a
27 health [insurance policy] benefit plan pursuant to a contract
28 administered by a pharmacy benefit manager.

29 * * *

30 "Effective rate contract." A contract that sets a specific

1 discount rate for all prescriptions filled by a member pharmacy
2 during the term of the contract.

3 * * *

4 "Generic effective rate." The reimbursement rate paid to the
5 pharmacy based on a percentage of the average wholesale cost for
6 generic drugs dispensed by the pharmacy under the contract with
7 the pharmacy benefit manager.

8 * * *

9 "Health benefit plan." A policy, contract, certificate or
10 agreement entered into, offered, issued or renewed by a health
11 insurer to provide, deliver, arrange for, pay for or reimburse
12 any of the costs of physical, mental or behavioral health care
13 services. ~~The term does not include Medicare supplement or~~ <--
14 ~~Civilian Health and Medical Program of the Uniformed Services~~
15 ~~(CHAMPUS) supplement insurance.~~

16 * * *

17 ["Health insurance policy." A policy, subscriber contract,
18 certificate or plan that provides prescription drug coverage.
19 The term includes both comprehensive and limited benefit health
20 policies.]

21 * * *

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

- 24 (1) An auditing entity.
- 25 (2) A health insurer.
- 26 (3) A pharmacy benefit manager.

27 * * *

28 "Monetary advantage or penalty." An incentive or deterrent
29 imposed under a health benefit plan that affects a beneficiary's
30 choice of pharmacy. The term includes, but is not limited to, a

1 higher copayment, a waiver of a copayment, a reduction in
2 reimbursement for services, a requirement or limit on the number
3 of days of a drug supply for which reimbursement will be allowed
4 or a promotion of one participating pharmacy over another by
5 these methods.

6 * * *

7 "Spread pricing." A model of prescription drug pricing in
8 which the PBM charges a health benefit plan or health insurer a
9 contracted price for prescription drugs and the contracted price
10 for the prescription drugs differs from the amount the PBM
11 directly or indirectly pays the pharmacist or pharmacy for
12 prescription drugs and related pharmacist services.

13 Section 3. Section 303 of the act is amended by adding a
14 subsection to read:

15 Section 303. Limitations.

16 * * *

17 (c) Scrivener's error.--A scrivener's error made by a
18 pharmacy not attributed to fraud, waste or abuse that is
19 discovered during an audit of the pharmacy by the PBM shall
20 result in the PBM recouping the dispensing fee for that
21 particular transaction, not the entire amount for the medication
22 received by the patient.

23 Section 4. Section 501(b) (3) of the act is amended to read:

24 Section 501. PBM and auditing entity registration.

25 * * *

26 (b) Term and fee.--

27 * * *

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

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

2 * * *

3 Section 5. The act is amended by adding a chapter to read:

4 CHAPTER 6

5 PHARMACY BENEFITS MANAGER CONTRACT

6 REQUIREMENTS AND PROHIBITED ACTS

7 Section 601. Contract provisions.

8 A contract between a PBM or a designee of the PBM and a
9 pharmacy may not:

10 (1) Require participation in the PBM's network
11 contingent on the pharmacy signing either an effective rate
12 contract or a contract based on the National Average Drug
13 Acquisition Cost guidelines.

14 (2) Include provisions allowing for retroactive
15 recoupment of money paid to a pharmacy by the PBM, unless
16 both parties agree to that provision.

17 (3) Base reimbursement upon ~~general~~ GENERIC effective <--
18 rate or the brand effective rate as a condition of entering a
19 network, unless both parties agree to that provision. Any
20 additional fees must be disclosed and applied at the time of <--
21 the adjudication of the claim IN WRITING 30 DAYS PRIOR TO <--
22 INITIATION OF THE ADDITIONAL FEES. Fees may include:

23 (i) Transaction fees.

24 (ii) Chargebacks due to recalculation of the cost of
25 the ingredients used in a prescription drug.

26 (iii) Adjustments in the ~~general~~ GENERIC effective <--
27 rate, brand effective rates or direct and indirect
28 remuneration fees made by the PBM.

29 Section 602. Spread pricing prohibited.

30 A health benefit plan, health insurer or PBM contracting with

1 a health benefit plan or health insurer may not utilize any form
2 of spread pricing in this Commonwealth.

3 Section 603. Patient steering prohibited.

4 A health benefit plan, health insurer or PBM contracting with
5 a health benefit plan or health insurer may not:

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

10 (2) Prohibit or limit any covered individual from
11 selecting an in-network pharmacy or in-network pharmacist of
12 the covered individual's choice who meets and agrees to the
13 terms and conditions, including reimbursements, in the PBM's
14 contract.

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

20 (4) Use a covered individual's pharmacy services data
21 collected under claims processing services for the purpose of
22 soliciting, marketing or referring the covered individual to
23 a mail-order pharmacy or PBM affiliate, except that a health
24 benefit plan or health insurer may use pharmacy services data
25 for the purpose of administering the health benefit plan.

26 Section 604. Clawbacks prohibited.

27 (a) General rule.--A health benefit plan, health insurer or
28 PBM contracting with a health benefit plan or health insurer may
29 not require cost-sharing in an amount or direct a pharmacy to
30 collect cost-sharing in an amount, greater than the lesser of

1 either of the following from an individual purchasing a
2 prescription drug:

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

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

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

14 (1) The pharmacist, pharmacy intern or technician shall
15 notify the patient.

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

17 Section 605. Network adequacy.

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

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

26 (2) The network may not be limited to affiliated
27 pharmacies only.

28 (3) The network shall meet or exceed the requirements of
29 42 CFR 423.120(a)(1) (relating to access to covered Part D
30 drugs) or successor regulation.

1 (b) Report requirement.--Beginning April 1, 2026, and
2 annually thereafter, a PBM shall file with the department a
3 network adequacy report describing the PBM network and the PBM
4 network's accessibility in this Commonwealth on a form
5 prescribed by the department, which shall be posted on the
6 department's publicly accessible Internet website.

7 Section 606. Regulations.

8 The department may promulgate regulations as necessary and
9 appropriate to carry out this chapter.

10 Section 607. Applicability.

11 If a contract is in effect on the effective date of this
12 section that conflicts with this chapter, the provision of this
13 chapter shall not apply until the date the contract is amended,
14 extended or renewed.

15 Section 6. The act is amended by adding a section to read:
16 Section 703.1. Transparency report required.

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

21 (1) The aggregate amount of all rebates that the PBM
22 received from all pharmaceutical manufacturers for all health
23 benefit plan and health insurer clients and for each health
24 benefit plan or health insurer client.

25 (2) The aggregate administrative fees that the PBM
26 received from all manufacturers for all health benefit plan
27 and health insurer clients and for each health benefit plan
28 or health insurer client.

29 (3) The aggregate retained rebates that the PBM received
30 from all pharmaceutical manufacturers and did not pass

1 through to health benefit plan or health insurer clients.

2 (4) The highest, lowest and mean aggregate retained
3 rebate percentage for all health benefit plan or health
4 insurer clients and for each health benefit plan or health
5 insurer client.

6 (5) For a PBM that controls or is affiliated with a
7 pharmacy, a description of any differences between what the
8 PBM reimburses or charges affiliated and nonaffiliated
9 pharmacies.

10 (b) Publication.--Within 60 days of receipt, the department
11 shall publish the transparency report under this section on the
12 department's publicly accessible Internet website in a form that
13 does not disclose the identity of a specific health benefit plan
14 or health insurer, the prices charged for specific drugs or
15 classes of drugs or the amount of any rebates provided for
16 specific drugs or classes of drugs.

17 (c) Additional categories.--The department may, by
18 regulation, direct PBMs to include additional categories for
19 aggregated data from health benefit plan or health insurer
20 clients in the annual transparency report submitted under this
21 section.

22 Section 7. Section 901 of the act is amended to read:

23 Section 901. Scope of enforcement authority.

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

28 [(b) Remedy.--Actions or inactions within the scope of the
29 department's investigative and enforcement authority under
30 subsection (a) found to violate this act constitute "unfair

1 methods of competition" and "unfair or deceptive acts or
2 practices" within the meaning of section 5 of the act of July
3 22, 1974 (P.L.589, No.205), known as the Unfair Insurance
4 Practices Act. A proceeding under this section shall be
5 conducted in accordance with 2 Pa.C.S. Ch. 5 Subch. A (relating
6 to practice and procedure of Commonwealth agencies).]

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

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

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

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

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

23 (2) Refusal to issue or renew a license, authorization
24 to operate or registration.

25 (3) A cease and desist order.

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

29 (5) For each violation of this act that a licensee knew
30 or reasonably should have known was a violation, a penalty of

1 not more than \$100,000, not to exceed an aggregate penalty of
2 \$1,000,000 in a single calendar year.

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

7 Section 8. The act is amended by adding sections to read:

8 Section 902. Regulations.

9 The department may promulgate regulations as necessary and
10 appropriate to carry out this chapter.

11 Section 903. Construction.

12 Nothing in this act shall be construed to apply to the
13 conduct of a PBM in connection with a contract with a self-
14 funded group health plan subject to 29 U.S.C. Ch. 18 (relating
15 to Employee Retirement Income Security Program) ~~OR EXEMPTED~~ <--
16 FROM 29 U.S.C. CH. 18 SUBCH. I (RELATING TO PROTECTION OF
17 EMPLOYEE BENEFIT RIGHTS) BY 29 U.S.C. § 1003(B) (RELATING TO
18 COVERAGE).

19 Section 9. This act shall take effect in 60 days.