

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1231 Session of 2022

INTRODUCED BY LAUGHLIN, PITTMAN AND HAYWOOD, MAY 23, 2022

REFERRED TO HEALTH AND HUMAN SERVICES, MAY 23, 2022

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," adding provisions  
7 relating to contracting for pharmacy benefits management.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 Section 1. The act of November 21, 2016 (P.L.1318, No.169),  
11 known as the Pharmacy Audit Integrity and Transparency Act, is  
12 amended by adding a chapter to read:

13 CHAPTER 6

14 CONTRACTING FOR

15 PHARMACY BENEFITS MANAGEMENT

16 Section 601. Application of chapter.

17 The provisions of this chapter shall apply to all contracts  
18 for pharmacy benefits manager services entered into by a  
19 contracting entity under the Medicaid program, and to each  
20 request for proposals or invitations for bids, auctions or other  
21 solicitations for pharmacy benefits management services on

1 behalf of Medicaid recipients that occur after the effective  
2 date of this section.

3 Section 602. Definitions.

4 The following words and phrases when used in this chapter  
5 shall have the meanings given to them in this section unless the  
6 context clearly indicates otherwise:

7 "Contracting entity." An entity authorized to contract for  
8 pharmacy benefits manager services on behalf of Medicaid  
9 recipients.

10 "Copayment." An amount a Medicaid recipient is required to  
11 pay at a point of sale in order to receive a covered  
12 prescription drug.

13 "Medicaid program." The Commonwealth's medical assistance  
14 program authorized under Article IV of the act of June 13, 1967  
15 (P.L.31, No.21), known as the Human Services Code.

16 "Medicaid recipient." An individual enrolled in the Medicaid  
17 program.

18 "Pharmacy benefits management." Any of the following:

19 (1) The procurement of prescription drugs at a  
20 negotiated contracted rate for distribution within this  
21 Commonwealth.

22 (2) The administration or management of prescription  
23 drug benefits provided by a managed care organization.

24 (3) The administration of pharmacy benefits, including  
25 any of the following:

26 (i) Operating a mail-service pharmacy.

27 (ii) Processing claims.

28 (iii) Managing a retail pharmacy network.

29 (iv) Paying claims to pharmacies, including retail,  
30 specialty or mail-order pharmacies, for prescription

1 drugs dispensed to medical assistance recipients  
2 receiving services in the managed care delivery system  
3 via a retail or mail-order pharmacy.

4 (v) Developing and managing a clinical formulary or  
5 preferred drug list, utilization management or quality  
6 assurance programs.

7 (vi) Rebate contracting and administration.

8 (vii) Managing a patient compliance, therapeutic  
9 intervention and generic substitution program.

10 (viii) Operating a disease management program.

11 (ix) Setting pharmacy payment pricing and  
12 methodologies, including maximum allowable cost and  
13 determining single or multiple source drugs.

14 "Pharmacy benefits management contract." A contract between  
15 a contracting entity and a pharmacy benefits manager for  
16 pharmacy benefits management services.

17 "Pharmacy benefits manager" or "PBM." A business that  
18 performs pharmacy benefits management. The term does not include  
19 a business that holds a valid license from the Insurance  
20 Department with accident and health authority to issue a health  
21 insurance policy and governed under any of the following:

22 (1) The act of May 17, 1921 (P.L.682, No.284), known as  
23 The Insurance Company Law of 1921.

24 (2) The act of December 29, 1972 (P.L.1701, No.364),  
25 known as the Health Maintenance Organization Act.

26 (3) 40 Pa.C.S. Ch. 61 (relating to hospital plan  
27 corporations) or 63 (relating to professional health services  
28 plan corporations).

29 "Reverse auction." A purchasing strategy that uses  
30 specialized software or an online marketplace and enables

1 suppliers to compete online in real-time by offering a contract  
2 out for bid over a period of time and by allowing multiple  
3 providers to offer ongoing bids on the contract while meeting  
4 all of the specifications until the time period for bidding  
5 expires.

6 Section 603. Solicitation of pharmacy benefits management  
7 contracts.

8 (a) Method of solicitation.--

9 (1) A contracting entity, prior to soliciting an  
10 invitation of bids or request for proposals for pharmacy  
11 benefits management services, shall first consider best  
12 practices, technologies and methodologies, including reverse  
13 auctions and electronic claim review, to maximize  
14 transparency in both contracting and contract implementation.

15 (2) A contracting entity shall use technology platforms  
16 that:

17 (i) Reprice PBM proposals for pharmacy spending  
18 utilizing code-based classification of drugs from  
19 nationally accepted data sources of comparisons of the  
20 costs of PBM proposals.

21 (ii) Conduct real-time, electronic, line-by-line,  
22 claim-by-claim review of invoiced PBM pharmacy claims  
23 using an automated claims adjudication technology  
24 platform that allows for online comparison of PBM  
25 invoices and auditing of other aspects of the services  
26 provided by the PBM.

27 (3) A contracting entity may procure the technical  
28 assistance necessary during the solicitation process to  
29 evaluate the qualifications of bidders and to conduct online  
30 automated reverse auction services to support the comparisons

1 for the procurement of pharmacy benefits management services.

2 (b) Certification to department.--Within 30 days of entering  
3 into or renewing a contract for pharmacy benefits management  
4 services, a contracting entity shall provide a certification to  
5 the department that the contracting entity complied with  
6 subsection (a) (1). The certification shall include the  
7 technologies employed and any cost or anticipated cost savings  
8 thereof.

9 (c) Transparency in solicitation.--An entity that seeks to  
10 provide pharmacy benefits management services to a contracting  
11 entity shall provide the following information to the  
12 contracting entity:

13 (1) The formulary, information on deductions and other  
14 out-of-pocket costs and any administrative requirement,  
15 including preauthorization requirement.

16 (2) Any reimbursement difference for the same drug  
17 between a retail pharmacy network and mail order service.

18 (3) Any financial incentive, such as rebate, refund,  
19 purchase order discount or administrative fee the PBM expects  
20 to receive from a manufacturer or wholesaler.

21 (4) The procedure to be used in determining when a drug  
22 has moved from brand to generic.

23 Section 604. Pharmacy benefits management contracts.

24 (a) Prohibited provisions.--

25 (1) (i) No pharmacy benefits management contract may  
26 prohibit a pharmacy from disclosing lower-cost  
27 prescription drug options to a Medicaid recipient,  
28 including those that are available if the Medicaid  
29 recipient would purchase the prescription drug without  
30 using the Medicaid program.

1           (ii) If information related to a Medicaid  
2           recipient's out-of-pocket cost or the clinical efficacy  
3           of a prescription drug or alternative medication is  
4           available to a pharmacy provider, no pharmacy benefits  
5           manager contract may provide penalties to a pharmacy  
6           provider for providing the information to a Medicaid  
7           recipient.

8           (2) No pharmacy benefits management contract may impose  
9           on a Medicaid recipient a copayment for a prescription drug  
10           benefit in an amount that exceeds the cost of the  
11           prescription drug that the pharmacy would charge to persons  
12           who do not purchase the prescription drug through the  
13           Medicaid program.

14           (b) Required provisions.--

15           (1) A pharmacy benefits management contract shall  
16           prohibit the pharmacy benefits manager from suspending the  
17           processing of payments owed to the contracting entity during  
18           a solicitation process undertaken to replace or renew the  
19           contract.

20           (2) Subject to the PBM's reasonable objections  
21           attributable to a conflict of interest or other bona fide  
22           concerns, a pharmacy benefits management contract shall allow  
23           the contracting entity to make the choice as to an auditor  
24           assigned to validate the financial guarantees specified in  
25           the contract.

26           (3) A pharmacy benefits management contract shall  
27           require the PBM to provide the following information for each  
28           contract year:

29           (i) The percentage of all prescriptions that were  
30           provided through retail pharmacies compared to mail order

1 pharmacies and the percentage of prescriptions for which  
2 a generic drug was available and dispensed, known as the  
3 generic dispensing rate, by pharmacy type, including an  
4 independent pharmacy, chain pharmacy, supermarket  
5 pharmacy or mass merchandiser pharmacy that is licensed  
6 as a pharmacy by the State and that dispenses medication  
7 to the general public.

8 (ii) To the extent attributable to patient  
9 utilization, the aggregate amount and the type of  
10 rebates, discounts or price concessions, excluding bona  
11 fide service fees, including, but not limited to,  
12 distribution service fees, inventory management fees,  
13 product stocking allowances and fees associated with  
14 administrative services agreements and patient care  
15 programs negotiated by the PBM, the aggregate amount of  
16 the rebates, discounts or price concessions and the total  
17 number of prescriptions that were dispensed.

18 (iii) The aggregate amount of the difference between  
19 the amount paid to the PBM and the amount that the PBM  
20 pays retail pharmacies and mail order pharmacies and the  
21 total number of prescriptions that were dispensed.

22 (4) A pharmacy benefits management contract shall  
23 authorize real-time, electronic, line-by-line, claim-by-claim  
24 review of invoiced PBM pharmacy claims, including using  
25 automated claims adjudication technology to allow for online  
26 comparison of PBM invoices and auditing of other aspects of  
27 the services provided by the PBM for each contract year.

28 Section 605. Effect of noncompliance.

29 Any provision of a pharmacy benefits management contract that  
30 violates this chapter shall be void and unenforceable.

1 Section 606. Audits.

2 The Insurance Commissioner may, upon request, audit a  
3 contract for pharmacy benefits management services for  
4 compliance with the provisions of this chapter.

5 Section 2. This act shall take effect in 60 days.