

# STATE OF NEW YORK

1705

2019-2020 Regular Sessions

## IN SENATE

January 15, 2019

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to implementing the pharmacy benefit manager transparency act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The insurance law is amended by adding a new article 6 to  
2 read as follows:

### ARTICLE 6

#### PHARMACY BENEFIT MANAGER TRANSPARENCY ACT

##### Section 601. Short title.

##### 602. Definitions.

##### 603. Responsibility to covered entities.

##### 604. Pharmacy benefit manager transparency.

##### 605. Report publication.

##### 606. Compliance and enforcement.

##### 607. Rulemaking authority.

12 § 601. Short title. This article shall be known and may be cited as  
13 the "pharmacy benefit manager transparency act".

14 § 602. Definitions. For the purposes of this article, the following  
15 definitions shall apply:

16 (1) "Covered entity" means a nonprofit hospital or medical service  
17 organization, insurer, health coverage plan, or health maintenance  
18 organization licensed in the state; a health program administered by the  
19 superintendent or the state in the capacity of provider of health cover-  
20 age; or an employer, labor union, or other group of persons organized in  
21 the state that provides health coverage to covered individuals who are  
22 employed or reside in the state.

23 (2) "Covered individual" means a member, participant, enrollee,  
24 contract holder, or policy holder or beneficiary of a covered entity who  
25 is provided health coverage by the covered entity. This includes a

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 dependent or other person provided health coverage through a policy,  
2 contract, or plan for a covered individual.

3 (3) "Pharmacy benefit manager" means an entity that contracts with or  
4 is employed by a health benefit plan, state agency, insurer, managed  
5 care organization, or other third-party payor for the administration or  
6 management of prescription drug benefits provided by a covered entity  
7 for the benefit of covered individuals.

8 (4) "Wholesale acquisition cost" means the list price for a  
9 prescription drug, excluding any discounts, rebates, or reductions in  
10 price, as reported in the most recent editions of the wholesale price  
11 guides or other publications of drug pricing data a manufacturer  
12 provides to wholesalers or distributors in the United States, as speci-  
13 fied in 42 U.S.C. 23 § 1395w-3a(c)(6)(B).

14 § 603. Responsibility to covered entities. (1) A pharmacy benefit  
15 manager shall exercise good faith and fair dealing in the performance of  
16 its contractual obligations to a covered entity, and shall perform its  
17 duties with care, skill, prudence, diligence, and professionalism.

18 (2) A pharmacy benefit manager shall notify a covered entity in writ-  
19 ing of any activity, policy, practice, ownership interest, or affil-  
20 iation of the pharmacy benefit manager that presents a conflict of  
21 interest that interferes with the requirements imposed by this article.

22 § 604. Pharmacy benefit manager transparency. (1) Each pharmacy bene-  
23 fit manager under contract with a covered entity shall submit to the  
24 covered entity and to the superintendent no later than February first of  
25 each year the following information for the immediately preceding calen-  
26 dar year relative to such contract:

27 (a) The wholesale acquisition cost for each drug on its formulary and  
28 the total number of prescriptions that were dispensed.

29 (b) The amount of rebates, discounts, and price concessions that the  
30 pharmacy benefit manager received for each drug on its formulary. The  
31 amount of rebates shall include any utilization discounts the pharmacy  
32 benefit manager receives from a manufacturer.

33 (c) The amount of rebates, discounts, and price concessions described  
34 in paragraph (b) of this subsection that were passed through to a  
35 covered entity, and the amount that were retained by the pharmacy bene-  
36 fit manager, for each drug on its formulary.

37 (d) The amount of any fee, administrative or otherwise, received from  
38 a manufacturer.

39 (e) The nature, type, and amount of all other payments that the phar-  
40 macy benefit manager receives, directly or indirectly, from a manufac-  
41 turer in connection with a drug switch program, a formulary management  
42 program, a mail service pharmacy, educational support, data sales  
43 related to a covered individual, or any other function.

44 (f) The amount of any reimbursements the pharmacy benefit manager pays  
45 to contracting pharmacies, and the negotiated price covered entities pay  
46 the pharmacy benefit manager, for each drug on its formulary.

47 (g) Any other information as deemed necessary by the superintendent.

48 (2) The information disclosed pursuant to subsection one of this  
49 section shall include all retail, mail order, specialty, and compounded  
50 prescription products.

51 (3) Information submitted under this section shall be confidential and  
52 shall not be disclosed to any person by the superintendent or the  
53 covered entity receiving the information. Such information shall not be  
54 deemed a public record of the superintendent.

55 § 605. Report publication. (1) In order to allow patients and employ-  
56 ers to compare the ability of pharmacy benefit managers to negotiate

1 rebates, discounts, and price concessions and the amount of such  
2 rebates, discounts, and price concessions that are passed through to  
3 plan sponsors, and to allow covered entities to evaluate the nature of  
4 the relationship between pharmacy benefit managers and manufacturers and  
5 the effectiveness of pharmacy benefit managers in reducing costs for  
6 covered entities and their beneficiaries, no later than February first  
7 of each year, the superintendent shall issue a report to be published on  
8 the superintendent's website aggregating the information received by all  
9 pharmacy benefit managers under this section for the preceding year.

10 (2) The superintendent shall ensure that the information described in  
11 subsection one of this section is reported in a manner that prevents the  
12 disclosure of the identity of a specific pharmacy benefit manager, a  
13 covered entity, prices charged for prescription drugs or any associated  
14 rebates, discounts or price concessions with respect to an individual  
15 drug or an individual plan, or any information that identifies a product  
16 or manufacturer.

17 (3) On or before February first of each year the superintendent shall  
18 analyze the information submitted by pharmacy benefit managers pursuant  
19 to this article and produce an additional report to be published on the  
20 superintendent's website on the impact of pharmacy benefit managers on  
21 the cost, administration, and availability of prescription drugs.

22 (4) The superintendent shall submit the report and any recommendations  
23 for proposed legislation or further action by the state pursuant to the  
24 report's findings to the temporary president of the senate, the speaker  
25 of the assembly and the governor on or before February first of each  
26 year.

27 § 606. Compliance and enforcement. (1) All contracts for pharmacy  
28 benefit management entered into in this state or by a covered entity in  
29 this state shall comply with the requirements of this article.

30 (2) The superintendent is responsible for the enforcement of this  
31 article and may reasonably examine and investigate to ensure compliance  
32 with the provisions herein.

33 (3) The superintendent shall adopt procedures for investigating  
34 complaints of noncompliance with this article. If the superintendent  
35 finds a pharmacy benefit manager has failed to comply with any of the  
36 provisions of this article, the superintendent may, after notice and  
37 opportunity for a hearing, impose one or more sanctions as deemed appro-  
38 priate or necessary to bring non-complying entities into full compli-  
39 ance, including, but not limited to:

40 (a) revoking or suspending a license issued to a pharmacy benefit  
41 manager, or denying an application for a renewal of a license;

42 (b) imposing a period of probation best adapted to protect the public  
43 health and safety and for any rehabilitation;

44 (c) imposing an administrative fine not to exceed two hundred fifty  
45 dollars for each violation or instance of noncompliance;

46 (d) assessing costs to be paid by the pharmacy benefit manager; or

47 (e) imposing restrictions on the scope of operation of the pharmacy  
48 benefit manager in the state.

49 (4) In addition to sanctions for noncompliance as described in  
50 subsection three of this section, if a pharmacy benefit manager fails to  
51 submit to the superintendent the information required under section six  
52 hundred four of this article by the specified date, the superintendent  
53 may impose against the pharmacy benefit manager an administrative penal-  
54 ty of not more than two hundred fifty dollars for each day of such fail-  
55 ure.

1     (5) Any money collected, as administrative penalties or otherwise,  
2     pursuant to this section must be used by the superintendent to cover the  
3     costs of implementation and enforcement of this article.

4     § 607. Rulemaking authority. The superintendent shall promulgate and  
5     adopt rules and regulations to effectuate the purposes and provisions of  
6     this article. The rules and regulations shall be subject to review in  
7     accordance with general rules of administrative rulemaking and review of  
8     regulations in this state.

9     § 2. This act shall take effect immediately.