

# STATE OF NEW YORK

3014

2021-2022 Regular Sessions

## IN SENATE

January 27, 2021

Introduced by Sens. SEPULVEDA, BIAGGI, KENNEDY -- 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

3 Section 601. Short title.

4 602. Definitions.

5 603. Responsibility to covered entities.

6 604. Pharmacy benefit manager transparency.

7 605. Report publication.

8 606. Compliance and enforcement.

9 607. Rulemaking authority.

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

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

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

21 (2) "Covered individual" means a member, participant, enrollee,  
22 contract holder, or policy holder or beneficiary of a covered entity who

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

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1 is provided health coverage by the covered entity. This includes a  
2 dependent or other person provided health coverage through a policy,  
3 contract, or plan for a covered individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51     (4) In addition to sanctions for noncompliance as described in  
52 subsection three of this section, if a pharmacy benefit manager fails to  
53 submit to the superintendent the information required under section six  
54 hundred four of this article by the specified date, the superintendent  
55 may impose against the pharmacy benefit manager an administrative penal-

1 ty of not more than two hundred fifty dollars for each day of such fail-  
2 ure.

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

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

11 § 2. This act shall take effect immediately.