ALASKA STATE LEGISLATURE

House Labor & Commerce Committee

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HB 226: Pharmacies/Pharmacists/Benefits Managers
Explanation of Changes – Version U

Version S to Version U

Title – Amends title removing reference to pharmacies, pharmacists, and patient choice of pharmacy.

Section 1 – *No change.*

Section 2 – New section in this bill version. Amends 08.80.297(d)(2) - *Prescription prices available to consumer.*

Moves the new definition of "pharmacy benefit manager" to a new section added to the statute later in the bill (AS 21.27.975).

Section 3 – *Previous section 2, no change.*

Section 4 – *Previous section 3, no change.*

Section 5 – *Previous section 4, no change.*

Section 6 – *Previous section 5, no change.*

Section 7 – New section in this bill version. Amends 21.27.940 - *Pharmacy audits; restrictions.*

Expounds on the requirements of pharmacy audits. This section states that the requirements under statutes of an audit do not apply when there is suspected fraudulent activity.

Section 8 - *Previous section 6, no change.*

Section 9 – *Previous section 7, no change.*

<u>Section 10</u> – New section in this bill version. Amends 21.27.945 – *Drug pricing list; procedural requirements.* Adds new subsections.

States the requirements for the list that a PBM must provide to a network pharmacy. These include maintaining a searchable electronic format, identifying each drug for which a reimbursement amount is established, listing certain specifications per drug, the date on which a drug is added or removed from this list. Includes definitions related to this section.

Section 9 under the original bill is removed.

<u>Section 11</u> – Modifies previous section 10, adds a fourth new section under AS 21.27.

> **Sec. 21.27.954. Regulations relating to pharmacy benefit manager claims, grievances, activities, and appeals.**
>
> Adds a new section to statute regarding the regulation of PBM claims and grievances. This section ensures regulations and standards are in place giving pharmacies the opportunity for appropriate resolution of grievances, independent reviews of PBM activities, and requiring PBMs to hear pricing appeals.

Sections 11, 12, and 13 under the original bill are removed.

<u>Section 12</u> – New section in this bill version. Adds two new sections under AS 21.27 Article 9.

> **Sec. 21.27.960. Defined cost sharing and prescription drugs.**
>
> Requires PBMs to ensure that a covered person's defined cost sharing for a prescription drug is calculated at the point of sale based on a price reduced to at least 85% of all rebates received. This section also requires that a good faith estimate in defined cost sharing is passed through to the covered person at the point of sale.
>
> This section ensures the director or a PBM cannot impose any disciplinary action on a pharmacy or pharmacist for their failure to reduce a patient's defined cost if the health care insurer failed to provide the pharmacy with the information necessary to calculate the reduction. Furthermore, the health care insurer may not impose a monetary penalty on, or withhold a payment to, a pharmacy or pharmacist that engaged in good faith efforts to comply with (a) of this section.
>
> Nothing in this section prevents a health care insurer or an agent of the health care insurer from reducing a covered person's defined cost sharing by an amount greater than the amount calculated under (a) of this section.
>
> This section also states that a PBM may not be required to disclose the number of rebates they or a health care insurer receives on a product, manufacturer, or pharmacy-specific basis, except to comply with this section, as they are confidential.
>
> This section recognizes that provisions in this section that conflict with federal law do not apply to the extent of the conflict. Finally, this section allows the director to audit the

records of a PBM to determine whether the PBM complied with the requirements outlined within this section.

Sec. 21.27.975. Definitions.

This section takes all definitions previously listed under AS 21.27.955 (repealed in Section 18) and lists them here as well as adds new definitions.

1. affiliate;
2. audit;
3. claim;
4. covered person (moved from AS 21.27.955);
5. defined cost sharing;
6. drug (moved from AS 21.27.955);
7. extrapolation;
8. health care insurance plan (moved from AS 21.27.955);
9. health care insurer;
10. independent pharmacy;
11. insurer;
12. list;
13. maximum allowable cost (moved from AS 21.27.955);
14. national average drug acquisition cost (moved from AS 21.27.955);
15. network (moved from AS 21.27.955);
16. network pharmacy;
17. pharmacy;
18. pharmacy acquisition cost;
19. pharmacy benefits manager;
20. plan sponsor (moved from AS 21.27.955);
21. provider (moved from AS 21.27.955);
22. rebate;
23. recoupment; and
24. wholesale acquisition cost (moved from AS 21.27.955).

Sections 15, 16, and 17 under the original bill are removed.

<u>Section 13</u> – Modifies previous section 14, amends 21.36.520 - *Unfair trade practices.*

Removes previous section 14 numbers 6 and 7 and updates all following numbers.

<u>Section 14</u> – New section in this bill version. Adds new section under AS 21.27.

Sec. 21.42.435. Defined cost sharing and prescription drugs.

Requires health care insurers to ensure that a covered person's defined cost sharing for a prescription drug is at least 85% of all rebates received, in connection with dispensing or administration of the prescription drug. This section also requires that a good faith

estimate in defined cost sharing is passed through to the covered person at the point of sale.

This section ensures health care insurers cannot impose any disciplinary action on a pharmacy or pharmacist for their failure to reduce a patients defined cost inf the health care insurer failed to provide the pharmacy with the information necessary to calculate the reduction.

This section also ensures health care providers are not required to disclose the number of rebates they or a PBM receives on a product, manufacturer, or pharmacy-specific basis as they are confidential.

This section also allows the director to audit the records of a health care insurer to determine whether the health care insurer complied with the requirements outlined within this section.

Section 15 – New section in this bill version. Amends 21.42.599 – *Definitions.*

Adds new definitions.

9. defined cost sharing;
10. negotiated price concession;
11. price protection rebate; and
12. rebate.

Section 16 – New section in this bill version. Adds new section under 39.30.

Sec. 39.30.032. Coverage for dispensing fees.

Allows the director to periodically review dispensing fees by using surveys conducted by the Department of Health under AS 47.07 and the national average drug acquisition cost (NADAQ) retail price survey conducted by the Centers for Medicare and Medicaid (CMS).

The director shall negotiate dispensing fees with independent pharmacies and tribal health pharmacy providers to ensure availability of prescription medications. The director may establish differential dispensing fees based on community. The director shall set and adjust dispensing fees and shall adjust dispensing fees at least once every five years.

Section 17 – *Previous section 19, no change.*

Section 18 – *Previous section 20, no change.*

Section 19 – Modifies previous section 21.

Adds applicability to insurance policies in addition to contracts. Updates referenced sections.

Section 20 – *Previous section 22, no change.*

Section 21 – Modifies previous section 23.

Updates referenced transition regulations number due to section number changes in this version.

Section 22 – Modifies previous section 24.

Updates referenced section number due to section number changes in this version.

Sections removed from Version S in sectional analysis format.

Section 9. Repeals and reenacts AS 21.27.950 – *Reimbursement.*

Establishes that PBMs shall not reimburse pharmacies for a drug at less than the national average drug acquisition cost, (NADAC) or, in its absence, at less than the wholesale acquisition cost as defined in federal law, and in addition shall reimburse a pharmacist or pharmacies with a professional dispensing fee set by the Director. Subsection (c) sets out the factors the director will consider when determining the fees.

Section 11. **Amends AS 21.27.955 – *Definitions.***

(4) Modifies language relating to the list of reimbursement prices/amounts that are set by the PBMs.

Section 12. Repeals and reenacts AS 21.27.955 – *Definitions.*

(6) Provides a new, expanded definition of the term "network pharmacy".

Section 13. Amends AS 21.27.955 - *Definitions.*

This adds nine new definitions to this section (11) to (19)

Section 15. Adds new paragraph to AS 29.10.200 - *Limitations of home rule powers*.

Adds new (68) AS 29.20.420 health care insurance plans. See below.

Section 16. Amends AS.29.20 and adds new subsection .420 to Article 5

> **AS 29.20.420. *Health care insurance plans***.
> Adds that a municipality that offers a group health benefit plan for its employees enjoys the same protections as defined by the Division of Insurance unfair practices guidelines.

Section 17. Amends AS 39.30.090(a) - *Procurement of group insurance*

New paragraph (13) requires participating governmental units to obtain a policy of group health insurance that meets requirements of 21.27.901-21.27.955, 21.36.126 and requirements relating to managing pharmacy benefits under their policies.