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HB 226: Pharmacies / Pharmacists / Benefit Managers Sectional Analysis – Version S

Section 1. Amends AS 08.80.030(b) – *Powers and duties of the board*

(b)(19) establishes that the Board of Pharmacy has authority to regulate the dispensing of drugs that are not approved for self-administration (practices commonly known as white bagging and brown bagging).

Section 2. Amends AS 21.27.901 – *Registration of pharmacy benefit managers; scope of business practice.*

- Requires a Pharmacy Benefits Manager (PBM) operating in Alaska to register as a PBM with the Division.
- Allows PBMs to contract with an insurer to manage pharmacy benefits and other services and audits, and contract with network pharmacies. PBMs must be registered with the Division of Insurance to conduct business in the state.

Section 3. Amends/adds new subsections to AS 21.27.901 - *Registration of pharmacy benefit managers*

Adds a new subsection (c) establishing that each day a PBM conducts business in the state without being licensed by the state is a separate violation under AS 21.97.020.

Section 4. Amends AS 21.27.905(a) - *Renewal of registration*

Establishes that PBMs must biennially register with Division of Insurance under its procedures for license renewal.

Section 5. Amends/adds new section to AS 21.27 - *Fiduciary duty*

Adds that a PBM has a fiduciary responsibility to the plan sponsor and its covered persons, meaning it must consider impacts to the plan sponsor as well as the insured employees; notify conflicts of interest with its duties to the state; shall pass on its rebates to the plan; shall respond to requests of drug costs when requested; basically it directs the PBM to act in good faith and transparently with its plan sponsor.

Section 6. Amends AS 21.27.945 - *Drug pricing list; procedural requirements*

- (a) establishes that a PBM must keep its drug pricing list current and electronically searchable (without charge) and must identify each drug by its national drug code, its national average drug acquisition cost (NADAC) or its wholesale acquisition cost, and its reimbursement amount; provides definitions. The PBM must provide a current PBM

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employee phone number to the pharmacy, update price list at least weekly to reflect current national drug database pricing.

Section 7. Repeals and reenacts AS 21.27.945(b) - *Drug pricing list; procedural requirements*
Require PBMs to ensure drugs on a pricing list meet certain objective standards, are available, and are not obsolete.

Section 8. Amends AS 21.27.945 adds definitions and adds new subsections – *Drug pricing list; procedural requirements*

To establish that a PBM must keep its drug pricing list current and electronically searchable and must identify each drug by its national drug code, its national average drug acquisition cost or its wholesale acquisition cost, and its reimbursement amount; provides definitions.

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 10. Amends AS 21.27 and adds 3 new sections

1. **AS 21.27.951 *Patient choice of pharmacy*.** This subsection bars health insurers and PBMs from: (1) prohibiting or limiting an insured person from receiving pharmacy services from a pharmacy of that person's choice; and (2) restricting access to drugs through only a PBM-owned or affiliated pharmacy except when doing so is required by USFDA standards; and requires PBMs to treat as a network pharmacy any qualified pharmacy that agrees to network terms; provides definitions for "specialty drug" and "specialty pharmacy."
2. **AS 21.27.952 *Patient access to clinician-administered drugs*.** This subsection bars health insurers and PBMs from denying reimbursement to, or imposing higher fees, copayments, or penalties on, pharmacies (other than those selected by the insurer or PBM) who dispense to insured persons clinician-administered drugs (drugs infused, injected, or administered in clinical settings, typically high-cost cancer or autoimmune therapy drugs); bars insurers and PBMs from requiring or encouraging that clinician-administered drugs be dispensed to an insured person in a manner inconsistent with the

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federal Drug Supply Chain Security Act (practices commonly known as “white bagging” and “brown bagging”.) Adds definition of “clinician-administered drug”.

3. **AS 21.27.953. *Penalties***. Allows the Director of Division of Insurance to impose penalties resulting from a filed complaint.

Nothing in this section interferes with a patient’s right to choose his or her preferred pharmacy.

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 14. Amends and adds a new section to AS 21.36.126 - *Unfair trade practices*

(a) establishes that insurers or PBMs may not:

- violate a pharmacy’s right to reimbursement under new AS 21.27.950;
- interfere with a person’s right to choose a pharmacy under new AS 21.27.951;
- interfere with a person’s right of access to clinician-administered drugs under new AS 21.27.952;
- interfere with a pharmacy’s right to participate in a PBM’s pharmacy network under new AS 21.27.951;
- reimburse a pharmacy less than it reimburses a PBM-owned or affiliated pharmacy for the same services;
- impose any copayment, fee or condition not equally imposed upon all in the same benefit category;
- steer insured persons to use a PBM-owned or affiliated pharmacy;
- impose any monetary advantage or penalty that could affect or influence a person’s choice among pharmacies that have agreed to a PBM’s network terms;
- reduce pharmacy reimbursement because of a person’s choice among pharmacies that have agreed to a PBM’s network terms;

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- use a person's pharmacy services data for soliciting, marketing, or referral to a PBM-owned or affiliated pharmacy;
- condition a person's coverage or pharmacy's reimbursement on use of a mail-order pharmacy or PBM-owned or affiliated pharmacy;
- prohibit or limit a network pharmacy from mailing, shipping or delivering drugs to its patients;
- condition participation in a PBM pharmacy network on credentialing standards beyond licensing standards set by the Alaska Board of Pharmacy or charging a fee in connection with network enrollment;
- prohibit a pharmacy from informing patients of the difference between the pharmacy's customary cost of a drug versus the drug cost when using the PBM's insurance;
- conduct spread pricing, where a PBM charges an insurer a different price for a drug (typically higher) than it reimburses a pharmacy;
- charge or collect any fee from a pharmacy, including claim-processing fees, performance-based fees, network participation fees, or accreditation fees.

The new subsection establishes that contract terms between a pharmacy and a PBM in violation of this subsection are null and void; that violations of the subsection are unfair trade practices subject to penalty under AS Chapter 21 (Insurance); and provides that nothing in the section shall be construed to interfere with a patient's right to know where there is access to the lowest-cost drugs, nor be construed to interfere with a patient's right to receive notice of changes to pharmacy networks; provides 11 definitions.

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.

Section 18. Amends AS 39.30.091 - *Authorization for self-insurance and excess loss insurance*

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Adds that the state's self-insured group employee medical plan and union trusts are subject to the statutes on PBMs and unfair trade practices.

Section 19. Amends and adds new paragraph AS 45.50.471(b) - *Unlawful acts and practices*

Adds new paragraph (b)(58) establishes that violations of new subsection 21.36.126(a) are violations of the Alaska Unfair Trade Practices and Consumer Protection Act.

Section 20. Repeals AS 21.27.955(5) and 21.27.955(8) - *Definitions*

Repeals two definitions: "multi-source generic drug" and "pharmacy acquisition cost".

Section 21. Applicability:

States that this legislation applies to contracts between PBMs and pharmacies/pharmacists initiated after the effective date of this bill.

Section 22. Gives Dept. of Commerce, Community, & Economic Development (DCCED) and the Dept. of Administration (DOA) authority to adopt regulations necessary to implement the bill.

Section 23. Adopts immediate effective date for purposes of regulation-making.

Section 24. Establishes that the Act takes effect July 1, 2025.