

**CS FOR HOUSE BILL NO. 226(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/24/24

Referred: Rules

Sponsor(s): REPRESENTATIVES SUMNER, Himschoot, Ortiz, Wright, Ruffridge, Galvin, Josephson

SENATOR Myers

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to insurance; relating to pharmacy benefits managers; relating to  
2 dispensing fees; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 08.80.297(d)(2) is amended to read:

5 (2) "pharmacy benefits manager" has the meaning given in  
6 AS 21.27.975 [21.27.955].

7 \* **Sec. 2.** AS 21.27.901 is amended to read:

8 **Sec. 21.27.901. Registration of pharmacy benefits managers; scope of**  
9 **business practice.** (a) A person may not conduct business in the state as a pharmacy  
10 benefits manager unless the person is registered with the director [AS A THIRD-  
11 PARTY ADMINISTRATOR UNDER AS 21.27.630].

12 (b) A pharmacy benefits manager registered under this section  
13 [AS 21.27.630] may

14 (1) contract with an insurer to administer or manage pharmacy benefits

1 provided by an insurer for a covered person, including claims processing services for  
2 and audits of payments for prescription drugs and medical devices and supplies; **and**

3 (2) contract with network pharmacies [;

4 (3) SET THE COST OF MULTI-SOURCE GENERIC DRUGS  
5 UNDER AS 21.27.945; AND

6 (4) ADJUDICATE APPEALS RELATED TO MULTI-SOURCE  
7 GENERIC DRUG REIMBURSEMENT].

8 \* **Sec. 3.** AS 21.27.901 is amended by adding new subsections to read:

9 (c) A pharmacy benefits manager

10 (1) shall apply for registration following the same procedures for  
11 licensure set out in AS 21.27.040;

12 (2) is subject to hearings and orders on violations; denial, nonrenewal,  
13 suspension, or revocation of registration; penalties; and surrender of registration under  
14 the procedures set out in AS 21.27.405 - 21.27.460.

15 (d) Each day that a pharmacy benefits manager conducts business in the state  
16 as a pharmacy benefits manager without being registered is a separate violation of this  
17 section, and each separate violation is subject to the maximum civil penalty under  
18 AS 21.97.020.

19 \* **Sec. 4.** AS 21.27.905(a) is amended to read:

20 (a) A pharmacy benefits manager shall biennially renew a registration with the  
21 director **following the procedures for license renewal in AS 21.27.380.**

22 \* **Sec. 5.** AS 21.27 is amended by adding a new section to read:

23 **Sec. 21.27.907. Fiduciary duty.** (a) A pharmacy benefits manager owes a  
24 fiduciary duty to a plan sponsor. A pharmacy benefits manager shall adhere to the  
25 practices set out in this section.

26 (b) A pharmacy benefits manager shall

27 (1) perform the manager's duties with care, skill, prudence, and  
28 diligence and in accordance with the standards of conduct applicable to a fiduciary in  
29 an enterprise of a like character and with like aims; and

30 (2) notify the plan sponsor in writing of any activity, policy, or practice  
31 of the pharmacy benefits manager that directly or indirectly presents any conflict of

1 interest with the duties imposed by this chapter.

2 (c) A pharmacy benefits manager that receives from a drug manufacturer or  
3 labeler a payment or benefit of any kind in connection with the use of a prescription  
4 drug by a covered person, including a payment or benefit based on volume of sales or  
5 market share, shall pass that payment or benefit on in full to the plan sponsor. This  
6 provision does not prohibit the insurer from agreeing by contract to compensate the  
7 pharmacy benefits manager by returning a portion of the benefit or payment to the  
8 pharmacy benefits manager.

9 (d) Upon request by a plan sponsor, a pharmacy benefits manager shall

10 (1) provide information showing the quantity of drugs purchased by  
11 the covered person and the net cost to the covered person for the drugs; the  
12 information must include all rebates, discounts, and other similar payments; if  
13 requested by the plan sponsor, the pharmacy benefits manager shall provide the  
14 quantity and net cost information on a drug-by-drug basis by National Drug Code  
15 registration number rather than on an aggregated basis; and

16 (2) disclose to the plan sponsor all financial terms and arrangements  
17 for remuneration of any kind that apply between the pharmacy benefits manager and a  
18 prescription drug manufacturer or labeler, including formulary management and drug-  
19 substitution programs, educational support, claims processing, and data sales fees.

20 (e) A pharmacy benefits manager providing information to a plan sponsor  
21 under (d) of this section may designate that information as confidential. Information  
22 designated as confidential may not be disclosed by the plan sponsor to another person  
23 without the consent of the pharmacy benefits manager, unless ordered by a court.

24 (f) If a pharmacy dispenses a substitute prescription drug for a prescribed drug  
25 to a covered person and the substitute prescription drug costs more than the prescribed  
26 drug, the pharmacy benefits manager shall disclose to the plan sponsor the cost of both  
27 drugs and any benefit or payment directly or indirectly accruing to the pharmacy  
28 benefits manager as a result of the substitution. The pharmacy benefits manager shall  
29 transfer in full to the plan sponsor a benefit or payment received in any form by the  
30 pharmacy benefits manager as a result of a prescription drug substitution.

31 \* **Sec. 6.** AS 21.27.940 is amended to read:

1           **Sec. 21.27.940. Pharmacy audits; restrictions.** The requirements of  
2 AS 21.27.901 - **21.27.975** [21.27.955] do not apply to an audit

3           (1) in which suspected fraudulent activity or other intentional or wilful  
4 misrepresentation is evidenced by a physical review, a review of claims data, a  
5 statement, or another investigative method; or

6           (2) of claims paid for under the medical assistance program under  
7 AS 47.07.

8 \* **Sec. 7.** AS 21.27.945(a) is amended to read:

9           (a) A pharmacy benefits manager shall

10           (1) **provide** [MAKE AVAILABLE] to each network pharmacy at the  
11 beginning of the term of the network pharmacy's contract, and upon renewal of the  
12 contract, the methodology and sources used to determine the [DRUG PRICING] list;

13           **(2) provide the list to a network pharmacy without charge;**

14           **(3)** [(2)] provide **and keep current** a telephone number at which a  
15 network pharmacy may contact an employee of a pharmacy benefits manager [TO  
16 DISCUSS THE PHARMACY'S APPEAL];

17           **(4)** [(3)] provide a process for a network pharmacy to have ready  
18 access to the list specific to that pharmacy;

19           **(5)** [(4)] review and update applicable list information at least once  
20 every seven business days to reflect modification of list pricing;

21           **(6)** [(5)] update list prices within one business day after a significant  
22 price update or modification provided by the pharmacy benefits manager's national  
23 drug database provider; and

24           **(7)** [(6)] ensure that dispensing fees are not included in the calculation  
25 of the list pricing.

26 \* **Sec. 8.** AS 21.27.945(b) is repealed and reenacted to read:

27           (b) Before placing or maintaining a specific drug on the list, a pharmacy  
28 benefits manager shall ensure that

29           (1) if the drug is therapeutically equivalent and pharmaceutically  
30 equivalent to a prescribed drug, the drug is listed as therapeutically equivalent and  
31 pharmaceutically equivalent "A" or "B" rated in the most recent edition or supplement

1 of the United States Food and Drug Administration's Approved Drug Products with  
2 Therapeutic Equivalence Evaluations, also known as the Orange Book;

3 (2) if the drug is a different biological product than a prescribed drug,  
4 the drug is an interchangeable biological product;

5 (3) the drug is readily available for purchase from national or regional  
6 wholesalers operating in the state; and

7 (4) the drug is not obsolete or temporarily unavailable.

8 \* **Sec. 9.** AS 21.27.945 is amended by adding new subsections to read:

9 (c) The list a pharmacy benefits manager provides to a network pharmacy  
10 under (a) of this section must

11 (1) be maintained in a searchable electronic format that is accessible  
12 with a computer;

13 (2) identify each drug for which a reimbursement amount is  
14 established;

15 (3) specify for each drug

16 (A) the national drug code;

17 (B) the national average drug acquisition cost, if available;

18 (C) the wholesale acquisition cost, if available; and

19 (D) the reimbursement amount; and

20 (4) specify the date on which a drug is added or removed from the list.

21 (d) In this section,

22 (1) "interchangeable biological product" has the meaning given in  
23 AS 08.80.480;

24 (2) "pharmaceutically equivalent" means a drug has identical amounts  
25 of the same active chemical ingredients in the same dosage form and meets the  
26 standards of strength, quality, and purity according to the United States Pharmacopeia  
27 published by the United States Pharmacopeial Convention or another similar  
28 nationally recognized publication;

29 (3) "significant price update or modification" means

30 (A) an increase or decrease of 10 percent or more in the  
31 pharmacy acquisition cost;

1 (B) a change in the methodology in which the maximum  
2 allowable cost for a drug is determined; or

3 (C) a change in the value of a variable involved in the  
4 methodology used to determine the maximum allowable cost for a drug;

5 (4) "therapeutically equivalent" means a drug is from the same  
6 therapeutic class as another drug and, when administered in an appropriate amount,  
7 provides the same therapeutic effect as, and is identical in duration and intensity to,  
8 the other drug;

9 (5) "therapeutic class" means a group of similar drug products that  
10 have the same or similar mechanisms of action and are used to treat a specific  
11 condition.

12 \* **Sec. 10.** AS 21.27 is amended by adding new sections to read:

13 **Sec. 21.27.951. Patient access to clinician-administered drugs.** (a) An  
14 insurer or its pharmacy benefits manager may not

15 (1) refuse to authorize, approve, or pay a provider for providing  
16 covered clinician-administered drugs and related services to a covered person if the  
17 provider has agreed to participate in the insurer's health care insurance plan according  
18 to the terms offered by the insurer or its pharmacy benefits manager;

19 (2) if the criteria for medical necessity is met, condition, deny, restrict,  
20 or refuse to authorize or approve a provider for a clinician-administered drug because  
21 the provider obtained the clinician-administered drug from a pharmacy that is not a  
22 network pharmacy in the insurer's or its pharmacy benefits manager's network;

23 (3) require a pharmacy to dispense a clinician-administered drug  
24 directly to a covered person or agent of the insured with the intention that the covered  
25 person or the agent of the insured will transport the medication to a provider for  
26 administration;

27 (4) require or encourage the dispensing of a clinician-administered  
28 drug to a covered person in a manner that is inconsistent with the supply chain security  
29 controls and chain of distribution set by 21 U.S.C. 360eee - 360eee-4 (Drug Supply  
30 Chain Security Act);

31 (5) require that a clinician-administered drug be dispensed or

1 administered to a covered person in the residence of the covered person or require use  
 2 of an infusion site external to the office, department, or clinic of the provider of the  
 3 covered person; nothing in this paragraph prohibits the insurer or its pharmacy  
 4 benefits manager, or an agent of the insurer or its pharmacy benefits manager, from  
 5 offering the use of a home infusion pharmacy or external infusion site.

6 (b) If a health insurance plan provides in-network and out-of-network benefits  
 7 and there is not an in-network health care provider or health care facility within a 50-  
 8 mile radius of the primary residence of a covered person, the health insurance plan  
 9 must provide coverage to the covered person for clinician-administered drugs at the  
 10 minimum in-network benefit level.

11 (c) In this section, "clinician-administered drug" means a drug, other than a  
 12 vaccine, that requires administration by a provider and that the United States Food and  
 13 Drug Administration or the drug's manufacturer has not approved for self-  
 14 administration.

15 **Sec. 21.27.952. Penalties.** In addition to any other penalty provided by law, if  
 16 a person violates AS 21.27.945 - 21.27.975, the director may, after notice and hearing,  
 17 impose a penalty in accordance with AS 21.27.440.

18 **Sec. 21.27.953. Regulations relating to pharmacy benefits manager claims,**  
 19 **grievances, activities, and appeals.** The director shall adopt regulations that provide  
 20 standards and criteria for

21 (1) the structure and operation of pharmacy benefits manager  
 22 reimbursement of pharmacy claims under this chapter;

23 (2) procedures maintained by a pharmacy benefits manager to ensure  
 24 that a pharmacy has the opportunity for appropriate resolution of grievances;

25 (3) an independent review of pharmacy benefits manager activities  
 26 under this title; and

27 (4) requiring a pharmacy benefits manager to hear pricing appeals.

28 \* **Sec. 11.** AS 21.27 is amended by adding a new section to article 9 to read:

29 **Sec. 21.27.975. Definitions.** In AS 21.27.901 - 21.27.975,

30 (1) "affiliate" means a business, pharmacy, pharmacist, or provider  
 31 who, directly or indirectly through one or more intermediaries, controls, is controlled

1 by, or is under common control with a pharmacy benefits manager;

2 (2) "audit" means an official examination and verification of accounts  
3 and records;

4 (3) "claim" means a request from a pharmacy or pharmacist to be  
5 reimbursed for the cost of filling or refilling a prescription for a drug or for providing  
6 a medical supply or device;

7 (4) "covered person" means an individual receiving medication  
8 coverage or reimbursement provided by an insurer or its pharmacy benefits manager  
9 under a health care insurance plan;

10 (5) "drug" means a prescription drug;

11 (6) "extrapolation" means the practice of inferring a frequency or  
12 dollar amount of overpayments, underpayments, invalid claims, or other errors on any  
13 portion of claims submitted, based on the frequency or dollar amount of  
14 overpayments, underpayments, invalid claims, or other errors actually measured in a  
15 sample of claims;

16 (7) "health care insurance plan" has the meaning provided in  
17 AS 21.54.500;

18 (8) "insurer" includes a company or group of companies under  
19 common management, ownership, or control, an insurance company licensed under  
20 AS 21.09, a hospital or medical service corporation licensed under AS 21.87, a  
21 fraternal benefit society licensed under AS 21.84, a health maintenance organization  
22 licensed under AS 21.86, a multiple employer welfare arrangement, a church plan, and  
23 a governmental plan, but does not include a nonfederal governmental plan that elects  
24 to be excluded under 42 U.S.C. 300gg-21(a)(2) (Health Insurance Portability and  
25 Accountability Act);

26 (9) "list" means a list of drugs for which a pharmacy benefits manager  
27 has established predetermined reimbursement amounts, or methods for determining  
28 reimbursement amounts, to be paid to a network pharmacy or pharmacist for  
29 pharmacy services, such as a maximum allowable cost or maximum allowable cost list  
30 or any other list of prices used by a pharmacy benefits manager;

31 (10) "maximum allowable cost" means the maximum amount that a

1 pharmacy benefits manager will reimburse a pharmacy for the cost of a drug;

2 (11) "national average drug acquisition cost" means the average  
3 acquisition cost for outpatient drugs covered by Medicaid, as determined by a monthly  
4 survey of retail pharmacies conducted by the federal Centers for Medicare and  
5 Medicaid Services;

6 (12) "network" means an entity that, through contracts or agreements  
7 with providers, provides or arranges for access by groups of covered persons to health  
8 care services by providers who are not otherwise or individually contracted directly  
9 with an insurer or its pharmacy benefits manager;

10 (13) "network pharmacy" means a pharmacy that provides covered  
11 health care services or supplies to an insured or a member under a contract with a  
12 network plan to act as a participating provider;

13 (14) "pharmacy" has the meaning given in AS 08.80.480;

14 (15) "pharmacy acquisition cost" means the amount that a  
15 pharmaceutical wholesaler or distributor charges for a pharmaceutical product as listed  
16 on the pharmacy's invoice;

17 (16) "pharmacy benefits manager" means a person that contracts with a  
18 pharmacy on behalf of an insurer to process claims or pay pharmacies for prescription  
19 drugs or medical devices and supplies or provide network management for  
20 pharmacies;

21 (17) "plan sponsor" has the meaning given in AS 21.54.500;

22 (18) "provider" means a physician, pharmacist, hospital, clinic,  
23 hospital outpatient department, pharmacy, or other person licensed or otherwise  
24 authorized in this state to furnish health care services;

25 (19) "recoupment" means the amount that a pharmacy must remit to a  
26 pharmacy benefits manager when the pharmacy benefits manager has determined that  
27 an overpayment to the pharmacy has occurred;

28 (20) "wholesale acquisition cost" has the meaning given in 42 U.S.C.  
29 1395w-3a(c)(6)(B).

30 \* **Sec. 12.** AS 21.36 is amended by adding a new section to article 5 to read:

31 **Sec. 21.36.520. Unfair trade practices.** (a) An insurer providing a health care

1 insurance plan or its pharmacy benefits manager may not

2 (1) interfere with a covered person's right to choose a pharmacy or  
3 provider;

4 (2) interfere with a covered person's right of access to a clinician-  
5 administered drug;

6 (3) interfere with the right of a pharmacy or pharmacist to participate  
7 as a network pharmacy;

8 (4) reimburse a pharmacy or pharmacist an amount less than the  
9 amount the pharmacy benefits manager reimburses an affiliate for providing the same  
10 pharmacy services, calculated on a per-unit basis using the same generic product  
11 identifier or generic code number;

12 (5) impose a reduction in reimbursement for pharmacy services  
13 because of the person's choice among pharmacies that have agreed to participate in the  
14 plan according to the terms offered by the insurer or its pharmacy benefits manager;

15 (6) use a covered person's pharmacy services data collected under the  
16 provision of claims processing services for the purpose of soliciting, marketing, or  
17 referring the person to an affiliate of the pharmacy benefits manager;

18 (7) prohibit or limit a pharmacy from mailing, shipping, or delivering  
19 drugs to a patient as an ancillary service; however, the insurer or its pharmacy benefits  
20 manager

21 (A) is not required to reimburse a delivery fee charged by a  
22 pharmacy unless the fee is specified in the contract between the pharmacy  
23 benefits manager and the pharmacy;

24 (B) may not require a patient signature as proof of delivery of a  
25 mailed or shipped drug if the pharmacy

26 (i) maintains a mailing or shipping log signed by a  
27 representative of the pharmacy or keeps a record of each notification of  
28 delivery provided by the United States mail or a package delivery  
29 service; and

30 (ii) is responsible for the cost of mailing, shipping, or  
31 delivering a replacement for a drug that was mailed or shipped but not

1 received by the covered person;

2 (8) prohibit or limit a network pharmacy from informing an insured  
3 person of the difference between the out-of-pocket cost to the covered person to  
4 purchase a drug, medical device, or supply using the covered person's pharmacy  
5 benefits and the pharmacy's usual and customary charge for the drug, medical device,  
6 or supply;

7 (9) conduct or participate in spread pricing in the state;

8 (10) assess, charge, or collect a form of remuneration that passes from  
9 a pharmacy or a pharmacist in a pharmacy network to the pharmacy benefits manager  
10 including claim processing fees, performance-based fees, network participation fees,  
11 or accreditation fees;

12 (11) reverse and resubmit the claim of a pharmacy more than 90 days  
13 after the date the claim was first adjudicated, and may not reverse and resubmit the  
14 claim of a pharmacy unless the insurer or pharmacy benefits manager

15 (A) provides prior written notification to the pharmacy;

16 (B) has just cause;

17 (C) first attempts to reconcile the claim with the pharmacy; and

18 (D) provides to the pharmacy, at the time of the reversal and  
19 resubmittal, a written description that includes details of and justification for  
20 the reversal and resubmittal.

21 (b) A provision of a contract between a pharmacy benefits manager and a  
22 pharmacy or pharmacist that is contrary to a requirement of this section is null, void,  
23 and unenforceable in this state.

24 (c) A violation of this section or a regulation adopted under this section is an  
25 unfair trade practice and subject to penalty under this chapter.

26 (d) For purposes of this section, a violation has occurred each time a  
27 prohibited act is committed.

28 (e) Nothing in this section may interfere with or violate a patient's right under  
29 AS 08.80.297 to know where the patient may have access to the lowest cost drugs or  
30 the requirement that a patient must receive notice of a change to a pharmacy network,  
31 including the addition of a new pharmacy or removal of an existing pharmacy from a

1 pharmacy network.

2 (f) The director may adopt regulations to provide an appeals process for  
3 claims adjudicated under this section.

4 (g) In this section,

5 (1) "affiliate" has the meaning given in AS 21.27.975;

6 (2) "clinician-administered drug" has the meaning given in  
7 AS 21.27.951(c);

8 (3) "covered person" has the meaning given in AS 21.27.975;

9 (4) "drug" has the meaning given in AS 21.27.975;

10 (5) "health care insurance plan" has the meaning given in  
11 AS 21.54.500;

12 (6) "insurer" has the meaning given in AS 21.27.975;

13 (7) "network pharmacy" has the meaning given in AS 21.27.975;

14 (8) "out-of-pocket cost" means a deductible, coinsurance, copayment,  
15 or similar expense owed by a covered person under the terms of the covered person's  
16 health care insurance plan;

17 (9) "provider" has the meaning given in AS 21.27.975;

18 (10) "spread pricing" means the method of pricing a drug in which the  
19 contracted price for a drug that a pharmacy benefits manager charges a health care  
20 insurance plan differs from the amount the pharmacy benefits manager directly or  
21 indirectly pays the pharmacist or pharmacy for pharmacist services.

22 \* **Sec. 13.** AS 45.50.471(b) is amended by adding a new paragraph to read:

23 (58) violating AS 21.36.520(a) (insurers and pharmacy benefits  
24 managers), if the violation is committed or performed with a frequency that indicates a  
25 general business practice.

26 \* **Sec. 14.** AS 21.27.950 and 21.27.955 are repealed.

27 \* **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to  
28 read:

29 **APPLICABILITY.** This Act applies to an insurance policy or contract, including a  
30 contract between a pharmacy benefits manager and a pharmacy or pharmacist, issued,  
31 delivered, entered into, renewed, or amended on or after the effective date of secs. 1 - 14 of

1 this Act.

2 \* **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 TRANSITION: REGULATIONS. The Department of Commerce, Community, and  
5 Economic Development and the Department of Administration may adopt regulations  
6 necessary to implement the changes made by this Act. The regulations take effect under  
7 AS 44.62 (Administrative Procedure Act), but not before the effective date of the law  
8 implemented by the regulation.

9 \* **Sec. 17.** Section 16 of this Act takes effect immediately under AS 01.10.070(c).

10 \* **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect January 1, 2026.