

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 5/10/24

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. Duty of care.** (a) A pharmacy benefits manager owes a duty of
24 care to a plan sponsor, benefits administrator, and covered person. A pharmacy
25 benefits manager shall adhere to the practices set out in this section.

26 (b) A pharmacy benefits manager shall

27 (1) perform the manager's duties with care, skill, prudence, diligence,
28 fairness, transparency, and professionalism and in the best interest of the plan sponsor,
29 benefits administrator, and covered person as required by this section; 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) The duty of care owed to a covered person under this section takes
3 precedence over the duty of care owed to any other person.

4 (d) A pharmacy benefits manager that receives from a drug manufacturer or
5 labeler a payment or benefit of any kind in connection with the use of a prescription
6 drug by a covered person, including a payment or benefit based on volume of sales or
7 market share, shall pass that payment or benefit on in full to the plan sponsor.

8 (e) Upon request by a plan sponsor, a pharmacy benefits manager shall

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

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

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

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

30 * **Sec. 6.** AS 21.27.940 is amended to read:

31 **Sec. 21.27.940. Pharmacy audits; restrictions.** The requirements of

1 AS 21.27.901 - **21.27.975** [21.27.955] do not apply to an audit

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

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

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

8 (a) A pharmacy benefits manager shall

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

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

13 **(3)** [(2)] provide **and keep current** a telephone number at which a
14 network pharmacy may contact an employee of a pharmacy benefits manager [TO
15 DISCUSS THE PHARMACY'S APPEAL];

16 **(4)** [(3)] provide a process for a network pharmacy to have ready
17 access to the list specific to that pharmacy;

18 **(5)** [(4)] review and update applicable list information at least once
19 every seven business days to reflect modification of list pricing;

20 **(6)** [(5)] update list prices within one business day after a significant
21 price update or modification provided by the pharmacy benefits manager's national
22 drug database provider; and

23 **(7)** [(6)] ensure that dispensing fees are not included in the calculation
24 of the list pricing.

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

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

28 (1) if the drug is therapeutically equivalent and pharmaceutically
29 equivalent to a prescribed drug, the drug is listed as therapeutically equivalent and
30 pharmaceutically equivalent "A" or "B" rated in the most recent edition or supplement
31 of the United States Food and Drug Administration's Approved Drug Products with

1 Therapeutic Equivalence Evaluations, also known as the Orange Book;

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

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

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

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

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

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

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

14 (3) specify for each drug

15 (A) the national drug code;

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

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

18 (D) the reimbursement amount; and

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

20 (d) In this section,

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

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

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

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

31 (B) a change in the methodology in which the maximum

1 allowable cost for a drug is determined; or

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

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

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

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

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

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

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

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

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

30 (5) require that a clinician-administered drug be dispensed or
31 administered to a covered person in the residence of the covered person or require use

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

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

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

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

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

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

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

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

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

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

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

29 (1) "affiliate" means a business, pharmacy, pharmacist, or provider
 30 who, directly or indirectly through one or more intermediaries, controls, is controlled
 31 by, or is under common control with a pharmacy benefits manager;

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

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

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

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

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

15 (7) "insurer" has the meaning given to "health care insurer" in
16 AS 21.54.500;

17 (8) "list" means a list of drugs for which a pharmacy benefits manager
18 has established predetermined reimbursement amounts, or methods for determining
19 reimbursement amounts, to be paid to a network pharmacy or pharmacist for
20 pharmacy services, such as a maximum allowable cost or maximum allowable cost list
21 or any other list of prices used by a pharmacy benefits manager;

22 (9) "maximum allowable cost" means the maximum amount that a
23 pharmacy benefits manager will reimburse a pharmacy for the cost of a drug;

24 (10) "national average drug acquisition cost" means the average
25 acquisition cost for outpatient drugs covered by Medicaid, as determined by a monthly
26 survey of retail pharmacies conducted by the federal Centers for Medicare and
27 Medicaid Services;

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

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

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

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

8 (15) "pharmacy benefits manager" means a person that contracts with a
 9 pharmacy on behalf of an insurer to process claims or pay pharmacies for prescription
 10 drugs or medical devices and supplies or provide network management for
 11 pharmacies;

12 (16) "plan sponsor" has the meaning given in AS 21.54.500;

13 (17) "provider" means a physician, pharmacist, hospital, clinic,
 14 hospital outpatient department, pharmacy, or other person licensed or otherwise
 15 authorized in this state to furnish health care services;

16 (18) "recoupment" means the amount that a pharmacy must remit to a
 17 pharmacy benefits manager when the pharmacy benefits manager has determined that
 18 an overpayment to the pharmacy has occurred;

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

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

22 **Sec. 21.36.520. Unfair trade practices.** (a) An insurer providing a health care
 23 insurance policy or its pharmacy benefits manager may not

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

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

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

30 (4) reimburse a pharmacy or pharmacist an amount less than the
 31 amount the pharmacy benefits manager reimburses an affiliate for providing the same

1 pharmacy services, calculated on a per-unit basis using the same generic product
2 identifier or generic code number;

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

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

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

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

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

17 (i) maintains a mailing or shipping log signed by a
18 representative of the pharmacy or keeps a record of each notification of
19 delivery provided by the United States mail or a package delivery
20 service; and

21 (ii) is responsible for the cost of mailing, shipping, or
22 delivering a replacement for a drug that was mailed or shipped but not
23 received by the covered person;

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

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

30 (10) assess, charge, or collect a form of remuneration that passes from
31 a pharmacy or a pharmacist in a pharmacy network to the pharmacy benefits manager,

1 including claim processing fees, performance-based fees, network participation fees,
2 or accreditation fees;

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

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

7 (B) has just cause;

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

9 (D) provides to the pharmacy, at the time of the reversal and
10 resubmittal, a written description that includes details of and justification for
11 the reversal and resubmittal.

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

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

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

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

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

26 (g) In this section,

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

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

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

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

1 (5) "insurer" has the meaning given to "health care insurer" in
2 AS 21.54.500;

3 (6) "network pharmacy" has the meaning given in AS 21.27.975;

4 (7) "out-of-pocket cost" means a deductible, coinsurance, copayment,
5 or similar expense owed by a covered person under the terms of the covered person's
6 health care insurance policy;

7 (8) "provider" has the meaning given in AS 21.27.975;

8 (9) "spread pricing" means the method of pricing a drug in which the
9 contracted price for a drug that a pharmacy benefits manager charges a health care
10 insurance policy differs from the amount the pharmacy benefits manager directly or
11 indirectly pays the pharmacist or pharmacy for pharmacist services.

12 * **Sec. 13.** AS 21.27.950 and 21.27.955 are repealed.

13 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 APPLICABILITY. This Act applies to an insurance policy or contract, including a
16 contract between a pharmacy benefits manager and a pharmacy or pharmacist, issued,
17 delivered, entered into, renewed, or amended on or after the effective date of secs. 1 - 13 of
18 this Act.

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

21 TRANSITION: REGULATIONS. The director of the division of insurance may adopt
22 regulations necessary to implement the changes made by this Act under AS 21.06.090. The
23 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
24 effective date of the law implemented by the regulation.

25 * **Sec. 16.** Section 15 of this Act takes effect immediately under AS 01.10.070(c).

26 * **Sec. 17.** Except as provided in sec. 16 of this Act, this Act takes effect January 1, 2025.