

SENATE BILL NO. 124

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-THIRD LEGISLATURE - FIRST SESSION

BY SENATOR WILSON BY REQUEST

Introduced: 4/5/23

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to health care insurers; relating to pharmacy benefits managers;**
2 **relating to prescription drug defined cost sharing; and providing for an effective date."**

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

4 * **Section 1.** AS 21.27.955 is amended to read:

5 **Sec. 21.27.955. Definitions.** In AS 21.27.901 - 21.27.960 [AS 21.27.901 -
6 21.27.955],

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

9 (2) "claim" means a request from a pharmacy or pharmacist to be
10 reimbursed for the cost of filling or refilling a prescription for a drug or for providing
11 a medical supply or device;

12 **(3) "defined cost sharing" has the meaning given in AS 21.42.599;**

13 **(4) [(3)] "extrapolation" means the practice of inferring a frequency or**
14 **dollar amount of overpayments, underpayments, invalid claims, or other errors on any**

1 portion of claims submitted, based on the frequency or dollar amount of
 2 overpayments, underpayments, invalid claims, or other errors actually measured in a
 3 sample of claims;

4 **(5) "health care insurer" means**

5 **(A) an insurer regulated by this title that offers health**
 6 **insurance coverage as defined in 42 U.S.C. 300gg-91; or**

7 **(B) a state or local governmental plan;**

8 **(6)** [(4)] "list" means the list of multi-source generic drugs for which a
 9 predetermined reimbursement amount has been established such as a maximum
 10 allowable cost or maximum allowable cost list or any other list of prices used by a
 11 pharmacy benefits manager;

12 **(7)** [(5)] "multi-source generic drug" means any covered outpatient
 13 prescription drug that the United States Food and Drug Administration has determined
 14 is pharmaceutically equivalent or bioequivalent to the originator or name brand drug
 15 and for which there are at least two drug products that are rated as therapeutically
 16 equivalent under the United States Food and Drug Administration's most recent
 17 publication of "Approved Drug Products with Therapeutic Equivalence Evaluations";

18 **(8)** [(6)] "network pharmacy" means a pharmacy that provides covered
 19 health care services or supplies to an insured or a member under a contract with a
 20 network plan to act as a participating provider;

21 **(9)** [(7)] "pharmacy" has the meaning given in AS 08.80.480;

22 **(10)** [(8)] "pharmacy acquisition cost" means the amount that a
 23 pharmaceutical wholesaler or distributor charges for a pharmaceutical product as listed
 24 on the pharmacy's invoice;

25 **(11)** [(9)] "pharmacy benefits manager" means a person that

26 **(A)** contracts with a pharmacy on behalf of **a health care** [AN]
 27 insurer to process claims or pay pharmacies for prescription drugs or medical
 28 devices and supplies or provide network management for pharmacies; **or**

29 **(B) contracts with or is employed by a health care insurer,**
 30 **either directly or through an intermediary, to manage a prescription drug**
 31 **benefit provided by the health care insurer, including the processing and**

1 payment of claims for prescription drugs, performance of prescription
 2 drug utilization review, processing of drug prior authorization requests,
 3 adjudication of appeals or grievances related to the prescription drug
 4 benefit, contracting with network pharmacies, or otherwise controlling the
 5 cost of prescription drugs;

6 (12) "rebate" has the meaning given in AS 21.42.599;

7 (13) [(10)] "recoupment" means the amount that a pharmacy must
 8 remit to a pharmacy benefits manager when the pharmacy benefits manager has
 9 determined that an overpayment to the pharmacy has occurred.

10 * **Sec. 2.** AS 21.27 is amended by adding a new section to article 9 to read:

11 **Sec. 21.27.960. Defined cost sharing and prescription drugs.** (a) A
 12 pharmacy benefits manager and agents of a pharmacy benefits manager shall ensure
 13 that a covered person's defined cost sharing for a prescription drug is calculated at the
 14 point of sale based on a price that is reduced by an amount equal to at least 85 percent
 15 of all rebates received, or that will be received, in connection with the dispensing or
 16 administration of the prescription drug. The pharmacy benefits manager or the agent
 17 of the pharmacy benefits manager shall ensure that a good faith estimate of the
 18 covered person's reduction in defined cost sharing required under this subsection is
 19 passed through to the covered person at the point of sale.

20 (b) The director or a pharmacy benefits manager may not impose liability, a
 21 penalty, or disciplinary action on a pharmacy or pharmacist for the pharmacy's or
 22 pharmacist's failure to reduce a covered person's defined cost sharing under (a) of this
 23 section if the covered person's health care insurer fails to provide the pharmacy or
 24 pharmacist with the information necessary to calculate the reduction. The health care
 25 insurer may not impose a monetary penalty on, or withhold a payment to, a pharmacy
 26 or pharmacist that engaged in good faith efforts to comply with (a) of this section.

27 (c) Nothing in this section prevents a health care insurer or an agent of a
 28 health care insurer from reducing a covered person's defined cost sharing by an
 29 amount greater than the amount calculated under (a) of this section.

30 (d) A pharmacy benefits manager may not be required to disclose the amount
 31 of rebates a health care insurer or pharmacy benefits manager receives on a product-

1 specific, manufacturer-specific, or pharmacy-specific basis, except as required to
 2 comply with this section. Information and records relating to the amount of rebates a
 3 health insurer or pharmacy benefits manager receives on a product-specific,
 4 manufacturer-specific, or pharmacy-specific basis are confidential for the purposes of
 5 AS 21.06.060.

6 (e) If a provision in this section conflicts with federal law, the provision does
 7 not apply to the extent of the conflict.

8 (f) The director may audit the books and records of a pharmacy benefits
 9 manager registered under this chapter to determine whether the pharmacy benefits
 10 manager has complied with the requirements of this section.

11 * **Sec. 3.** AS 21.42 is amended by adding a new section to read:

12 **Sec. 21.42.435. Defined cost sharing and prescription drugs.** (a) A health
 13 care insurer and agents of a health care insurer shall ensure that a covered person's
 14 defined cost sharing for a prescription drug is calculated at the point of sale based on a
 15 price that is reduced by an amount equal to at least 85 percent of all rebates received,
 16 or that will be received, in connection with the dispensing or administration of the
 17 prescription drug. The health care insurer or the agent of the health care insurer shall
 18 ensure that a good faith estimate of the covered person's reduction in defined cost
 19 sharing required under this subsection is passed through to the covered person at the
 20 point of sale.

21 (b) The director or a health care insurer may not impose liability, a penalty, or
 22 disciplinary action on a pharmacy or pharmacist for the pharmacy's or pharmacist's
 23 failure to reduce a covered person's defined cost sharing under (a) of this section if the
 24 covered person's health care insurer fails to provide the pharmacy or pharmacist with
 25 the information necessary to calculate the reduction. The health care insurer may not
 26 impose a monetary penalty on, or withhold a payment to, a pharmacy or pharmacist
 27 that engaged in good faith efforts to comply with (a) of this section.

28 (c) Nothing in this section prevents a health care insurer or an agent of a
 29 health care insurer from reducing a covered person's defined cost sharing by an
 30 amount greater than the amount calculated under (a) of this section.

31 (d) A health care insurer or an agent of a health care insurer may not be

1 required to disclose the amount of rebates a health care insurer or pharmacy benefits
 2 manager receives on a product-specific, manufacturer-specific, or pharmacy-specific
 3 basis, except as required to comply with this section. Information and records relating
 4 to the amount of rebates a health insurer or pharmacy benefits manager receives on a
 5 product-specific, manufacturer-specific, or pharmacy-specific basis are confidential
 6 for the purposes of AS 21.06.060.

7 (e) If a provision in this section conflicts with federal law, the provision does
 8 not apply to the extent of the conflict.

9 (f) The director may audit the books and records of a health care insurer to
 10 determine whether the health care insurer has complied with the requirements of this
 11 section.

12 (g) In this section, "health care insurer" has the meaning given in
 13 AS 21.27.955.

14 * **Sec. 4.** AS 21.42.599 is amended by adding new paragraphs to read:

15 (9) "defined cost sharing" means a deductible payment, coinsurance, or
 16 similar amount owed by a covered person under the terms of the covered person's
 17 health care insurance plan;

18 (10) "negotiated price concession" includes a base price concession or
 19 reasonable estimate of any price protection rebate and performance-based price
 20 concession that may accrue directly or indirectly to a health care insurer during the
 21 coverage year from a manufacturer, dispensing pharmacy, or other party in connection
 22 with the dispensing or administration of a prescription drug;

23 (11) "price protection rebate" means a negotiated price concession that
 24 accrues directly or indirectly to the health care insurer, or another person on behalf of
 25 the health care insurer, in the event of an increase in the wholesale acquisition cost of
 26 a drug above a threshold specified in a contract to which the health care insurer, or
 27 another person on behalf of the health care insurer, is a party;

28 (12) "rebate" means a

29 (A) negotiated price concession, whether or not the negotiated
 30 price concession is described as a rebate or accrues directly or indirectly to a
 31 health care insurer during the coverage year from a manufacturer, dispensing

1 pharmacy, or other party in connection with the dispensing or administration of
2 a prescription drug; or

3 (B) reasonable estimate of any negotiated price concessions,
4 fees, and other administrative costs that are passed through, or are reasonably
5 anticipated to be passed through, to the health care insurer and serve to reduce
6 the health care insurer's prescription drug liabilities.

7 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 APPLICABILITY. This Act applies to an insurance policy or contract issued,
10 delivered, or renewed on or after the effective date of this Act.

11 * **Sec. 6.** This Act takes effect January 1, 2025.