

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Section 513b1 as follows:

6 (215 ILCS 5/513b1)

7 Sec. 513b1. Pharmacy benefit manager contracts.

8 (a) As used in this Section:

9 "340B drug discount program" means the program established
10 under Section 340B of the federal Public Health Service Act,
11 42 U.S.C. 256b.

12 "340B entity" means a covered entity as defined in 42
13 U.S.C. 256b(a)(4) authorized to participate in the 340B drug
14 discount program.

15 "340B pharmacy" means any pharmacy used to dispense 340B
16 drugs for a covered entity, whether entity-owned or external.

17 "Biological product" has the meaning ascribed to that term
18 in Section 19.5 of the Pharmacy Practice Act.

19 "Maximum allowable cost" means the maximum amount that a
20 pharmacy benefit manager will reimburse a pharmacy for the
21 cost of a drug.

22 "Maximum allowable cost list" means a list of drugs for
23 which a maximum allowable cost has been established by a

1 pharmacy benefit manager.

2 "Pharmacy benefit manager" means a person, business, or
3 entity, including a wholly or partially owned or controlled
4 subsidiary of a pharmacy benefit manager, that provides claims
5 processing services or other prescription drug or device
6 services, or both, for health benefit plans.

7 "Retail price" means the price an individual without
8 prescription drug coverage would pay at a retail pharmacy, not
9 including a pharmacist dispensing fee.

10 "Third-party payer" means any entity that pays for
11 prescription drugs on behalf of a patient other than a health
12 care provider or sponsor of a plan subject to regulation under
13 Medicare Part D, 42 U.S.C. 1395w-101~~7~~ et seq.

14 (b) A contract between a health insurer and a pharmacy
15 benefit manager must require that the pharmacy benefit
16 manager:

17 (1) Update maximum allowable cost pricing information
18 at least every 7 calendar days.

19 (2) Maintain a process that will, in a timely manner,
20 eliminate drugs from maximum allowable cost lists or
21 modify drug prices to remain consistent with changes in
22 pricing data used in formulating maximum allowable cost
23 prices and product availability.

24 (3) Provide access to its maximum allowable cost list
25 to each pharmacy or pharmacy services administrative
26 organization subject to the maximum allowable cost list.

1 Access may include a real-time pharmacy website portal to
2 be able to view the maximum allowable cost list. As used in
3 this Section, "pharmacy services administrative
4 organization" means an entity operating within the State
5 that contracts with independent pharmacies to conduct
6 business on their behalf with third-party payers. A
7 pharmacy services administrative organization may provide
8 administrative services to pharmacies and negotiate and
9 enter into contracts with third-party payers or pharmacy
10 benefit managers on behalf of pharmacies.

11 (4) Provide a process by which a contracted pharmacy
12 can appeal the provider's reimbursement for a drug subject
13 to maximum allowable cost pricing. The appeals process
14 must, at a minimum, include the following:

15 (A) A requirement that a contracted pharmacy has
16 14 calendar days after the applicable fill date to
17 appeal a maximum allowable cost if the reimbursement
18 for the drug is less than the net amount that the
19 network provider paid to the supplier of the drug.

20 (B) A requirement that a pharmacy benefit manager
21 must respond to a challenge within 14 calendar days of
22 the contracted pharmacy making the claim for which the
23 appeal has been submitted.

24 (C) A telephone number and e-mail address or
25 website to network providers, at which the provider
26 can contact the pharmacy benefit manager to process

1 and submit an appeal.

2 (D) A requirement that, if an appeal is denied,
3 the pharmacy benefit manager must provide the reason
4 for the denial and the name and the national drug code
5 number from national or regional wholesalers.

6 (E) A requirement that, if an appeal is sustained,
7 the pharmacy benefit manager must make an adjustment
8 in the drug price effective the date the challenge is
9 resolved and make the adjustment applicable to all
10 similarly situated network pharmacy providers, as
11 determined by the managed care organization or
12 pharmacy benefit manager.

13 (5) Allow a plan sponsor contracting with a pharmacy
14 benefit manager an annual right to audit compliance with
15 the terms of the contract by the pharmacy benefit manager,
16 including, but not limited to, full disclosure of any and
17 all rebate amounts secured, whether product specific or
18 generalized rebates, that were provided to the pharmacy
19 benefit manager by a pharmaceutical manufacturer.

20 (6) Allow a plan sponsor contracting with a pharmacy
21 benefit manager to request that the pharmacy benefit
22 manager disclose the actual amounts paid by the pharmacy
23 benefit manager to the pharmacy.

24 (7) Provide notice to the party contracting with the
25 pharmacy benefit manager of any consideration that the
26 pharmacy benefit manager receives from the manufacturer

1 for dispense as written prescriptions once a generic or
2 biologically similar product becomes available.

3 (c) In order to place a particular prescription drug on a
4 maximum allowable cost list, the pharmacy benefit manager
5 must, at a minimum, ensure that:

6 (1) if the drug is a generically equivalent drug, it
7 is listed as therapeutically equivalent and
8 pharmaceutically equivalent "A" or "B" rated in the United
9 States Food and Drug Administration's most recent version
10 of the "Orange Book" or have an NR or NA rating by
11 Medi-Span, Gold Standard, or a similar rating by a
12 nationally recognized reference;

13 (2) the drug is available for purchase by each
14 pharmacy in the State from national or regional
15 wholesalers operating in Illinois; and

16 (3) the drug is not obsolete.

17 (d) A pharmacy benefit manager is prohibited from limiting
18 a pharmacist's ability to disclose whether the cost-sharing
19 obligation exceeds the retail price for a covered prescription
20 drug, and the availability of a more affordable alternative
21 drug, if one is available in accordance with Section 42 of the
22 Pharmacy Practice Act.

23 (e) A health insurer or pharmacy benefit manager shall not
24 require an insured to make a payment for a prescription drug at
25 the point of sale in an amount that exceeds the lesser of:

26 (1) the applicable cost-sharing amount; or

1 (2) the retail price of the drug in the absence of
2 prescription drug coverage.

3 (f) Unless required by law, a contract between a pharmacy
4 benefit manager or third-party payer and a 340B entity or 340B
5 pharmacy shall not contain any provision that:

6 (1) distinguishes between drugs purchased through the
7 340B drug discount program and other drugs when
8 determining reimbursement or reimbursement methodologies,
9 or contains otherwise less favorable payment terms or
10 reimbursement methodologies for 340B entities or 340B
11 pharmacies when compared to similarly situated non-340B
12 entities;

13 (2) imposes any fee, chargeback, or rate adjustment
14 that is not similarly imposed on similarly situated
15 pharmacies that are not 340B entities or 340B pharmacies;

16 (3) imposes any fee, chargeback, or rate adjustment
17 that exceeds the fee, chargeback, or rate adjustment that
18 is not similarly imposed on similarly situated pharmacies
19 that are not 340B entities or 340B pharmacies;

20 (4) prevents or interferes with an individual's choice
21 to receive a covered prescription drug from a 340B entity
22 or 340B pharmacy through any legally permissible means,
23 except that nothing in this paragraph shall prohibit the
24 establishment of differing copayments or other
25 cost-sharing amounts within the benefit plan for covered
26 persons who acquire covered prescription drugs from a

1 nonpreferred or nonparticipating provider;

2 (5) excludes a 340B entity or 340B pharmacy from a
3 pharmacy network on any basis that includes consideration
4 of whether the 340B entity or 340B pharmacy participates
5 in the 340B drug discount program;

6 (6) prevents a 340B entity or 340B pharmacy from using
7 a drug purchased under the 340B drug discount program; or

8 (7) any other provision that discriminates against a
9 340B entity or 340B pharmacy by treating the 340B entity
10 or 340B pharmacy differently than non-340B entities or
11 non-340B pharmacies for any reason relating to the
12 entity's participation in the 340B drug discount program.

13 As used in this subsection, "pharmacy benefit manager" and
14 "third-party payer" do not include pharmacy benefit managers
15 and third-party payers acting on behalf of a Medicaid program.

16 (g) A violation of this Section by a pharmacy benefit
17 manager constitutes an unfair or deceptive act or practice in
18 the business of insurance under Section 424.

19 (h) A provision that violates subsection (f) in a contract
20 between a pharmacy benefit manager or a third-party payer and
21 a 340B entity that is entered into, amended, or renewed after
22 July 1, 2022 shall be void and unenforceable.

23 (i)(1) A pharmacy benefit manager may not retaliate
24 against a pharmacist or pharmacy for disclosing information in
25 a court, in an administrative hearing, before a legislative
26 commission or committee, or in any other proceeding, if the

1 pharmacist or pharmacy has reasonable cause to believe that
2 the disclosed information is evidence of a violation of a
3 State or federal law, rule, or regulation.

4 (2) A pharmacy benefit manager may not retaliate against a
5 pharmacist or pharmacy for disclosing information to a
6 government or law enforcement agency, if the pharmacist or
7 pharmacy has reasonable cause to believe that the disclosed
8 information is evidence of a violation of a State or federal
9 law, rule, or regulation.

10 (3) A pharmacist or pharmacy shall make commercially
11 reasonable efforts to limit the disclosure of confidential and
12 proprietary information.

13 (4) Retaliatory actions against a pharmacy or pharmacist
14 include cancellation of, restriction of, or refusal to renew
15 or offer a contract to a pharmacy solely because the pharmacy
16 or pharmacist has:

17 (A) made disclosures of information that the
18 pharmacist or pharmacy has reasonable cause to believe is
19 evidence of a violation of a State or federal law, rule, or
20 regulation;

21 (B) filed complaints with the plan or pharmacy benefit
22 manager; or

23 (C) filed complaints against the plan or pharmacy
24 benefit manager with the Department.

25 (j) ~~(i)~~ This Section applies to contracts entered into or
26 renewed on or after July 1, ~~2022~~ 2023.

1 (k) ~~(j)~~ This Section applies to any group or individual
2 policy of accident and health insurance or managed care plan
3 that provides coverage for prescription drugs and that is
4 amended, delivered, issued, or renewed on or after July 1,
5 2020.

6 (Source: P.A. 101-452, eff. 1-1-20; 102-778, eff. 7-1-22;
7 revised 8-19-22.)