

HB5833



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5833

Introduced 5/3/2024, by Rep. John M. Cabello

SYNOPSIS AS INTRODUCED:

215 ILCS 5/513b1

Amends the Illinois Insurance Code. Provides that a pharmacy benefit manager or an affiliate acting on the pharmacy benefit manager's behalf is prohibited from steering a covered individual. Defines "steer". Effective July 1, 2024.

LRB103 40511 RPS 72993 b

A BILL FOR

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 and by adding Section 513b1.5 as
6 follows:

7 (215 ILCS 5/513b1)

8 Sec. 513b1. Pharmacy benefit manager contracts.

9 (a) As used in this Section:

10 "340B drug discount program" means the program established
11 under Section 340B of the federal Public Health Service Act,
12 42 U.S.C. 256b.

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

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

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

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

23 "Maximum allowable cost list" means a list of drugs for

1 which a maximum allowable cost has been established by a
2 pharmacy benefit manager.

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

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

11 "Steer" includes, but is not limited to:

12 (1) requiring a covered individual to use only a
13 pharmacy, including a mail-order pharmacy, in which the
14 pharmacy benefit manager maintains an ownership interest
15 or control;

16 (2) offering or implementing a plan design that
17 encourages a covered individual to use a pharmacy in which
18 the pharmacy benefit manager maintains an ownership
19 interest or control, if such plan design increases costs
20 for the covered individual, including requiring a covered
21 individual to pay full costs for a prescription if the
22 covered individual chooses not to use a pharmacy owned or
23 controlled by the pharmacy benefit manager;

24 (3) reimbursing a pharmacy or pharmacist for a
25 pharmaceutical product or pharmacist service in an amount
26 less than the amount that the pharmacy benefit manager

1 reimburses itself or an affiliate for providing the same
2 product or services, unless the pharmacy or pharmacist
3 contractually agrees to a lower reimbursement amount; or
4 (4) any other actions determined by the Department by
5 rule.

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

10 (b) A contract between a health insurer and a pharmacy
11 benefit manager must require that the pharmacy benefit
12 manager:

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

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

20 (3) Provide access to its maximum allowable cost list
21 to each pharmacy or pharmacy services administrative
22 organization subject to the maximum allowable cost list.
23 Access may include a real-time pharmacy website portal to
24 be able to view the maximum allowable cost list. As used in
25 this Section, "pharmacy services administrative
26 organization" means an entity operating within the State

1 that contracts with independent pharmacies to conduct
2 business on their behalf with third-party payers. A
3 pharmacy services administrative organization may provide
4 administrative services to pharmacies and negotiate and
5 enter into contracts with third-party payers or pharmacy
6 benefit managers on behalf of pharmacies.

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

11 (A) A requirement that a contracted pharmacy has
12 14 calendar days after the applicable fill date to
13 appeal a maximum allowable cost if the reimbursement
14 for the drug is less than the net amount that the
15 network provider paid to the supplier of the drug.

16 (B) A requirement that a pharmacy benefit manager
17 must respond to a challenge within 14 calendar days of
18 the contracted pharmacy making the claim for which the
19 appeal has been submitted.

20 (C) A telephone number and e-mail address or
21 website to network providers, at which the provider
22 can contact the pharmacy benefit manager to process
23 and submit an appeal.

24 (D) A requirement that, if an appeal is denied,
25 the pharmacy benefit manager must provide the reason
26 for the denial and the name and the national drug code

1 number from national or regional wholesalers.

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

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

16 (6) Allow a plan sponsor contracting with a pharmacy
17 benefit manager to request that the pharmacy benefit
18 manager disclose the actual amounts paid by the pharmacy
19 benefit manager to the pharmacy.

20 (7) Provide notice to the party contracting with the
21 pharmacy benefit manager of any consideration that the
22 pharmacy benefit manager receives from the manufacturer
23 for dispense as written prescriptions once a generic or
24 biologically similar product becomes available.

25 (c) In order to place a particular prescription drug on a
26 maximum allowable cost list, the pharmacy benefit manager

1 must, at a minimum, ensure that:

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

9 (2) the drug is available for purchase by each
10 pharmacy in the State from national or regional
11 wholesalers operating in Illinois; and

12 (3) the drug is not obsolete.

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

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

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

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

25 (f) Unless required by law, a contract between a pharmacy
26 benefit manager or third-party payer and a 340B entity or 340B

1 pharmacy shall not contain any provision that:

2 (1) distinguishes between drugs purchased through the
3 340B drug discount program and other drugs when
4 determining reimbursement or reimbursement methodologies,
5 or contains otherwise less favorable payment terms or
6 reimbursement methodologies for 340B entities or 340B
7 pharmacies when compared to similarly situated non-340B
8 entities;

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

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

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

24 (5) excludes a 340B entity or 340B pharmacy from a
25 pharmacy network on any basis that includes consideration
26 of whether the 340B entity or 340B pharmacy participates

1 in the 340B drug discount program;

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

4 (7) any other provision that discriminates against a
5 340B entity or 340B pharmacy by treating the 340B entity
6 or 340B pharmacy differently than non-340B entities or
7 non-340B pharmacies for any reason relating to the
8 entity's participation in the 340B drug discount program.

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

12 (f-5) A pharmacy benefit manager or an affiliate acting on
13 the pharmacy benefit manager's behalf shall not steer a
14 covered individual.

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

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

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

1 the disclosed information is evidence of a violation of a
2 State or federal law, rule, or regulation.

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

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

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

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

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

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

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

26 (k) This Section applies to any group or individual policy

1 of accident and health insurance or managed care plan that
2 provides coverage for prescription drugs and that is amended,
3 delivered, issued, or renewed on or after July 1, 2020.

4 (Source: P.A. 102-778, eff. 7-1-22; 103-154, eff. 6-30-23;
5 103-453, eff. 8-4-23.)

6 Section 99. Effective date. This Act takes effect July 1,
7 2024.