

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 198

FINAL READING

Introduced by Sorrentino, 39; Hallstrom, 1; Sanders, 45.

Read first time January 14, 2025

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to the Pharmacy Benefit Manager Licensure and
2 Regulation Act; amend sections 44-4601, 44-4603, and 44-4610,
3 Revised Statutes Cumulative Supplement, 2024; to define terms; to
4 change provisions relating to specialty pharmacies and clinician-
5 administered drugs; to prohibit health benefit plans, health
6 carriers, and pharmacy benefit managers from taking certain actions;
7 to authorize a network pharmacy or network pharmacist to decline to
8 provide a drug as prescribed; to change provisions relating to
9 retail pharmacies; to prohibit spread pricing as prescribed; to
10 harmonize provisions; to provide an operative date; and to repeal
11 the original sections.
- 12 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 44-4601, Revised Statutes Cumulative Supplement,
2 2024, is amended to read:

3 44-4601 Sections 44-4601 to 44-4612 and sections 4 to 8 of this act
4 shall be known and may be cited as the Pharmacy Benefit Manager Licensure
5 and Regulation Act.

6 **Sec. 2.** Section 44-4603, Revised Statutes Cumulative Supplement,
7 2024, is amended to read:

8 44-4603 For purposes of the Pharmacy Benefit Manager Licensure and
9 Regulation Act:

10 (1) Auditing entity means a pharmacy benefit manager or any person
11 that represents a pharmacy benefit manager in conducting an audit for
12 compliance with a contract between the pharmacy benefit manager and a
13 pharmacy;

14 (2) Claims processing service means an administrative service
15 performed in connection with the processing and adjudicating of a claim
16 relating to a pharmacist service that includes:

17 (a) Receiving a payment for a pharmacist service; or

18 (b) Making a payment to a pharmacist or pharmacy for a pharmacist
19 service;

20 (3) Clinician-administered drug means an outpatient prescription
21 drug other than a vaccine that:

22 (a) Cannot reasonably be self-administered by the covered person to
23 whom the drug is prescribed or by an individual assisting the covered
24 person with self-administration; and

25 (b) Is typically administered:

26 (i) By a health care provider authorized to administer the drug,
27 including when acting under a physician's delegation and supervision; and

28 (ii) In a physician's office, hospital outpatient infusion center,
29 or other clinical setting;

30 (4) {3} Covered person means a member, policyholder, subscriber,
31 enrollee, beneficiary, dependent, or other individual participating in a

1 health benefit plan;

2 ~~(5) (4)~~ Director means the Director of Insurance;

3 ~~(6) (5)~~ Health benefit plan means a policy, contract, certificate,
4 plan, or agreement entered into, offered, or issued by a health carrier
5 or self-funded employee benefit plan to the extent not preempted by
6 federal law to provide, deliver, arrange for, pay for, or reimburse any
7 of the costs of a physical, mental, or behavioral health care service;

8 ~~(7) (6)~~ Health carrier has the same meaning as in section 44-1303;

9 (8) Maintenance medication means a drug prescribed for a chronic,
10 long-term condition and taken on a regular, recurring basis;

11 (9) Network pharmacist means a pharmacist that has a contract,
12 either directly or through a pharmacy services administrative
13 organization, with a pharmacy benefit manager to provide covered drugs at
14 a negotiated reimbursement rate;

15 (10) Network pharmacy means a pharmacy that has a contract, either
16 directly or through a pharmacy services administrative organization, with
17 a pharmacy benefit manager to provide covered drugs at a negotiated
18 reimbursement rate;

19 ~~(11) (7)~~ Other prescription drug or device service means a service
20 other than a claims processing service, provided directly or indirectly,
21 whether in connection with or separate from a claims processing service,
22 including, but not limited to:

23 (a) Negotiating a rebate, discount, or other financial incentive or
24 arrangement with a drug company;

25 (b) Disbursing or distributing a rebate;

26 (c) Managing or participating in an incentive program or arrangement
27 for a pharmacist service;

28 (d) Negotiating or entering into a contractual arrangement with a
29 pharmacist or pharmacy;

30 (e) Developing and maintaining a formulary;

31 (f) Designing a prescription benefit program; or

1 (g) Advertising or promoting a service;

2 (12) Participating provider has the same meaning as in section
3 44-7103;

4 (13) ~~(8)~~ Pharmacist has the same meaning as in section 38-2832;

5 (14) ~~(9)~~ Pharmacist service means a product, good, or service or any
6 combination thereof provided as a part of the practice of pharmacy;

7 (15) ~~(10)~~ Pharmacy has the same meaning as in section 71-425;

8 (16)(a) ~~(11)(a)~~ Pharmacy benefit manager means a person, business,
9 or entity, including a wholly or partially owned or controlled subsidiary
10 of a pharmacy benefit manager, that provides a claims processing service
11 or other prescription drug or device service for a health benefit plan to
12 a covered person who is a resident of this state; and

13 (b) Pharmacy benefit manager does not include:

14 (i) A health care facility licensed in this state;

15 (ii) A health care professional licensed in this state;

16 (iii) A consultant who only provides advice as to the selection or
17 performance of a pharmacy benefit manager; or

18 (iv) A health carrier to the extent that it performs any claims
19 processing service or other prescription drug or device service
20 exclusively for its enrollees; and

21 (17) Pharmacy benefit manager affiliate means a pharmacy or
22 pharmacist that directly or indirectly, through one or more
23 intermediaries, owns or controls, is owned or controlled by, or is under
24 common ownership or control with a pharmacy benefit manager;

25 (18) Pharmacy services administrative organization means an entity
26 that provides a contracted pharmacy with contracting administrative
27 services relating to prescription drug benefits;

28 (19) ~~(12)~~ Plan sponsor has the same meaning as in section 44-2702; -

29 (20) Specialty pharmacy means:

30 (a) A pharmacy that specializes in dispensing drugs for patients
31 with rare or complex medical conditions;

1 (b) A pharmacy that specializes in prescription drugs that have
2 specific storage or dispensing requirements; or

3 (c) A pharmacy that holds a specialty pharmacy accreditation from a
4 nationally recognized independent accrediting organization; and

5 (21) Spread pricing means the method of pricing a drug in which the
6 contracted price for a drug that a pharmacy benefit manager charges a
7 health benefit plan differs from the amount the pharmacy benefit manager
8 directly or indirectly pays the pharmacist or pharmacy for pharmacist
9 services.

10 **Sec. 3.** Section 44-4610, Revised Statutes Cumulative Supplement,
11 2024, is amended to read:

12 44-4610 (1) A pharmacy benefit manager shall not exclude a Nebraska
13 pharmacy from participation in the pharmacy benefit manager's specialty
14 pharmacy network if:

15 (a) {1} The pharmacy holds a specialty pharmacy accreditation from a
16 nationally recognized independent accrediting organization; and

17 (b) {2} The pharmacy is willing to accept the terms and conditions
18 of the pharmacy benefit manager's agreement with the pharmacy benefit
19 manager's specialty pharmacies.

20 (2) A pharmacy benefit manager shall not:

21 (a) Apply terms and conditions to an unaffiliated specialty pharmacy
22 that are stricter than the terms and conditions required for any
23 specialty pharmacy affiliated with the pharmacy benefit manager;

24 (b) Apply terms and conditions to specialty pharmacies that are
25 inconsistent with the Pharmacy Benefit Manager Licensure and Regulation
26 Act; or

27 (c) Require data reporting from specialty pharmacies more frequently
28 than quarterly unless reasonably necessary for the pharmacy benefit
29 manager to collect or report data obtained pursuant to subdivision (3)(a)
30 or (b) of this section.

31 (3) A pharmacy benefit manager shall not impose reporting terms and

1 conditions that require a specialty pharmacy to collect and remit data
2 unless such terms and conditions are:

3 (a) Necessary for a pharmacy benefit manager to meet reporting
4 obligations required by federal or state laws or regulations;

5 (b) Related to data (i) that may only be obtained from the specialty
6 pharmacy and (ii) that a pharmacy benefit manager is contractually
7 obligated to provide to another entity in order for that entity to meet
8 reporting obligations required by federal or state laws or regulations;

9 (c) Necessary for purposes of payment integrity or rebate
10 administration; or

11 (d) Submitted by the specialty pharmacy to the nationally recognized
12 independent accrediting organization from which the specialty pharmacy
13 holds an accreditation.

14 (4) In addition to other terms and conditions consistent with this
15 section, a pharmacy benefit manager may impose contract terms and
16 conditions that are reasonably necessary to demonstrate that the
17 specialty pharmacy has sufficient:

18 (a) Policies and metrics related to providing quality and consistent
19 care for patients using the pharmacy; and

20 (b) Policies and procedures consistent with industry standards to
21 avoid instances of fraud, waste, or abuse.

22 **Sec. 4.** (1) A specialty pharmacy that ships a clinician-
23 administered drug to a health care provider or pharmacy shall:

24 (a) Comply with all federal laws regulating the shipment of drugs,
25 including, but not limited to, general chapter 800 of the United States
26 Pharmacopeia;

27 (b) In response to questions from a health care provider or
28 pharmacy, provide access to a pharmacist or nurse employed by the
29 specialty pharmacy twenty-four hours per day, seven days per week;

30 (c) Allow a covered person and health care provider to request a
31 refill of a clinician-administered drug on behalf of a covered person in

1 accordance with the pharmacy benefit manager's or health carrier's
2 utilization review procedures; and

3 (d) Adhere to the track and trace requirements, as described in the
4 federal Drug Supply Chain Security Act, 21 U.S.C. 360eee et seq., for a
5 clinician-administered drug that needs to be compounded or manipulated
6 and, if requested by the health care provider or the provider's designee,
7 provide the track and trace information to the health care provider or
8 designee.

9 (2) For any clinician-administered drug dispensed by a specialty
10 pharmacy selected by the pharmacy benefit manager or health carrier, the
11 requesting health care provider or the provider's designee shall provide
12 the requested date, approximate time, and place of delivery of a
13 clinician-administered drug at least five business days before the date
14 of delivery. The specialty pharmacy shall require a signature of the
15 health care provider or the provider's designee upon receipt of the
16 shipment when shipped to a health care provider. If any clinician-
17 administered drug dispensed by a specialty pharmacy is not delivered as
18 specified in this subsection, the covered person shall not be financially
19 responsible if the clinician-administered drug is not able to be
20 administered to the covered person.

21 (3) The requirements of subsections (1) and (2) of this section do
22 not apply when the specialty pharmacy and the health care provider
23 administering the clinician-administered drug have shared ownership.

24 (4) A pharmacy benefit manager or health carrier that requires
25 dispensing of a clinician-administered drug through a specialty pharmacy
26 shall establish and disclose a process which allows the health care
27 provider or pharmacy to appeal and have exceptions to the use of a
28 specialty pharmacy when:

29 (a) A drug is not delivered as specified in subsection (2) of this
30 section; or

31 (b) An attending health care provider reasonably believes a covered

1 person may experience harm without the immediate use of a clinician-
2 administered drug that a health care provider or pharmacy has in stock.

3 (5) A pharmacy benefit manager or health carrier shall not:

4 (a) Require a specialty pharmacy to dispense a covered clinician-
5 administered drug directly to a covered person with the intention that
6 the covered person will transport the clinician-administered drug to a
7 health care provider for administration;

8 (b) Refuse to authorize or reimburse a participating provider for
9 dispensing a covered clinician-administered drug based on costs if the
10 costs of the drug to the health benefit plan are substantially similar as
11 compared to the costs of the drug if provided from a specialty pharmacy
12 selected by the pharmacy benefit manager or health carrier;

13 (c) Refuse to authorize or reimburse a participating provider
14 pursuant to the network agreement for the administration of covered
15 clinician-administered drugs;

16 (d) Penalize or remove from the network a participating provider
17 solely for refusing to administer a covered clinician-administered drug
18 received from a specialty pharmacy selected by the pharmacy benefit
19 manager or health carrier. If a participating provider refuses to source
20 covered clinician-administered drugs from a specialty pharmacy selected
21 by the pharmacy benefit manager or health carrier, the participating
22 provider shall direct the covered person to contact the health carrier
23 for coverage options; or

24 (e) Require a covered person to obtain a clinician-administered drug
25 from a specialty pharmacy selected by the pharmacy benefit manager or
26 health carrier if a participating provider of the covered person's choice
27 sources the drug and provides for administration at substantially similar
28 costs.

29 **Sec. 5.** (1) A health benefit plan, health carrier, or pharmacy
30 benefit manager shall not:

31 (a) Require a covered person, as a condition of payment or

1 reimbursement, to obtain pharmacist services exclusively through the
2 mail-order pharmacy or pharmacy benefit manager affiliate;

3 (b) Prohibit or limit a covered person from selecting a network
4 pharmacist or network pharmacy of the covered person's choice;

5 (c) Transfer a covered person's prescriptions from a network
6 pharmacy to another pharmacy unless requested by the covered person;

7 (d) Use financial incentives, including, but not limited to,
8 adjustments in cost-sharing obligations of a covered person, to the
9 exclusive benefit of the pharmacy benefit manager affiliate pharmacy; or

10 (e) Except as provided in subdivision (2)(b) of this section, auto-
11 enroll a covered person in mail-order pharmacist services.

12 (2) Nothing in this section shall be construed to prevent a health
13 benefit plan, health carrier, or pharmacy benefit manager from:

14 (a) Requiring a covered person to use a network specialty pharmacy;

15 (b) Auto-enrolling a covered person in mail-order pharmacist
16 services for a maintenance medication, provided that a covered person:

17 (i) Shall not be auto-enrolled for the first ninety days of a new
18 maintenance medication; and

19 (ii) Shall have the ability to opt out of mail-order pharmacist
20 services at any time;

21 (c) Informing a covered person of an ability to obtain pharmacist
22 services at a lower cost; or

23 (d) Requiring a covered person to obtain pharmacist services from a
24 mail-order pharmacy or pharmacy benefit manager affiliate when such
25 services are not otherwise available from another network pharmacy.

26 **Sec. 6.** (1) A network pharmacy or network pharmacist may decline to
27 provide a drug if the pharmacy or pharmacist will be or is paid less than
28 the acquisition cost for the drug.

29 (2) If a network pharmacy or network pharmacist declines to provide
30 a drug as authorized in subsection (1) of this section, the pharmacy or
31 pharmacist shall provide the covered person with adequate information as

1 to where the prescription for the drug may be filled or shall refer the
2 covered person to his or her plan sponsor.

3 (3) A pharmacy benefit manager, pharmacy services administrative
4 organization, or any person acting on behalf of a pharmacy benefit
5 manager or pharmacy services administrative organization shall not
6 penalize, remove from the network, or otherwise retaliate against a
7 network pharmacy or network pharmacist solely for declining to provide a
8 drug as provided in subsection (1) of this section.

9 **Sec. 7.** (1) A contract between a retail pharmacy and a pharmacy
10 benefit manager or plan sponsor shall not prohibit the retail pharmacy
11 from offering the following as an ancillary service of the retail
12 pharmacy:

13 (a) The delivery of a prescription drug by mail or common carrier to
14 a covered person or his or her personal representative on request of the
15 covered person or personal representative if the request is made before
16 the drug is delivered; or

17 (b) The delivery of a prescription to a covered person or his or her
18 personal representative by an employee or contractor of the retail
19 pharmacy.

20 (2) Nothing in this section shall require a retail pharmacy to
21 receive a request from a covered person or his or her personal
22 representative for delivery of a drug by mail, common carrier, or an
23 employee or contractor of the retail pharmacy when refilling or renewing
24 prescription drug services for which a request was previously received,
25 so long as the retail pharmacy has confirmed that the covered person
26 wishes to receive the drug.

27 (3) A pharmacy benefit manager or plan sponsor shall not remove a
28 retail pharmacy from its networks or require a retail pharmacy to join a
29 mail-order pharmacy network for the sole reason of providing ancillary
30 delivery services as long as the ancillary delivery services were
31 provided in compliance with this section and with the terms and

1 conditions of the retail pharmacy's contract with the pharmacy benefit
2 manager or plan sponsor and its pharmacy services administrative
3 organization, if applicable.

4 (4) Except as otherwise provided in a contract described in
5 subsection (1) of this section, a retail pharmacy shall not charge a plan
6 sponsor or pharmacy benefit manager for the delivery service described in
7 subsection (1) of this section.

8 (5) If a retail pharmacy provides a delivery service described in
9 subsection (1) of this section to a covered person, the retail pharmacy
10 shall disclose both of the following to the covered person or his or her
11 personal representative:

12 (a) Any fee charged to the covered person for the delivery of a
13 prescription drug; and

14 (b) That the plan sponsor or pharmacy benefit manager may not
15 reimburse the covered person for the fee described in subdivision (a) of
16 this subsection.

17 (6) For purposes of this section, retail pharmacy means a pharmacy
18 that dispenses prescription drugs to the public at retail primarily to
19 individuals who reside in close proximity or who are receiving care from
20 a provider in close proximity to the pharmacy, typically by face-to-face
21 interaction with the individual or the individual's caregiver.

22 **Sec. 8.** (1) A contract between a pharmacy benefit manager and a
23 health benefit plan that is issued on or after January 1, 2026, shall not
24 contain spread pricing unless such contract is an extension of a contract
25 entered into prior to January 1, 2026, which included spread pricing.

26 (2) Beginning January 1, 2029, no contract between a pharmacy
27 benefit manager and a health benefit plan shall include spread pricing.

28 **Sec. 9.** This act becomes operative on January 1, 2026.

29 **Sec. 10.** Original sections 44-4601, 44-4603, and 44-4610, Revised
30 Statutes Cumulative Supplement, 2024, are repealed.