

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 778

Introduced by Bostar, 29.

Read first time January 18, 2023

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to the Pharmacy Benefit Manager Licensure and
2 Regulation Act; to amend sections 44-4601, 44-4603, 44-4608, and
3 44-4611, Revised Statutes Cumulative Supplement, 2022; to define and
4 redefine terms; to change provisions relating to an appeal process;
5 to prohibit pharmacy benefit managers from taking certain actions;
6 to provide for pharmacy benefit manager duties; to prohibit spread
7 pricing as prescribed; to change enforcement provisions; to
8 harmonize provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-4601, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 44-4601 Sections 44-4601 to 44-4612 and sections 4 to 7 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 2022, 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) Covered person means a member, policyholder, subscriber,
21 enrollee, beneficiary, dependent, or other individual participating in a
22 health benefit plan;

23 (4) Director means the Director of Insurance;

24 (5) Health benefit plan means a policy, contract, certificate, or
25 agreement entered into, offered, or issued (a) by a health carrier or
26 plan sponsor or (b) under the medical assistance program established
27 pursuant to the Medical Assistance Act, to provide, deliver, arrange for,
28 pay for, or reimburse any of the costs of a physical, mental, or
29 behavioral health care service;

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

31 (7) Other prescription drug or device service means a service other

1 than a claims processing service, provided directly or indirectly,
2 whether in connection with or separate from a claims processing service,
3 including, but not limited to:

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

6 (b) Disbursing or distributing a rebate;

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

9 (d) Negotiating or entering into a contractual arrangement with a
10 pharmacist or pharmacy;

11 (e) Developing and maintaining a formulary;

12 (f) Designing a prescription benefit program; or

13 (g) Advertising or promoting a service;

14 (8) Pharmacist has the same meaning as in section 38-2832;

15 (9) Pharmacist service means a product, good, or service or any
16 combination thereof provided as a part of the practice of pharmacy;

17 (10) Pharmacy has the same meaning as in section 71-425;

18 (11) Pharmacy acquisition cost means the amount that a
19 pharmaceutical wholesaler charges for a pharmaceutical product as listed
20 on the pharmacy's billing invoice;

21 (12) Pharmacy benefit management services means claims processing
22 services and other prescription drug or device services;

23 (13)(a) ~~(11)(a)~~ Pharmacy benefit manager means a person, business,
24 or entity, including a wholly or partially owned or controlled subsidiary
25 of a pharmacy benefit manager, that provides a claims processing service
26 or other prescription drug or device service for a health benefit plan to
27 a covered person who is a resident of this state; and

28 (b) Pharmacy benefit manager does not include:

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

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

31 (iii) A consultant who only provides advice as to the selection or

1 performance of a pharmacy benefit manager; or

2 (iv) A health carrier to the extent that it performs any claims
3 processing service or other prescription drug or device service
4 exclusively for its enrollees; ~~and~~

5 (14) Pharmacy benefit manager affiliate means a pharmacy or
6 pharmacist that directly or indirectly, through one or more
7 intermediaries, owns or controls, is owned or controlled by, or is under
8 common ownership or control with a pharmacy benefit manager;

9 (15) Pharmacy benefit manager duty means a duty and obligation to
10 perform pharmacy benefit management services with care, skill, prudence,
11 diligence, fairness, transparency, and professionalism, and for the best
12 interest of the covered person, the health benefit plan, and the
13 provider, as consistent with the requirements of the Pharmacy Benefit
14 Manager Licensure and Regulation Act and any rules and regulations
15 adopted and promulgated under the act;

16 (16) ~~(12)~~ Plan sponsor has the same meaning as in section 44-2702;
17 and -

18 (17) Spread pricing means any amount charged or claimed by a
19 pharmacy benefit manager in excess of the ingredient cost for a dispensed
20 prescription drug plus any dispensing fee paid directly or indirectly to
21 any pharmacy, pharmacist, or other provider on behalf of the health
22 benefit plan, less a pharmacy benefit management fee.

23 Sec. 3. Section 44-4608, Revised Statutes Cumulative Supplement,
24 2022, is amended to read:

25 44-4608 (1) With respect to each contract and contract renewal
26 between a pharmacy benefit manager and a pharmacy, the pharmacy benefit
27 manager shall:

28 (a) Update any maximum allowable cost price list at least every
29 seven business days, noting any price change from the previous list, and
30 provide a means by which a network pharmacy may promptly review a current
31 price in an electronic, print, or telephonic format within one business

1 day of any such change at no cost to the pharmacy;

2 (b) Maintain a procedure to eliminate a product from the maximum
3 allowable cost price list in a timely manner to remain consistent with
4 any change in the marketplace; and

5 (c) Make the maximum allowable cost price list available to each
6 contracted pharmacy in a format that is readily accessible and usable to
7 the contracted pharmacy.

8 (2) A pharmacy benefit manager shall not place a prescription drug
9 on a maximum allowable cost price list unless the drug is available for
10 purchase by pharmacies in this state from a national or regional drug
11 wholesaler and is not obsolete.

12 (3) Each contract between a pharmacy benefit manager and a pharmacy
13 shall include a process to appeal, investigate, and resolve disputes
14 regarding any maximum allowable cost price and reimbursements made under
15 a maximum allowable cost price for a specific drug or drugs as: -

16 (a) Not meeting the requirements of this section; or

17 (b) Being below the pharmacy acquisition cost.

18 (4) The process to appeal, investigate, and resolve disputes
19 described in subsection (3) of this section shall include:

20 (a) A fifteen-business-day limit on the right to appeal following
21 submission of an initial claim by a pharmacy;

22 (b) A requirement that any appeal be investigated and resolved
23 within seven business days after the appeal is received by the pharmacy
24 benefit manager; and

25 (c)(i) ~~(e)~~ A requirement that the pharmacy benefit manager provide a
26 reason for any denial of an appeal and identify the national drug code
27 for the drug that may be purchased by the pharmacy at a price at or below
28 the price on the maximum allowable cost price list as determined by the
29 pharmacy benefit manager; or -

30 (ii) If the national drug code provided by the pharmacy benefit
31 manager is not available below the maximum allowable cost from the

1 pharmaceutical wholesaler from whom the pharmacy purchases the majority
2 of prescription drugs for resale, then the pharmacy benefit manager shall
3 adjust the maximum allowable cost price above the appealing pharmacy's
4 pharmacy acquisition cost and permit the pharmacy to reverse and rebill
5 each claim affected by the inability to procure the drug at a cost that
6 is equal to or less than the previously appealed maximum allowable cost
7 price.

8 (5) (4) If an appeal is determined to be valid by the pharmacy
9 benefit manager, the pharmacy benefit manager shall:

10 (a) Make an adjustment in the maximum allowable cost drug price no
11 later than one day after the appeal is resolved; and

12 (b) Permit the appealing pharmacy to reverse and rebill the claim in
13 question, using the date of the original claim; -

14 (c) Provide the national drug code number that the increase or
15 change is based on to the pharmacy; and

16 (d) Make the change described in subdivision (5)(a) of this section
17 effective for each similarly situated pharmacy subject to the maximum
18 allowable cost price list.

19 Sec. 4. Except as provided in section 44-4610, a pharmacy benefit
20 manager shall not require pharmacy accreditation standards or
21 recertification requirements to participate in a network which are
22 inconsistent with, more stringent than, or in addition to the federal and
23 state requirements for licensure as a pharmacy in the state.

24 Sec. 5. (1)(a) A pharmacy benefit manager shall not reimburse a
25 pharmacy or pharmacist in this state an amount less than the amount that
26 the pharmacy benefit manager reimburses a pharmacy benefit manager
27 affiliate for providing the same pharmacist services.

28 (b) The amount shall be calculated on a per-unit basis based on the
29 same generic product identifier or generic code number.

30 (2) A pharmacy benefit manager may not directly or indirectly engage
31 in patient steering to a pharmacy benefit manager affiliate.

1 Sec. 6. (1)(a) A pharmacy benefit manager shall owe the pharmacy
2 benefit manager duty to any covered person, health benefit plan, or
3 provider that receives pharmacy benefit management services from the
4 pharmacy benefit manager or that furnishes, covers, receives, or is
5 administered a unit of prescription drug for which the pharmacy benefit
6 manager has provided pharmacy benefit management services.

7 (b) The pharmacy benefit manager duty owed to covered persons shall
8 include duties of care, good faith, and fair dealing. The director shall
9 adopt and promulgate rules and regulations defining the scope of the
10 duties owed to covered persons, including obligations of the pharmacy
11 benefit manager to provide all pharmacy benefit management services
12 related to formulary design, utilization management, and grievances and
13 appeals to covered persons in a transparent manner and in a way that is
14 consistent with the best interests of covered persons, and to disclose
15 all conflicts of interest to covered persons.

16 (c) The pharmacy benefit manager duty owed to health benefit plans
17 shall include duties of care, good faith, and fair dealing. The director
18 shall adopt and promulgate rules and regulations defining the scope of
19 the duties owed to health benefit plans, including obligations of the
20 pharmacy benefit manager to provide transparency to health benefit plans
21 about amounts charged or claimed by the pharmacy benefit manager in a
22 manner that is adequate to identify all instances of spread pricing and
23 to disclose all conflicts of interest to health benefit plans.

24 (d) The pharmacy benefit manager duty owed to providers shall
25 include duties of care, good faith, and fair dealing. The director shall
26 adopt and promulgate rules and regulations defining the scope of the
27 duties owed to providers, including obligations of the pharmacy benefit
28 manager to provide transparency to providers about amounts charged or
29 claimed by the pharmacy benefit manager in a manner that is adequate to
30 identify all instances of spread pricing and to disclose all conflicts of
31 interest to providers.

1 (2) If there is a conflict between the pharmacy benefit manager
2 duties owed under this section, the pharmacy benefit manager duty owed to
3 a covered person shall be primary over the duty owed to any other party,
4 and the pharmacy benefit manager duty owed to a provider shall be primary
5 over the duty owed to a health benefit plan.

6 Sec. 7. (1) No pharmacy benefit manager, health carrier, or health
7 benefit plan may, either directly or through an intermediary, agent, or
8 affiliate, engage in, facilitate, or enter into a contract with another
9 person involving spread pricing in this state.

10 (2) A pharmacy benefit manager contract with a health carrier or
11 health benefit plan entered into on or after the effective date of this
12 act must acknowledge that spread pricing is not permitted under the
13 Pharmacy Benefit Manager Licensure and Regulation Act.

14 Sec. 8. Section 44-4611, Revised Statutes Cumulative Supplement,
15 2022, is amended to read:

16 44-4611 (1) The director shall enforce compliance with the
17 requirements of the Pharmacy Benefit Manager Licensure and Regulation
18 Act.

19 (2)(a) Pursuant to the Insurers Examination Act, the director may
20 examine or audit the books and records of a pharmacy benefit manager
21 providing a claims processing service or other prescription drug or
22 device service for a health benefit plan to determine compliance with the
23 act.

24 (b) Information or data acquired during an examination under
25 subdivision (2)(a) of this section is:

26 (i) Considered proprietary and confidential;

27 (ii) Not subject to sections 84-712, 84-712.01, and 84-712.03 to
28 84-712.09;

29 (iii) Not subject to subpoena; and

30 (iv) Not subject to discovery or admissible as evidence in any
31 private civil action.

1 (3) The director may use any document or information provided
2 pursuant to subsection (3) or (4) of section 44-4606 in the performance
3 of the director's duties to determine compliance with the Pharmacy
4 Benefit Manager Licensure and Regulation Act.

5 (4) The director may suspend or revoke the license of a pharmacy
6 benefit manager and may impose a monetary penalty on a pharmacy benefit
7 manager or the health carrier with which a pharmacy benefit manager is
8 contracted for a violation of the Pharmacy Benefit Manager Licensure and
9 Regulation Act. The director shall establish the monetary penalty for a
10 violation of the act in an amount not to exceed one thousand dollars per
11 entity for each violation.

12 Sec. 9. Original sections 44-4601, 44-4603, 44-4608, and 44-4611,
13 Revised Statutes Cumulative Supplement, 2022, are repealed.