

1 SB73
2 197449-1
3 By Senator Orr
4 RFD: Healthcare
5 First Read: 05-MAR-19

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8 SYNOPSIS: Under existing law, pharmacy benefit
9 managers are neither authorized nor prohibited from
10 preventing a pharmacy or pharmacist from disclosing
11 information on the amount an individual would pay
12 for a prescription drug if he or she does not have
13 an insurance plan, benefits, discounts, or if the
14 individual paid for the prescription without using
15 their pharmacy benefits. This bill would prohibit
16 pharmacy benefit managers from prohibiting
17 pharmacies and pharmacists from providing this
18 information.

19 This bill would further provide auditing
20 procedures for pharmacy records and would limit
21 recoupment for certain errors by pharmacy.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 To prohibit pharmacy benefit managers from
2 preventing pharmacies and pharmacists from disclosing
3 information on the amount an individual would pay for a
4 prescription drug if he or she does not have an insurance
5 plan, benefits, discounts, or if an individual paid for a
6 prescription without using their pharmacy benefits; to amend
7 Sections 34-23-184 through 34-23-186, Code of Alabama 1975, to
8 provide further for auditing procedures; and to limit
9 recoupment for certain errors by a pharmacy.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. This Article shall be known and may be
12 cited as The Pharmacy Patient Protection Act.

13 Section 2. For purposes of this act, the following
14 words shall have the following meanings:

15 (1) PHARMACIST. Any person licensed by the Alabama
16 State Board of Pharmacy to practice the profession of pharmacy
17 in the State of Alabama and whose license is in good standing.

18 (2) PHARMACY. A place licensed by the Alabama State
19 Board of Pharmacy in which prescriptions, drugs, medicines,
20 medical devices, chemicals, and poisons are sold, offered for
21 sale, compounded, or dispensed, and shall include all places
22 whose title may imply the sale, offering for sale,
23 compounding, or dispensing of prescriptions, drugs, medicines,
24 chemicals, or poisons.

25 (3) PHARMACY BENEFIT MANAGEMENT PLAN. An arrangement
26 for the delivery of pharmacist services in which a pharmacy
27 benefit manager undertakes to administer the payment or

1 reimbursement of any of the costs of pharmacist services for
2 an enrollee on a prepaid or insured basis that contains one or
3 more incentive arrangements intended to influence the cost or
4 level of pharmacist services between the plan sponsor and one
5 or more pharmacies with respect to the delivery of pharmacist
6 services and requires or creates benefit payment differential
7 incentives for enrollees to use under the contract with the
8 pharmacy benefit manager.

9 (4) PHARMACY BENEFIT MANAGER. A business that
10 administers the prescription drug or device portion of
11 pharmacy benefit management plans or health insurance plans on
12 behalf of plan sponsors, insurance companies, unions, and
13 health maintenance organizations. The term includes a person
14 or entity acting for a pharmacy benefit manager in a
15 contractual or employment relationship in the performance of
16 pharmacy benefits management for a managed care company,
17 nonprofit hospital or medical service organization, insurance
18 company, or third-party payor.

19 Section 3. (a) A pharmacy benefit manager shall not:

20 (1) Prohibit a pharmacist or pharmacy from providing
21 to an insured individual information on the amount of the
22 insured person's cost share for their prescription drug and
23 the clinical efficacy of a more affordable alternative drug if
24 one is available. Neither a pharmacy or pharmacist can be
25 penalized by a pharmacy benefits manager for disclosing this
26 informality to an insured or for selling to an insured a more
27 affordable alternative if one is available.

1 (2) Prohibit a pharmacist or pharmacy from offering
2 and providing store direct delivery services to an insured
3 person as an ancillary service of the pharmacy.

4 (3) Charge or collect from an insured person a
5 co-payment that exceeds the total submitted charges by the
6 network pharmacy for which the pharmacy is paid;

7 (4) Charge or hold a pharmacist or pharmacy
8 responsible for any fee that is related to the adjudication of
9 a claim.

10 (5) Recoup funds from a pharmacy in connection with
11 claims for which the pharmacy has already been paid without
12 first complying with the requirements set forth in Article 8
13 of this Chapter, unless such recoupment is otherwise permitted
14 or required by law; and

15 (6) Penalize or retaliate against a pharmacist or
16 pharmacy for exercising rights under this Article or Article
17 8.

18 (b) To the extent any provision of this code section
19 is inconsistent or conflicts with applicable federal law,
20 rule, or regulation, such applicable federal law, rule, or
21 regulation shall apply.

22 (c) Each willful violation of the provisions of this
23 article shall be punishable as provided in Section 27-1-12
24 pursuant to the powers of the Commissioner of the Department
25 of Insurance as set forth in Section 27-2-7. In addition, any
26 pharmacist or pharmacy may also enforce this article in the

1 superior court of the county in this state where the
2 pharmacist or pharmacy resides.

3 (d) This act shall be enforced by the Commissioner
4 of Insurance who shall have oversight, including but not
5 limited to, the authority to investigate complaints of alleged
6 violations of the law, prohibit recoupments or adjudication
7 fees, order reimbursement of any wrongful recoupments or
8 imposed fees, institute fines for violations of the law, and
9 promulgate rules and regulations to effectuate the provisions
10 of this act.

11 Section 4. Sections 34-23-184 through 34-23-186,
12 Code of Alabama 1975 are amended to read as follows:

13 "§34-23-184.

14 "(a) The entity conducting an audit shall follow
15 these procedures:

16 "(1) The pharmacy contract shall identify and
17 describe in detail the audit procedures.

18 "(2) The entity conducting the on-site audit shall
19 give the pharmacy written notice at least two weeks before
20 conducting the initial on-site audit for each audit cycle. If
21 the pharmacy benefit manager does not include their auditing
22 guidelines within their provider manual, then the notice must
23 include a documented checklist of all items being audited and
24 the manual, including the name, date, and edition or volume,
25 applicable to the audit and auditing guidelines. For on-site
26 audits a pharmacy benefit manager shall also provide a list of
27 material that is copied or removed during the course of an

1 audit to the pharmacy. The pharmacy benefit manager may
2 document this material on either a checklist or on an audit
3 acknowledgement form. The pharmacy shall produce any items
4 during the course of the audit or within 30 days of the
5 on-site audit.

6 "(3) The entity conducting the on-site audit may not
7 interfere with the delivery of pharmacist services to a
8 patient and shall utilize every effort to minimize
9 inconvenience and disruption to pharmacy operations during the
10 audit process.

11 "(4) An audit that involves clinical or professional
12 judgment shall be conducted by or in consultation with a
13 licensed pharmacist.

14 "(5) The audit shall not consider as fraud any
15 clerical or record keeping error, such as a typographical
16 error, scrivener's error, or computer error regarding a
17 required document or record; however, such errors may be
18 subject to recoupment, provided that a pharmacy shall not be
19 subject to a charge-back, or recoupment, penalty, fee, or
20 assessment of any kind, for a clerical or recordkeeping error
21 in a required document or record, including a typographical or
22 computer error, unless the error resulted in overpayment to
23 the pharmacy. The pharmacy shall have the right to submit
24 amended claims through an online submission to correct
25 clerical or recordkeeping errors in lieu of recoupment of a
26 claim where no actual financial harm to the patient or plan
27 has occurred, provided that the prescription was dispensed

1 according to prescription documentation requirements set forth
2 by the Alabama Pharmacy Act and within the plan limits. The
3 pharmacy shall not be subject to recoupment of funds by the
4 pharmacy benefit manager unless the pharmacy benefit manager
5 can provide proof of intent to commit fraud or such error
6 results in actual financial harm to the pharmacy benefit
7 manager, a health insurance plan managed by the pharmacy
8 benefit manager, or a consumer. A person shall not be subject
9 to criminal penalties for errors provided for in this
10 subsection without proof of intent to commit fraud, waste, or
11 abuse.

12 "a. Any amount to be charged back or recouped due to
13 overpayment shall not exceed the amount the pharmacy was
14 overpaid and a pharmacy shall not be subject to a penalty,
15 fee, or assessment of any kind.

16 "b. The auditing entity shall not include the
17 dispensing fee in the calculation of an overpayment unless a
18 prescription is considered a misfill. As used in this
19 paragraph, misfill means a prescription that was not
20 dispensed, a prescription in which the prescriber denied the
21 authorization request, a prescription in which an additional
22 dispensing fee was charged, or a prescription error.

23 "(6) An entity conducting an audit shall not require
24 any documentation that is not required by state and federal
25 law. The information shall be considered to be valid if
26 documented on the prescription, computerized treatment notes,
27 pharmacy system, or other acceptable medical records.

1 "(7) Unless superseded by state or federal law,
2 auditors shall only have access to previous audit reports on a
3 particular pharmacy conducted by the auditing entity for the
4 same pharmacy benefit manager, health plan, or insurer. An
5 auditing vendor contracting with multiple pharmacy benefit
6 managers or health insurance plans shall not use audit reports
7 or other information gained from an audit on a particular
8 pharmacy to conduct another audit for a different pharmacy
9 benefit manager or health insurance plan.

10 "(8) Audit results shall be disclosed to the health
11 benefit plan in a manner pursuant to contract terms.

12 "(9) A pharmacy may use the records of a hospital,
13 physician, or other authorized practitioner of the healing
14 arts for drugs or medicinal supplies written or transmitted by
15 any means of communication for the purposes of validating the
16 pharmacy record with respect to orders or refills of a legend
17 or narcotic drug.

18 "(10) If the pharmacy benefit manager or its
19 representative conducts an audit, the sample size shall not be
20 greater than 150 prescriptions, provided that a refill does
21 not constitute a separate prescription for the purposes of
22 this subdivision. A prescription, including its refills, shall
23 not be audited more than once a year.

24 "(11) Reasonable costs associated with the audit
25 shall be the responsibility of the auditing entity if the
26 claims sample exceeds 100 unique prescription hard copies.

1 "(12) A finding of an overpayment or an underpayment
2 may be a projection based on the number of patients served
3 having a similar diagnosis or on the number of similar orders
4 or refills for similar drugs, except that recoupment shall be
5 based on the actual overpayment or underpayment of actual
6 claims.

7 "(13) A finding of an overpayment may not include
8 the cost of the drugs that were dispensed in accordance with
9 the prescriber's orders, provided the prescription was
10 dispensed according to prescription documentation requirements
11 set forth by the Alabama Pharmacy Act and within the plan
12 limits. A finding of an overpayment may not include the
13 dispensing fee amount unless any of the following apply:

14 "a. A prescription was not actually dispensed.

15 "b. The prescriber denied authorization.

16 "c. The prescription dispensed was a medication
17 error by the pharmacy.

18 "d. The identified overpayment is solely based on an
19 extra dispensing fee.

20 "(14) Each pharmacy shall be audited under the same
21 standards and parameters as other similarly situated
22 pharmacies audited by the entity and must be audited under
23 rules applicable to the contractor and time period of the
24 prescription.

25 "(15) Where not superseded by state or federal law,
26 the period covered by an audit may not exceed two years from
27 the date the claim was submitted to or adjudicated by a

1 managed care company, nonprofit hospital or medical service
2 organization, health benefit plan, third-party payor, pharmacy
3 benefit manager, a health program administered by a department
4 of the state, or any entity that represents those companies,
5 groups, or department. An audit may not be conducted six
6 months past the date the pharmacy benefit management plan
7 terminated its contract to adjudicate claims with a pharmacy
8 benefit manager, health plan administrator, or any other
9 entity representing those companies.

10 "(16) An audit may not be initiated or scheduled
11 during the first five calendar days of any month.

12 "(b) The entity shall provide the pharmacy with a
13 written report of the audit and comply with all of the
14 following requirements:

15 "(1) The preliminary audit report shall be delivered
16 to the pharmacy within 90 days of (1) an onsite audit; or (2)
17 the due date for documents to be submitted for a desk audit
18 ~~after the conclusion of the audit, with a reasonable extension~~
19 ~~to be granted upon request.~~

20 "(2) A pharmacy shall be allowed at least 30 days
21 following receipt of the preliminary audit report in which to
22 produce documentation to address any discrepancy found during
23 the audit, with a reasonable extension to be granted upon
24 request.

25 "(3) A final audit report shall be delivered to the
26 pharmacy within 180 days after receipt of the preliminary

1 audit report or final appeal, as provided for in Section
2 34-23-185, whichever is later.

3 "(4) The audit documents shall be signed by the
4 auditors assigned to the audit. The acknowledgement or receipt
5 shall be signed by the auditor and the audit report shall
6 contain clear contact information of the representative of the
7 auditing organization.

8 "(5) Recoupments of any disputed funds, or repayment
9 of funds to the entity by the pharmacy if permitted pursuant
10 to contractual agreement, shall occur after final ~~internal~~
11 disposition of the audit, including the appeals process and
12 Commissioner of Insurance review as provided for in Section
13 34-23-185. ~~If the identified discrepancy for an individual~~
14 ~~audit exceeds twenty-five thousand dollars (\$25,000), future~~
15 ~~payments in excess of that amount to the pharmacy may be~~
16 ~~withheld pending finalization of the audit.~~

17 "(6) Interest shall not accrue during the audit
18 period.

19 "(7) Each entity conducting an audit shall provide a
20 copy of the final audit report, after completion of any review
21 process, to the plan sponsor in a manner pursuant to a
22 contract.

23 "§34-23-185.

24 "(a) Each entity conducting an audit shall establish
25 a written appeals process under which a pharmacy may appeal an
26 unfavorable preliminary audit report to the entity.

1 "(b) Following the appeal, if the entity finds that
2 an unfavorable audit report or any portion thereof is
3 unsubstantiated, the entity shall dismiss the audit report or
4 that portion without the necessity of any further action.

5 "(c) Following the appeal, if any of the issues
6 raised in the appeal are not resolved to the satisfaction of
7 the pharmacy, the pharmacy may file a complaint with the
8 Commissioner of Insurance who shall have oversight over
9 Sections 34-23-183 through 34-23-185, Code of Alabama 1975,
10 including but not limited to, the authority to investigate
11 complaints of alleged violations of the law, prohibit
12 recoupment, order reimbursement of any wrongful recoupments,
13 institute fines for violations of the law, and promulgate
14 rules and regulations to effectuate the provisions of this
15 Title. either party, that party may ask for mediation of those
16 ~~unresolved issues unless other remedies are granted under the~~
17 ~~terms of the contract. A certified mediator shall be chosen by~~
18 ~~agreement of the parties from the mediators list maintained by~~
19 ~~the Alabama Supreme Court. The cost of mediation shall be~~
20 ~~borne by agreement of the parties or by the decision of the~~
21 ~~mediator.~~

22 "§34-23-186.

23 "(a) The auditing entity shall not use extrapolation
24 or estimation to calculate penalties or amounts to be charged
25 back or recouped unless otherwise required by federal
26 requirements or federal plans.

1 "(b) The auditing entity conducting a pharmacy audit
2 shall not compensate an employee or contractor with which an
3 auditing entity contracts to conduct a pharmacy audit based on
4 the amount claimed or the actual amount recouped by the
5 pharmacy being audited."

6 Section 5. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.