

IN THE SENATE

SENATE BILL NO. 1068

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO INSURANCE; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A
2 NEW CHAPTER 65, TITLE 41, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR
3 CERTAIN REQUIREMENTS FOR PHARMACY BENEFIT MANAGERS, TO PROHIBIT CER-
4 TAIN ACTIONS, TO PROVIDE APPLICABILITY, AND TO PROVIDE RULEMAKING AU-
5 THORITY; AMENDING SECTION 41-348, IDAHO CODE, TO REVISE PROVISIONS RE-
6 GARDING PROHIBITED ACTS AND TO DEFINE TERMS; AND PROVIDING SEVERABIL-
7 ITY.
8

9 Be It Enacted by the Legislature of the State of Idaho:

10 SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended
11 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
12 ter 65, Title 41, Idaho Code, and to read as follows:

13 CHAPTER 65
14 PHARMACY BENEFIT MANAGERS

15 41-6501. DEFINITIONS. For purposes of this chapter:

16 (1) "Covered person" means a policyholder, subscriber, enrollee, or
17 other individual participating in a plan providing health benefits. A cov-
18 ered person includes the authorized representative of the covered person.

19 (2) "Entity" means a managed care organization, insurer, administra-
20 tor, third-party payor, or self-funded health plan trust fund.

21 (3) "Network pharmacy" means a retail pharmacy that contracts with a
22 pharmacy benefit manager.

23 (4) "Pharmacy benefit manager" means an organization, insurer, or a
24 third-party administrator that offers or manages a prescription drug bene-
25 fit program.

26 (5) "Retail pharmacy" means a chain pharmacy, a supermarket pharmacy,
27 a mass merchandiser pharmacy, an independent pharmacy, or a network of inde-
28 pendent pharmacies that is licensed as a pharmacy by the state of Idaho and
29 that dispenses medications to the general public. Such term does not in-
30 clude a nursing home pharmacy, long-term care pharmacy, hospital pharmacy,
31 clinics, charitable or nonprofit pharmacy, government pharmacy, or pharmacy
32 benefit managers.

33 41-6502. PHARMACY BENEFIT MANAGERS REQUIREMENTS. (1) There is hereby
34 established in the Idaho department of insurance a pharmacy benefit managers
35 program.

36 (2) As of January 1, 2020, all pharmacy benefit managers shall register
37 annually with the director of the Idaho department of insurance before pro-
38 viding, or continuing to provide, services to entities.

39 (3) A pharmacy benefit manager in the program shall not:

1 (a) Prohibit a pharmacist or retail pharmacy from providing a covered
 2 person information on the amount of the cost share for a prescription
 3 drug and the clinical efficacy of a more affordable alternative drug
 4 if one is available, and a pharmacy benefit manager may not penalize
 5 a pharmacist or retail pharmacy for disclosing such information to a
 6 covered person or for selling to a covered person a more affordable al-
 7 ternative if one is available; or

8 (b) Require a pharmacist or retail pharmacy to charge or collect from a
 9 covered person a copayment that exceeds the total submitted charges by
 10 the network pharmacy.

11 (4) The provisions of this chapter shall not apply to pharmacy benefit
 12 managers that exclusively service the following: self-funded health plans
 13 not required to be registered under chapter 40 or 41, title 41, Idaho Code, or
 14 plans governed by tricare, medicare, Idaho medicaid, or medical assistance
 15 as defined in chapter 2, title 56, Idaho Code.

16 41-6503. RULEMAKING AUTHORITY. The director of the Idaho department
 17 of insurance is authorized to promulgate, adopt, and enforce rules and fees
 18 to implement and supervise the registration and such other requirements nec-
 19 essary for pharmacy benefit managers to provide services to entities in ac-
 20 cordance with the provisions of this chapter.

21 SECTION 2. That Section 41-348, Idaho Code, be, and the same is hereby
 22 amended to read as follows:

23 41-348. PROHIBITED ACTS -- SERVICE PROVIDERS AND PRESCRIPTION DRUG
 24 SELLERS. (1) It is unlawful for a person:

25 (a) Knowing that the payment is for the referral of a claimant to a ser-
 26 vice provider, either to accept payment from a service provider or, be-
 27 ing a service provider, to pay another; or

28 (b) To provide or claim or represent to have provided services to a
 29 claimant, knowing the claimant was referred in violation of paragraph
 30 (a) of this subsection.

31 (2) It is unlawful for a service provider to engage in a regular prac-
 32 tice of waiving, rebating, giving, paying, or offering to waive, rebate,
 33 give or pay all or part of a claimant's deductible or claim for casualty,
 34 disability insurance, worker's compensation insurance, health insurance or
 35 property insurance.

36 (3) Notwithstanding any other provision of this section, it is not un-
 37 lawful for a prescription drug manufacturer, or retail pharmacy as defined
 38 in section 41-6501, Idaho Code, to offer rebates, coupons, vouchers, dis-
 39 counts, or payments that would offset all or part of a claimant's immediate
 40 cost-sharing expenses related to coverage of a prescription drug by an in-
 41 surer or employer health plan.

42 (4) If a rebate, coupon, voucher, discount, direct payment, or other
 43 valuable consideration is offered that would offset all or part of a
 44 claimant's immediate cost-sharing expenses related to coverage of a pre-
 45 scription drug by an insurer or employer health plan, then the insurer or
 46 employer health plan may limit direct or indirect reimbursement to the pre-
 47 scription drug manufacturer or retail pharmacy to the lowest cost generic
 48 equivalent, if any, for the drug.

1 (5) Notwithstanding any other provision of this section, any form of
2 direct support offered by drug manufacturers, retail pharmacies, or other
3 interested parties as defined by the director to a claimant to offset all or
4 part of a claimant's immediate cost-sharing expenses related to coverage of
5 a prescription drug by an insurer or employer health plan is not required to
6 be counted toward any deductible or annual limitation on cost-sharing.

7 (6) As used in this section:

8 (a) "Health care services" means a service provided to a claimant for
9 treatment of physical or mental illness or injury arising in whole or
10 substantial part from trauma.

11 (b) "Prescription drug" and "manufacturer" shall have the same mean-
12 ings as provided in section 54-1705, Idaho Code.

13 (c) "Service provider" means a person who directly or indirectly pro-
14 vides, advertises, or otherwise claims to provide services.

15 (ed) "Services" means health care services, motor vehicle body or other
16 motor vehicle repair and preparing, processing, presenting or negoti-
17 ating an insurance claim against an insurance company.

18 (47) Any person or service provider violating the provisions of this
19 section shall be subject to the monetary civil penalties provided in section
20 41-327, Idaho Code, as if the person or service provider were an insurer.

21 SECTION 3. SEVERABILITY. The provisions of this act are hereby declared
22 to be severable and if any provision of this act or the application of such
23 provision to any person or circumstance is declared invalid for any reason,
24 such declaration shall not affect the validity of the remaining portions of
25 this act.