



AN ACT ESTABLISHING ALLOWABLE AND PROHIBITED PRACTICES FOR PHARMACY BENEFIT MANAGERS AND OTHER THIRD-PARTY PAYERS; AMENDING SECTIONS 33-22-101 AND 33-22-170, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Allowable and prohibited fees on pharmacies.** (1) A pharmacy benefit manager or third-party payer may not directly or indirectly charge or hold a pharmacy responsible for a fee related to a claim:

- (a) if the fee is not apparent at the time the claim is processed;
- (b) if the fee is not reported on the remittance advice of an adjudicated claim;
- (c) after the initial claim is adjudicated; or

(d) if the pharmacy and pharmacy benefit manager or third-party payer did not clearly agree to the fee in a writing signed between the pharmacy benefit manager or third-party payer and the pharmacy or an entity representing the pharmacy.

(2) A pharmacy benefit manager or third-party payer may collect a performance-based fee from a pharmacy only if the pharmacy fails to meet the criteria established by a pharmacy performance measurement entity. The fee may be applied only to the professional dispensing fee outlined in the contract with the pharmacy and may not be imposed on the cost of goods sold by a pharmacy.

(3) Only criteria established by a pharmacy performance measurement entity may be used to measure a pharmacy's performance for the purposes of this section.

**Section 2. Limitation on copayments.** A pharmacy benefit manager or third-party payer may not charge a patient a copayment that exceeds the cost of the prescription drug. If a patient pays a copayment, the dispensing provider or pharmacy may retain the adjudicated reimbursement and the pharmacy benefit manager or third-party payer may not alter the adjudicated reimbursement.

**Section 3. Rights of pharmacies.** (1) A pharmacy benefit manager or third-party payer may not prohibit a pharmacist or pharmacy from:

- (a) participating in a class-action lawsuit;
- (b) disclosing to the plan sponsor or to the patient information regarding the adjudicated reimbursement paid to the pharmacy if the pharmacist or pharmacy complies with the requirements of the federal Health Insurance Portability and Accountability Act of 1996, 29 U.S.C. 1181 et seq.;
- (c) providing relevant information to a patient about the patient's prescription drug order, including but not limited to the cost and clinical efficacy of a more affordable alternative drug if one is available;
- (d) mailing or delivering a prescription drug to a patient as an ancillary service of a pharmacy if the practice is not prohibited under Title 37, chapter 7; or
- (e) charging a shipping and handling fee to a patient who has asked that a prescription drug be mailed or delivered if the practice is not prohibited under Title 37, chapter 7; or

(2) A pharmacy benefit manager or third-party payer may not require pharmacy accreditation standards or recertification requirements inconsistent with, more stringent than, or in addition to federal and state requirements for licensure as a pharmacy in this state.

(3) A pharmacist or pharmacy that belongs to a pharmacy services administrative organization may receive a copy of a contract the pharmacy services administrative organization entered into with a pharmacy benefit manager or third-party payer on the pharmacy's or pharmacist's behalf.

(4) A pharmacy benefit manager or third-party payer shall provide a pharmacy or pharmacist with the processor control number, bank identification number, and group number for each pharmacy network established or administered by a pharmacy benefit manager or third-party payer to enable the pharmacy to make an informed contracting decision.

- (5) (a) A pharmacy benefit manager shall:
- (i) offer a pharmacy an opportunity to renew an existing contract every 3 years, at a minimum; and
  - (ii) allow a pharmacy to terminate a contract upon a 90-day notice to the pharmacy benefit manager.
- (b) An addendum or amendment to an existing contract between a pharmacy benefit manager and a pharmacy is effective only upon signing of the addendum or amendment by both parties.

(6) A pharmacy has a private right of action to enforce provisions of [sections 1 through 3].

**Section 4.** Section 33-22-101, MCA, is amended to read:

**"33-22-101. Exceptions to scope.** (1) Subject to subsection (2), parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-129, 33-22-130 through 33-22-136, 33-22-138, 33-22-140, 33-22-141, 33-22-142, 33-22-153, 33-22-243, and 33-22-304, and part 19 of this chapter do not apply to or affect:

(a) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(b) any group or blanket policy;

(c) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance that:

(i) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(ii) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity if the insured or annuitant becomes totally and permanently disabled as defined by the contract or supplemental contract;

(d) reinsurance.

(2) (a) Sections 33-22-137, 33-22-150 through 33-22-152, and 33-22-301 apply to group or blanket policies.

(b) [Sections 1 through 3] apply to workers' compensation, group, and blanket policies."

**Section 5.** Section 33-22-170, MCA, is amended to read:

**"33-22-170. Definitions.** As used in 33-22-170 through 33-22-174 and [sections 1 through 3], the following definitions apply:

(1) "Maximum allowable cost list" means the list of drugs used by a pharmacy benefit manager that sets the maximum cost on which reimbursement to a network pharmacy or pharmacist is based.

(2) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy pursuant to Title 37, chapter 7.

(3) "Pharmacy" means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7, and that has entered into a network contract with a pharmacy benefit

manager, health insurance issuer, or plan sponsor.

(4) "Pharmacy benefit manager" means a person who contracts with pharmacies on behalf of a health insurance issuer, third-party administrator, or plan sponsor to process claims for prescription drugs, provide retail network management for pharmacies or pharmacists, and pay pharmacies or pharmacists for prescription drugs.

(5) "Pharmacy performance measurement entity" means:

(a) the electronic quality improvement platform for plans and pharmacies; or

(b) an entity approved by the board of pharmacy provided for in 2-15-1733 as a nationally recognized and unbiased entity that assists pharmacies in improving performance measures.

(6) "Prescription drug" means any drug that is required by federal law or regulation to be dispensed only by a prescription subject to section 353(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq.

(7) "Prescription drug order" has the meaning provided in 37-7-101.

~~(5)~~(8) "Reference pricing" means a calculation for the price of a pharmaceutical that uses the most current nationally recognized reference price or amount to set the reimbursement for prescription drugs and other products, supplies, and services covered by a network contract between a plan sponsor, health insurance issuer, or pharmacy benefit manager and a pharmacy or pharmacist."

**Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [sections 1 through 3].

**Section 7. Effective date -- applicability.** [This act] is effective January 1, 2020, and applies to contracts and agreements in effect on and after [the effective date of this act].

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I hereby certify that the within bill,  
SB 0083, originated in the Senate.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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Secretary of the Senate

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

SENATE BILL NO. 83

INTRODUCED BY S. FITZPATRICK

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