

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 316**

Introduced by Kolterman, 24.

Read first time January 16, 2019

Committee:

- 1 A BILL FOR AN ACT relating to pharmacy; to adopt the Pharmacy Benefit
- 2 Fairness and Transparency Act.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 7 of this act shall be known and may be  
2 cited as the Pharmacy Benefit Fairness and Transparency Act.

3           Sec. 2. For purposes of the Pharmacy Benefit Fairness and  
4 Transparency Act:

5           (1) Contracted pharmacy means a pharmacy located in this state that  
6 participates either in the network of a pharmacy benefit manager or in a  
7 health care or pharmacy benefits management plan through a direct  
8 contract or through a contract with a pharmacy services administration  
9 organization, a group purchasing organization, or another contracting  
10 agent;

11           (2) Covered entity means (a) a nonprofit hospital or medical  
12 services corporation, an insurer, a third-party payor, a managed care  
13 company, or a health maintenance organization; (b) a health program  
14 administered by the state in the capacity of provider of health insurance  
15 coverage; or (c) an employer, a labor union, or any other group of  
16 persons organized in the state that provides health insurance coverage;

17           (3) Covered individual means a member, participant, enrollee,  
18 contract holder, policyholder, or beneficiary of a covered entity who is  
19 provided health insurance coverage by the covered entity and includes a  
20 dependent or other person provided health insurance coverage through a  
21 policy, contract, or plan for a covered individual;

22           (4) Director means the Director of Insurance;

23           (5)(a) Insurer means any person providing life insurance, sickness  
24 and accident insurance, workers' compensation insurance, or annuities in  
25 this state.

26           (b) Insurer includes an authorized insurance company, a prepaid  
27 hospital or medical care plan, a managed care plan, a health maintenance  
28 organization, any other person providing a plan of insurance subject to  
29 state insurance regulation, and an employer who is approved by the  
30 Nebraska Workers' Compensation Court as a self-covered entity;

31           (6) Pharmacist has the same meaning as in section 38-2832;

1           (7) Pharmacy has the same meaning as in section 71-425;

2           (8) Pharmacy benefit manager means a person or an entity that  
3 performs pharmacy benefits management services for a covered entity and  
4 includes any other person or entity acting on behalf of a pharmacy  
5 benefit manager pursuant to a contractual or employment relationship;

6           (9) Pharmacy benefits management means the administration or  
7 management of prescription drug benefits provided by a covered entity  
8 under the terms and conditions of the contract between the pharmacy  
9 benefit manager and the covered entity;

10           (10) Prescription drug means a prescription drug or device or legend  
11 drug or device as defined in section 38-2841; and

12           (11) Third-party payor means an organization other than the patient  
13 or health care provider involved in the financing of personal health  
14 services.

15           Sec. 3. (1) A pharmacy benefit manager doing business in this state  
16 shall obtain a certificate of authority as a third-party administrator  
17 under the Third-Party Administrator Act and shall be subject to both the  
18 Third-Party Administrator Act and the Pharmacy Benefit Fairness and  
19 Transparency Act.

20           (2) In addition to the fees required under the Third-Party  
21 Administrator Act, a pharmacy benefit manager shall pay to the director a  
22 certification fee established by the director. The certification fee  
23 shall be set to allow the oversight activities required under the  
24 Pharmacy Benefit Fairness and Transparency Act to be self-supporting, but  
25 such fee shall not exceed five thousand dollars.

26           (3) The director shall enforce the Pharmacy Benefit Fairness and  
27 Transparency Act. After notice and hearing, the director may suspend or  
28 revoke a pharmacy benefit manager's certificate of authority as a third-  
29 party administrator upon finding that the pharmacy benefit manager  
30 violated any of the requirements of the Third-Party Administrator Act or  
31 the Pharmacy Benefit Fairness and Transparency Act.

1       (4) In addition to other remedies and penalties available under the  
2 law of this state, each violation of the Pharmacy Benefit Fairness and  
3 Transparency Act shall be an unfair trade practice in the business of  
4 insurance subject to the Unfair Insurance Trade Practices Act.

5       (5) The director may examine the financial condition, affairs, and  
6 management of any pharmacy benefit manager pursuant to the Insurers  
7 Examination Act.

8       Sec. 4. A pharmacy benefit manager shall exercise good faith and  
9 fair dealing in performing its duties under a contract with a covered  
10 entity or a contracted pharmacy.

11       Sec. 5. (1) A pharmacy benefit manager shall be prohibited from  
12 charging or collecting from a covered person a copayment for a  
13 prescription or pharmacy service that exceeds the amount retained by the  
14 network pharmacy from all payment sources for filling the prescription or  
15 providing the service. Any amount paid by an insured pursuant to this  
16 section shall be applied toward any deductible the insured has under the  
17 insured's health plan.

18       (2) A pharmacy benefit manager shall not exclude a Nebraska pharmacy  
19 from participation in its specialty pharmacy network. A licensed pharmacy  
20 or a licensed pharmacist may dispense prescription drugs that are allowed  
21 pursuant to the license.

22       (3) Covered individuals who use a mail-order pharmacy shall not be  
23 charged fees or higher copays to utilize a contracted pharmacy. A  
24 pharmacy benefit manager shall not prohibit a pharmacist or contracted  
25 pharmacy from mailing a prescription drug to a covered individual.

26       Sec. 6. A pharmacist or contracted pharmacy shall not be prohibited  
27 from or subject to penalties or removal from a network or plan for  
28 sharing information regarding the cost, price, or copayment of a  
29 prescription drug with a covered individual or a covered individual's  
30 caregiver.

31       Sec. 7. The director may adopt and promulgate rules and regulations

1 to carry out the Pharmacy Benefit Fairness and Transparency Act.