

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 990

Introduced by Bostar, 29.

Read first time January 05, 2024

Committee:

- 1 A BILL FOR AN ACT relating to the Pharmacy Benefit Manager Licensure and
- 2 Regulation Act; to amend sections 44-4603, 44-4604, 44-4606, and
- 3 44-4610, Revised Statutes Cumulative Supplement, 2022; to define and
- 4 redefine terms; to change provisions relating to applicability of
- 5 the act; to prohibit certain actions by pharmacy benefit managers;
- 6 to harmonize provisions; and to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-4603, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 44-4603 For purposes of the Pharmacy Benefit Manager Licensure and
4 Regulation Act:

5 (1) Auditing entity means a pharmacy benefit manager or any person
6 that represents a pharmacy benefit manager in conducting an audit for
7 compliance with a contract between the pharmacy benefit manager and a
8 pharmacy;

9 (2) Claims processing service means an administrative service
10 performed in connection with the processing and adjudicating of a claim
11 relating to a pharmacist service that includes:

12 (a) Receiving a payment for a pharmacist service; or

13 (b) Making a payment to a pharmacist or pharmacy for a pharmacist
14 service;

15 (3) Covered person means a member, policyholder, subscriber,
16 enrollee, beneficiary, dependent, or other individual participating in a
17 health benefit plan;

18 (4) Director means the Director of Insurance;

19 (5) Health benefit plan means a policy, contract, certificate, plan,
20 or agreement entered into, offered, or issued by a health carrier to
21 provide, deliver, arrange for, pay for, or reimburse any of the costs of
22 a physical, mental, or behavioral health care service that is entered
23 into, offered, or issued (a) by an insured or self-funded health carrier
24 or plan sponsor or (b) under the medical assistance program pursuant to
25 the Medical Assistance Act;

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

27 (7) Other prescription drug or device service means a service other
28 than a claims processing service, provided directly or indirectly,
29 whether in connection with or separate from a claims processing service,
30 including, but not limited to:

31 (a) Negotiating a rebate, discount, or other financial incentive or

1 arrangement with a drug company;

2 (b) Disbursing or distributing a rebate;

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

5 (d) Negotiating or entering into a contractual arrangement with a
6 pharmacist or pharmacy;

7 (e) Developing and maintaining a formulary;

8 (f) Designing a prescription benefit program; or

9 (g) Advertising or promoting a service;

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

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

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

14 (11)(a) Pharmacy benefit manager means a person, business, or
15 entity, including a wholly or partially owned or controlled subsidiary of
16 a pharmacy benefit manager, that provides a claims processing service or
17 other prescription drug or device service for a health benefit plan to a
18 covered person who is a resident of this state; and

19 (b) Pharmacy benefit manager does not include:

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

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

22 (iii) A consultant who only provides advice as to the selection or
23 performance of a pharmacy benefit manager; or

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

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

28 (13) Retail community pharmacy means a facility that is licensed as
29 a pharmacy by the State of Nebraska and dispenses medication to the
30 general public at retail prices.

31 Sec. 2. Section 44-4604, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

2 44-4604 (1) The Pharmacy Benefit Manager Licensure and Regulation
3 Act applies to any contract or health benefit plan issued, renewed,
4 recredentialed, amended, or extended on or after January 1, 2023,
5 including any ~~health carrier that performs a~~ claims processing service or
6 other prescription drug or device service performed through a third
7 party.

8 (2) As a condition of licensure, any contract in existence on the
9 date a pharmacy benefit manager receives its license to do business in
10 this state shall comply with the requirements of the act.

11 (3) Nothing in the act is intended or shall be construed to conflict
12 with existing relevant federal law.

13 Sec. 3. Section 44-4606, Revised Statutes Cumulative Supplement,
14 2022, is amended to read:

15 44-4606 (1) A participation contract between a pharmacy benefit
16 manager and any pharmacist or pharmacy providing prescription drug
17 coverage for a health benefit plan shall not prohibit or restrict any
18 pharmacy or pharmacist from or penalize any pharmacy or pharmacist for
19 disclosing to any covered person any health care information that the
20 pharmacy or pharmacist deems appropriate regarding:

21 (a) The nature of treatment, risks, or an alternative to such
22 treatment;

23 (b) The availability of an alternate therapy, consultation, or test;

24 (c) The decision of a utilization reviewer or similar person to
25 authorize or deny a service;

26 (d) The process that is used to authorize or deny a health care
27 service or benefit; or

28 (e) Information on any financial incentive or structure used by the
29 health carrier.

30 (2) A pharmacy benefit manager shall not prohibit a pharmacy or
31 pharmacist from discussing information regarding the total cost for a

1 pharmacist service for a prescription drug or from selling a more
2 affordable alternative to the covered person if a more affordable
3 alternative is available.

4 (3) A pharmacy benefit manager contract with a participating
5 pharmacist or pharmacy shall not prohibit, restrict, or limit disclosure
6 of information to the director, law enforcement, or a state or federal
7 governmental official, provided that:

8 (a) The recipient of the information represents that such recipient
9 has the authority, to the extent provided by state or federal law, to
10 maintain proprietary information as confidential; and

11 (b) Prior to disclosure of information designated as confidential,
12 the pharmacist or pharmacy:

13 (i) Marks as confidential any document in which the information
14 appears; or

15 (ii) Requests confidential treatment for any oral communication of
16 the information.

17 (4) A pharmacy benefit manager shall not terminate the contract with
18 or penalize a pharmacist or pharmacy due to the pharmacist or pharmacy:

19 (a) Disclosing information about a pharmacy benefit manager
20 practice, except information determined to be a trade secret, as
21 determined by state law or the director; or

22 (b) Sharing any portion of the pharmacy benefit manager contract
23 with the director pursuant to a complaint or a query regarding whether
24 the contract is in compliance with the Pharmacy Benefit Manager Licensure
25 and Regulation Act.

26 (5)(a) A pharmacy benefit manager shall not require a covered person
27 purchasing a covered prescription drug to pay an amount greater than the
28 lesser of the covered person's cost-sharing amount under the terms of the
29 health benefit plan or the amount the covered person would pay for the
30 drug if the covered person were paying the cash price.

31 (b) Any amount paid by a covered person under subdivision (5)(a) of

1 this section shall be attributable toward any deductible or, to the
2 extent consistent with section 2707 of the federal Public Health Service
3 Act, 42 U.S.C. 300gg-6, as such section existed on January 1, 2022, the
4 annual out-of-pocket maximum under the covered person's health benefit
5 plan.

6 (6)(a) A pharmacy benefit manager shall not restrict a covered
7 person's ability to choose how a retail community pharmacy may dispense
8 or deliver prescription drugs.

9 (b) A pharmacy benefit manager shall not prohibit a retail community
10 pharmacy from shipping, mailing, or any manner of delivering dispensed
11 prescription drugs to a covered person at any location requested by the
12 covered individual if such shipping, mailing, or delivery is otherwise
13 allowed by law.

14 (c) A pharmacy benefit manager shall not require a retail community
15 pharmacy to participate in a mail order contract or substantially similar
16 terms to ship, mail, or deliver a prescription drug to a covered person.

17 Sec. 4. Section 44-4610, Revised Statutes Cumulative Supplement,
18 2022, is amended to read:

19 44-4610 A pharmacy benefit manager shall not exclude a Nebraska
20 pharmacy from participation in the pharmacy benefit manager's specialty
21 pharmacy network if:

22 (1) The pharmacy holds a specialty pharmacy accreditation from a
23 nationally recognized independent accrediting organization; and

24 (2) The pharmacy is willing to accept reasonable ~~the~~ terms and
25 conditions of the pharmacy benefit manager's agreement with the pharmacy
26 benefit manager's specialty pharmacies. Such reasonable terms shall not:

27 (a) Exceed reporting requirements and frequency that is required for
28 specialty pharmacy accreditation from a nationally recognized independent
29 accrediting organization;

30 (b) Exceed performance requirements as required for specialty
31 pharmacy accreditation from a nationally recognized independent

1 accrediting organization; or

2 (c) Include excessive or punitive fees.

3 Sec. 5. Original sections 44-4603, 44-4604, 44-4606, and 44-4610,

4 Revised Statutes Cumulative Supplement, 2022, are repealed.