# SENATE BILL REPORT
# SB 5213

As of February 1, 2023

**Title:** An act relating to pharmacy benefit managers.

**Brief Description:** Concerning pharmacy benefit managers.

**Sponsors:** Senators Kuderer, Short, Cleveland, Conway, Dhingra, Rolfes, Wellman and Wilson, C..

**Brief History:**
**Committee Activity:** Health & Long Term Care: 2/03/23.

**Brief Summary of Bill**

- Removes pharmacy benefit managers from the definition of health care benefit manager and separately regulates pharmacy benefit managers.
- Imposes certain requirements on pharmacy benefit manager business practices.

## SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Staff:** Greg Attanasio (786-7410)

**Background:** Health Care Benefit Managers. All health care benefit managers (HCBMs), including pharmacy benefit managers (PBMs), must be registered by the Office of the Insurance Commissioner (OIC). Applications for registration must include the identity of the HCBM and the individuals and entities with a controlling interest in the HCBM, and whether the HCBM does business as a PBM or a different type of benefit manager, in addition to other required information. Registered HCBMs must pay licensing and renewal fees. The fees must be set at an amount that ensures the registration, renewal, and oversight activities of the OIC are self-supporting.

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Prior to approving an application, the OIC must find that the HCBM has not committed any act that resulted in the denial, suspension, or revocation of a registration, has the capacity to comply with state and federal laws, and has designated a person responsible for such compliance.

A HCBM may not provide services to a health carrier or an employee benefits program without a written agreement describing the rights and responsibilities of the parties. The HCBM must file with the OIC every benefit management contract and contract amendment between the HCBM and a provider, pharmacy, pharmacy services administration organization, or other HCBM.

Pharmacy Benefit Manager Regulation. A PBM is a person that contracts with pharmacies on behalf of an insurer, third party payer, or the prescription drug purchasing consortium to:

- process claims;
- provide retail network management;
- pay pharmacies or pharmacists;
- negotiate rebates;
- manage pharmacy networks; or
- make credentialing determinations.

A PBM may not:

- cause or knowingly permit to be used any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading;
- charge a pharmacist or pharmacy a fee related to the adjudication of a claim, credentialing, participation, certification, accreditation, or enrollment in a network, including a fee for the receipt and processing of a pharmacy claim, for the development or management of claims processing services in a PBM network, or for participating in a PBM network;
- require accreditation standards inconsistent with or more stringent than accreditation standards established by a national accreditation organization;
- reimburse a pharmacy or pharmacist an amount less than the amount the PBM reimburses an affiliate for providing the same services; or
- retroactively deny or reduce a claim or aggregate of claims after the claim or aggregate of claims has been adjudicated, unless the original claim was submitted fraudulently or the denial or reduction is the result of a pharmacy audit.

**Summary of Bill:** PBMs are removed from the definition of HCBM, and a new chapter regulating PBMs is created, incorporating existing PBM regulations.

A PBM is defined as a person that administers or manages a pharmacy benefits plan or program under a contractual obligation. A pharmacy benefits plan is a plan or program that pays for, reimburses, covers the cost of, or otherwise provides for pharmacist services to individuals who reside in or are employed in this state.

PBMs must register with the OIC. Registered PBMs must pay licensing and renewal fees. The fees must be set at an amount that ensures the registration, renewal, and oversight activities of the OIC are self-supporting. Before approving an application, the OIC must find that the PBM has not committed any act that resulted in the denial, suspension, or revocation of a registration, has the capacity to comply with state and federal laws, and has designated a person responsible for such compliance.

A PBM may not administer a pharmacy benefits plan without a written agreement describing the rights and responsibilities of the parties. The PBM must file with the OIC every pharmacy benefits plan contract and contract amendment between the PBM and an entity, provider, pharmacy, pharmacy services administration organization, or other PBM.

A PBM may not:

- require a covered person to obtain prescriptions from a mail order pharmacy unless the prescription drug is a specialty drug, and must receive affirmative authorization from a covered person before filling a prescription drug through a mail order pharmacy;
- reimburse a network pharmacy an amount less than the contract price between the pharmacy benefit manager and the person the pharmacy benefit manager has contracted with to provide a pharmacy benefits plan or program;
- deny, restrict, or reduce payment to a participating provider for a medically necessary provider-administered drug on the basis that the provider obtained the drug from a wholesaler or pharmacy;
- exclude a pharmacy from the network on the basis that the pharmacy is new, has only been open for a limited time, or has transferred locations;
- require a covered person to pay more for a drug than the PBM reimburses the pharmacy, including the dispensing fee; or
- use information obtained through claim adjudication to solicit, coerce, or incentivize a covered person to use a pharmacy owned or affiliated with the PBM.

A PBM must:

- include a provision in contracts with participating pharmacies that allows the pharmacy to decline to fill a prescription if the PBM refuses to reimburse the pharmacy at a rate that is at least equal to the pharmacy's acquisition cost of the drug plus a dispensing fee;
- apply the same copays, fees, days allowance regardless of which participating pharmacy a covered person uses;
- permit the covered person to receive delivery or mail order of a medication through any network pharmacy; and
- pay for patient specific assistive hardware related to dispensed prescriptions including, but not limited to, audible prescription labels.

If a covered person uses a mail-order pharmacy, the PBM must allow for dispensing at a

local network pharmacy if the mail-order is delayed by more than one day, or if the order arrives in a unusable condition. The PBM must also ensure that covered persons using a mail-order pharmacy have easy and timely access to prescription counseling by a pharmacist.

A pharmacy benefit manager must establish a process by which a network pharmacy, or its representative, may appeal its reimbursement for a drug. A network pharmacy may appeal a reimbursement cost for a drug if the reimbursement for the drug is less than the net amount that the network pharmacy paid to the supplier of the drug.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.