

By: Representatives Bell (65th), Banks, Burnett, Calhoun, Clark, Dortch, Faulkner, Hines, Holloway, Jackson, Karriem, Paden, Williams-Barnes

To: Public Health and Human Services; Insurance

HOUSE BILL NO. 426

1 AN ACT TO CREATE THE "NO GAG RULE ON PHARMACISTS ACT"; TO
2 STATE LEGISLATIVE FINDINGS AND DECLARATIONS; TO DEFINE CERTAIN
3 TERMS; TO PROHIBIT HEALTH INSURERS AND PHARMACY BENEFITS MANAGERS
4 FROM REQUIRING CONTRACTS WITH PHARMACISTS TO INCLUDE PROVISIONS
5 THAT PENALIZE PHARMACISTS FOR DISCLOSING PRESCRIPTION DRUG COST
6 INFORMATION, INCLUDING THE AVAILABILITY OF MORE AFFORDABLE
7 ALTERNATIVE MEDICATIONS, TO CUSTOMERS; TO REQUIRE THE COMMISSIONER
8 OF INSURANCE TO ENFORCE THE ACT AND UPON REQUEST, TO CAUSE
9 INSURANCE CONTRACTS TO BE AUDITED; AND FOR RELATED PURPOSES.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 **SECTION 1.** This act shall be known and may be cited as the
12 "No Gag Rule on Pharmacists Act."

13 **SECTION 2.** (1) The Legislature finds that:

14 (a) Pharmacy benefits managers (PBMs) are companies
15 that contract with pharmacists to administer the prescription drug
16 benefit component of health benefit plans, setting the co-pay
17 amounts for each drug.

18 (b) PBMs, on behalf of insurers, often use contract
19 provisions to prohibit pharmacists from informing their customers
20 about less expensive ways to pay for their prescriptions.



21 (c) In some cases, customers who have not reached their
22 deductible could pay less by purchasing a drug independently of
23 their insurance, but contract provisions required by PBMs prohibit
24 pharmacists from sharing this option with customers.

25 (d) These contract provisions are unfair to pharmacists
26 who effectively are prohibited from using their professional
27 expertise.

28 (e) Pharmacy customers are disadvantaged unfairly by
29 this system, as they are financially impacted and also unable to
30 make fully informed decisions on their healthcare choices because
31 they are denied information on potential prescription drug
32 options.

33 (2) The Legislature declares that the purpose of this act is
34 to protect the health and welfare of residents who need to take
35 prescription drugs.

36 **SECTION 3.** As used in this act, the following words and
37 phrases have the meanings ascribed in this section unless the
38 context clearly indicates otherwise:

39 (a) "Allowable claim amount" means the amount the
40 insurer or pharmacy benefits manager has agreed to pay the
41 pharmacy for the prescription medication.

42 (b) "Health benefit plan" means any entity or program
43 that provides reimbursement for pharmaceutical services.

44 (c) "Insurer" means any entity that provides or offers
45 a health benefit plan.



46 (d) "Pharmacist" means a pharmacist licensed by the
47 Mississippi State Board of Pharmacy.

48 (e) "Pharmacy" means a place licensed by the
49 Mississippi State Board of Pharmacy.

50 (f) "Pharmacy benefits manager" or "PBM" means a third
51 party administrator of the prescription drug program of a health
52 benefit plan.

53 **SECTION 4.** (1) An insurer or pharmacy benefits manager may
54 not offer or agree to a contract provision that penalizes a
55 pharmacy or pharmacist for disclosing information to a customer
56 regarding:

57 (a) The cost of a prescription medication to the
58 customer; or

59 (b) The availability of any therapeutically equivalent
60 alternative medications or alternative methods of purchasing the
61 prescription medication which are less expensive to the customer
62 than the cost of the prescription medication, including, but not
63 limited to, paying a cash price.

64 (2) A contract provision is deemed to penalize a pharmacy or
65 pharmacist if it prohibits disclosure of information under
66 subsection (1) of this section or if it disadvantages a pharmacy
67 or pharmacist that makes such a disclosure, including through
68 increased utilization review, reduced payments or other financial
69 disincentives.



70 (3) An insurer or pharmacy benefits manager may not require
71 an individual to make a payment at the point of sale for a covered
72 prescription medication in an amount greater than the lesser of:

73 (a) The applicable copayment for the prescription
74 medication;

75 (b) The allowable claim amount for the prescription
76 medication; or

77 (c) The amount an individual would pay for the
78 prescription medication if the individual purchased the
79 prescription medication without using a health benefit plan or any
80 other source of prescription medication benefits or discounts.

81 (4) A provision of a contract which violates this act is
82 void and unenforceable and constitutes an unfair trade practice;
83 however, the invalidity or unenforceability of a contract
84 provision under this subsection does not affect any other
85 provision of the contract.

86 (5) The Commissioner of Insurance shall enforce the
87 provisions of this section and, upon request, may require an audit
88 to be performed on a contract for pharmacy services in order to
89 determine compliance or a failure to comply with the provisions of
90 this section.

91 **SECTION 5.** This act shall take effect and be in force from
92 and after July 1, 2018.

