

By: Representatives Mims, Bain, Shanks,
Scoggin, Tullos, Arnold, Mangold, Carpenter,
Ford (73rd), Anthony

To: Public Health and Human
Services

HOUSE BILL NO. 733

1 AN ACT TO AMEND SECTION 73-21-153, MISSISSIPPI CODE OF 1972,
2 TO DEFINE NEW TERMS UNDER THE PHARMACY BENEFIT PROMPT PAY ACT; TO
3 CREATE NEW SECTION 73-21-154, MISSISSIPPI CODE OF 1972, TO
4 PROHIBIT HEALTH INSURANCE ISSUERS AND PHARMACY BENEFIT MANAGERS
5 FROM CERTAIN DISCRIMINATORY PRACTICES RELATING TO ENTITIES
6 PARTICIPATING IN THE FEDERAL 340B DRUG DISCOUNT PROGRAM; TO AMEND
7 SECTION 73-21-155, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACY
8 BENEFIT MANAGERS FROM REIMBURSING A PHARMACY OR PHARMACIST FOR A
9 PRESCRIPTION DRUG OR PHARMACIST SERVICE IN A NET AMOUNT LESS THAN
10 THE NATIONAL AVERAGE DRUG ACQUISITION COST FOR THE PRESCRIPTION
11 DRUG OR PHARMACIST SERVICE IN EFFECT AT THE TIME THE DRUG OR
12 SERVICE IS ADMINISTERED OR DISPENSED, PLUS A PROFESSIONAL
13 DISPENSING FEE; TO AMEND SECTION 73-21-156, MISSISSIPPI CODE OF
14 1972, TO REQUIRE PHARMACY BENEFIT MANAGERS TO PROVIDE A REASONABLE
15 ADMINISTRATIVE APPEAL PROCEDURE TO ALLOW PHARMACIES TO CHALLENGE A
16 REIMBURSEMENT FOR A SPECIFIC DRUG OR DRUGS AS BEING BELOW THE
17 REIMBURSEMENT RATE REQUIRED BY THE PRECEDING PROVISION; TO PROVIDE
18 THAT IF THE APPEAL IS UPHOLD, THE PHARMACY BENEFIT MANAGER SHALL
19 MAKE THE CHANGE IN THE PAYMENT TO THE REQUIRED REIMBURSEMENT RATE;
20 TO AMEND SECTIONS 73-21-157 AND 73-21-159, MISSISSIPPI CODE OF
21 1972, TO PROVIDE FOR THE LICENSING AND REGULATION OF PHARMACY
22 SERVICES ADMINISTRATIVE ORGANIZATIONS BY THE STATE BOARD OF
23 PHARMACY; TO AMEND SECTION 73-21-161, MISSISSIPPI CODE OF 1972, TO
24 PROHIBIT PHARMACIES, PHARMACY BENEFIT MANAGERS AND PHARMACY
25 BENEFIT MANAGER AFFILIATES FROM ORDERING A PATIENT TO USE AN
26 AFFILIATE PHARMACY OF ANOTHER PHARMACY BENEFIT MANAGER, OR
27 OFFERING OR IMPLEMENTING PLAN DESIGNS THAT PENALIZE A PATIENT WHEN
28 A PATIENT CHOOSES NOT TO USE AN AFFILIATE PHARMACY OR THE
29 AFFILIATE PHARMACY OF ANOTHER PHARMACY BENEFIT MANAGER, OR
30 INTERFERING WITH THE PATIENT'S RIGHT TO CHOOSE THE PATIENT'S
31 PHARMACY OR PROVIDER OF CHOICE; TO CREATE NEW SECTION 73-21-162,
32 MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACY BENEFIT MANAGERS
33 AND PHARMACY BENEFIT MANAGER AFFILIATES FROM PENALIZING OR
34 RETALIATING AGAINST A PHARMACIST, PHARMACY OR PHARMACY EMPLOYEE



35 FOR EXERCISING ANY RIGHTS UNDER THIS ACT, INITIATING ANY JUDICIAL
36 OR REGULATORY ACTIONS, OR APPEARING BEFORE ANY GOVERNMENTAL
37 AGENCY, LEGISLATIVE MEMBER OR BODY OR ANY JUDICIAL AUTHORITY; TO
38 AMEND SECTION 73-21-163, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
39 THE BOARD OF PHARMACY TO BRING INJUNCTIVE ACTIONS AND IMPOSE
40 MONETARY PENALTIES ON PHARMACY SERVICES ADMINISTRATIVE
41 ORGANIZATIONS FOR NONCOMPLIANCE WITH THE PHARMACY BENEFIT PROMPT
42 PAY ACT; TO AMEND SECTIONS 73-21-83 AND 73-21-91, MISSISSIPPI CODE
43 OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED
44 PURPOSES.

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

46 **SECTION 1.** Section 73-21-153, Mississippi Code of 1972, is
47 amended as follows:

48 73-21-153. For purposes of Sections 73-21-151 through
49 73-21-163, the following words and phrases shall have the meanings
50 ascribed herein unless the context clearly indicates otherwise:

51 (a) "Board" means the State Board of Pharmacy.

52 (b) "Commissioner" means the Mississippi Commissioner
53 of Insurance.

54 (c) "Day" means a calendar day, unless otherwise
55 defined or limited.

56 (d) "Electronic claim" means the transmission of data
57 for purposes of payment of covered prescription drugs, other
58 products and supplies, and pharmacist services in an electronic
59 data format specified by a pharmacy benefit manager and approved
60 by the department.

61 (e) "Electronic adjudication" means the process of
62 electronically receiving, reviewing and accepting or rejecting an
63 electronic claim.



64 (f) "Enrollee" means an individual who has been
65 enrolled in a pharmacy benefit management plan.

66 (g) "Health insurance plan" means benefits consisting
67 of prescription drugs, other products and supplies, and pharmacist
68 services provided directly, through insurance or reimbursement, or
69 otherwise and including items and services paid for as
70 prescription drugs, other products and supplies, and pharmacist
71 services under any hospital or medical service policy or
72 certificate, hospital or medical service plan contract, preferred
73 provider organization agreement, or health maintenance
74 organization contract offered by a health insurance issuer.

75 (h) "Pharmacy benefit manager" shall have the same
76 definition as provided in Section 73-21-179. * * * The term
77 "pharmacy benefit manager" shall not include:

78 (i) An insurance company unless the insurance
79 company is providing services as a pharmacy benefit manager as
80 defined in Section 73-21-179, in which case the insurance company
81 shall be subject to Sections 73-21-151 through 73-21-159 only for
82 those pharmacy benefit manager services * * *; and

83 (ii) * * * The pharmacy benefit manager of the
84 Mississippi State and School Employees Health Insurance Plan or
85 the Mississippi Division of Medicaid or its contractors when
86 performing pharmacy benefit manager services for the Division of
87 Medicaid.



88 (i) "Pharmacy benefit manager affiliate" means a
89 pharmacy or pharmacist that directly or indirectly, through one or
90 more intermediaries, owns or controls, is owned or controlled by,
91 or is under common ownership or control with a pharmacy benefit
92 manager.

93 (j) "Pharmacy benefit management plan" shall have the
94 same definition as provided in Section 73-21-179.

95 (k) "Pharmacist," "pharmacist services" and "pharmacy"
96 or "pharmacies" shall have the same definitions as provided in
97 Section 73-21-73.

98 (l) "Uniform claim form" means a form prescribed by
99 rule by the State Board of Pharmacy; however, for purposes of
100 Sections 73-21-151 through 73-21-159, the board shall adopt the
101 same definition or rule where the State Department of Insurance
102 has adopted a rule covering the same type of claim. The board may
103 modify the terminology of the rule and form when necessary to
104 comply with the provisions of Sections 73-21-151 through
105 73-21-159.

106 (m) "Plan sponsors" means the employers, insurance
107 companies, unions and health maintenance organizations that
108 contract with a pharmacy benefit manager for delivery of
109 prescription services.

110 (n) "National average drug acquisition cost" means the
111 average acquisition cost of a drug as determined by the monthly
112 survey of retail pharmacies conducted by the federal Centers for



113 Medicare and Medicaid Services to determine average acquisition
114 cost for Medicaid covered outpatient drugs as set out in Title 42
115 CFR Part 447.

116 (o) "Wholesale acquisition cost" means the wholesale
117 acquisition cost of the drug as defined in 42 USC Section
118 1395w-3a(c)(6)(B).

119 (p) "Pharmacy services administrative organization"
120 means any entity that contracts with a pharmacy to assist with
121 third-party payer interactions and that may provide a variety of
122 other administrative services, including contracting with pharmacy
123 benefits managers on behalf of pharmacies and managing pharmacies'
124 claims payments for third-party payers.

125 (q) "340B entity" means a covered entity participating
126 in the federal 340B drug discount program, as defined in Section
127 340B of the Public Health Service Act, 42 USC Section 256b,
128 including the entity's pharmacy or pharmacies, or any pharmacy or
129 pharmacies under contract with the 340B covered entity to dispense
130 drugs on behalf of the 340B covered entity.

131 **SECTION 2.** The following shall be codified as Section
132 73-21-154, Mississippi Code of 1972:

133 73-21-154. (1) A health insurance issuer or pharmacy
134 benefit manager or other third-party payer shall not:

135 (a) Reimburse a 340B entity for pharmacy-dispensed
136 drugs at a rate lower than the rate paid for the same drug by



137 national drug code number to pharmacies that are not 340B
138 entities;

139 (b) Assess a fee, chargeback or adjustment upon a 340B
140 entity that is not equally assessed on non-340B entities;

141 (c) Exclude 340B entities from its network of
142 participating pharmacies based on criteria that is not applied to
143 non-340B entities; or

144 (d) Require a claim for a drug by national drug code
145 number to include a modifier to identify that the drug is a 340B
146 drug.

147 (2) With respect to a patient eligible to receive drugs
148 subject to an agreement under 42 USC Section 256b, a pharmacy
149 benefit manager or third party that makes payment for those drugs
150 shall not discriminate against a 340B entity in a manner that
151 prevents or interferes with the patient's choice to receive those
152 drugs from the 340B entity.

153 (3) A pharmaceutical manufacturer shall not:

154 (a) Prohibit a pharmacy from contracting or
155 participating with an entity authorized to participate in the 340B
156 drug pricing by denying access to drugs that are manufactured by
157 the pharmaceutical manufacturer.

158 (b) Deny or prohibit 340B drug pricing for a pharmacy
159 that receives drugs purchased under a 340B drug pricing contract
160 pharmacy arrangement with an entity authorized to participate in
161 340B drug pricing.



162 **SECTION 3.** Section 73-21-155, Mississippi Code of 1972, is
163 amended as follows:

164 73-21-155. (1) * * * A pharmacy benefit manager may not
165 reimburse a pharmacy or pharmacist for a prescription drug or
166 pharmacist service in a net amount less than the national average
167 drug acquisition cost for the prescription drug or pharmacist
168 service in effect at the time the drug or service is administered
169 or dispensed, plus a professional dispensing fee of Eleven Dollars
170 and Twenty-nine Cents (\$11.29). If the national average drug
171 acquisition cost is not available at the time a drug is
172 administered or dispensed, a pharmacy benefit manager may not
173 reimburse in a net amount that is less than the wholesale
174 acquisition cost of the drug as defined in 42 USC Section
175 1395w-3a(c) (6) (B), plus a professional dispensing fee of Eleven
176 Dollars and Twenty-nine Cents (\$11.29). The net amount is
177 inclusive of all transaction fees, adjudication fees, price
178 concessions, effective rate reconciliations, and all other revenue
179 and credits passing from the pharmacy to the pharmacy benefit
180 manager. If neither of these reimbursement amounts is available
181 at the time the drug is administered or dispensed, the pharmacy
182 benefit manager shall reimburse the pharmacy for the drug or
183 service administered or dispensed for the pharmacy's usual and
184 customary charge for the service or drug, plus a professional
185 dispensing fee of Eleven Dollars and Twenty-nine cents (\$11.29).



186 (2) * * * Any contract that provides for less than
187 reimbursement provided in subsection (1) of this section violates
188 the public policy of the state and is void.

189 (3) (a) All benefits payable under a pharmacy benefit
190 management plan shall be paid within seven (7) days after receipt
191 of due written proof of a clean claim where claims are submitted
192 electronically, and shall be paid within thirty-five (35) days
193 after receipt of due written proof of a clean claim where claims
194 are submitted in paper format. Benefits due under the plan and
195 claims are overdue if not paid within seven (7) days or
196 thirty-five (35) days, whichever is applicable, after the pharmacy
197 benefit manager receives a clean claim containing necessary
198 information essential for the pharmacy benefit manager to
199 administer preexisting condition, coordination of benefits and
200 subrogation provisions under the plan sponsor's health insurance
201 plan. A "clean claim" means a claim received by any pharmacy
202 benefit manager for adjudication and which requires no further
203 information, adjustment or alteration by the pharmacist or
204 pharmacies or the insured in order to be processed and paid by the
205 pharmacy benefit manager. A claim is clean if it has no defect or
206 impropriety, including any lack of substantiating documentation,
207 or particular circumstance requiring special treatment that
208 prevents timely payment from being made on the claim under this
209 subsection. A clean claim includes resubmitted claims with
210 previously identified deficiencies corrected.



211 (b) A clean claim does not include any of the
212 following:

213 (i) A duplicate claim, which means an original
214 claim and its duplicate when the duplicate is filed within thirty
215 (30) days of the original claim;

216 (ii) Claims which are submitted fraudulently or
217 that are based upon material misrepresentations;

218 (iii) Claims that require information essential
219 for the pharmacy benefit manager to administer preexisting
220 condition, coordination of benefits or subrogation provisions
221 under the plan sponsor's health insurance plan; or

222 (iv) Claims submitted by a pharmacist or pharmacy
223 more than thirty (30) days after the date of service; if the
224 pharmacist or pharmacy does not submit the claim on behalf of the
225 insured, then a claim is not clean when submitted more than thirty
226 (30) days after the date of billing by the pharmacist or pharmacy
227 to the insured.

228 (c) Not later than seven (7) days after the date the
229 pharmacy benefit manager actually receives an electronic claim,
230 the pharmacy benefit manager shall pay the appropriate benefit in
231 full, or any portion of the claim that is clean, and notify the
232 pharmacist or pharmacy (where the claim is owed to the pharmacist
233 or pharmacy) of the reasons why the claim or portion thereof is
234 not clean and will not be paid and what substantiating
235 documentation and information is required to adjudicate the claim



236 as clean. Not later than thirty-five (35) days after the date the
237 pharmacy benefit manager actually receives a paper claim, the
238 pharmacy benefit manager shall pay the appropriate benefit in
239 full, or any portion of the claim that is clean, and notify the
240 pharmacist or pharmacy (where the claim is owed to the pharmacist
241 or pharmacy) of the reasons why the claim or portion thereof is
242 not clean and will not be paid and what substantiating
243 documentation and information is required to adjudicate the claim
244 as clean. Any claim or portion thereof resubmitted with the
245 supporting documentation and information requested by the pharmacy
246 benefit manager shall be paid within twenty (20) days after
247 receipt.

248 (4) If the board finds that any pharmacy benefit manager,
249 agent or other party responsible for reimbursement for
250 prescription drugs and other products and supplies has not paid
251 ninety-five percent (95%) of clean claims as defined in subsection
252 (3) of this section received from all pharmacies in a calendar
253 quarter, he shall be subject to administrative penalty of not more
254 than Twenty-five Thousand Dollars (\$25,000.00) to be assessed by
255 the State Board of Pharmacy.

256 (a) Examinations to determine compliance with this
257 subsection may be conducted by the board. The board may contract
258 with qualified impartial outside sources to assist in examinations
259 to determine compliance. The expenses of any such examinations
260 shall be paid by the pharmacy benefit manager examined.



261 (b) Nothing in the provisions of this section shall
262 require a pharmacy benefit manager to pay claims that are not
263 covered under the terms of a contract or policy of accident and
264 sickness insurance or prepaid coverage.

265 (c) If the claim is not denied for valid and proper
266 reasons by the end of the applicable time period prescribed in
267 this provision, the pharmacy benefit manager must pay the pharmacy
268 (where the claim is owed to the pharmacy) or the patient (where
269 the claim is owed to a patient) interest on accrued benefits at
270 the rate of one and one-half percent (1-1/2%) per month accruing
271 from the day after payment was due on the amount of the benefits
272 that remain unpaid until the claim is finally settled or
273 adjudicated. Whenever interest due pursuant to this provision is
274 less than One Dollar (\$1.00), such amount shall be credited to the
275 account of the person or entity to whom such amount is owed.

276 (d) Any pharmacy benefit manager and a pharmacy may
277 enter into an express written agreement containing timely claim
278 payment provisions which differ from, but are at least as
279 stringent as, the provisions set forth under subsection (3) of
280 this section, and in such case, the provisions of the written
281 agreement shall govern the timely payment of claims by the
282 pharmacy benefit manager to the pharmacy. If the express written
283 agreement is silent as to any interest penalty where claims are
284 not paid in accordance with the agreement, the interest penalty
285 provision of subsection (4) (c) of this section shall apply.



286 (e) The State Board of Pharmacy may adopt rules and
287 regulations necessary to ensure compliance with this subsection.

288 (5) (a) For purposes of this subsection (5), "network
289 pharmacy" means a licensed pharmacy in this state that has a
290 contract with a pharmacy benefit manager to provide covered
291 drugs * * *. A network pharmacy or pharmacist may decline to
292 provide a brand name drug, multisource generic drug, or service,
293 if the network pharmacy or pharmacist is paid less than that
294 network pharmacy's acquisition cost for the product. If the
295 network pharmacy or pharmacist declines to provide such drug or
296 service, the pharmacy or pharmacist shall provide the customer
297 with adequate information as to where the prescription for the
298 drug or service may be filled.

299 (b) The State Board of Pharmacy shall adopt rules and
300 regulations necessary to implement and ensure compliance with this
301 subsection, including, but not limited to, rules and regulations
302 that address access to pharmacy services in rural or underserved
303 areas in cases where a network pharmacy or pharmacist declines to
304 provide a drug or service under paragraph (a) of this subsection.
305 The board shall promulgate the rules and regulations required by
306 this paragraph (b) not later than October 1, 2016.

307 (6) A pharmacy benefit manager shall not directly or
308 indirectly retroactively deny or reduce a claim or aggregate of
309 claims after the claim or aggregate of claims has been
310 adjudicated.



311 **SECTION 4.** Section 73-21-156, Mississippi Code of 1972, is
312 amended as follows:

313 73-21-156. (1) * * * A pharmacy benefit manager shall:

314 (a) Provide a reasonable administrative appeal
315 procedure to allow pharmacies to challenge a * * * reimbursement
316 for a specific drug or drugs as * * * being below the * * *
317 reimbursement rate required by subsection (1) of Section
318 73-21-155.

319 (b) The reasonable administrative appeal procedure
320 shall include the following:

321 (i) A dedicated telephone number, email address
322 and website for the purpose of submitting administrative appeals;

323 (ii) The ability to submit an administrative
324 appeal directly to the pharmacy benefit manager regarding the
325 pharmacy benefit management plan or through a pharmacy service
326 administrative organization; and

327 (iii) A period of not less than * * * forty-five
328 (45) business days to file an administrative appeal.

329 (c) The pharmacy benefit manager shall respond to the
330 challenge under paragraph (a) of this subsection (* * *1)
331 within * * * forty-five (45) business days after receipt of the
332 challenge.

333 (d) If a challenge is made under paragraph (a) of this
334 subsection (* * *1), the pharmacy benefit manager shall



335 within * * * forty-five (45) business days after receipt of the
336 challenge either:

337 (i) If the appeal is upheld:

338 1. Make the change in the * * * payment
339 to * * * the required reimbursement rate;

340 2. Permit the challenging pharmacy or
341 pharmacist to reverse and rebill the claim in question;

342 3. Provide the National Drug Code that the
343 increase or change is based on to the pharmacy or pharmacist; and

344 4. Make the change under item 1 of this
345 subparagraph (i) effective for each similarly situated
346 pharmacy * * *; or

347 (ii) If the appeal is denied, provide the
348 challenging pharmacy or pharmacist the National Drug Code and
349 the * * * national average drug acquisition or wholesale
350 acquisition cost of the drug, as applicable.

351 * * *

352 (2) The board may conduct an audit or audits of appeals
353 denied under the provisions of subsection (1) of this section to
354 ensure compliance with its requirements. In conducting audits,
355 the board is empowered to request production of documents
356 pertaining to compliance with the provisions of this section, and
357 documents so requested shall be produced within seven (7) days of
358 the request unless extended by the board or its duly authorized
359 staff.



360 (* * *3) (a) A pharmacy benefit manager shall not
361 reimburse a pharmacy or pharmacist in the state an amount less
362 than the amount that the pharmacy benefit manager reimburses a
363 pharmacy benefit manager affiliate for providing the same
364 pharmacist services.

365 (b) The amount shall be calculated on a per unit basis
366 based on the same brand and generic product identifier or brand
367 and generic code number.

368 **SECTION 5.** Section 73-21-157, Mississippi Code of 1972, is
369 amended as follows:

370 73-21-157. (1) Before beginning to do business as a
371 pharmacy benefit manager or a pharmacy services administrative
372 organization, a pharmacy benefit manager or a pharmacy services
373 administrative organization shall obtain a license to do business
374 from the board. To obtain a license, the applicant shall submit
375 an application to the board on a form to be prescribed by the
376 board.

377 (2) Each pharmacy benefit manager providing pharmacy
378 management benefit plans or any pharmacy services administrative
379 organization providing services in this state shall file a
380 statement with the board annually by March 1 or within sixty (60)
381 days of the end of its fiscal year if not a calendar year. The
382 statement shall be verified by at least two (2) principal officers
383 and shall cover the preceding calendar year or the immediately



384 preceding fiscal year of the pharmacy benefit manager or the
385 pharmacy services administrative organization.

386 (3) The statement shall be on forms prescribed by the board
387 and shall include:

388 (a) A financial statement of the organization,
389 including its balance sheet and income statement for the preceding
390 year; and

391 (b) Any other information relating to the operations of
392 the pharmacy benefit manager or the pharmacy services
393 administrative organization required by the board under this
394 section.

395 (4) (a) Any information required to be submitted to the
396 board pursuant to licensure application that is considered
397 proprietary by a pharmacy benefit manager or a pharmacy services
398 administrative organization shall be marked as confidential when
399 submitted to the board. All such information shall not be subject
400 to the provisions of the federal Freedom of Information Act or the
401 Mississippi Public Records Act and shall not be released by the
402 board unless subject to an order from a court of competent
403 jurisdiction. The board shall destroy or delete or cause to be
404 destroyed or deleted all such information thirty (30) days after
405 the board determines that the information is no longer necessary
406 or useful.

407 (b) Any person who knowingly releases, causes to be
408 released or assists in the release of any such information shall



409 be subject to a monetary penalty imposed by the board in an amount
410 not exceeding Fifty Thousand Dollars (\$50,000.00) per violation.
411 When the board is considering the imposition of any penalty under
412 this paragraph (b), it shall follow the same policies and
413 procedures provided for the imposition of other sanctions in the
414 Pharmacy Practice Act. Any penalty collected under this paragraph
415 (b) shall be deposited into the special fund of the board and used
416 to support the operations of the board relating to the regulation
417 of pharmacy benefit managers or pharmacy services administrative
418 organizations.

419 (c) All employees of the board who have access to the
420 information described in paragraph (a) of this subsection shall be
421 fingerprinted, and the board shall submit a set of fingerprints
422 for each employee to the Department of Public Safety for the
423 purpose of conducting a criminal history records check. If no
424 disqualifying record is identified at the state level, the
425 Department of Public Safety shall forward the fingerprints to the
426 Federal Bureau of Investigation for a national criminal history
427 records check.

428 (5) If the pharmacy benefit manager or the pharmacy services
429 administrative organization is audited annually by an independent
430 certified public accountant, a copy of the certified audit report
431 shall be filed annually with the board by June 30 or within thirty
432 (30) days of the report being final.



433 (6) The board may extend the time prescribed for any
434 pharmacy benefit manager or pharmacy services administrative
435 organization for filing annual statements or other reports or
436 exhibits of any kind for good cause shown. However, the board
437 shall not extend the time for filing annual statements beyond
438 sixty (60) days after the time prescribed by subsection (1) of
439 this section. The board may waive the requirements for filing
440 financial information for the pharmacy benefit manager or the
441 pharmacy services administrative organization if an affiliate of
442 the pharmacy benefit manager or the pharmacy services
443 administrative organization is already required to file such
444 information under current law with the Commissioner of Insurance
445 and allow the pharmacy benefit manager or the pharmacy services
446 administrative organization to file a copy of documents containing
447 such information with the board in lieu of the statement required
448 by this section.

449 (7) The expense of administering this section shall be
450 assessed annually by the board against all pharmacy benefit
451 managers and pharmacy services administrative organizations
452 operating in this state.

453 (8) A pharmacy benefit manager or third-party payor may not
454 require pharmacy accreditation standards or recertification
455 requirements inconsistent with, more stringent than, or in
456 addition to federal and state requirements for licensure as a
457 pharmacy in this state.



458 (9) A pharmacy or pharmacist that belongs to a pharmacy
459 services administrative organization shall be provided with a true
460 and correct copy of any contract that the pharmacy services
461 administrative organization enters into with a pharmacy benefit
462 manager or third-party payer on the pharmacy's or pharmacist's
463 behalf.

464 **SECTION 6.** Section 73-21-159, Mississippi Code of 1972, is
465 amended as follows:

466 73-21-159. (1) In lieu of or in addition to making its own
467 financial examination of a pharmacy benefit manager or a pharmacy
468 services administrative organization, the board may accept the
469 report of a financial examination of other persons responsible for
470 the pharmacy benefit manager or the pharmacy services
471 administrative organization under the laws of another state
472 certified by the applicable official of such other state.

473 (2) The board shall coordinate financial examinations of a
474 pharmacy benefit manager or a pharmacy services administrative
475 organization that provides pharmacy management benefit plans or
476 pharmacy services administrative organization services in this
477 state to ensure an appropriate level of regulatory oversight and
478 to avoid any undue duplication of effort or regulation. The
479 pharmacy benefit manager or pharmacy services administrative
480 organization being examined shall pay the cost of the examination.
481 The cost of the examination shall be deposited in a special fund
482 that shall provide all expenses for the licensing, supervision and



483 examination of all pharmacy benefit managers or pharmacy services
484 administrative organizations subject to regulation under Sections
485 73-21-71 through 73-21-129 and Sections 73-21-151 through
486 73-21-163.

487 (3) The board may provide a copy of the financial
488 examination to the person or entity who provides or operates the
489 health insurance plan or to a pharmacist or pharmacy.

490 (4) The board is authorized to hire independent financial
491 consultants to conduct financial examinations of a pharmacy
492 benefit manager or a pharmacy services administrative organization
493 and to expend funds collected under this section to pay the costs
494 of such examinations.

495 **SECTION 7.** Section 73-21-161, Mississippi Code of 1972, is
496 amended as follows:

497 73-21-161. (1) As used in this section, the term "referral"
498 means:

499 (a) Ordering of a patient to a pharmacy by a pharmacy
500 benefit manager affiliate either orally or in writing, including
501 online messaging;

502 (b) Ordering a patient to use an affiliate pharmacy of
503 another pharmacy benefit manager;

504 (c) Offering or implementing plan designs that require
505 patients to use affiliated pharmacies or affiliated pharmacies of
506 another pharmacy benefit manager or that penalize a patient,
507 including requiring a patient to pay the full cost for a



508 prescription or a higher cost-share, when a patient chooses not to
509 use an affiliate pharmacy or the affiliate pharmacy of another
510 pharmacy benefit manager; or

511 (* * *d) Patient or prospective patient specific
512 advertising, marketing, or promotion of a pharmacy by an
513 affiliate.

514 The term "referral" does not include a pharmacy's inclusion
515 by a pharmacy benefit manager affiliate in communications to
516 patients, including patient and prospective patient specific
517 communications, regarding network pharmacies and prices, provided
518 that the affiliate includes information regarding eligible
519 nonaffiliate pharmacies in those communications and the
520 information provided is accurate.

521 (2) A pharmacy, pharmacy benefit manager, or pharmacy
522 benefit manager affiliate licensed or operating in Mississippi
523 shall be prohibited from:

524 (a) Making referrals;

525 (b) Transferring or sharing records relative to
526 prescription information containing patient identifiable and
527 prescriber identifiable data to or from a pharmacy benefit manager
528 affiliate for any commercial purpose; however, nothing in this
529 section shall be construed to prohibit the exchange of
530 prescription information between a pharmacy and its affiliate for
531 the limited purposes of pharmacy reimbursement; formulary
532 compliance; pharmacy care; public health activities otherwise



533 authorized by law; or utilization review by a health care
534 provider; * * *

535 (c) Presenting a claim for payment to any individual,
536 third-party payor, affiliate, or other entity for a service
537 furnished pursuant to a referral from an affiliate * * *; or

538 (d) Interfering with the patient's right to choose the
539 patient's pharmacy or provider of choice, including inducement,
540 required referrals or offering financial or other incentives or
541 measures that would constitute a violation of Section 83-9-6.

542 (3) This section shall not be construed to prohibit a
543 pharmacy from entering into an agreement with a pharmacy benefit
544 manager affiliate to provide pharmacy care to patients, provided
545 that the pharmacy does not receive referrals in violation of
546 subsection (2) of this section and the pharmacy provides the
547 disclosures required in subsection (1) of this section.

548 (4) If a pharmacy licensed or holding a nonresident pharmacy
549 permit in this state has an affiliate, it shall annually file with
550 the board a disclosure statement identifying all such affiliates.

551 (5) In addition to any other remedy provided by law, a
552 violation of this section by a pharmacy shall be grounds for
553 disciplinary action by the board under its authority granted in
554 this chapter.

555 (6) A pharmacist who fills a prescription that violates
556 subsection (2) of this section shall not be liable under this
557 section.



558 **SECTION 8.** The following shall be codified as Section
559 73-21-162, Mississippi Code of 1972:

560 73-21-162. A pharmacy benefit manager or pharmacy benefit
561 manager affiliate shall not penalize or retaliate against a
562 pharmacist, pharmacy or pharmacy employee for exercising any
563 rights under this chapter, initiating any judicial or regulatory
564 actions or discussing or disclosing information pertaining to an
565 agreement with a pharmacy benefit manager or a pharmacy benefit
566 manager affiliate when testifying or otherwise appearing before
567 any governmental agency, legislative member or body or any
568 judicial authority.

569 **SECTION 9.** Section 73-21-163, Mississippi Code of 1972, is
570 amended as follows:

571 73-21-163. Whenever the board has reason to believe that a
572 pharmacy benefit manager * * *, pharmacy benefit manager affiliate
573 or pharmacy services administrative organization is using, has
574 used, or is about to use any method, act or practice prohibited in
575 Sections 73-21-151 through 73-21-163 and that proceedings would be
576 in the public interest, it may bring an action in the name of the
577 board against the pharmacy benefit manager * * *, pharmacy benefit
578 manager affiliate or pharmacy services administrative organization
579 to restrain by temporary or permanent injunction the use of such
580 method, act or practice. The action shall be brought in the
581 Chancery Court of the First Judicial District of Hinds County,
582 Mississippi. The court is authorized to issue temporary or



583 permanent injunctions to restrain and prevent violations of
584 Sections 73-21-151 through 73-21-163 and such injunctions shall be
585 issued without bond.

586 (2) The board may impose a monetary penalty on a pharmacy
587 benefit manager * * *, a pharmacy benefit manager affiliate or
588 pharmacy services administrative organization for noncompliance
589 with the provisions of the Sections 73-21-151 through 73-21-163,
590 in amounts of not less than One Thousand Dollars (\$1,000.00) per
591 violation and not more than Twenty-five Thousand Dollars
592 (\$25,000.00) per violation. Each day a violation continues for
593 the same brand or generic product identifier or brand or generic
594 code number is a separate violation. The board shall prepare a
595 record entered upon its minutes that states the basic facts upon
596 which the monetary penalty was imposed. Any penalty collected
597 under this subsection (2) shall be deposited into the special fund
598 of the board.

599 (3) The board may assess a monetary penalty for those
600 reasonable costs that are expended by the board in the
601 investigation and conduct of a proceeding if the board imposes a
602 monetary penalty under subsection (2) of this section. A monetary
603 penalty assessed and levied under this section shall be paid to
604 the board by the licensee, registrant or permit holder upon the
605 expiration of the period allowed for appeal of those penalties
606 under Section 73-21-101, or may be paid sooner if the licensee,
607 registrant or permit holder elects. Any penalty collected by the



608 board under this subsection (3) shall be deposited into the
609 special fund of the board.

610 (4) When payment of a monetary penalty assessed and levied
611 by the board against a licensee, registrant or permit holder in
612 accordance with this section is not paid by the licensee,
613 registrant or permit holder when due under this section, the board
614 shall have the power to institute and maintain proceedings in its
615 name for enforcement of payment in the chancery court of the
616 county and judicial district of residence of the licensee,
617 registrant or permit holder, or if the licensee, registrant or
618 permit holder is a nonresident of the State of Mississippi, in the
619 Chancery Court of the First Judicial District of Hinds County,
620 Mississippi. When those proceedings are instituted, the board
621 shall certify the record of its proceedings, together with all
622 documents and evidence, to the chancery court and the matter shall
623 be heard in due course by the court, which shall review the record
624 and make its determination thereon in accordance with the
625 provisions of Section 73-21-101. The hearing on the matter may,
626 in the discretion of the chancellor, be tried in vacation.

627 (5) The board shall develop and implement a uniform penalty
628 policy that sets the minimum and maximum penalty for any given
629 violation of Sections 73-21-151 through 73-21-163. The board
630 shall adhere to its uniform penalty policy except in those cases
631 where the board specifically finds, by majority vote, that a
632 penalty in excess of, or less than, the uniform penalty is



633 appropriate. That vote shall be reflected in the minutes of the
634 board and shall not be imposed unless it appears as having been
635 adopted by the board.

636 **SECTION 10.** Section 73-21-83, Mississippi Code of 1972, is
637 amended as follows:

638 73-21-83. (1) The board shall be responsible for the
639 control and regulation of the practice of pharmacy, to include the
640 regulation of pharmacy externs or interns and pharmacist
641 technicians, in this state, the regulation of the wholesaler
642 distribution of drugs and devices as defined in Section 73-21-73,
643 the distribution of sample drugs or devices by manufacturer's
644 distributors as defined in Section 73-21-73 by persons other than
645 the original manufacturer or distributor in this state * * *, the
646 regulation of pharmacy benefit managers and pharmacy services
647 administrative organizations as defined in Section 73-21-153.

648 (2) A license for the practice of pharmacy shall be obtained
649 by all persons prior to their engaging in the practice of
650 pharmacy. However, the provisions of this chapter shall not apply
651 to physicians, dentists, veterinarians, osteopaths or other
652 practitioners of the healing arts who are licensed under the laws
653 of the State of Mississippi and are authorized to dispense and
654 administer prescription drugs in the course of their professional
655 practice.

656 (3) The initial licensure fee shall be set by the board but
657 shall not exceed Two Hundred Dollars (\$200.00), except the initial



658 licensure fee for pharmacy benefit managers and pharmacy services
659 administrative organizations shall be set by the board but shall
660 not exceed Five Hundred Dollars (\$500.00).

661 (4) All students actively enrolled in a professional school
662 of pharmacy accredited by the American Council on Pharmaceutical
663 Education who are making satisfactory progress toward graduation
664 and who act as an extern or intern under the direct supervision of
665 a pharmacist in a location permitted by the Board of Pharmacy must
666 obtain a pharmacy student registration prior to engaging in such
667 activity. The student registration fee shall be set by the board
668 but shall not exceed One Hundred Dollars (\$100.00).

669 (5) All persons licensed to practice pharmacy prior to July
670 1, 1991, by the State Board of Pharmacy under Section 73-21-89
671 shall continue to be licensed under the provisions of Section
672 73-21-91.

673 **SECTION 11.** Section 73-21-91, Mississippi Code of 1972, is
674 amended as follows:

675 73-21-91. (1) Every pharmacist shall renew his license
676 annually. To renew his license, a pharmacist shall:

677 (a) Submit an application for renewal on the form
678 prescribed by the board;

679 (b) Submit satisfactory evidence of the completion in
680 the last licensure period of such continuing education units as
681 shall be required by the board, but in no case less than one (1)
682 continuing education unit in the last licensure period;



683 (c) (i) Pay any renewal fees as required by the board,
684 not to exceed One Hundred Dollars (\$100.00) for each annual
685 licensing period, provided that the board may add a surcharge of
686 not more than Five Dollars (\$5.00) to a license renewal fee to
687 fund a program to aid impaired pharmacists or pharmacy students.
688 Any pharmacist license renewal received postmarked after December
689 31 of the renewal period will be returned and a Fifty Dollar
690 (\$50.00) late renewal fee will be assessed before renewal.

691 (ii) The renewal license fee for a pharmacy
692 benefit manager or a pharmacy services administrative organization
693 shall be set by the board, but shall not exceed Five Hundred
694 Dollars (\$500.00). Any license renewal received postmarked after
695 December 31 of the renewal period will be returned and a Five
696 Hundred Dollar (\$500.00) late renewal fee will be assessed before
697 renewal.

698 (2) Any pharmacist who has defaulted in license renewal may
699 be reinstated within two (2) years upon payment of renewal fees in
700 arrears and presentation of evidence of the required continuing
701 education. Any pharmacist defaulting in license renewal for a
702 period in excess of two (2) years shall be required to
703 successfully complete the examination given by the board pursuant
704 to Section 73-21-85 before being eligible for reinstatement as a
705 pharmacist in Mississippi, or shall be required to appear before
706 the board to be examined for his competence and knowledge of the
707 practice of pharmacy, and may be required to submit evidence of



708 continuing education. If the person is found fit by the board to
709 practice pharmacy in this state, the board may reinstate his
710 license to practice pharmacy upon payment of all renewal fees in
711 arrears.

712 (3) Each application or filing made under this section shall
713 include the social security number(s) of the applicant in
714 accordance with Section 93-11-64.

715 **SECTION 12.** This act shall take effect and be in force from
716 and after July 1, 2022.

