MISSISSIPPI LEGISLATURE REGULAR SESSION 2022

By: Senator(s) Parks

To: Public Health and Welfare

SENATE BILL NO. 2894

AN ACT TO AMEND SECTION 73-21-153, MISSISSIPPI CODE OF 1972, TO DEFINE NEW TERMS UNDER THE PHARMACY BENEFIT PROMPT PAY ACT; TO CREATE NEW SECTION 73-21-154, MISSISSIPPI CODE OF 1972, TO PROHIBIT HEALTH INSURANCE ISSUERS AND PHARMACY BENEFIT MANAGERS FROM CERTAIN DISCRIMINATORY PRACTICES RELATING TO ENTITIES PARTICIPATING IN THE FEDERAL 340B DRUG DISCOUNT PROGRAM; TO AMEND SECTION 73-21-155, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACY BENEFIT MANAGERS FROM REIMBURSING A PHARMACY OR PHARMACIST FOR A PRESCRIPTION DRUG OR PHARMACIST SERVICE IN A NET AMOUNT LESS THAN THE NATIONAL AVERAGE DRUG ACQUISITION COST FOR THE PRESCRIPTION DRUG OR PHARMACIST SERVICE IN EFFECT AT THE TIME THE DRUG OR SERVICE IS ADMINISTERED OR DISPENSED, PLUS A PROFESSIONAL DISPENSING FEE; TO AMEND SECTION 73-21-156, MISSISSIPPI CODE OF 1972, TO REQUIRE PHARMACY BENEFIT MANAGERS TO PROVIDE A REASONABLE ADMINISTRATIVE APPEAL PROCEDURE TO ALLOW PHARMACIES TO CHALLENGE A REIMBURSEMENT FOR A SPECIFIC DRUG OR DRUGS AS BEING BELOW THE REIMBURSEMENT RATE REQUIRED BY THE PRECEDING PROVISION; TO PROVIDE THAT IF THE APPEAL IS UPHELD, THE PHARMACY BENEFIT MANAGER SHALL MAKE THE CHANGE IN THE PAYMENT TO THE REQUIRED REIMBURSEMENT RATE; TO AMEND SECTIONS 73-21-157 AND 73-21-159, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE LICENSING AND REGULATION OF PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS BY THE STATE BOARD OF PHARMACY; TO AMEND SECTION 73-21-161, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACIES, PHARMACY BENEFIT MANAGERS AND PHARMACY BENEFIT MANAGER AFFILIATES FROM ORDERING A PATIENT TO USE AN AFFILIATE PHARMACY OF ANOTHER PHARMACY BENEFIT MANAGER, OR OFFERING OR IMPLEMENTING PLAN DESIGNS THAT PENALIZE A PATIENT WHEN A PATIENT CHOOSES NOT TO USE AN AFFILIATE PHARMACY OR THE AFFILIATE PHARMACY OF ANOTHER PHARMACY BENEFIT MANAGER, OR INTERFERING WITH THE PATIENT'S RIGHT TO CHOOSE THE PATIENT'S PHARMACY OR PROVIDER OF CHOICE; TO CREATE NEW SECTION 73-21-162, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACY BENEFIT MANAGERS AND PHARMACY BENEFIT MANAGER AFFILIATES FROM PENALIZING OR RETALIATING AGAINST A PHARMACIST, PHARMACY OR PHARMACY EMPLOYEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) "340B entity" means a covered entity participating in the federal 340B Drug Discount Program, as defined in Section 340B of the Public Health Service Act, 42 USC Section 256b, including the entity's pharmacy or pharmacies, or any pharmacy or pharmacies under contract with the 340B covered entity to dispense drugs on behalf of the 340B covered entity.

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

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

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

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

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

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

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

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

(3) A pharmaceutical manufacturer shall not:

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

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

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

73-21-155. (1) *** * *** A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacist service in a net amount less than the national average drug acquisition cost for the prescription drug or pharmacist service in effect at the time the drug or service is administered or dispensed, plus a professional dispensing fee of Eleven Dollars and Twenty-nine Cents ($11.29). If the national average drug acquisition cost is not available at the time a drug is administered or dispensed, a pharmacy benefit manager may not reimburse in a net amount that is less than the wholesale acquisition cost of the drug as defined in 42 USC Section 1395w-3a(c)(6)(B), plus a professional dispensing fee of Eleven Dollars and Twenty-nine Cents ($11.29). The net amount is inclusive of all transaction fees, adjudication fees, price concessions, effective rate reconciliations, and all other revenue and credits passing from the pharmacy to the pharmacy benefit manager. If neither of these reimbursement amounts is available at the time the drug is administered or dispensed, the pharmacy benefit manager shall reimburse the pharmacy for the drug or service administered or dispensed for the pharmacy's usual and customary charge for the service or drug, plus a professional dispensing fee of Eleven Dollars and Twenty-nine Cents ($11.29).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) If a challenge is made under paragraph (a) of this subsection (* * *1), the pharmacy benefit manager shall within * * * forty-five (45) business days after receipt of the challenge either:

(i) If the appeal is upheld:

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

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

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

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

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

* * *

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

(* * *3) (a) A pharmacy benefit manager shall not reimburse a pharmacy or pharmacist in the state an amount less

than the amount that the pharmacy benefit manager reimburses a pharmacy benefit manager affiliate for providing the same pharmacist services.

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

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

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

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

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

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

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

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

(b) Any person who knowingly releases, causes to be released or assists in the release of any such information shall be subject to a monetary penalty imposed by the board in an amount not exceeding Fifty Thousand Dollars ($50,000.00) per violation.

When the board is considering the imposition of any penalty under this paragraph (b), it shall follow the same policies and procedures provided for the imposition of other sanctions in the Pharmacy Practice Act. Any penalty collected under this paragraph (b) shall be deposited into the special fund of the board and used to support the operations of the board relating to the regulation of pharmacy benefit managers or pharmacy services administrative organizations.

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

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

(6) The board may extend the time prescribed for any pharmacy benefit manager or pharmacy services administrative organization for filing annual statements or other reports or

exhibits of any kind for good cause shown. However, the board shall not extend the time for filing annual statements beyond sixty (60) days after the time prescribed by subsection (1) of this section. The board may waive the requirements for filing financial information for the pharmacy benefit manager or the pharmacy services administrative organization if an affiliate of the pharmacy benefit manager or the pharmacy services administrative organization is already required to file such information under current law with the Commissioner of Insurance and allow the pharmacy benefit manager or the pharmacy services administrative organization to file a copy of documents containing such information with the board in lieu of the statement required by this section.

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

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

(9) A pharmacy or pharmacist that belongs to a pharmacy services administrative organization shall be provided with a true and correct copy of any contract that the pharmacy services

administrative organization enters into with a pharmacy benefit manager or third-party payer on the pharmacy's or pharmacist's behalf.

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

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

(2) The board shall coordinate financial examinations of a pharmacy benefit manager or a pharmacy services administrative organization that provides pharmacy management benefit plans or pharmacy services administrative organization services in this state to ensure an appropriate level of regulatory oversight and to avoid any undue duplication of effort or regulation. The pharmacy benefit manager or pharmacy services administrative organization being examined shall pay the cost of the examination. The cost of the examination shall be deposited in a special fund that shall provide all expenses for the licensing, supervision and examination of all pharmacy benefit managers or pharmacy services administrative organizations subject to regulation under Sections

73-21-71 through 73-21-129 and Sections 73-21-151 through 73-21-163.

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

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

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

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

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

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

(* * *c) Offering or implementing plan designs that require patients to use affiliated pharmacies or affiliated pharmacies of another pharmacy benefit manager or that penalize a patient, including requiring a patient to pay the full cost for a prescription or a higher cost-share, when a patient chooses not to

use an affiliate pharmacy or the affiliate pharmacy of another pharmacy benefit manager; or

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

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

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

(a) Making referrals;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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