By: Representatives Mims, Bain, Mangold, Newman, Shanks, Hulum, Hobgood-Wilkes, Williamson

To: Public Health and Human Services

HOUSE BILL NO. 1096

1 AN ACT TO AMEND SECTION 73-21-153, MISSISSIPPI CODE OF 1972,
2 TO DEFINE NEW TERMS AND REVISE THE DEFINITIONS OF EXISTING TERMS
3 UNDER THE PHARMACY BENEFIT PROMPT PAY ACT; TO CREATE NEW SECTION
4 73-21-154, MISSISSIPPI CODE OF 1972, TO PROHIBIT HEALTH INSURANCE
5 ISSUERS AND PHARMACY BENEFIT MANAGERS FROM CERTAIN DISCRIMINATORY
6 PRACTICES RELATING TO ENTITIES PARTICIPATING IN THE FEDERAL 340B
7 DRUG DISCOUNT PROGRAM; TO AMEND SECTION 73-21-155, MISSISSIPPI
8 CODE OF 1972, TO PROHIBIT PHARMACY BENEFIT MANAGERS FROM
9 REIMBURSING A PHARMACY OR PHARMACIST FOR A PRESCRIPTION DRUG OR
10 PHARMACIST SERVICE IN A NET AMOUNT LESS THAN THE NATIONAL AVERAGE
11 DRUG ACQUISITION COST FOR THE PRESCRIPTION DRUG OR PHARMACIST
12 SERVICE IN EFFECT AT THE TIME THE DRUG OR SERVICE IS ADMINISTERED
13 OR DISPENSED, PLUS A PROFESSIONAL DISPENSING FEE; TO AMEND SECTION
14 73-21-156, MISSISSIPPI CODE OF 1972, TO REQUIRE PHARMACY BENEFIT
15 MANAGERS TO PROVIDE A REASONABLE ADMINISTRATIVE APPEAL PROCEDURE
16 TO ALLOW PHARMACIES TO CHALLENGE A REIMBURSEMENT FOR A SPECIFIC
17 DRUG OR DRUGS AS BEING BELOW THE REIMBURSEMENT RATE REQUIRED BY
18 THE PRECEDING PROVISION; TO PROVIDE THAT IF THE APPEAL IS UPHELD,
19 THE PHARMACY BENEFIT MANAGER SHALL MAKE THE CHANGE IN THE PAYMENT
20 TO THE REQUIRED REIMBURSEMENT RATE; TO AMEND SECTION 73-21-157,
21 MISSISSIPPI CODE OF 1972, TO REQUIRE A PHARMACY SERVICES
22 ADMINISTRATIVE ORGANIZATION TO PROVIDE TO A PHARMACY OR PHARMACIST
23 A COPY OF ANY CONTRACT ENTERED INTO ON BEHALF OF THE PHARMACY OR
24 PHARMACIST BY THE PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION;
25 TO CREATE NEW SECTION 73-21-158, MISSISSIPPI CODE OF 1972, TO
26 REQUIRE PHARMACY BENEFIT MANAGERS TO PASS ON TO THE PLAN SPONSOR
27 ALL REBATES AND PAYMENTS THAT IT RECEIVES FROM PHARMACEUTICAL
28 MANUFACTURERS IN CONNECTION WITH CLAIMS ADMINISTERED ON BEHALF OF
29 THE PLAN SPONSOR; TO REQUIRE PHARMACY BENEFIT MANAGERS TO REPORT
30 ANNUALLY TO EACH PLAN SPONSOR THE AGGREGATE AMOUNT OF ALL REBATES
31 AND OTHER PAYMENTS THAT THE PHARMACY BENEFIT MANAGER RECEIVED FROM
32 PHARMACEUTICAL MANUFACTURERS IN CONNECTION WITH CLAIMS
33 ADMINISTERED ON BEHALF OF THE PLAN SPONSOR; TO AMEND SECTION
34 73-21-161, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACIES,

35 PHARMACY BENEFIT MANAGERS AND PHARMACY BENEFIT MANAGER AFFILIATES
36 FROM ORDERING A PATIENT TO USE AN AFFILIATE PHARMACY OF ANOTHER
37 PHARMACY BENEFIT MANAGER, OR OFFERING OR IMPLEMENTING PLAN DESIGNS
38 THAT PENALIZE A PATIENT WHEN A PATIENT CHOOSES NOT TO USE AN
39 AFFILIATE PHARMACY OR THE AFFILIATE PHARMACY OF ANOTHER PHARMACY
40 BENEFIT MANAGER, OR INTERFERING WITH THE PATIENT'S RIGHT TO CHOOSE
41 THE PATIENT'S PHARMACY OR PROVIDER OF CHOICE; TO CREATE NEW
42 SECTION 73-21-162, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACY
43 BENEFIT MANAGERS AND PHARMACY BENEFIT MANAGER AFFILIATES FROM
44 PENALIZING OR RETALIATING AGAINST A PHARMACIST, PHARMACY OR
45 PHARMACY EMPLOYEE FOR EXERCISING ANY RIGHTS UNDER THIS ACT,
46 INITIATING ANY JUDICIAL OR REGULATORY ACTIONS, OR APPEARING BEFORE
47 ANY GOVERNMENTAL AGENCY, LEGISLATIVE MEMBER OR BODY OR ANY
48 JUDICIAL AUTHORITY; TO AMEND SECTION 73-21-163, MISSISSIPPI CODE
49 OF 1972, TO AUTHORIZE THE BOARD OF PHARMACY, FOR THE PURPOSES OF
50 CONDUCTING INVESTIGATIONS, TO CONDUCT EXAMINATIONS OF PHARMACY
51 BENEFIT MANAGERS AND TO ISSUE SUBPOENAS TO OBTAIN DOCUMENTS OR
52 RECORDS THAT IT DEEMS RELEVANT TO THE INVESTIGATION; AND FOR
53 RELATED PURPOSES.

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

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

57 73-21-153. For purposes of Sections 73-21-151 through
58 73-21-163, the following words and phrases shall have the meanings
59 ascribed herein unless the context clearly indicates otherwise:

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

61 (b) "Clean claim" means a completed billing instrument,
62 paper or electronic, received by a pharmacy benefit manager from a
63 pharmacist or pharmacies or the insured, which is accepted and
64 payment remittance advice is provided by the pharmacy benefit
65 manager. A clean claim includes resubmitted claims with
66 previously identified deficiencies corrected.

67 (c) "Commissioner" means the Mississippi Commissioner
68 of Insurance.

69 (* * *d) "Day" means a calendar day, unless otherwise
70 defined or limited.
71 (* * *e) "Electronic claim" means the transmission of
72 data for purposes of payment of covered prescription drugs, other
73 products and supplies, and pharmacist services in an electronic
74 data format specified by a pharmacy benefit manager and approved
75 by the department.
76 (* * *f) "Electronic adjudication" means the process
77 of electronically receiving * * * and reviewing an electronic
78 claim and either accepting and providing payment remittance advice
79 for the electronic claim or rejecting an electronic claim.
80 (* * *g) "Enrollee" means an individual who has been
81 enrolled in a pharmacy benefit management plan.
82 (* * *h) "Health insurance plan" means benefits
83 consisting of prescription drugs, other products and supplies, and
84 pharmacist services provided directly, through insurance or
85 reimbursement, or otherwise and including items and services paid
86 for as prescription drugs, other products and supplies, and
87 pharmacist services under any hospital or medical service policy
88 or certificate, hospital or medical service plan contract,
89 preferred provider organization agreement, or health maintenance
90 organization contract offered by a health insurance issuer.
91 (i) "National average drug acquisition cost" means the
92 average acquisition cost of a drug as determined by the monthly
93 survey of retail pharmacies conducted by the federal Centers for

94 Medicare and Medicaid Services to determine average acquisition
95 cost for Medicaid covered outpatient drugs as set out in Title 42
96 CFR Part 447.
97 (j) "Payment remittance advice" means the claim detail
98 that the pharmacy receives when successfully processing an
99 electronic or paper claim. The claim detail shall contain, but is
100 not limited to:
101 (i) The amount that the pharmacy benefit manager
102 will reimburse for product ingredient; and
103 (ii) The amount that the pharmacy benefit manager
104 will reimburse for product dispensing fee; and
105 (iii) The amount that the pharmacy benefit manager
106 dictates the patient must pay.
107 (k) "Pharmacist," "pharmacist services" and "pharmacy"
108 or "pharmacies" shall have the same definitions as provided in
109 Section 73-21-73.
110 (* * *l) "Pharmacy benefit manager" * * * includes
111 those entities defined as a pharmacy benefit manager in Section
112 73-21-179 and also includes those entities sponsoring or providing
113 cash discount cards as defined in Section 83-9-6.1. * * * The
114 term "pharmacy benefit manager" shall not include:
115 (i) An insurance company unless the insurance
116 company is providing services as a pharmacy benefit manager as
117 defined in Section 73-21-179, in which case the insurance company

118 shall be subject to Sections 73-21-151 through * * * 73-21-163
119 only for those pharmacy benefit manager services * * *; and
120 (ii) * * * The pharmacy benefit manager of the
121 Mississippi State and School Employees Health Insurance Plan or
122 its contractors when performing pharmacy benefit manager services
123 for the plan, or the Mississippi Division of Medicaid or its
124 contractors when performing pharmacy benefit manager services for
125 the Division of Medicaid.
126 (m) "Pharmacy benefit management plan" means an
127 arrangement for the delivery of pharmacist's services in which a
128 pharmacy benefit manager undertakes to administer the payment or
129 reimbursement of any of the costs of pharmacist's services for an
130 enrollee or participant on a prepaid or insured basis or otherwise
131 that:
132 (i) Contains one or more incentive arrangements
133 intended to influence the cost or level of pharmacist's services
134 between the plan sponsor and one or more pharmacies with respect
135 to the delivery of pharmacist's services; and
136 (ii) Requires or creates benefit payment
137 differential incentives for enrollees to use under contract with
138 the pharmacy benefit manager.
139 (* * *n) "Pharmacy benefit manager affiliate"
140 means * * * an entity that directly or indirectly, * * * owns or
141 controls, is owned or controlled by, or is under common ownership
142 or control with a pharmacy benefit manager.

143 * * *

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

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

154 (q) "Rebate" means any and all payments and price
155 concessions that accrue to a pharmacy benefits manager or its plan
156 sponsor client, directly or indirectly, including through an
157 affiliate, subsidiary, third party or intermediary, including
158 off-shore group purchasing organizations, from a pharmaceutical
159 manufacturer, its affiliate, subsidiary, third party or
160 intermediary, including, but not limited to, payments, discounts,
161 administration fees, credits, incentives or penalties associated
162 directly or indirectly in any way with claims administered on
163 behalf of a plan sponsor.

164 (* * *r) "Uniform claim form" means a form prescribed
165 by rule by the State Board of Pharmacy; however, for purposes of
166 Sections 73-21-151 through * * * 73-21-163, the board shall adopt
167 the same definition or rule where the State Department of

168 Insurance has adopted a rule covering the same type of claim. The
169 board may modify the terminology of the rule and form when
170 necessary to comply with the provisions of Sections 73-21-151
171 through *** 73-21-163.
172 ***
173 (s) "Wholesale acquisition cost" means the wholesale
174 acquisition cost of the drug as defined in 42 USC Section
175 1395w-3a(c)(6)(B).
176 (t) "340B entity" means a covered entity participating
177 in the federal 340B drug discount program, as defined in Section
178 340B of the Public Health Service Act, 42 USC Section 256b,
179 including the entity's pharmacy or pharmacies, or any pharmacy or
180 pharmacies under contract with the 340B covered entity to dispense
181 drugs on behalf of the 340B covered entity.
182 **SECTION 2.** The following shall be codified as Section
183 73-21-154, Mississippi Code of 1972:
184 73-21-154. (1) A health insurance issuer or pharmacy
185 benefit manager or other third-party payer shall not:
186 (a) Reimburse a 340B entity for pharmacy-dispensed
187 drugs at a rate lower than the rate paid for the same drug by
188 national drug code number to pharmacies that are not 340B
189 entities;
190 (b) Assess a fee, chargeback or adjustment upon a 340B
191 entity that is not equally assessed on non-340B entities;

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192 (c) Exclude 340B entities from its network of
193 participating pharmacies based on criteria that is not applied to
194 non-340B entities; or
195 (d) Require a claim for a drug by national drug code
196 number to include a modifier to identify that the drug is a 340B
197 drug.
198 (2) With respect to a patient eligible to receive drugs
199 subject to an agreement under 42 USC Section 256b, a pharmacy
200 benefit manager or third party that makes payment for those drugs
201 shall not discriminate against a 340B entity in a manner that
202 prevents or interferes with the patient's choice to receive those
203 drugs from the 340B entity.
204 (3) A pharmaceutical manufacturer shall not:
205 (a) Prohibit a pharmacy from contracting or
206 participating with an entity authorized to participate in the 340B
207 drug pricing by denying access to drugs that are manufactured by
208 the pharmaceutical manufacturer.
209 (b) Deny or prohibit 340B drug pricing for a pharmacy
210 that receives drugs purchased under a 340B drug pricing contract
211 pharmacy arrangement with an entity authorized to participate in
212 340B drug pricing.
213 **SECTION 3.** Section 73-21-155, Mississippi Code of 1972, is
214 amended as follows:
215 73-21-155. (1) *** A pharmacy benefit manager shall not
216 reimburse a pharmacy or pharmacist for a prescription drug or

217 pharmacist service in a net amount less than the national average
218 drug acquisition cost for the prescription drug or pharmacist
219 service in effect at the time that the drug or service is
220 administered or dispensed, plus a professional dispensing fee of
221 Eleven Dollars and Twenty-nine Cents ($11.29). If the national
222 average drug acquisition cost is not available at the time that a
223 drug is administered or dispensed, a pharmacy benefit manager
224 shall not reimburse in a net amount that is less than the
225 wholesale acquisition cost of the drug as defined in 42 USC
226 Section 1395w-3a(c)(6)(B), plus a professional dispensing fee of
227 Eleven Dollars and Twenty-nine Cents ($11.29). The net amount is
228 inclusive of all transaction fees, adjudication fees, price
229 concessions, effective rate reconciliations, and all other revenue
230 and credits passing from the pharmacy to the pharmacy benefit
231 manager. If neither of these reimbursement amounts is available
232 at the time that the drug is administered or dispensed, the
233 pharmacy benefit manager shall reimburse the pharmacy for the drug
234 or service administered or dispensed for the pharmacy's usual and
235 customary charge for the service or drug, plus a professional
236 dispensing fee of Eleven Dollars and Twenty-nine Cents ($11.29).
237 (2) *** * *** A pharmacy benefit manager is prohibited from
238 charging a plan sponsor more for a prescription drug than the net
239 amount that it pays a pharmacy for the prescription drug as
240 provided in subsection (1) of this section. Separately identified
241 administrative fees or costs are exempt from this requirement, if

242 mutually agreed upon in writing by the payor and pharmacy benefit
243 manager.
244 (3) Any contract that provides for less than reimbursement
245 provided in subsection (1) of this section violates the public
246 policy of the state and is void.
247 (4) (a) All benefits payable under a pharmacy benefit
248 management plan shall be paid within seven (7) days after receipt
249 of * * * a clean electronic claim where * * * the claim was * * *
250 electronically adjudicated, and shall be paid within thirty-five
251 (35) days after receipt of due written proof of a clean claim
252 where claims are submitted in paper format. Benefits due under
253 the plan and claims are overdue if not paid within seven (7) days
254 or thirty-five (35) days, whichever is applicable, after the
255 pharmacy benefit manager receives a clean claim containing
256 necessary information essential for the pharmacy benefit manager
257 to administer preexisting condition, coordination of benefits and
258 subrogation provisions under the plan sponsor's health insurance
259 plan. * * *
260 * * *
261 (* * *b) * * * If an electronic claim is denied, the
262 pharmacy benefit manager shall * * * notify the pharmacist or
263 pharmacy * * * of the reasons why the claim or portion thereof is
264 not clean and will not be paid and what substantiating
265 documentation and information is required to adjudicate the claim
266 as clean. If a written claim is denied, the pharmacy benefit

267 manager shall notify the pharmacy or pharmacies. * * * No later
268 than thirty-five (35) days * * * of receipt of such claim, the
269 pharmacy benefit manager shall * * * provide the pharmacist or
270 pharmacy * * * the reasons why the claim or portion thereof is not
271 clean and will not be paid and what substantiating documentation
272 and information is required to adjudicate the claim as clean. Any
273 claim or portion thereof resubmitted with the supporting
274 documentation and information requested by the pharmacy benefit
275 manager shall be paid within twenty (20) days after receipt.
276 (c) A claim for pharmacist services may not be
277 retroactively denied or reduced after adjudication of the claim
278 unless the:
279 (i) Original claim was submitted fraudulently;
280 (ii) Original claim payment was incorrect because
281 the pharmacy or pharmacist had already been paid for the
282 pharmacist services;
283 (iii) Pharmacist services were not rendered by the
284 pharmacy or pharmacist; or
285 (iv) Adjustment was agreed upon by the pharmacy
286 prior to the denial or reduction.
287 (* * *5) If the board finds that any pharmacy benefit
288 manager, agent or other party responsible for reimbursement for
289 prescription drugs and other products and supplies has not paid
290 ninety-five percent (95%) of clean claims * * * received from all
291 pharmacies in a calendar quarter, he shall be subject to

292 administrative penalty of not more than Twenty-five Thousand
293 Dollars ($25,000.00) to be assessed by the State Board of
294 Pharmacy.

295 (a) Examinations to determine compliance with
296 this *** section may be conducted by the board. The board may
297 contract with qualified impartial outside sources to assist in
298 examinations to determine compliance. The expenses of any such
299 examinations shall be paid by the pharmacy benefit manager
300 examined and deposited into a special fund that is created in the
301 State Treasury, which shall be used by the board, upon
302 appropriation by the Legislature, to support the operations of the
303 board relating to the regulation of pharmacy benefit managers.

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

308 (c) If the claim is not denied for valid and proper
309 reasons by the end of the applicable time period prescribed in
310 this provision, the pharmacy benefit manager must pay the pharmacy
311 (where the claim is owed to the pharmacy) or the patient (where
312 the claim is owed to a patient) interest on accrued benefits at
313 the rate of one and one-half percent (1-1/2%) per month accruing
314 from the day after payment was due on the amount of the benefits
315 that remain unpaid until the claim is finally settled or
316 adjudicated. Whenever interest due pursuant to this provision is

317 less than One Dollar ($1.00), such amount shall be credited to the
318 account of the person or entity to whom such amount is owed.
319 (d) Any pharmacy benefit manager and a pharmacy may
320 enter into an express written agreement containing timely claim
321 payment provisions which differ from, but are at least as
322 stringent as, the provisions set forth under subsection (* * *4)
323 of this section, and in such case, the provisions of the written
324 agreement shall govern the timely payment of claims by the
325 pharmacy benefit manager to the pharmacy. If the express written
326 agreement is silent as to any interest penalty where claims are
327 not paid in accordance with the agreement, the interest penalty
328 provision of * * * paragraph (c) of this subsection shall apply.
329 (e) The State Board of Pharmacy may adopt rules and
330 regulations necessary to ensure compliance with this subsection.
331 (* * *6) (a) For purposes of this subsection (* * *6),
332 "network pharmacy" means a licensed pharmacy in this state that
333 has a contract with a pharmacy benefit manager to provide covered
334 drugs at a negotiated reimbursement rate. A network pharmacy or
335 pharmacist may decline to provide a brand name drug, multisource
336 generic drug, or service, if the network pharmacy or pharmacist is
337 paid less than that network pharmacy's acquisition cost for the
338 product. If the network pharmacy or pharmacist declines to
339 provide such drug or service, the pharmacy or pharmacist shall
340 provide the customer with adequate information as to where the
341 prescription for the drug or service may be filled.

342 (b) The State Board of Pharmacy shall adopt rules and
343 regulations necessary to implement and ensure compliance with this
344 subsection, including, but not limited to, rules and regulations
345 that address access to pharmacy services in rural or underserved
346 areas in cases where a network pharmacy or pharmacist declines to
347 provide a drug or service under paragraph (a) of this
348 subsection. *** * ***
349 (*** * ***7) A pharmacy benefit manager shall not directly or
350 indirectly retroactively deny or reduce a claim or aggregate of
351 claims after the claim or aggregate of claims has been
352 adjudicated.
353 **SECTION 4.** Section 73-21-156, Mississippi Code of 1972, is
354 amended as follows:
355 73-21-156. (1) *** * *** A pharmacy benefit manager shall:
356 (a) Provide a reasonable administrative appeal
357 procedure to allow pharmacies to challenge *** * *** reimbursement for
358 a specific drug or drugs as *** * *** being below the *** * ***
359 reimbursement rate required by subsection (1) of Section
360 73-21-155.
361 (b) The reasonable administrative appeal procedure
362 shall include the following:
363 (i) A dedicated telephone number, email address
364 and website for the purpose of submitting administrative appeals;
365 (ii) The ability to submit an administrative
366 appeal directly to the pharmacy benefit manager regarding the

367 pharmacy benefit management plan or through a pharmacy service
368 administrative organization; and
369 (iii) A period of less than * * * forty-five (45)
370 business days to file an administrative appeal.
371 (c) The pharmacy benefit manager shall respond to the
372 challenge under paragraph (a) of this subsection (* * *1)
373 within * * * forty-five (45) business days after receipt of the
374 challenge.
375 (d) If a challenge is made under paragraph (a) of this
376 subsection (* * *1), the pharmacy benefit manager shall
377 within * * * forty-five (45) business days after receipt of the
378 challenge either:
379 (i) * * * Uphold the appeal * * * and:
380 1. Make the change * * * to the reimbursement
381 rate;
382 2. Reimburse the corrected rate within three
383 (3) business days and permit the challenging pharmacy or
384 pharmacist to reverse and rebill the claim in question, if
385 necessary;
386 3. Provide the National Drug Code that the
387 increase or change is based on to the pharmacy or pharmacist; and
388 4. Make the change under item 1 of this
389 subparagraph (i) effective for each similarly situated
390 pharmacy * * *; or

391 (ii) * * * Deny the appeal * * * and provide the
392 challenging pharmacy or pharmacist the National Drug Code and
393 the * * * national average drug acquisition or wholesale
394 acquisition cost of the drug, as applicable.
395 * * *
396 (2) The board may conduct an audit or audits of appeals
397 denied under the provisions of subsection (1) of this section to
398 ensure compliance with its requirements. In conducting audits,
399 the board is empowered to request production of documents
400 pertaining to compliance with the provisions of this section, and
401 documents so requested shall be produced within seven (7) days of
402 the request unless extended by the board or its duly authorized
403 staff.
404 (a) The pharmacy benefit manager being audited shall
405 pay all costs of such audit. The cost of the audit examination
406 shall be deposited into the special fund created in Section
407 73-21-155, and shall be used by the board, upon appropriation of
408 the Legislature, to support the operations of the board relating
409 to the regulation of pharmacy benefit managers.
410 (b) The board is authorized to hire independent
411 consultants to conduct appeal audits of a pharmacy benefit manager
412 and expend funds collected under this section to pay the cost of
413 performing audit examination services.
414 (* * *3) (a) A pharmacy benefit manager shall not
415 reimburse a pharmacy or pharmacist in the state an amount less

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

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

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

424 73-21-157. (1) Before beginning to do business as a
425 pharmacy benefit manager, a pharmacy benefit manager shall obtain
426 a license to do business from the board. To obtain a license, the
427 applicant shall submit an application to the board on a form to be
428 prescribed by the board.

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

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

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

441 (b) Any other information relating to the operations of
442 the pharmacy benefit manager required by the board under this
443 section.
444 (4) (a) Any information required to be submitted to the
445 board pursuant to licensure application that is considered
446 proprietary by a pharmacy benefit manager shall be marked as
447 confidential when submitted to the board. All such information
448 shall not be subject to the provisions of the federal Freedom of
449 Information Act or the Mississippi Public Records Act and shall
450 not be released by the board unless subject to an order from a
451 court of competent jurisdiction. The board shall destroy or
452 delete or cause to be destroyed or deleted all such information
453 thirty (30) days after the board determines that the information
454 is no longer necessary or useful.
455 (b) Any person who knowingly releases, causes to be
456 released or assists in the release of any such information shall
457 be subject to a monetary penalty imposed by the board in an amount
458 not exceeding Fifty Thousand Dollars ($50,000.00) per violation.
459 When the board is considering the imposition of any penalty under
460 this paragraph (b), it shall follow the same policies and
461 procedures provided for the imposition of other sanctions in the
462 Pharmacy Practice Act. Any penalty collected under this paragraph
463 (b) shall be deposited into the special fund created in Section
464 73-21-155, and shall be used by the board, upon appropriation of

465 the Legislature, to support the operations of the board relating
466 to the regulation of pharmacy benefit managers.
467 (c) All employees of the board who have access to the
468 information described in paragraph (a) of this subsection shall be
469 fingerprinted, and the board shall submit a set of fingerprints
470 for each employee to the Department of Public Safety for the
471 purpose of conducting a criminal history records check. If no
472 disqualifying record is identified at the state level, the
473 Department of Public Safety shall forward the fingerprints to the
474 Federal Bureau of Investigation for a national criminal history
475 records check.
476 (5) If the pharmacy benefit manager is audited annually by
477 an independent certified public accountant, a copy of the
478 certified audit report shall be filed annually with the board by
479 June 30 or within thirty (30) days of the report being final.
480 (6) The board may extend the time prescribed for any
481 pharmacy benefit manager for filing annual statements or other
482 reports or exhibits of any kind for good cause shown. However,
483 the board shall not extend the time for filing annual statements
484 beyond sixty (60) days after the time prescribed by subsection (1)
485 of this section. The board may waive the requirements for filing
486 financial information for the pharmacy benefit manager if an
487 affiliate of the pharmacy benefit manager is already required to
488 file such information under current law with the Commissioner of
489 Insurance and allow the pharmacy benefit manager to file a copy of

490 documents containing such information with the board in lieu of
491 the statement required by this section.
492 (7) The expense of administering this section shall be
493 assessed annually by the board against all pharmacy benefit
494 managers operating in this state.
495 (8) A pharmacy benefit manager or third-party payor may not
496 require pharmacy accreditation standards or recertification
497 requirements inconsistent with, more stringent than, or in
498 addition to federal and state requirements for licensure as a
499 pharmacy in this state.
500 (9) A pharmacy or pharmacist that belongs to a pharmacy
501 services administrative organization shall be provided with a true
502 and correct copy of any contract that the pharmacy services
503 administrative organization enters into with a pharmacy benefit
504 manager or third-party payer on the pharmacy's or pharmacist's
505 behalf.
506 **SECTION 6.** The following shall be codified as Section
507 73-21-158, Mississippi Code of 1972:
508 73-21-158. (1) A pharmacy benefit manager shall pass on to
509 the plan sponsor one hundred percent (100%) of all rebates and
510 other payments that it receives directly or indirectly from
511 pharmaceutical manufacturers in connection with claims
512 administered on behalf of the plan sponsor. In addition, a
513 pharmacy benefit manager shall report annually to each plan
514 sponsor the aggregate amount of all rebates and other payments

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515 that the pharmacy benefit manager received from pharmaceutical
516 manufacturers in connection with claims administered on behalf of
517 the plan sponsor.

518 (2) A pharmacy benefit manager or third-party payer may not
519 charge or cause a patient to pay a copayment that exceeds the
520 total reimbursement paid by the pharmacy benefit manager to the
521 pharmacy.

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

524 73-21-161. (1) As used in this section, the term "referral"
525 means:

526 (a) Ordering of a patient to a pharmacy benefit manager
527 affiliate by a pharmacy benefit manager or a pharmacy benefit
528 manager affiliate either orally or in writing, including online
529 messaging, or any form of communication;

530 (b) Requiring a patient to use an affiliate pharmacy of
531 another pharmacy benefit manager;

532 (*** * ***c) Offering or implementing plan designs that
533 require patients to use affiliated pharmacies or affiliated
534 pharmacies of another pharmacy benefit manager or that penalize a
535 patient, including requiring a patient to pay the full cost for a
536 prescription or a higher cost-share, when a patient chooses not to
537 use an affiliate pharmacy or the affiliate pharmacy of another
538 pharmacy benefit manager; or

539 (* * *d) Patient or prospective patient specific
540 advertising, marketing, or promotion of a pharmacy by * * * a
541 pharmacy benefit manager or pharmacy benefit manager affiliate.
542 The term "referral" does not include a pharmacy's inclusion
543 by a pharmacy benefit manager or a pharmacy benefit manager
544 affiliate in communications to patients, including patient and
545 prospective patient specific communications, regarding network
546 pharmacies and prices, provided that the affiliate includes
547 information regarding eligible nonaffiliate pharmacies in those
548 communications and the information provided is accurate.
549 (2) A pharmacy, pharmacy benefit manager, or pharmacy
550 benefit manager affiliate licensed or operating in Mississippi
551 shall be prohibited from:
552 (a) Making referrals;
553 (b) Transferring or sharing records relative to
554 prescription information containing patient identifiable and
555 prescriber identifiable data to or from a pharmacy benefit manager
556 affiliate for any commercial purpose; however, nothing in this
557 section shall be construed to prohibit the exchange of
558 prescription information between a pharmacy and its affiliate for
559 the limited purposes of pharmacy reimbursement; formulary
560 compliance; pharmacy care; public health activities otherwise
561 authorized by law; or utilization review by a health care
562 provider; or

ST: Pharmacy Benefits Prompt Pay Act; revise various provisions of.

563 (c) Presenting a claim for payment to any individual,
564 third-party payor, affiliate, or other entity for a service
565 furnished pursuant to a referral from * * * a pharmacy benefit
566 manager or pharmacy benefit manager affiliate.
567 (d) Interfering with the patient's right to choose the
568 patient's pharmacy or provider of choice, including inducement,
569 required referrals or offering financial or other incentives or
570 measures that would constitute a violation of Section 83-9-6.
571 (3) This section shall not be construed to prohibit a
572 pharmacy from entering into an agreement with a pharmacy benefit
573 manager affiliate to provide pharmacy care to patients, provided
574 that the pharmacy does not receive referrals in violation of
575 subsection (2) of this section and the pharmacy provides the
576 disclosures required in subsection (1) of this section.
577 (4) If a pharmacy licensed or holding a nonresident pharmacy
578 permit in this state has an affiliate, it shall annually file with
579 the board a disclosure statement identifying all such affiliates.
580 (5) In addition to any other remedy provided by law, a
581 violation of this section by a pharmacy shall be grounds for
582 disciplinary action by the board under its authority granted in
583 this chapter.
584 (6) A pharmacist who fills a prescription that violates
585 subsection (2) of this section shall not be liable under this
586 section.

587 **SECTION 8.** The following shall be codified as Section
588 73-21-162, Mississippi Code of 1972:

589 73-21-162. (1) Retaliation is prohibited.

590 (a) A pharmacy benefit manager may not retaliate
591 against a pharmacist or pharmacy based on the pharmacist's or
592 pharmacy's exercise of any right or remedy under this chapter.
593 Retaliation prohibited by this section includes, but is not
594 limited to:

595 (i) Terminating or refusing to renew a contract
596 with the pharmacist or pharmacy;

597 (ii) Subjecting the pharmacist or pharmacy to an
598 increased frequency of audits, number of claims audited, or amount
599 of monies for claims audited; or

600 (iii) Failing to promptly pay the pharmacist or
601 pharmacy any money owed by the pharmacy benefit manager to the
602 pharmacist or pharmacy.

603 (b) For the purposes of this section, a pharmacy
604 benefit manager is not considered to have retaliated against a
605 pharmacy if the pharmacy benefit manager:

606 (i) Takes an action in response to a credible
607 allegation of fraud against the pharmacist or pharmacy; and

608 (ii) Provides reasonable notice to the pharmacist
609 or pharmacy of the allegation of fraud and the basis of the
610 allegation before initiating an action.

611 (2) A pharmacy benefit manager or pharmacy benefit manager
612 affiliate shall not penalize or retaliate against a pharmacist,
613 pharmacy or pharmacy employee for exercising any rights under this
614 chapter, initiating any judicial or regulatory actions or
615 discussing or disclosing information pertaining to an agreement
616 with a pharmacy benefit manager or a pharmacy benefit manager
617 affiliate when testifying or otherwise appearing before any
618 governmental agency, legislative member or body or any judicial
619 authority.

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

622 73-21-163. (1) Whenever the board has reason to believe
623 that a pharmacy benefit manager or pharmacy benefit manager
624 affiliate is using, has used, or is about to use any method, act
625 or practice prohibited in Sections 73-21-151 through 73-21-163 and
626 that proceedings would be in the public interest, it may bring an
627 action in the name of the board against the pharmacy benefit
628 manager or pharmacy benefit manager affiliate to restrain by
629 temporary or permanent injunction the use of such method, act or
630 practice. The action shall be brought in the Chancery Court of
631 the First Judicial District of Hinds County, Mississippi. The
632 court is authorized to issue temporary or permanent injunctions to
633 restrain and prevent violations of Sections 73-21-151 through
634 73-21-163 and such injunctions shall be issued without bond.

635 (2) The board may impose a monetary penalty on a pharmacy
636 benefit manager or a pharmacy benefit manager affiliate for
637 noncompliance with the provisions of the Sections 73-21-151
638 through 73-21-163, in amounts of not less than One Thousand
639 Dollars ($1,000.00) per violation and not more than Twenty-five
640 Thousand Dollars ($25,000.00) per violation. Each day that a
641 violation continues * * * is a separate violation. The board
642 shall prepare a record entered upon its minutes that states the
643 basic facts upon which the monetary penalty was imposed. Any
644 penalty collected under this subsection (2) shall be deposited
645 into the special fund of the board created in Section 73-21-155,
646 and shall be used by the board, upon appropriation of the
647 Legislature, to support the operations of the board relating to
648 the regulation of pharmacy benefit managers.
649 (3) For the purposes of conducting investigations, the
650 board, through its executive director, may conduct examinations of
651 a pharmacy benefit manager and may also issue subpoenas to any
652 individual, pharmacy, pharmacy benefit manager, or any other
653 entity having documents or records that it deems relevant to the
654 investigation. The board may contract with qualified impartial
655 outside sources to assist in examinations to determine
656 noncompliance with the provisions of Sections 73-21-151 through
657 73-21-163. Money collected by the board under subsection (2) of
658 this section may be used to pay the cost of conducting or
659 contracting for such examinations.

660 (* * *4) The board may assess a monetary penalty for those
661 reasonable costs that are expended by the board in the
662 investigation and conduct of a proceeding if the board imposes a
663 monetary penalty under subsection (2) of this section. A monetary
664 penalty assessed and levied under this section shall be paid to
665 the board by the licensee, registrant or permit holder upon the
666 expiration of the period allowed for appeal of those penalties
667 under Section 73-21-101, or may be paid sooner if the licensee,
668 registrant or permit holder elects. Any penalty collected by the
669 board under this subsection (3) shall be deposited into the
670 special fund of the board created in Section 73-21-155, and shall
671 be used by the board, upon appropriation of the Legislature, to
672 support the operations of the board relating to the regulation of
673 pharmacy benefit managers.
674 (* * *5) When payment of a monetary penalty assessed and
675 levied by the board against a licensee, registrant or permit
676 holder in accordance with this section is not paid by the
677 licensee, registrant or permit holder when due under this section,
678 the board shall have the power to institute and maintain
679 proceedings in its name for enforcement of payment in the chancery
680 court of the county and judicial district of residence of the
681 licensee, registrant or permit holder, or if the licensee,
682 registrant or permit holder is a nonresident of the State of
683 Mississippi, in the Chancery Court of the First Judicial District
684 of Hinds County, Mississippi. When those proceedings are

685 instituted, the board shall certify the record of its proceedings,
686 together with all documents and evidence, to the chancery court
687 and the matter shall be heard in due course by the court, which
688 shall review the record and make its determination thereon in
689 accordance with the provisions of Section 73-21-101. The hearing
690 on the matter may, in the discretion of the chancellor, be tried
691 in vacation.

692 (*** * ***6) The board shall develop and implement a uniform
693 penalty policy that sets the minimum and maximum penalty for any
694 given violation of Sections 73-21-151 through 73-21-163. The
695 board shall adhere to its uniform penalty policy except in those
696 cases where the board specifically finds, by majority vote, that a
697 penalty in excess of, or less than, the uniform penalty is
698 appropriate. That vote shall be reflected in the minutes of the
699 board and shall not be imposed unless it appears as having been
700 adopted by the board.

701 **SECTION 10.** This act shall take effect and be in force from
702 and after July 1, 2023.