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To: Drug Policy; State
 Affairs

HOUSE BILL NO. 1119

1 AN ACT TO AMEND SECTION 73-21-151, MISSISSIPPI CODE OF 1972,
 2 TO RENAME THE "PHARMACY BENEFIT PROMPT PAY ACT" TO THE
 3 "REPRESENTATIVE ANDY STEPP PHARMACY BENEFIT PROMPT PAY ACT"; TO
 4 AMEND SECTION 73-21-153, MISSISSIPPI CODE OF 1972, TO DEFINE NEW
 5 TERMS AND REVISE THE DEFINITIONS OF EXISTING TERMS UNDER THE
 6 PHARMACY BENEFIT PROMPT PAY ACT; TO AMEND SECTION 73-21-155,
 7 MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACY BENEFIT MANAGERS
 8 FROM REIMBURSING A PHARMACY OR PHARMACIST FOR A PRESCRIPTION DRUG
 9 OR PHARMACIST SERVICE IN A NET AMOUNT LESS THAN THE NATIONAL
 10 AVERAGE DRUG ACQUISITION COST (NADAC) FOR THE PRESCRIPTION DRUG OR
 11 PHARMACIST SERVICE IN EFFECT AT THE TIME THE DRUG IS ADMINISTERED
 12 OR DISPENSED, PLUS A PROFESSIONAL DISPENSING FEE EQUAL TO THE
 13 PROFESSIONAL DISPENSING FEE PAID BY MISSISSIPPI DIVISION OF
 14 MEDICAID; TO REQUIRE A PHARMACY BENEFIT MANAGER TO MAKE PROMPT
 15 PAYMENT TO A PHARMACY; TO AMEND SECTION 73-21-156, MISSISSIPPI
 16 CODE OF 1972, TO REQUIRE PHARMACY BENEFIT MANAGERS TO PROVIDE A
 17 REASONABLE ADMINISTRATIVE APPEAL PROCEDURE TO ALLOW PHARMACIES TO
 18 CHALLENGE A REIMBURSEMENT FOR A SPECIFIC DRUG OR DRUGS AS BEING
 19 BELOW THE REIMBURSEMENT RATE REQUIRED BY THE PRECEDING PROVISION;
 20 TO AMEND SECTION 73-21-157, MISSISSIPPI CODE OF 1972, TO REQUIRE A
 21 PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION TO BE LICENSED WITH
 22 THE MISSISSIPPI BOARD OF PHARMACY; TO REQUIRE A PHARMACY SERVICES
 23 ADMINISTRATIVE ORGANIZATION TO PROVIDE TO A PHARMACY OR PHARMACIST
 24 A COPY OF ANY CONTRACT ENTERED INTO ON BEHALF OF THE PHARMACY OR
 25 PHARMACIST BY THE PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION;
 26 TO CREATE NEW SECTION 73-21-158, MISSISSIPPI CODE OF 1972, TO
 27 PROHIBIT PHARMACY BENEFIT MANAGERS FROM CHARGING A PLAN SPONSOR
 28 MORE FOR A PRESCRIPTION DRUG THAN THE NET AMOUNT IT PAYS A
 29 PHARMACY FOR THE PRESCRIPTION DRUG; TO PROHIBIT A PHARMACY BENEFIT
 30 MANAGER OR THIRD-PARTY PAYOR FROM CHARGING A PATIENT AN AMOUNT
 31 THAT EXCEEDS THE TOTAL AMOUNT RETAINED BY THE PHARMACY; TO AMEND
 32 SECTION 73-21-161, MISSISSIPPI CODE OF 1972, TO PROHIBIT A
 33 PHARMACY BENEFIT MANAGER OR PHARMACY BENEFIT MANAGER AFFILIATES
 34 FROM ORDERING A PATIENT TO USE A SPECIFIC PHARMACY OR PHARMACIES,



35 INCLUDING AN AFFILIATE PHARMACY, OFFERING OR IMPLEMENTING PLAN
36 DESIGNS THAT PENALIZE A PATIENT WHEN A PATIENT CHOOSES NOT TO USE
37 A PARTICULAR PHARMACY, INCLUDING AN AFFILIATE PHARMACY,
38 ADVERTISING OR PROMOTING A PHARMACY, INCLUDING AN AFFILIATE
39 PHARMACY, OVER ANOTHER IN-NETWORK PHARMACY, CREATING NETWORK OR
40 ENGAGING IN PRACTICES THAT EXCLUDE AN IN-NETWORK PHARMACY,
41 ENGAGING IN A PRACTICE THAT ATTEMPTS TO LIMIT THE DISTRIBUTION OF
42 PRESCRIPTION DRUG TO CERTAIN PHARMACIES, AND INTERFERING WITH THE
43 PATIENT'S RIGHT TO CHOOSE THE PATIENT'S PHARMACY OR PROVIDER OF
44 CHOICE; TO EXEMPT FROM THESE PROHIBITIONS FACILITIES THAT ARE
45 LICENSED TO FILL PRESCRIPTIONS SOLELY FOR EMPLOYEES OF A PLAN
46 SPONSOR OR EMPLOYER; TO CREATE NEW SECTION 73-21-162, MISSISSIPPI
47 CODE OF 1972, TO PROHIBIT PHARMACY BENEFIT MANAGERS AND PHARMACY
48 BENEFIT MANAGER AFFILIATES FROM PENALIZING OR RETALIATING AGAINST
49 A PHARMACIST, PHARMACY OR PHARMACY EMPLOYEE FOR EXERCISING ANY
50 RIGHTS UNDER THIS ACT, INITIATING ANY JUDICIAL OR REGULATORY
51 ACTIONS, OR APPEARING BEFORE ANY GOVERNMENTAL AGENCY, LEGISLATIVE
52 MEMBER OR BODY OR ANY JUDICIAL AUTHORITY; TO AMEND SECTION
53 73-21-163, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF
54 PHARMACY, FOR THE PURPOSES OF CONDUCTING INVESTIGATIONS, TO
55 CONDUCT EXAMINATIONS OF PHARMACY BENEFIT MANAGERS AND TO ISSUE
56 SUBPOENAS TO OBTAIN DOCUMENTS OR RECORDS THAT IT DEEMS RELEVANT TO
57 THE INVESTIGATION; AND FOR RELATED PURPOSES.

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

59 **SECTION 1.** Section 73-21-151, Mississippi Code of 1972, is
60 amended as follows:

61 73-21-151. Sections 73-21-151 through 73-21-163 shall be
62 known as the "Representative Andy Stepp Pharmacy Benefit Prompt
63 Pay Act."

64 **SECTION 2.** Section 73-21-153, Mississippi Code of 1972, is
65 amended as follows:

66 73-21-153. For purposes of Sections 73-21-151 through
67 73-21-163, the following words and phrases shall have the meanings
68 ascribed herein unless the context clearly indicates otherwise:

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

70 (b) "Clean claim" means a completed billing instrument,
71 paper or electronic, received by a pharmacy benefit manager from a



72 pharmacist or pharmacies or the insured, which is accepted and
73 payment remittance advice is provided by the pharmacy benefit
74 manager. A clean claim includes resubmitted claims with
75 previously identified deficiencies corrected.

76 (* * *c) "Commissioner" means the Mississippi
77 Commissioner of Insurance.

78 (* * *d) "Day" means a calendar day, unless otherwise
79 defined or limited.

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

85 (* * *f) "Electronic adjudication" means the process
86 of electronically receiving * * * and reviewing an electronic
87 claim and either accepting and providing payment remittance advice
88 for the electronic claim or rejecting * * * the electronic claim.

89 (* * *g) "Enrollee" means an individual who has been
90 enrolled in a pharmacy benefit management plan or health insurance
91 plan.

92 (* * *h) "Health insurance plan" means benefits
93 consisting of prescription drugs, other products and supplies, and
94 pharmacist services provided directly, through insurance or
95 reimbursement, or otherwise and including items and services paid
96 for as prescription drugs, other products and supplies, and



97 pharmacist services under any hospital or medical service policy
98 or certificate, hospital or medical service plan contract,
99 preferred provider organization agreement, or health maintenance
100 organization contract offered by a health insurance issuer.

101 (i) "National average drug acquisition cost" (NADAC)
102 means the average acquisition cost of a drug as determined by the
103 monthly survey of retail pharmacies conducted by the federal
104 Centers for Medicare and Medicaid Services to determine average
105 acquisition cost for Medicaid covered outpatient drugs as set out
106 in Title 42 CFR Part 447.

107 (j) "Network pharmacy" means a pharmacy licensed by the
108 board and provides pharmacy services to Mississippi consumers and
109 has a contract with a pharmacy benefit manager to provide covered
110 drugs at a negotiated reimbursement rate.

111 (k) "Payment remittance advice" means the claim detail
112 that the pharmacy receives when successfully processing an
113 electronic or paper claim. The claim detail shall contain, but is
114 not limited to:

115 (i) The amount that the pharmacy benefit manager
116 will reimburse for product ingredient; and

117 (ii) The amount that the pharmacy benefit manager
118 will reimburse for product dispensing fee; and

119 (iii) The amount that the pharmacy benefit manager
120 dictates the patient must pay.



121 (1) "Pharmacist" and "pharmacy" shall have the same
122 definition as provided in Section 73-21-73.

123 (* * *m) "Pharmacy benefit manager" * * * means an
124 entity that provides pharmacy benefit management services. * * *
125 The term "pharmacy benefit manager" shall not include the
126 following:

127 (i) An insurance company unless the insurance
128 company is providing services as a pharmacy benefit manager * * *,
129 in which case the insurance company shall be subject to Sections
130 73-21-151 through * * * 73-21-163 only for those pharmacy benefit
131 manager services * * *; and

132 (ii) * * * The Mississippi Division of Medicaid or
133 its contractors when performing pharmacy benefit manager services
134 for the Division of Medicaid.

135 (* * *n) "Pharmacy benefit manager affiliate"
136 means * * * an entity that directly or indirectly, * * * owns or
137 controls, is owned or controlled by, or is under common ownership
138 or control with a pharmacy benefit manager.

139 (* * *o) "Pharmacy benefit management plan" * * *
140 means an arrangement for the delivery of pharmacist's services in
141 which a pharmacy benefit manager undertakes to administer the
142 payment or reimbursement of any of the costs of pharmacist's
143 services, drugs, or devices.



144 (p) "Pharmacy benefit management services" shall
145 include, but not limited to, the following services, which may be
146 provided either directly or through outsourcing or contracts:

147 (i) Adjudicate drug claims or any portion of the
148 transaction.

149 (ii) Contract with retail and mail pharmacy
150 networks.

151 (iii) Establish payment levels for pharmacies.

152 (iv) Develop formulary or drug list of covered
153 therapies.

154 (v) Provide benefit design consultation.

155 (vi) Manage cost and utilization trends.

156 (vii) Contract for manufacturer rebates.

157 (viii) Provide fee-based clinical services to
158 improve member care.

159 (ix) Third-party administration.

160 (x) Sponsoring or providing cash discount cards as
161 defined in Section 83-9-6.1, and also electronic discount cards.

162 (q) "Pharmacist services" means products, goods and
163 services, or any combination of products, goods and services,
164 provided as part of the practice of pharmacy.

165 (r) "Pharmacy services administrative organization"
166 means any entity that contracts with a pharmacy or pharmacist to
167 assist with third-party payor interactions and that may provide a
168 variety of other administrative services, including, but not



169 limited to, contracting with pharmacy benefit managers on behalf
170 of pharmacies and providing pharmacies with credentialing,
171 billing, audit, general business, and analytic support.

172 * * *

173 (s) "Plan sponsors" means the employers, insurance
174 companies, unions and health maintenance organizations that
175 contract, either directly or indirectly, with a pharmacy benefit
176 manager for delivery of prescription drugs and/or services.

177 (t) "Rebate" means any and all payments and price
178 concessions that accrue to a pharmacy benefit manager or its plan
179 sponsor client, directly or indirectly, including through an
180 affiliate, subsidiary, third party or intermediary, including
181 off-shore group purchasing organizations, from a pharmaceutical
182 manufacturer, its affiliate, subsidiary, third party or
183 intermediary, including, but not limited, to payments, discounts,
184 administration fees, credits, incentives or penalties associated
185 directly or indirectly in any way with claims administered on
186 behalf of a plan sponsor.

187 (* * *u) "Uniform claim form" means a form prescribed
188 by rule by the * * * board; however, for purposes of Sections
189 73-21-151 through * * * 73-21-163, the board shall adopt the same
190 definition or rule where the State Department of Insurance has
191 adopted a rule covering the same type of claim. The board may
192 modify the terminology of the rule and form when necessary to



193 comply with the provisions of Sections 73-21-151 through * * *
194 73-21-163.

195 (v) "Wholesale acquisition cost" means the wholesale
196 acquisition cost of the drug as defined in 42 USC Section
197 1395w-3a(c) (6) (B) .

198 * * *

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

201 73-21-155. (1) * * * The reimbursement to a pharmacy or
202 pharmacist by a pharmacy benefit manager for the dispensing of a
203 prescription drug shall be as follows:

204 (a) A pharmacy benefit manager shall reimburse an
205 in-network pharmacy or pharmacist for the ingredient cost of a
206 prescription drug in an amount equal to the sum of:

207 (i) The National Average Drug Acquisition Cost for
208 the drug on the day of claim adjudication; or

209 (ii) In the case of a drug that does not appear on
210 the National Average Drug Acquisition Cost index, the Wholesale
211 Acquisition Cost for such prescription drug; and

212 (b) A pharmacy benefit manager shall pay an in-network
213 pharmacy a professional dispensing fee that is equal to the
214 professional dispensing fee paid by the Mississippi Division of
215 Medicaid.

216 (c) However, in the case when no National Average Drug
217 Acquisition Cost or Wholesale Acquisition Cost are available, the



218 reimbursement shall be the pharmacy's or pharmacist's usual and
219 customary charge for such drug.

220 (* * *2) (a) All benefits payable * * * from a pharmacy
221 benefit * * * manager shall be paid within seven (7) days after
222 receipt of * * * a clean electronic claim where * * * the claim
223 was electronically adjudicated, and shall be paid within
224 thirty-five (35) days after receipt of due written proof of a
225 clean claim where claims are submitted in paper format.
226 Benefits * * * are overdue if not paid within seven (7) days or
227 thirty-five (35) days, whichever is applicable, after the pharmacy
228 benefit manager receives a clean claim containing necessary
229 information essential for the pharmacy benefit manager to
230 administer preexisting condition, coordination of benefits and
231 subrogation provisions under the plan sponsor's health insurance
232 plan. * * *

233 * * *

234 (* * *b) * * * If an electronic claim is denied, the
235 pharmacy benefit manager shall * * * notify the pharmacist or
236 pharmacy * * * within seven (7) days of the reasons why the claim
237 or portion thereof is not clean and will not be paid and what
238 substantiating documentation and information is required to
239 adjudicate the claim as clean. * * * If a written claim is
240 denied, the pharmacy benefit manager * * * shall notify the
241 pharmacy or pharmacies no later than thirty-five (35) days of
242 receipt of such claim. The pharmacy benefit manager shall * * *



243 notify the pharmacist or pharmacy * * * of the reasons why the
244 claim or portion thereof is not clean and will not be paid and
245 what substantiating documentation and information is required to
246 adjudicate the claim as clean. Any claim or portion thereof
247 resubmitted with the supporting documentation and information
248 requested by the pharmacy benefit manager shall be paid within
249 twenty (20) days after receipt.

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

257 (a) Examinations to determine compliance with
258 this * * * section may be conducted by the board. The board may
259 contract with qualified impartial outside sources to assist in
260 examinations to determine compliance. * * *

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) Any pharmacy benefit manager and a pharmacy may
266 enter into an express written agreement containing timely claim
267 payment provisions which differ from, but are at least as



268 stringent as, the provisions set forth under subsection (2) of
269 this section, and in such case, the provisions of the written
270 agreement shall govern the timely payment of claims by the
271 pharmacy benefit manager to the pharmacy. If the express written
272 agreement is silent as to any interest penalty where claims are
273 not paid in accordance with the agreement, the interest penalty
274 provision of subsection (4) of this section shall apply.

275 (d) The board may adopt rules and regulations necessary
276 to ensure compliance with this section.

277 (* * *4) If * * * a clean claim is not paid or is
278 denied * * * without providing to the pharmacy valid and proper
279 reasons as to why the claim is not clean by the end of the
280 applicable time period prescribed in this * * * section, the
281 pharmacy benefit manager must pay the pharmacy (where the claim is
282 owed to the pharmacy) or the patient (where the claim is owed to a
283 patient) interest on accrued benefits at the rate of one and
284 one-half percent (1-1/2%) per month accruing from the day after
285 payment was due on the amount of the benefits that remain unpaid
286 until the claim is finally settled or adjudicated. Whenever
287 interest due pursuant to this * * * subsection is less than One
288 Dollar (\$1.00), such amount shall be credited to the account of
289 the person or entity to whom such amount is owed.

290 * * *

291 (5) (a) * * * A network pharmacy or pharmacist may decline
292 to provide a brand name drug, * * * generic drug, biosimilar drug



293 or service, if the network pharmacy or pharmacist is paid less
294 than that network pharmacy's * * * cost for the * * *
295 prescription. If the network pharmacy or pharmacist declines to
296 provide such drug or service, the pharmacy or pharmacist shall
297 provide the customer with adequate information as to where the
298 prescription for the drug or service may be filled.

299 (b) The * * * board shall adopt rules and regulations
300 necessary to implement and ensure compliance with this subsection,
301 including, but not limited to, rules and regulations that address
302 access to pharmacy services in rural or underserved areas and also
303 in cases where a network pharmacy or pharmacist declines to
304 provide a drug or service under paragraph (a) of this subsection.

305 * * *

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

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

312 73-21-156. * * * (* * * 1) A pharmacy benefit manager
313 shall:

314 (a) Provide a reasonable administrative appeal
315 procedure to allow pharmacies to challenge * * * reimbursements
316 made * * * for a specific drug or drugs as * * * being below



317 the * * * 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 * * * direct telephone number, email address
322 and website for the purpose of submitting administrative appeals;

323 (ii) The website of the pharmacy benefit manager
324 shall include easily accessible administrative appeal
325 instructions, including listing any required information to be
326 submitted by pharmacies for the purpose of submitting
327 administrative appeals;

328 (* * * iii) The ability to submit an
329 administrative appeal directly to the pharmacy benefit
330 manager * * * or through a pharmacy service administrative
331 organization; and

332 (* * * iv) A period of no less than thirty
333 (30) * * * days to file an administrative appeal.

334 (c) The pharmacy benefit manager shall respond to the
335 challenge under paragraph (a) of this subsection (4) within thirty
336 (30) * * * days after receipt of the challenge.

337 (d) If a challenge is made under paragraph (a) of this
338 subsection * * *, the pharmacy benefit manager shall within thirty
339 (30) * * * days after receipt of the challenge either:

340 (i) * * * Uphold the appeal * * * and adjust the
341 reimbursement paid to the pharmacist or pharmacy to the amount



342 required pursuant to subsection (1) of Section 73-21-155,
343 and * * * make the * * * adjustment effective for each similarly
344 situated pharmacy * * * that filed a claim with the same National
345 Drug Code on the same date of service and was reimbursed at or
346 below the challenged rate; or

347 (ii) * * * Deny the appeal * * * and provide the
348 reason for the denial in writing to the challenging pharmacy or
349 pharmacist, including the * * * national average drug acquisition
350 or wholesale acquisition cost of the drug, as applicable, to
351 validate the reimbursement.

352 (2) A pharmacy benefit manager shall not deny an appeal
353 submitted pursuant to subsection (1) based upon an existing
354 contract with the pharmacy that provides for a reimbursement rate
355 lower than the amount required pursuant to subsection (1) of
356 Section 73-21-155.

357 (3) A pharmacy or pharmacist that belongs to a pharmacy
358 services administrative organization shall be provided a true and
359 correct copy of any contract and contract amendment that the
360 pharmacy services administrative organization enters into with a
361 pharmacy benefit manager or third-party payor on the pharmacy's or
362 pharmacist's behalf.

363 (* * * 4) * * * A pharmacy benefit manager shall not
364 reimburse a pharmacy or pharmacist in the state an amount less
365 than the amount that the pharmacy benefit manager reimburses a
366 pharmacy benefit manager affiliate for providing the same * * *



367 drug or drugs. * * * The reimbursement amount for such drug or
368 drugs shall be calculated on a per unit basis based on the same
369 brand and generic product identifier or brand and generic code
370 number.

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

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

380 (2) When applying for a license or renewal of a license,
381 each pharmacy benefit manager * * * shall file * * * with the
382 board the following: * * *

383 (a) A copy of a certified audit report, if the pharmacy
384 benefit manager has been audited by a certified public accountant
385 within the last twenty-four (24) months; or

386 (* * *b) If the pharmacy benefit manager has not been
387 audited in the last twenty-four (24) months, a financial statement
388 of the organization, including its balance sheet and income
389 statement for the preceding year which shall be verified by at
390 least two (2) principal officers; and



391 (* * *c) Any other information relating to the
392 operations of the pharmacy benefit manager required by the
393 board * * *.

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

406 (b) Any person who knowingly releases, causes to be
407 released or assists in the release of any such information shall
408 be subject to a monetary penalty imposed by the board in an amount
409 not exceeding Fifty Thousand Dollars (\$50,000.00) per violation.
410 When the board is considering the imposition of any penalty under
411 this paragraph (b), it shall follow the same policies and
412 procedures provided for the imposition of other sanctions in the
413 Pharmacy Practice Act. Any penalty collected under this paragraph
414 (b) shall be deposited into the special fund of the board and used



415 to support the operations of the board relating to the regulation
416 of pharmacy benefit managers.

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

426 (* * * 4) * * * The board may waive the requirements for
427 filing financial information for the pharmacy benefit manager if
428 an affiliate of the pharmacy benefit manager is already required
429 to file such information under current law with the Commissioner
430 of Insurance and allow the pharmacy benefit manager to file a copy
431 of documents containing such information with the board in lieu of
432 the statement required by this section.

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

437 (8) A pharmacy benefit manager or third-party payor * * *
438 shall not require pharmacy accreditation standards or * * *
439 certification requirements inconsistent with, more stringent than,



440 or in addition to federal and state requirements for licensure as
441 a pharmacy in this state.

442 **SECTION 6.** The following shall be codified as Section
443 73-21-158, Mississippi Code of 1972:

444 73-21-158. (1) A pharmacy benefit manager shall be
445 prohibited from charging a plan sponsor more for a prescription
446 drug than the net amount it pays a pharmacy for the prescription
447 drug. Separately identified administrative fees or costs are
448 exempt from this requirement, if mutually agreed upon in writing
449 by the payor and pharmacy benefit manager.

450 (2) A pharmacy benefit manager or third-party payor shall
451 not charge or cause a patient to pay an amount that exceeds the
452 total amount retained by the pharmacy.

453 (3) A pharmacy benefit manager shall pass on to the plan
454 sponsor One Hundred percent (100%) of all rebates and other
455 payments it receives directly or indirectly from pharmaceutical
456 manufacturers or rebate aggregators in connection with claims
457 administered on behalf of such plan sponsor. In addition, a
458 pharmacy benefit manager shall report annually to each plan
459 sponsor the aggregate amount of all rebates and other payments
460 that the pharmacy benefit manager received from pharmaceutical
461 manufacturers or rebate aggregators in connection with claims if
462 administered on behalf of the plan sponsor.

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



465 73-21-161. (1) As used in this section, the term " * * *
466 steering" means:

467 (a) Directing, ordering or requiring * * * a patient to
468 use a specific affiliate pharmacy * * * or pharmacies, for the
469 purpose of filling a prescription or receiving services or other
470 care from a pharmacist;

471 (b) Offering or implementing health insurance plan
472 designs that require * * * a beneficiary to use an affiliate
473 pharmacy or pharmacies, or that increases costs to a patient,
474 including requiring a patient to pay the full cost for a
475 prescription drug when such patient chooses not to use a pharmacy
476 benefit manager affiliate pharmacy; * * *

477 (c) * * * Advertising, marketing, or * * * promoting an
478 affiliate pharmacy or pharmacies, over another in-network
479 pharmacy.

480 (d) Creating any network or engaging in any practice,
481 including accreditation or credentialing standards, day supply
482 limitations, or delivery methods limitations, that exclude an
483 in-network pharmacy or restrict an in-network pharmacy from
484 filling a prescription for a prescription drug; or

485 (e) Directly or indirectly engaging in any practice
486 that attempts to influence or induce a pharmaceutical manufacturer
487 to limit the distribution of a prescription drug to a small number
488 of pharmacies or certain types of pharmacies, or to restrict
489 distribution of such drug to nonaffiliate pharmacies.



490 The term " * * * steering" does not include a pharmacy's
491 inclusion by a pharmacy benefit manager or pharmacy benefit
492 manager affiliate in communications to patients, including patient
493 and prospective patient specific communications, regarding network
494 pharmacies and prices, provided that the pharmacy benefit manager
495 or a pharmacy benefit manager affiliate includes information
496 regarding eligible nonaffiliate pharmacies in those communications
497 and the information provided is accurate.

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

501 (a) * * * Steering;

502 (b) Transferring or sharing records relative to
503 prescription information containing patient identifiable and
504 prescriber identifiable data to or from a pharmacy benefit manager
505 affiliate for any commercial purpose; however, nothing in this
506 section shall be construed to prohibit the exchange of
507 prescription information between a pharmacy and its affiliate for
508 the limited purposes of pharmacy reimbursement; formulary
509 compliance; pharmacy care; public health activities otherwise
510 authorized by law; or utilization review by a health care
511 provider; * * *

512 (c) Presenting a claim for payment to any individual,
513 third-party payor, affiliate, or other entity for a service



514 furnished * * * by steering from * * * a pharmacy benefit manager
515 or pharmacy benefit manager affiliate * * *; or

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

520 (3) This section shall not be construed to prohibit a
521 pharmacy from entering into an agreement with a pharmacy benefit
522 manager or pharmacy benefit manager affiliate to provide pharmacy
523 care to patients, provided that neither the pharmacy * * * nor the
524 pharmacy benefit manager or pharmacy benefit manager affiliate
525 violate subsection (2) of this section and the pharmacy provides
526 the disclosures required in subsection (1) of this section.

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

531 (* * *5) A pharmacist who fills a prescription that
532 violates subsection (2) of this section shall not be liable under
533 this section.

534 (6) This section shall not apply to facilities licensed to
535 fill prescriptions solely for employees of a plan sponsor or
536 employer.

537 **SECTION 8.** The following shall be codified as Section
538 73-21-162, Mississippi Code of 1972:



539 73-21-162. (1) Retaliation is prohibited.

540 (a) A pharmacy benefit manager shall not retaliate
541 against a pharmacist or pharmacy based on the pharmacist's or
542 pharmacy's exercise of any right or remedy under this chapter.
543 Retaliation prohibited by this section includes, but is not
544 limited to:

545 (i) Terminating or refusing to renew a contract
546 with the pharmacist or pharmacy;

547 (ii) Subjecting the pharmacist or pharmacy to an
548 increased frequency of audits, number of claims audited, or amount
549 of monies for claims audited; or

550 (iii) Failing to promptly pay the pharmacist or
551 pharmacy any money owed by the pharmacy benefit manager to the
552 pharmacist or pharmacy.

553 (b) For the purposes of this section, a pharmacy
554 benefit manager is not considered to have retaliated against a
555 pharmacy if the pharmacy benefit manager:

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

558 (ii) Provides reasonable notice to the pharmacist
559 or pharmacy of the allegation of fraud and the basis of the
560 allegation before initiating an action.

561 (2) A pharmacy benefit manager or pharmacy benefit manager
562 affiliate shall not penalize or retaliate against a pharmacist,
563 pharmacy or pharmacy employee for exercising any rights under this



564 chapter, initiating any judicial or regulatory actions or
565 discussing or disclosing information pertaining to an agreement
566 with a pharmacy benefit manager or a pharmacy benefit manager
567 affiliate when testifying or otherwise appearing before any
568 governmental agency, legislative member or body or any judicial
569 authority.

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

572 73-21-163. (1) Whenever the board has reason to believe
573 that a pharmacy benefit manager * * *, pharmacy benefit manager
574 affiliate or pharmacy services administrative organization is
575 using, has used, or is about to use any method, act or practice
576 prohibited in Sections 73-21-151 through 73-21-163 and that
577 proceedings would be in the public interest, it may bring an
578 action in the name of the board against the pharmacy benefit
579 manager * * *, pharmacy benefit manager affiliate or pharmacy
580 services administrative organization to restrain by temporary or
581 permanent injunction the use of such method, act or practice. The
582 action shall be brought in the Chancery Court of the First
583 Judicial District of Hinds County, Mississippi. The court is
584 authorized to issue temporary or permanent injunctions to restrain
585 and prevent violations of Sections 73-21-151 through 73-21-163 and
586 such injunctions shall be issued without bond.

587 (2) The board may impose a monetary penalty on a pharmacy
588 benefit manager * * *, a pharmacy benefit manager affiliate or



589 pharmacy services administrative organization for noncompliance
590 with the provisions of the Sections 73-21-151 through 73-21-163,
591 in amounts of not less than One Thousand Dollars (\$1,000.00) per
592 violation and not more than Twenty-five Thousand Dollars
593 (\$25,000.00) per violation. Each day a violation continues for
594 the same brand or generic product identifier or brand or generic
595 code number is a separate violation. Each day that a pharmacy
596 benefit manager or pharmacy services administrative organization
597 does business in this state without a license is deemed a separate
598 violation. The board shall prepare a record entered upon its
599 minutes that states the basic facts upon which the monetary
600 penalty was imposed. Any penalty collected under this subsection
601 (2) shall be deposited into the special fund of the board.

602 (3) For the purposes of conducting investigations, the
603 board, through its executive director, may conduct audits and
604 examinations of a pharmacy benefit manager and may also issue
605 subpoenas to any individual, pharmacy, pharmacy benefit manager or
606 any other entity having documents or records that it deems
607 relevant to the investigation.

608 (* * *4) The board may assess a monetary penalty for those
609 reasonable costs that are expended by the board in the
610 investigation and conduct of a proceeding if the board imposes a
611 monetary penalty under subsection (2) of this section. A monetary
612 penalty assessed and levied under this section shall be paid to
613 the board by the licensee, registrant or permit holder upon the



614 expiration of the period allowed for appeal of those penalties
615 under Section 73-21-101, or may be paid sooner if the licensee,
616 registrant or permit holder elects. Any penalty collected by the
617 board under this subsection (* * *4) shall be deposited into the
618 special fund of the board.

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

637 (6) (a) The board may conduct audits to ensure compliance
638 with the provisions of this act. In conducting audits, the board



639 is empowered to request production of documents pertaining to
640 compliance with the provisions of this act, and documents so
641 requested shall be produced within seven (7) days of the request
642 unless extended by the board or its duly authorized staff.

643 (b) The pharmacy benefit manager being audited shall
644 pay all costs of such audit if such audit reveals any
645 noncompliance with this act. The cost of the audit examination
646 shall be deposited into the special fund and shall be used by the
647 board, upon appropriation of the Legislature, to support the
648 operations of the board relating to the regulation of pharmacy
649 benefit managers.

650 (c) The board is authorized to hire independent
651 consultants to conduct audits of a pharmacy benefit manager and
652 expend funds collected under this section to pay the cost of
653 performing audit services.

654 (* * *7) The board shall develop and implement a uniform
655 penalty policy that sets the minimum and maximum penalty for any
656 given violation of Sections 73-21-151 through 73-21-163. The
657 board shall adhere to its uniform penalty policy except in those
658 cases where the board specifically finds, by majority vote, that a
659 penalty in excess of, or less than, the uniform penalty is
660 appropriate. That vote shall be reflected in the minutes of the
661 board and shall not be imposed unless it appears as having been
662 adopted by the board.



663 **SECTION 10.** This act shall take effect and be in force from
664 and after July 1, 2025.

