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To: Public Health and
Welfare

SENATE BILL NO. 2677

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 AMEND SECTION
4 73-21-155, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACY BENEFIT
5 MANAGERS FROM REIMBURSING A PHARMACY OR PHARMACIST FOR A
6 PRESCRIPTION DRUG OR PHARMACIST SERVICE IN A NET AMOUNT LESS THAN
7 THE NATIONAL AVERAGE DRUG ACQUISITION COST (NADAC) FOR THE
8 PRESCRIPTION DRUG OR PHARMACIST SERVICE IN EFFECT AT THE TIME THE
9 DRUG IS ADMINISTERED OR DISPENSED, PLUS A PROFESSIONAL DISPENSING
10 FEE EQUAL TO THE PROFESSIONAL DISPENSING FEE PAID BY MISSISSIPPI
11 DIVISION OF MEDICAID AND TO REQUIRE A PHARMACY BENEFIT MANAGER TO
12 MAKE PROMPT PAYMENT TO A PHARMACY; TO AMEND SECTION 73-21-156,
13 MISSISSIPPI CODE OF 1972, TO REQUIRE PHARMACY BENEFIT MANAGERS TO
14 PROVIDE A REASONABLE ADMINISTRATIVE APPEAL PROCEDURE TO ALLOW
15 PHARMACIES TO CHALLENGE A REIMBURSEMENT FOR A SPECIFIC DRUG OR
16 DRUGS AS BEING BELOW THE REIMBURSEMENT RATE REQUIRED BY THE
17 PRECEDING PROVISION; TO AMEND SECTION 73-21-157, MISSISSIPPI CODE
18 OF 1972, TO REQUIRE A PHARMACY SERVICES ADMINISTRATIVE
19 ORGANIZATION TO BE LICENSED WITH THE MISSISSIPPI BOARD OF
20 PHARMACY; TO REQUIRE A PHARMACY SERVICES ADMINISTRATIVE
21 ORGANIZATION TO PROVIDE TO A PHARMACY OR PHARMACIST A COPY OF ANY
22 CONTRACT ENTERED INTO ON BEHALF OF THE PHARMACY OR PHARMACIST BY
23 THE PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION; TO CREATE NEW
24 SECTION 73-21-158, MISSISSIPPI CODE OF 1972, TO PROHIBIT PHARMACY
25 BENEFIT MANAGERS FROM CHARGING A PLAN SPONSOR MORE FOR A
26 PRESCRIPTION DRUG THAN THE NET AMOUNT IT PAYS A PHARMACY FOR THE
27 PRESCRIPTION DRUG; TO PROHIBIT A PHARMACY BENEFIT MANAGER OR
28 THIRD-PARTY PAYER FROM CHARGING A PATIENT TO PAY AN AMOUNT THAT
29 EXCEEDS THE TOTAL AMOUNT RETAINED BY THE PHARMACY; TO AMEND
30 SECTION 73-21-161, MISSISSIPPI CODE OF 1972, TO PROHIBIT A
31 PHARMACY BENEFIT MANAGER OR PHARMACY BENEFIT MANAGER AFFILIATES
32 FROM ORDERING A PATIENT TO USE A SPECIFIC PHARMACY OR PHARMACIES,
33 INCLUDING AN AFFILIATE PHARMACY; OFFERING OR IMPLEMENTING PLAN
34 DESIGNS THAT PENALIZE A PATIENT WHEN A PATIENT CHOOSES NOT TO USE



A PARTICULAR PHARMACY, INCLUDING AN AFFILIATE PHARMACY;
ADVERTISING OR PROMOTING A PHARMACY, INCLUDING AN AFFILIATE
PHARMACY, OVER ANOTHER IN-NETWORK PHARMACY; CREATING NETWORK OR
ENGAGING IN PRACTICES THAT EXCLUDE AN IN-NETWORK PHARMACY;
ENGAGING IN A PRACTICE THAT ATTEMPT TO LIMIT THE DISTRIBUTION OF
PRESCRIPTION DRUG TO CERTAIN PHARMACIES; INTERFERING WITH THE
PATIENT'S RIGHT TO CHOOSE THE PATIENT'S PHARMACY OR PROVIDER OF
CHOICE; THIS SECTION DOES NOT APPLY TO FACILITIES LICENSED TO FILL
PRESCRIPTIONS SOLELY FOR EMPLOYEES OF A PLAN SPONSOR OR EMPLOYER;
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, FOR THE PURPOSES OF
CONDUCTING INVESTIGATIONS, TO CONDUCT EXAMINATIONS OF PHARMACY
BENEFIT MANAGERS AND TO ISSUE SUBPOENAS TO OBTAIN DOCUMENTS OR
RECORDS THAT IT DEEMS RELEVANT TO THE INVESTIGATION; 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) "Clean claim" means a completed billing instrument,
paper or electronic, received by a pharmacy benefit manager from a
pharmacist or pharmacies or the insured, which is accepted and
payment remittance advice is provided by the pharmacy benefit
manager. A clean claim includes resubmitted claims with
previously identified deficiencies corrected.

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



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

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

78 (* * *f) "Electronic adjudication" means the process
79 of electronically receiving * * * and reviewing an electronic
80 claim and either accepting and providing payment remittance advice
81 for the electronic claim or rejecting * * * the electronic claim.

82 (* * *g) "Enrollee" means an individual who has been
83 enrolled in a pharmacy benefit management plan or health insurance
84 plan.

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

94 (i) "National average drug acquisition cost" means the
95 average acquisition cost of a drug as determined by the monthly



96 survey of retail pharmacies conducted by the federal Centers for
97 Medicare and Medicaid Services to determine average acquisition
98 cost for Medicaid covered outpatient drugs as set out in Title 42
99 CFR Part 447.

100 (j) "Network pharmacy" means a pharmacy licensed by the
101 Board and provides pharmacy services to Mississippi consumers and
102 has a contract with a pharmacy benefit manager to provide covered
103 drugs at a negotiated reimbursement rate.

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

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

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

112 (iii) The amount that the pharmacy benefit manager
113 dictates the patient must pay.

114 (l) "Pharmacist" and "pharmacy" shall have the same
115 definitions as provided in Section 73-21-73.

116 (* * *m) "Pharmacy benefit manager" * * * means an
117 entity that provides pharmacy benefit management services. * * *

118 The term "pharmacy benefit manager" shall not include * * *:

119 (i) An insurance company unless the insurance
120 company is providing services as a pharmacy benefit manager * * *,



in which case the insurance company shall be subject to Sections 73-21-151 through * * * 73-21-163 only for those pharmacy benefit manager services * * *; and

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

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

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

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

(i) Adjudicate drug claims or any portion of the transaction;

(ii) Contract with retail and mail pharmacy networks;

(iii) Establish payment levels for pharmacies;

(iv) Develop formulary or drug list of covered therapies;



(v) Provide benefit design consultation;
(vi) Manage cost and utilization trends;
(vii) Contract for manufacturer rebates;
(viii) Provide fee-based clinical services to
improve member care;
(ix) Third-party administration; and
(x) Sponsoring or providing cash discount cards as
defined in Section 83-9-6.1, and also electronic discount cards.

(* * * g) * * * "Pharmacist services" * * * means
products, goods, and services, or any combination of products,
goods, and services, provided as part of the practice of pharmacy.

(r) "Pharmacy services administrative organization"
means any entity that contracts with a pharmacy or pharmacist to
assist with third-party payer interactions and that may provide a
variety of other administrative services, including, but not
limited to, contracting with pharmacy benefits managers on behalf
of pharmacies and providing pharmacies with credentialing,
billing, audit, general business, and analytic support.

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

(t) "Rebate" means any and all payments and price
concessions that accrue to a pharmacy benefits manager or its plan



sponsor client, directly or indirectly, including through an
affiliate, subsidiary, third party, or intermediary, including
off-shore group purchasing organizations, from a pharmaceutical
manufacturer, its affiliate, subsidiary, third party, or
intermediary, including, but not limited to, payments, discounts,
administration fees, credits, incentives, or penalties associated
directly or indirectly in any way with claims administered on
behalf of a plan sponsor.

(* * *u) "Uniform claim form" means a form prescribed
by rule by the * * * board; however, for purposes of Sections
73-21-151 through * * * 73-21-163, 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 * * *
73-21-163.

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

SECTION 2. Section 73-21-155, Mississippi Code of 1972, is
amended as follows:

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



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

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

200 (ii) In the case of a drug that does not appear on
201 the National Average Drug Acquisition Cost Index, the Wholesale
202 Acquisition Cost for such prescription drug; and

203 (b) A pharmacy benefit manager shall pay an in-network
204 pharmacy a professional dispensing fee that is equal to the
205 professional dispensing fee paid by the Mississippi Division of
206 Medicaid.

207 (c) However, in the case when no National Average Drug
208 Acquisition Cost or Wholesale Acquisition Cost are available, the
209 reimbursement shall be the pharmacy's or pharmacist's usual and
210 customary charge for such drug.

211 (* * *2) (a) All benefits payable * * * from a pharmacy
212 benefit * * * manager shall be paid within seven (7) days after
213 receipt of * * * a clean electronic claim where claims are
214 submitted * * * in paper format. Benefits * * * are overdue if
215 not paid within seven (7) days or thirty-five (35) days, whichever
216 is applicable, after the pharmacy benefit manager receives a clean
217 claim containing necessary information essential for the pharmacy
218 benefit manager to administer preexisting condition, coordination



219 of benefits and subrogation provisions under the plan sponsor's
220 health insurance plan. * * *

221 * * *

222 (* * *b) * * * If an electronic claim is denied, the
223 pharmacy benefit manager shall * * * notify the pharmacist or
224 pharmacy * * * within seven (7) days of the reasons why the claim
225 or portion thereof is not clean and will not be paid and what
226 substantiating documentation and information is required to
227 adjudicate the claim as clean. * * * If a written claim is
228 denied, the pharmacy benefit manager shall notify the pharmacy or
229 pharmacies no later than thirty-five (35) days * * * of receipt of
230 such claim * * *. The pharmacy benefit manager shall * * * notify
231 the * * * pharmacy * * * of the reasons why the claim or portion
232 thereof is not clean and will not be paid and what substantiating
233 documentation and information is required to adjudicate the claim
234 as clean. Any claim or portion thereof resubmitted with the
235 supporting documentation and information requested by the pharmacy
236 benefit manager shall be paid within twenty (20) days after
237 receipt.

238 (* * *3) If the board finds that any pharmacy benefit
239 manager, agent or other party responsible for reimbursement for
240 prescription drugs and other products and supplies has not paid
241 ninety-five percent (95%) of clean claims * * * received from all
242 pharmacies in a calendar quarter, * * * shall be subject to



administrative penalty of not more than Twenty-five Thousand Dollars (\$25,000.00) to be assessed by the * * * board.

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

(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) 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 (* * * 2) 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) * * * of this section shall apply.

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

(4) If a clean claim is not paid or is denied without providing to the pharmacy valid and proper reasons as to why the



claim is not clean by the end of the applicable time period prescribed in this section, 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 subsection 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.

(5) (a) * * * A network pharmacy or pharmacist may decline to provide a brand name drug * * * generic drug, biosimilar drug, or service, if the network pharmacy or pharmacist is paid less than that network pharmacy's * * * cost for the * * * prescription. 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 * * * board 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 and also in cases where a network pharmacy or pharmacist declines to provide a drug or service under paragraph (a) of this subsection. * * *



(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 3. 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 * * * reimbursements made * * * 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 direct dedicated telephone number, email address and website for the purpose of submitting administrative appeals;

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

(* * *iii) The ability to submit an administrative appeal directly to the pharmacy benefit



manager * * * or through a pharmacy service administrative organization; and

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

(c) The pharmacy benefit manager shall respond to the challenge under paragraph (a) of this subsection (* * *1) within thirty (30) * * * days after receipt of the challenge.

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

(i) * * * Uphold the appeal * * * and adjust the reimbursement paid to the pharmacist or pharmacy to the amount required pursuant to Section 73-21-155(1), and make the adjustment effective for each similarly situated pharmacy * * * that filed a claim with the same National Drug Code on the same date of service and was reimbursed at or below the challenged rate; or

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

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



(3) A pharmacy or pharmacist that belongs to a pharmacy services administrative organization shall be provided a true and correct copy of any contract and contract amendment 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.

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

SECTION 4. 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 pharmacy services administrative organization, a pharmacy benefit manager or 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) When applying for a license or renewal of a license,
each pharmacy benefit manager * * * shall file * * * with the
board * * *:

* * *

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

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

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

(* * *3) (a) Any information required to be submitted to
the board pursuant to licensure application that is considered
proprietary by a pharmacy benefit manager or 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.

(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.

* * *

(* * *4) * * * The board may waive the requirements for filing financial information for the pharmacy benefit manager if



415 an affiliate of the pharmacy benefit manager is already required
416 to file such information under current law with the Commissioner
417 of Insurance and allow the pharmacy benefit manager to file a copy
418 of documents containing such information with the board in lieu of
419 the statement required by this section.

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

424 (* * *6) A pharmacy benefit manager or third-party
425 payor * * * shall not require pharmacy accreditation standards
426 or * * * certification requirements inconsistent with, more
427 stringent than, or in addition to federal and state requirements
428 for licensure as a pharmacy in this state.

429 **SECTION 5.** The following shall be codified as Section
430 73-21-158, Mississippi Code of 1972:

431 73-21-158. (1) A pharmacy benefit manager shall be
432 prohibited from charging a plan sponsor more for a prescription
433 drug than the net amount it pays a pharmacy for the prescription
434 drug. Separately identified administrative fees or costs are
435 exempt from this requirement, if mutually agreed upon in writing
436 by the payor and pharmacy benefit manager.

437 (2) A pharmacy benefit manager or third-party payer shall
438 not charge or cause a patient to pay an amount that exceeds the
439 total amount retained by the pharmacy.



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

SECTION 6. Section 73-21-161, Mississippi Code of 1972, is amended as follows:

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

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

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



(c) * * * Advertising, marketing, or promoting an affiliate pharmacy or pharmacies, over another in-network pharmacy;

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

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

The term " * * * steering" does not include a pharmacy's inclusion by a pharmacy benefit manager or pharmacy benefit manager affiliate in communications to patients, including patient and prospective patient specific communications, regarding network pharmacies and prices, provided that the pharmacy benefit manager or pharmacy benefit manager 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) * * * Steering;



(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 * * * by steering from * * * a pharmacy benefit manager or pharmacy benefit manager 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 or pharmacy benefit manager affiliate to provide pharmacy care to patients, provided that neither the pharmacy * * * nor the pharmacy benefit manager or pharmacy benefit manager affiliate violate subsection (2) of this section and the pharmacy provides the disclosures required in subsection (1) of this section.



514 * * *

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

519 (* * *5) A pharmacist who fills a prescription that
520 violates subsection (2) of this section shall not be liable under
521 this section.

522 (6) This section shall not apply to facilities licensed to
523 fill prescriptions solely for employees of a plan sponsor or
524 employer.

525 **SECTION 7.** The following shall be codified as Section
526 73-21-162, Mississippi Code of 1972:

527 73-21-162. 73-21-162. (1) Retaliation is prohibited.

528 (a) A pharmacy benefit manager shall not retaliate
529 against a pharmacist or pharmacy based on the pharmacist's or
530 pharmacy's exercise of any right or remedy under this chapter.
531 Retaliation prohibited by this section includes, but is not
532 limited to:

533 (i) Terminating or refusing to renew a contract
534 with the pharmacist or pharmacy;

535 (ii) Subjecting the pharmacist or pharmacy to an
536 increased frequency of audits, number of claims audited, or amount
537 of monies for claims audited; or



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

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

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

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

(2) 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 8. Section 73-21-163, Mississippi Code of 1972, is amended as follows:

73-21-163. (1) Whenever the board has reason to believe that a pharmacy benefit manager * * *, pharmacy benefit manager affiliate, or pharmacy services administrative organization is



563 using, has used, or is about to use any method, act or practice
564 prohibited in Sections 73-21-151 through 73-21-163 and that
565 proceedings would be in the public interest, it may bring an
566 action in the name of the board against the pharmacy benefit
567 manager * * *, pharmacy benefit manager affiliate, or pharmacy
568 services administrative organization to restrain by temporary or
569 permanent injunction the use of such method, act or practice. The
570 action shall be brought in the Chancery Court of the First
571 Judicial District of Hinds County, Mississippi. The court is
572 authorized to issue temporary or permanent injunctions to restrain
573 and prevent violations of Sections 73-21-151 through 73-21-163 and
574 such injunctions shall be issued without bond.

575 (2) The board may impose a monetary penalty on a pharmacy
576 benefit manager * * *, a pharmacy benefit manager affiliate, or
577 pharmacy services administrative organization for noncompliance
578 with the provisions of the Sections 73-21-151 through 73-21-163,
579 in amounts of not less than One Thousand Dollars (\$1,000.00) per
580 violation and not more than Twenty-five Thousand Dollars
581 (\$25,000.00) per violation. Each day that a pharmacy benefit
582 manager or pharmacy services administrative organization does
583 business in this state without a license is deemed a separate
584 violation. The board shall prepare a record entered upon its
585 minutes that states the basic facts upon which the monetary
586 penalty was imposed. Any penalty collected under this subsection
587 (2) shall be deposited into the special fund of the board.



588 (3) For the purposes of conducting investigations, the
589 board, through its executive director, may conduct audits and
590 examinations of a pharmacy benefit manager and may also issue
591 subpoenas to any individual, pharmacy, pharmacy benefit manager,
592 or any other entity having documents or records that it deems
593 relevant to the investigation.

594 (* * *4) The board may assess a monetary penalty for those
595 reasonable costs that are expended by the board in the
596 investigation and conduct of a proceeding if the board imposes a
597 monetary penalty under subsection (2) of this section. A monetary
598 penalty assessed and levied under this section shall be paid to
599 the board by the licensee, registrant or permit holder upon the
600 expiration of the period allowed for appeal of those penalties
601 under Section 73-21-101, or may be paid sooner if the licensee,
602 registrant or permit holder elects. Any penalty collected by the
603 board under this subsection (* * *4) shall be deposited into the
604 special fund of the board.

605 (* * *5) When payment of a monetary penalty assessed and
606 levied by the board against a licensee, registrant or permit
607 holder in accordance with this section is not paid by the
608 licensee, registrant or permit holder when due under this section,
609 the board shall have the power to institute and maintain
610 proceedings in its name for enforcement of payment in the chancery
611 court of the county and judicial district of residence of the
612 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.

(6) (a) The board may conduct audits to ensure compliance with the provisions of this act. In conducting audits, the board is empowered to request production of documents pertaining to compliance with the provisions of this act, and documents so requested shall be produced within seven (7) days of the request unless extended by the board or its duly authorized staff.

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

(c) The board is authorized to hire independent consultants to conduct audits of a pharmacy benefit manager and



638 expend funds collected under this section to pay the cost of
639 performing audit services.

640 (* * *7) The board shall develop and implement a uniform
641 penalty policy that sets the minimum and maximum penalty for any
642 given violation of Sections 73-21-151 through 73-21-163. The
643 board shall adhere to its uniform penalty policy except in those
644 cases where the board specifically finds, by majority vote, that a
645 penalty in excess of, or less than, the uniform penalty is
646 appropriate. That vote shall be reflected in the minutes of the
647 board and shall not be imposed unless it appears as having been
648 adopted by the board.

649 **SECTION 9.** This act shall take effect and be in force from
650 and after July 1, 2025.

