

By: Representative Howell

To: Insurance; Public Health
and Human Services

HOUSE BILL NO. 710

1 AN ACT TO CREATE THE PHARMACY BENEFIT MANAGEMENT REGULATION
2 ACT; TO PROVIDE DEFINITIONS; TO REQUIRE THAT PHARMACY BENEFIT
3 MANAGERS RECEIVE A LICENSE FROM THE COMMISSIONER OF INSURANCE AND
4 A CERTIFICATE OF AUTHORITY FROM THE STATE BOARD OF PHARMACY BEFORE
5 OPERATING IN THIS STATE; TO REQUIRE THE FILING OF CERTAIN ANNUAL
6 STATEMENTS; TO PROVIDE FOR FINANCIAL EXAMINATIONS; TO PROVIDE FOR
7 CERTAIN ASSESSMENTS AND FEES; TO PROVIDE THAT CONTRACTS BETWEEN
8 PHARMACIES AND PHARMACY BENEFIT MANAGERS SHALL BE FILED WITH THE
9 COMMISSIONER OF INSURANCE BEFORE EXECUTION; TO PROVIDE FOR
10 ENFORCEMENT; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** This act shall be known and cited as the
13 "Pharmacy Benefit Management Regulation Act."

14 **SECTION 2.** This act establishes standards and criteria for
15 the regulation and licensing of pharmacy benefit managers. The
16 purpose of this act is to promote, preserve and protect the public
17 health, safety and welfare by and through effective regulation and
18 licensing of pharmacy benefit managers.

19 **SECTION 3.** For purposes of this act:

20 (a) "Board of Pharmacy" or "board" means the State
21 Board of Pharmacy empowered to regulate pharmacy benefit managers
22 including granting a certificate of authority to a company.

23 (b) "Cease and desist" is an order of the board
24 prohibiting a pharmacy benefit manager or other person or entity
25 from continuing a particular course of conduct, which violates
26 this act or its rules and regulations.

27 (c) "Commissioner" means the State Insurance
28 Commissioner.

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

31 (e) "Insolvent" or "insolvency" means a financial
32 situation in which, based upon the financial information required
33 by this act for the preparation of the pharmacy benefit manager's
34 annual statement, the assets of the pharmacy benefit manager are
35 less than the sum of all of its liabilities and required reserves.

36 (f) "Maintenance drug" means a drug prescribed by a
37 practitioner who is licensed to prescribe drugs and used to treat
38 a medical condition for a period greater than thirty (30) days.

39 (g) "Multi-source drug" means a drug that is stocked
40 and is available from the three (3) or more suppliers.

41 (h) "Pharmacist's services" includes drug therapy and
42 other patient care services provided by a licensed pharmacist
43 intended to achieve outcomes related to the cure or prevention of
44 a disease, elimination or reduction of a patient's symptoms or
45 arresting or slowing of a disease process as defined in the rules
46 of the board.

47 (i) "Pharmacist" means any individual properly licensed
48 as a pharmacist by the State Pharmacy Board.

49 (j) "Pharmacy" means any appropriately licensed place
50 within this state where drugs are dispensed and pharmacist's
51 services are provided.

52 (k) "Pharmacy benefits manager" or "PBM" means a
53 business that administers the prescription drug/device portion of
54 health insurance plans on behalf of plan sponsors, insurance
55 companies, unions and health maintenance organizations.

56 (l) "Pharmacy benefit management plan" means an
57 arrangement for the delivery of pharmacist's services in which a
58 pharmacy benefit manager undertakes to pay for, or reimburse, any
59 of the costs of pharmacist's services for an enrollee on a prepaid
60 or insured basis which (i) contains one or more incentive
61 arrangements intended to influence the cost or level of
62 pharmacist's services between the plan sponsor and one or more
63 pharmacies with respect to the delivery of pharmacist's services;

64 and (ii) requires or creates benefit payment differential
65 incentives for enrollees to use under contract with the pharmacy
66 benefit manager. A pharmacy benefit plan does not mean any
67 employee welfare benefit plan (as defined in Section 3(1) of the
68 Employee Retirement Income Security Act of 1974, 29 USCS Section
69 1002(1)), which is self-insured or self-funded.

70 (m) "Plan sponsors" means the employers, insurance
71 companies, unions and health maintenance organizations that
72 contract with a PBM for delivery of prescription services.

73 (n) "Usual and customary price" means the price the
74 pharmacists would have charged a cash paying patient (not a
75 patient where reimbursement rates are set by a contract) for the
76 same services on the same date inclusive of any discounts
77 applicable.

78 **SECTION 4.** No person or organization shall establish or
79 operate a pharmacy benefit manager in this state to provide
80 pharmacy benefit management plans without obtaining a certificate
81 of authority from the State Board of Pharmacy in accordance with
82 this act and all applicable federal and state laws. All PBMs
83 providing pharmacy benefit management plans in this state shall
84 obtain a certificate of authority from the State Board of Pharmacy
85 every four (4) years.

86 Any organization or person may apply to the board to obtain a
87 certificate of authority to establish and operate a PBM in
88 compliance with this act if the organization obtains from the
89 commissioner an annual license to do business in this state. A
90 nonrefundable application fee of Five Hundred Dollars (\$500.00)
91 shall accompany each application for a certificate of authority.

92 The board may suspend or revoke any certificate of authority
93 issued to a pharmacy benefit manager under this act or deny an
94 application for a certificate of authority if it finds:

95 (a) That the pharmacy benefit manager is operating
96 significantly in contravention of its basic organizational
97 document.

98 (b) The pharmacy benefit manager does not arrange for
99 pharmacist's services.

100 (c) That the pharmacy benefit manager has failed to
101 meet the requirements for issuance of a certificate of authority
102 as set forth in this act and all applicable federal and state
103 laws.

104 (d) That the pharmacy benefit manager is unable to
105 fulfill its obligation to furnish pharmacist's services as
106 required under its pharmacy benefit management plan.

107 (e) The pharmacy benefit manager is no longer
108 financially responsible and may reasonably be expected to be
109 unable to meet its obligations to enrollees or prospective
110 enrollees.

111 (f) The pharmacy benefit manager, or any person on its
112 behalf, has advertised or merchandised its services in an untrue,
113 misrepresentative, misleading, deceptive or unfair manner.

114 (g) The continued operation of the pharmacy benefit
115 manager would be hazardous to its enrollees.

116 (h) The pharmacy benefit manager has failed to file an
117 annual statement with the commissioner in a timely manner.

118 (i) The pharmacy benefit manager has otherwise failed
119 to substantially comply with this act and any rules and
120 regulations under this act.

121 When the certificate of authority of a pharmacy benefit
122 manager is revoked, such organization shall proceed, immediately
123 following the effective date of the order of revocation, to wind
124 up its affairs and shall conduct no further business except as may
125 be essential to the orderly conclusion of the affairs of such
126 organization. The board may permit such further operation of the
127 organization as the board may find to be in the best interest of

128 enrollees to the end that the enrollees will be afforded the
129 greatest practical opportunity to obtain pharmacist's services.

130 **SECTION 5.** The commissioner shall not issue an annual PBM
131 license to do business in this state to any PBM providing pharmacy
132 benefit management plans until he is satisfied that the pharmacy
133 benefit manager:

134 (a) Has paid all fees, taxes and charges required by
135 law;

136 (b) Has made any deposit required by this act;

137 (c) Has the minimum capital and surplus requirements
138 specified by the commissioner;

139 (d) Has filed a financial statement or statements and
140 any reports, certificates or other documents the commissioner
141 considers necessary to secure a full and accurate knowledge of its
142 affairs and financial condition;

143 (e) Is solvent and its financial condition, method of
144 operation and manner of doing business are such as to satisfy the
145 commissioner that it can meet its obligations to all enrollees;
146 and

147 (f) Has otherwise complied with all the requirements of
148 law.

149 This PBM license shall be in addition to the certificate of
150 authority required by the board. A nonrefundable license
151 application fee of Five Hundred Dollars (\$500.00) shall accompany
152 each application for a license to transact the business in this
153 state. The fee shall be collected by the commissioner and paid
154 directly into a special fund that shall provide expenses for the
155 regulation, supervision and examination of all entities subject to
156 regulation under this act.

157 The PBM license shall be signed by the commissioner or a duly
158 authorized agent of the commissioner and shall expire on the next
159 June 30 after the date on which it becomes effective.

160 All PBMs providing pharmacy benefit management plans shall
161 obtain an annual renewal of its PBM license from the commissioner.
162 The commissioner may refuse to renew the PBM license of any
163 pharmacy benefit manager or may renew the license, subject to any
164 restrictions considered appropriate by the commissioner, if it
165 finds an impairment of required capital and surplus or if it finds
166 that the pharmacy benefit manager has not satisfied all the
167 conditions set forth in this act. The commissioner shall not fail
168 to renew the license of any pharmacy benefit manager transacting
169 business in this state without giving the pharmacy benefit manager
170 ten (10) days' notice and giving it an opportunity to be heard.
171 The hearing may be informal, and the commissioner and the pharmacy
172 benefit manager may waive the required notice.

173 **SECTION 6.** (1) Each PBM providing pharmacy management
174 benefit plans in this state shall file a statement with the
175 commissioner annually by March 1. The statement shall be verified
176 by at least two (2) principal officers and shall cover the
177 preceding calendar year. Each pharmacy benefit manager shall also
178 send a copy of the statement to the board.

179 (2) The statement shall be on forms prescribed by the
180 commissioner and shall include:

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

184 (b) The number of persons enrolled during the year, the
185 number of enrollees as of the end of the year and the number of
186 enrollments terminated during the year; and

187 (c) Any other information relating to the operations of
188 the pharmacy benefit manager required by the commissioner under
189 this act.

190 (3) If the pharmacy benefit manager is audited annually by
191 an independent certified public accountant, a copy of the

192 certified audit report shall be filed annually with the
193 commissioner by June 30.

194 (4) The commissioner may extend the time prescribed for any
195 pharmacy benefit manager for filing annual statements or other
196 reports or exhibits of any kind for good cause shown. However,
197 the commissioner shall not extend the time for filing annual
198 statements beyond sixty (60) days after the time prescribed by
199 subsection (1) of this section. Any pharmacy benefit manager
200 which fails to file its annual statement within the time
201 prescribed by this section may have its license revoked by the
202 commissioner or its certificate of authority revoked or suspended
203 by the board until the annual statement is filed. The
204 commissioner may waive the requirements for filing financial
205 information for the PBM if an affiliate of the PBM is already
206 required to file such information under current law.

207 **SECTION 7.** (1) In lieu of or in addition to making its own
208 financial examination of a pharmacy benefit manager, the
209 commissioner may accept the report of a financial examination of
210 other persons responsible for the pharmacy benefit manager under
211 the laws of another state certified by the insurance supervisory
212 official, similar regulatory agency or the state health
213 commissioner of another state.

214 (2) The commissioner shall coordinate financial examinations
215 of a PBM that provides pharmacy management benefit plans in this
216 state to ensure an appropriate level of regulatory oversight and
217 to avoid any undue duplication of effort or regulation. The
218 pharmacy benefit manager being examined shall pay the cost of the
219 examination. The cost of the examination shall be deposited in a
220 special fund that shall provide all expenses for the regulation,
221 supervision and examination of all entities subject to regulation
222 under this act.

223 **SECTION 8.** (1) The expense of administering this act,
224 including the cost incurred by the commissioner and the board,

225 shall be assessed annually by the commissioner against all
226 pharmacy benefit managers operating in this state. Before
227 determining the assessment the commissioner shall request from the
228 board an estimate to all expenses for the regulation, supervision
229 and examination of all entities subject to regulation under this
230 act. The assessment shall be in proportion to the business done
231 in this state.

232 (2) All fees assessed under this act and paid to the
233 commissioner shall be deposited in a special fund that shall
234 provide all expenses for the regulation, supervision and
235 examination of all entities subject to regulation under this act.

236 The commissioner shall assess each PBM annually for its just
237 share of expenses. The assessment shall be in proportion to the
238 business done in this state. The commissioner shall provide the
239 board an amount from the special fund to cover all expenses
240 incurred by the board for the regulation under this act.

241 The commissioner shall give each PBM notice of the
242 assessment, which shall be paid to the commissioner on or before
243 March 1 of each year. Any PBM that fails to pay the assessment on
244 or before the date herein prescribed shall be subject to a penalty
245 imposed by the commission. The penalty shall be ten percent (10%)
246 of the assessment and interest for the period between the due date
247 and the date of full payment. If a payment is made in an amount
248 later found to be in error, the commissioner shall, (a) if an
249 additional amount is due, notify the company of the additional
250 amount and the company shall pay the additional amount within
251 fourteen (14) days of the date of the notice, or, (b) if an
252 overpayment is made, order a refund.

253 If an assessment made under this act is not paid to the
254 commissioner by the prescribed date, the amount of the assessment,
255 penalty and interest may be recovered from the defaulting company
256 on motion of the commissioner made in the name and for the use of
257 the state in the appropriate circuit court after ten (10) days'

258 notice to the company. The license of any defaulting company to
259 transact business in this state may be revoked or suspended by the
260 commissioner until it has paid such assessment.

261 **SECTION 9.** Any PBM that contracts with a pharmacy or
262 pharmacist to provide pharmacist's services through a pharmacy
263 management plan for enrollees in this state shall file such
264 contract forms with the commissioner thirty (30) days before the
265 execution of such contract. The contract forms shall be deemed
266 approved unless the commissioner disapproves such contract forms
267 within thirty (30) days after filing with the commissioner.
268 Disapproval shall be in writing, stating the reasons therefor and
269 a copy thereof delivered to the PBM. The commissioner shall
270 develop formal criteria for the approval and disapproval of PBM
271 contract forms.

272 The PBM is required to provide a contract to the pharmacy
273 that is written in plain English, using terms that will be
274 generally understood by pharmacists.

275 Any PBM that contracts with a pharmacy or pharmacist to
276 provide pharmacist's services through a pharmacy management plan
277 for enrollees in this state on behalf of any health plan sponsors
278 shall be identified as the agent of such health plan sponsors.
279 The health plan fiduciary responsibilities shall transfer to the
280 contracting PBM.

281 Each contract shall apply the same coinsurance, co-payment
282 and deductible to covered drug prescriptions filled by a pharmacy
283 provider who participates in the network.

284 Nothing in this section shall be construed to prohibit a
285 contract from applying different coinsurance, co-payment and
286 deductible factors between generic and brand name drugs that an
287 enrollee may obtain with a prescription, unless such limit is
288 applied uniformly to all pharmacy providers in the insurance
289 policy's network.

290 No pharmacy benefit management plan shall mandate any
291 pharmacist to change an enrollee's maintenance drug unless the
292 prescribing physician and the enrollee agree to such plan.

293 A pharmacy's participation in any plan or network offered by
294 a PBM is at the option and the discretion of the pharmacy. The
295 pharmacy's participation or lack of participation in one (1) plan
296 shall not effect their participation in any other plan or network
297 offered by the PBM.

298 Any PBM that initiates an audit of a pharmacy under the
299 provisions of the contract shall limit methods and procedures that
300 are recognized as fair and equitable for both the PBM and the
301 pharmacy. Extrapolation calculations in an audit are prohibited.
302 PBMs shall not recoup any monies due from an audit by setoff from
303 future remittances until the results of the audit are resolved and
304 finalized by both the PBM and the pharmacy. In the event the
305 findings of an audit cannot be finalized and agreed to by both
306 parties, then the commissioner shall establish an independent
307 review board to adjudicate unresolved grievances.

308 Prior to the terminating of a pharmacy from the network, the
309 PBM must give the pharmacy a written explanation of the reason of
310 termination thirty (30) days before the actual termination unless
311 contract termination action is taken in reaction to (a) loss of
312 the pharmacy's license to practice pharmacy or loss of
313 professional liability insurance; or (b) conviction of fraud or
314 misrepresentation in the contract. The pharmacy may request and
315 receive within thirty (30) days a review of the proposed
316 termination by the board before such termination.

317 The pharmacy shall not be held responsible for actions of the
318 PBM or plan sponsors and the PBM or plan sponsors shall not be
319 held responsible for the actions of the pharmacy.

320 **SECTION 10.** The board and the commissioner shall develop
321 formal investigation and compliance procedures with respect to
322 complaints by plan sponsors, pharmacists or enrollees concerning

323 the failure of a pharmacy benefit manager to comply with the
324 provisions of this act. The commissioner may refer complaints
325 received under Section 13 of this act to the board. If the board
326 or the commissioner has reason to believe that there is a
327 violation of this act, it shall issue and serve upon the pharmacy
328 benefit manager concerned, a statement of the charges and a notice
329 of a hearing to be held at a time and place fixed in the notice,
330 which shall not be less than thirty (30) days after notice is
331 served. The notice shall require the pharmacy benefit manager to
332 show cause why an order should not be issued directing the alleged
333 offender to cease and desist from the violation. At such hearing,
334 the pharmacy benefit manager shall have an opportunity to be heard
335 and to show cause why an order should not be issued requiring the
336 pharmacy benefit manager to cease and desist from the violation.

337 The board may make an examination concerning the quality of
338 services of any pharmacy benefit manager and pharmacists with whom
339 the pharmacy benefit manager has contracts, agreements or other
340 arrangements pursuant to its pharmacy benefit management plan as
341 often as the board deems necessary for the protection of the
342 interests of the people of this state. The pharmacy benefit
343 manager being examined shall pay the cost of the examination.

344 **SECTION 11.** PBMs shall use a current and nationally
345 recognized benchmark to base reimbursements for medications and
346 products dispensed by provider pharmacies as follows:

347 (a) For brand (single source) products the average
348 wholesale price (AWP) as listed in First Data Bank (Hearst
349 publications) or Facts and Comparisons (formerly Medispan) correct
350 and current on the date of service provided shall be used as an
351 index.

352 (b) For generic drug (multi-source) products, maximum
353 allowable cost (MAC) shall be established by referencing First
354 Data Bank/Facts and Comparisons Baseline Price (BLP). Only
355 products that are compliant with pharmacy laws as equivalent and

356 generically interchangeable with a federal FDA Orange Book rating
357 of "A-B" will be reimbursed from a MAC price methodology. In the
358 event a multi-source product has no BLP price, then it shall be
359 treated as a single source branded drug for the purpose of valuing
360 reimbursement.

361 **SECTION 12.** (1) No PBM or its representative may cause or
362 knowingly permit the use of (a) advertising that is untrue or
363 misleading; (b) solicitation that is untrue or misleading; or (c)
364 any form of evidence of coverage that is deceptive.

365 (2) No pharmacy benefit manager, unless licensed as an
366 insurer, may use in its name, contracts or literature (a) any of
367 the words "insurance," "casualty," "surety," "mutual"; or (b) any
368 other words descriptive of the insurance, casualty or surety
369 business or deceptively similar to the name or description of any
370 insurance or fidelity and surety insurer doing business in this
371 state.

372 (3) No PBM shall discriminate on the basis of race, creed,
373 color, sex or religion in the selection of pharmacies for
374 participation in the organization.

375 (4) No pharmacy benefit manager shall unreasonably
376 discriminate against pharmacists when contracting for pharmacist's
377 services.

378 (5) The PBM shall be entitled to access to usual and
379 customary pricing only for comparison to the reimbursement of a
380 specific claims payment made by the PBM. Usual and customary
381 pricing is confidential and any other use or disclosure by the PBM
382 is prohibited.

383 (6) A PBM may not move a plan to another payment network
384 unless it receives written consent from the plan sponsor.

385 (7) No PBM shall receive or accept any rebate, kickback or
386 any special payment or favor or advantage of any valuable
387 consideration or inducement for switching a patient's drug product
388 unless it is specified in a written contract that has been filed

389 with the commissioner thirty (30) days before the execution of
390 such contract.

391 (8) Claims paid by the PBM shall not be retroactively denied
392 or adjusted after seven (7) days from adjudication of such
393 claims. In no case shall acknowledgement of eligibility be
394 retroactively reversed. The PBM shall be allowed for retroactive
395 denial or adjustment in the event (a) the original claim was
396 submitted fraudulently; (b) the original claim payment was
397 incorrect because the provider was already paid for services
398 rendered; or (c) the services were not rendered by the
399 pharmacists.

400 (9) No PBM shall terminate a pharmacy from a network because
401 (a) they express disagreement with a PBM's decision to deny or
402 limit benefits to an eligible person; (b) a pharmacist discusses
403 with a current, former or prospective eligible person any aspect
404 of such person's medical condition or treatment alternatives
405 whether a covered service or not; (c) of the pharmacist's personal
406 recommendations regarding selecting a PBM based on the
407 pharmacist's personal knowledge of the health needs of such
408 person; (d) of the pharmacy's protesting or expressing
409 disagreement with a medical decision, medical policy or medical
410 practice of a PBM; (e) the pharmacy has in good faith communicated
411 with or advocated on behalf of one or more of the pharmacy's
412 current, former or prospective person regarding the provisions,
413 terms or requirements of the PBM's health benefit plans as they
414 relate to the needs of such persons regarding the method by which
415 the pharmacy is compensated for services provided under such
416 agreement with the PBM.

417 (10) No PBM shall terminate a pharmacy from a network or
418 otherwise penalize a pharmacy solely because of the pharmacy's
419 invoking of the pharmacy's right under this agreement or
420 applicable law or regulation.

421 (11) Termination from a network for reason of competence and
422 professional behavior shall not release the PBM from the
423 obligation to make any payment due to the pharmacy for services
424 provided in special circumstances post-termination to the eligible
425 persons at less than agreed upon rates.

426 (12) Participation or lack of participation by a pharmacy in
427 a plan or network cannot effect participation in any other plan or
428 network offered by the PBM.

429 **SECTION 13.** Any disclosures from the PBM to the enrollees
430 shall be written in plain English, using terms that will be
431 generally understood by lay readers and a copy of the disclosure
432 shall be provided to all pharmacies that are members of the
433 network. The following shall be provided to the PBM's enrollees
434 of a pharmacy benefit management plan at the time of enrollment or
435 at the time the contract is issued and shall be made available
436 upon request or at least annually:

437 (a) A list of the names and locations of all affiliated
438 providers.

439 (b) A description of the service area or areas within
440 which the PBM shall provide pharmacist's services.

441 (c) A description of the method of resolving complaints
442 of covered persons, including a description of any arbitration
443 procedure, if complaints may be resolved through a specified
444 arbitration agreement.

445 (d) A notice that the pharmacy benefit manager is
446 subject to regulation in this state by both the State Board of
447 Pharmacy and the Commissioner of Insurance.

448 (e) A prominent notice included within the evidence of
449 coverage providing substantially the following: "If you have any
450 questions regarding an appeal or grievance concerning the
451 prescription coverage that you have been provided, which have not
452 been satisfactorily addressed by your plan, you may contact the
453 Insurance Commissioner." Such notice shall also provide the

454 toll-free telephone number, mailing address and electronic mail
455 address of the Insurance Commissioner.

456 **SECTION 14.** The enrollee in a pharmacy benefit management
457 plan has the right to privacy and confidentiality in regard to
458 pharmacist's services. This right may be expressly waived in
459 writing by the enrollee or the enrollee's guardian.

460 **SECTION 15.** (1) If a PBM becomes insolvent or ceases to be
461 a company in this state in any assessable or license year, the
462 company shall remain liable for the payment of the assessment for
463 the period in which it operated as a PBM in this state.

464 (2) In the event of an insolvency of a PBM, the commissioner
465 may, after notice and hearing, levy an assessment on pharmacy
466 benefit managers licensed to do business in this state. Such
467 assessments shall be paid quarterly to the commissioner, and upon
468 receipt by the commissioner shall be paid over into an escrow
469 account in the special fund. This escrow account shall be solely
470 for the benefit of enrollees of the insolvent PBM.

471 **SECTION 16.** This act shall take effect and be in force from
472 and after July 1, 2005.