

By: Senator(s) Parks

To: Insurance

SENATE BILL NO. 2736

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 CHARGING A PLAN SPONSOR MORE FOR A PRESCRIPTION DRUG
6 THAN THE NET AMOUNT IT PAYS A PHARMACY FOR THE PRESCRIPTION DRUG;
7 TO AMEND SECTION 73-21-156, MISSISSIPPI CODE OF 1972, TO REQUIRE
8 PHARMACY BENEFIT MANAGERS TO PROVIDE A REASONABLE ADMINISTRATIVE
9 APPEAL PROCEDURE TO ALLOW PHARMACIES TO CHALLENGE A REIMBURSEMENT
10 FOR A SPECIFIC DRUG OR DRUGS AS BEING BELOW THE REIMBURSEMENT RATE
11 REQUIRED BY THE PRECEDING PROVISION; TO PROVIDE THAT IF THE APPEAL
12 IS UPHELD, THE PHARMACY BENEFIT MANAGER SHALL MAKE THE CHANGE IN
13 THE PAYMENT TO THE REQUIRED REIMBURSEMENT RATE; TO PROVIDE THAT A
14 PATIENT SHALL NOT PAY A COPAYMENT FOR A PRESCRIPTION THAT EXCEEDS
15 THE TOTAL REIMBURSEMENT PAID BY THE PHARMACY BENEFIT MANAGER TO
16 THE PHARMACY; TO AMEND SECTION 73-21-157, MISSISSIPPI CODE OF
17 1972, TO REQUIRE THAT A PHARMACY BENEFIT MANAGER LICENSE BE
18 RENEWED ANNUALLY; THAT A PHARMACY SERVICES ADMINISTRATIVE
19 ORGANIZATION TO PROVIDE TO A PHARMACY OR PHARMACIST A COPY OF ANY
20 CONTRACT ENTERED INTO ON BEHALF OF THE PHARMACY OR PHARMACIST BY
21 THE PHARMACY SERVICES ADMINISTRATIVE ORGANIZATION; TO AMEND
22 SECTION 73-21-161, MISSISSIPPI CODE OF 1972, TO PROHIBIT
23 PHARMACIES, PHARMACY BENEFIT MANAGERS AND PHARMACY BENEFIT MANAGER
24 AFFILIATES FROM ORDERING A PATIENT TO USE AN AFFILIATE PHARMACY OF
25 ANOTHER PHARMACY BENEFIT MANAGER, OR OFFERING OR IMPLEMENTING PLAN
26 DESIGNS THAT PENALIZE A PATIENT WHEN A PATIENT CHOOSES NOT TO USE
27 AN AFFILIATE PHARMACY OR THE AFFILIATE PHARMACY OF ANOTHER
28 PHARMACY BENEFIT MANAGER, OR INTERFERING WITH THE PATIENT'S RIGHT
29 TO CHOOSE THE PATIENT'S PHARMACY OR PROVIDER OF CHOICE; TO CREATE
30 NEW SECTION 73-21-162, MISSISSIPPI CODE OF 1972, TO PROHIBIT
31 PHARMACY BENEFIT MANAGERS AND PHARMACY BENEFIT MANAGER AFFILIATES
32 FROM PENALIZING OR RETALIATING AGAINST A PHARMACIST, PHARMACY OR
33 PHARMACY EMPLOYEE FOR EXERCISING ANY RIGHTS UNDER THIS ACT,
34 INITIATING ANY JUDICIAL OR REGULATORY ACTIONS, OR APPEARING BEFORE



35 ANY GOVERNMENTAL AGENCY, LEGISLATIVE MEMBER OR BODY OR ANY
36 JUDICIAL AUTHORITY; TO AMEND SECTION 73-21-163, MISSISSIPPI CODE
37 OF 1972, TO AUTHORIZE THE BOARD OF PHARMACY, FOR THE PURPOSES OF
38 CONDUCTING INVESTIGATIONS, TO CONDUCT EXAMINATIONS OF PHARMACY
39 BENEFIT MANAGERS AND TO ISSUE SUBPOENAS TO OBTAIN DOCUMENTS OR
40 RECORDS THAT IT DEEMS RELEVANT TO THE INVESTIGATION; TO PROVIDE
41 THAT MONIES FROM PENALTIES SHALL BE DEPOSITED IN A SPECIAL FUND
42 FOR PURPOSES OF THE BOARD IN REGULATING PHARMACY BENEFIT MANAGERS;
43 AND FOR RELATED PURPOSES.

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

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

47 73-21-153. For purposes of Sections 73-21-151 through
48 73-21-163, the following words and phrases shall have the meanings
49 ascribed herein unless the context clearly indicates otherwise:

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

51 (b) "Clean claim" means a completed billing instrument,
52 paper or electronic, received by a pharmacy benefit manager from a
53 pharmacist or pharmacies or the insured, which is accepted and
54 payment remittance advice is provided by the pharmacy benefit
55 manager. A clean claim includes resubmitted claims with
56 previously identified deficiencies corrected.

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

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

61 (* * *e) "Electronic claim" means the transmission of
62 data for purposes of payment of covered prescription drugs, other
63 products and supplies, and pharmacist services in an electronic



64 data format specified by a pharmacy benefit manager and approved
65 by the department.

66 (* * *f) "Electronic adjudication" means the process
67 of electronically receiving * * * and reviewing an electronic
68 claim and either accepting and providing payment remittance advice
69 for the electronic claim or rejecting an electronic claim.

70 (* * *g) "Enrollee" means an individual who has been
71 enrolled in a pharmacy benefit management plan or a health
72 insurance plan or both.

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

82 (i) "Payment remittance advice" means the claim detail
83 that the pharmacy receives when successfully processing an
84 electronic or paper claim. The claim detail shall contain, but is
85 not limited to:

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



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

90 (iii) The amount that the pharmacy benefit manager
91 dictates the patient must pay.

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

95 (* * * k) "Pharmacy benefit manager" * * * includes
96 those entities defined as a pharmacy benefit manager in Section
97 73-21-179 and also includes those entities sponsoring or providing
98 cash discount cards as defined in Section 83-9-6.1. * * * The
99 term "pharmacy benefit manager" shall not include:

100 (i) An insurance company unless the insurance
101 company is providing services as a pharmacy benefit manager as
102 defined in Section 73-21-179, in which case the insurance company
103 shall be subject to Sections 73-21-151 through * * * 73-21-163
104 only for those pharmacy benefit manager services * * *; and

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

108 (l) "Pharmacy benefit management plan" means an
109 arrangement for the delivery of pharmacist's services in which a
110 pharmacy benefit manager undertakes to administer the payment or
111 reimbursement of any of the costs of pharmacist's services for an



112 enrollee or participant on a prepaid or insured basis or otherwise
113 that:

114 (i) Contains one or more incentive arrangements
115 intended to influence the cost or level of pharmacist's services
116 between the plan sponsor and one or more pharmacies with respect
117 to the delivery of pharmacist's services; and

118 (ii) Requires or creates benefit payment
119 differential incentives for enrollees to use under contract with
120 the pharmacy benefit manager.

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

125 * * *

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

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



136 (* * * p) "Uniform claim form" means a form prescribed
137 by rule by the State Board of Pharmacy; however, for purposes of
138 Sections 73-21-151 through * * * 73-21-163, the board shall adopt
139 the same definition or rule where the State Department of
140 Insurance has adopted a rule covering the same type of claim. The
141 board may modify the terminology of the rule and form when
142 necessary to comply with the provisions of Sections 73-21-151
143 through * * * 73-21-163.

144 * * *

145 (q) "Wholesale acquisition cost" means the wholesale
146 acquisition cost of the drug as defined in 42 USC Section
147 1395w-3a(c) (6) (B) .

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

150 73-21-155. (1) Reimbursement under a contract to a
151 pharmacist or pharmacy for prescription drugs and other products
152 and supplies that is calculated according to a formula that uses
153 Medi-Span, Gold Standard or a nationally recognized reference that
154 has been approved by the board in the pricing calculation shall
155 use the most current reference price or amount in the actual or
156 constructive possession of the pharmacy benefit manager, its
157 agent, or any other party responsible for reimbursement for
158 prescription drugs and other products and supplies on the date of
159 electronic adjudication or on the date of service shown on the
160 nonelectronic claim.



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

164 (* * *3) Pharmacy benefit managers, their agents and other
165 parties responsible for reimbursement for prescription drugs and
166 other products and supplies shall be required to update the
167 nationally recognized reference prices or amounts used for
168 calculation of reimbursement for prescription drugs and other
169 products and supplies no less than every three (3) business days.

170 (* * *4) (a) All benefits payable under a pharmacy benefit
171 management plan shall be paid within seven (7) days after receipt
172 of * * * a clean electronic claim where * * * the claim was
173 electronically adjudicated, and shall be paid within thirty-five
174 (35) days after receipt of due written proof of a clean claim
175 where claims are submitted in paper format. Benefits due under
176 the plan and claims are overdue if not paid within seven (7) days
177 or thirty-five (35) days, whichever is applicable, after the
178 pharmacy benefit manager receives a clean claim containing
179 necessary information essential for the pharmacy benefit manager
180 to administer preexisting condition, coordination of benefits and
181 subrogation provisions under the plan sponsor's health insurance
182 plan. * * *

183 * * *

184 (* * *b) * * * If an electronic claim is denied, the
185 pharmacy benefit manager shall * * * notify the pharmacist or



186 pharmacy * * * of the reasons why the claim or portion thereof is
187 not clean and will not be paid and what substantiating
188 documentation and information is required to adjudicate the claim
189 as clean. If a written claim is denied, the pharmacy benefit
190 manager shall notify the pharmacy or pharmacies. * * * No later
191 than thirty-five (35) days * * * of receipt of such claim, the
192 pharmacy benefit manager shall * * * provide the pharmacist or
193 pharmacy * * * the reasons why the claim or portion thereof is not
194 clean and will not be paid and what substantiating documentation
195 and information is required to adjudicate the claim as clean. Any
196 claim or portion thereof resubmitted with the supporting
197 documentation and information requested by the pharmacy benefit
198 manager shall be paid within twenty (20) days after receipt.

199 (c) A claim for pharmacist services may not be
200 retroactively denied or reduced after adjudication of the claim
201 unless the:

202 (i) Original claim was submitted fraudulently;

203 (ii) Original claim payment was incorrect because
204 the pharmacy or pharmacist had already been paid for the
205 pharmacist services;

206 (iii) Pharmacist services were not rendered by the
207 pharmacy or pharmacist; or

208 (iv) Adjustment was agreed upon by the pharmacy
209 prior to the denial or reduction.



210 (* * * 5) If the board finds that any pharmacy benefit
211 manager, agent or other party responsible for reimbursement for
212 prescription drugs and other products and supplies has not paid
213 ninety-five percent (95%) of clean claims * * * received from all
214 pharmacies in a calendar quarter, he shall be subject to
215 administrative penalty of not more than Twenty-five Thousand
216 Dollars (\$25,000.00) to be assessed by the State Board of
217 Pharmacy.

218 (a) Examinations to determine compliance with
219 this * * * section may be conducted by the board. The board may
220 contract with qualified impartial outside sources to assist in
221 examinations to determine compliance. The expenses of any such
222 examinations shall be paid by the pharmacy benefit manager
223 examined and deposited into a special fund that is created in the
224 State Treasury, which shall be used by the board, upon
225 appropriation by the Legislature, to support the operations of the
226 board relating to the regulation of pharmacy benefit managers.

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

231 (c) If the claim is not denied for valid and proper
232 reasons by the end of the applicable time period prescribed in
233 this provision, the pharmacy benefit manager must pay the pharmacy
234 (where the claim is owed to the pharmacy) or the patient (where



235 the claim is owed to a patient) interest on accrued benefits at
236 the rate of one and one-half percent (1-1/2%) per month accruing
237 from the day after payment was due on the amount of the benefits
238 that remain unpaid until the claim is finally settled or
239 adjudicated. Whenever interest due pursuant to this provision is
240 less than One Dollar (\$1.00), such amount shall be credited to the
241 account of the person or entity to whom such amount is owed.

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

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

254 (* * *6) (a) For purposes of this subsection (* * *6),
255 "network pharmacy" means a licensed pharmacy in this state that
256 has a contract with a pharmacy benefit manager to provide covered
257 drugs at a negotiated reimbursement rate. A network pharmacy or
258 pharmacist may decline to provide a brand name drug, multisource
259 generic drug, or service, if the network pharmacy or pharmacist is



260 paid less than that network pharmacy's * * * cost for the * * *
261 prescription. If the network pharmacy or pharmacist declines to
262 provide such drug or service, the pharmacy or pharmacist shall
263 provide the customer with adequate information as to where the
264 prescription for the drug or service may be filled.

265 (b) The State Board of Pharmacy shall adopt rules and
266 regulations necessary to implement and ensure compliance with this
267 subsection, including, but not limited to, rules and regulations
268 that address access to pharmacy services in rural or underserved
269 areas in cases where a network pharmacy or pharmacist declines to
270 provide a drug or service under paragraph (a) of this
271 subsection. * * *

272 (* * *7) A pharmacy benefit manager shall not directly or
273 indirectly retroactively deny or reduce a claim or aggregate of
274 claims after the claim or aggregate of claims has been
275 adjudicated.

276 **SECTION 3.** Section 73-21-156, Mississippi Code of 1972, is
277 amended as follows:

278 73-21-156. (1) As used in this section, the following terms
279 shall be defined as provided in this subsection:

280 (a) "Maximum allowable cost list" means a listing of
281 drugs or other methodology used by a pharmacy benefit manager,
282 directly or indirectly, setting the maximum allowable payment to a
283 pharmacy or pharmacist for a generic drug, brand-name drug,



284 biologic product or other prescription drug. The term "maximum
285 allowable cost list" includes without limitation:

286 (i) Average acquisition cost, including national
287 average drug acquisition cost;

288 (ii) Average manufacturer price;

289 (iii) Average wholesale price;

290 (iv) Brand effective rate or generic effective
291 rate;

292 (v) Discount indexing;

293 (vi) Federal upper limits;

294 (vii) Wholesale acquisition cost; and

295 (viii) Any other term that a pharmacy benefit
296 manager or a health care insurer may use to establish
297 reimbursement rates to a pharmacist or pharmacy for pharmacist
298 services.

299 (b) "Pharmacy acquisition cost" means the amount that a
300 pharmaceutical wholesaler charges for a pharmaceutical product as
301 listed on the pharmacy's billing invoice.

302 (2) Before a pharmacy benefit manager places or continues a
303 particular drug on a maximum allowable cost list, the drug:

304 (a) If * * * a generic equivalent drug product as
305 defined in 73-21-73, shall be listed as therapeutically equivalent
306 and pharmaceutically equivalent "A" or "B" rated in the United
307 States Food and Drug Administration's most recent version of the
308 "Orange Book" or "Green Book" or have an NR or NA rating by



309 Medi-Span, Gold Standard, or a similar rating by a nationally
310 recognized reference approved by the board;

311 (b) Shall be available for purchase by each pharmacy in
312 the state from national or regional wholesalers operating in
313 Mississippi; and

314 (c) Shall not be obsolete.

315 (3) A pharmacy benefit manager shall:

316 (a) Provide access to its maximum allowable cost list
317 to each pharmacy subject to the maximum allowable cost list;

318 (b) Update its maximum allowable cost list on a timely
319 basis, but in no event longer than three (3) calendar days; and

320 (c) Provide a process for each pharmacy subject to the
321 maximum allowable cost list to receive prompt notification of an
322 update to the maximum allowable cost list.

323 (4) A pharmacy benefit manager shall:

324 (a) Provide a reasonable administrative appeal
325 procedure to allow pharmacies to challenge a maximum allowable
326 cost list and reimbursements made under a maximum allowable cost
327 list for a specific drug or drugs as:

328 (i) Not meeting the requirements of this section;

329 or

330 (ii) Being below the pharmacy acquisition cost.

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



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

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

339 (iii) A period of no less than * * * forty-five
340 (45) business days to file an administrative appeal.

341 (c) The pharmacy benefit manager shall respond to the
342 challenge under paragraph (a) of this subsection (4) within * * *
343 forty-five (45) business days after receipt of the challenge.

344 (d) If a challenge is made under paragraph (a) of this
345 subsection (4), the pharmacy benefit manager shall within * * *
346 forty-five (45) business days after receipt of the challenge
347 either:

348 (i) * * * Uphold the appeal * * * and:

349 1. Make the change in the maximum allowable
350 cost list payment to at least the pharmacy acquisition cost;

351 2. Permit the challenging pharmacy or
352 pharmacist to reverse and rebill the claim in question if
353 necessary;

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

356 4. Make the change under item 1 of this
357 subparagraph (i) effective for each similarly situated pharmacy as



358 defined by the payor subject to the maximum allowable cost list;
359 or

360 (ii) * * * Deny the appeal * * * and:

361 1. Provide the challenging pharmacy or
362 pharmacist the National Drug Code and the name of the national or
363 regional pharmaceutical wholesalers operating in Mississippi that
364 have the drug currently in stock at a price below the maximum
365 allowable cost as listed on the maximum allowable cost list; * * *
366 and

367 * * * 2. If the National Drug Code provided
368 by the pharmacy benefit manager is not available below the
369 pharmacy acquisition cost from the pharmaceutical wholesaler from
370 whom the pharmacy or pharmacist purchases the majority of
371 prescription drugs for resale, then the pharmacy benefit manager
372 shall adjust the maximum allowable cost as listed on the maximum
373 allowable cost list above the challenging pharmacy's pharmacy
374 acquisition cost and permit the pharmacy to reverse and rebill
375 each claim affected by the inability to procure the drug at a cost
376 that is equal to or less than the previously challenged maximum
377 allowable cost.

378 (5) (a) The board may conduct an audit or audits of appeals
379 denied under the provisions of subsection (4) of this section to
380 ensure compliance with its requirements. In conducting audits,
381 the board is empowered to request production of documents
382 pertaining to compliance with the provisions of this section, and



383 documents so requested shall be produced within seven (7) days of
384 the request unless extended by the board or its duly authorized
385 staff.

386 (b) The pharmacy benefit manager being audited shall
387 pay all costs of such audit. The cost of the audit examination
388 shall be deposited into the special fund created in Section
389 73-21-155, and shall be used by the board to support the
390 operations of the board relating to the regulation of pharmacy
391 benefit managers.

392 (c) The board is authorized to hire independent
393 consultants to conduct appeal audits of a pharmacy benefit manager
394 and expend funds collected under this section to pay the cost of
395 performing audit examination services.

396 (* * *6) (a) A pharmacy benefit manager shall not
397 reimburse a pharmacy or pharmacist in the state an amount less
398 than the amount that the pharmacy benefit manager reimburses a
399 pharmacy benefit manager affiliate for providing the same
400 pharmacist services.

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

404 (7) A pharmacy benefit manager or third-party payer may not
405 charge or cause a patient to pay a copayment that exceeds the
406 total reimbursement paid by the pharmacy benefit manager to the
407 pharmacy.



408 **SECTION 4.** Section 73-21-157, Mississippi Code of 1972, is
409 amended as follows:

410 73-21-157. (1) Before beginning to do business as a
411 pharmacy benefit manager, a pharmacy benefit manager shall obtain
412 a license to do business from the board. This license shall be
413 renewed annually on or before the anniversary date of the license.
414 To obtain a license or to renew a license, the applicant shall
415 submit an application to the board on a form to be prescribed by
416 the board.

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

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

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

429 (b) Any other information relating to the operations of
430 the pharmacy benefit manager required by the board under this
431 section.



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

443 (b) Any person who knowingly releases, causes to be
444 released or assists in the release of any such information shall
445 be subject to a monetary penalty imposed by the board in an amount
446 not exceeding Fifty Thousand Dollars (\$50,000.00) per violation.
447 When the board is considering the imposition of any penalty under
448 this paragraph (b), it shall follow the same policies and
449 procedures provided for the imposition of other sanctions in the
450 Pharmacy Practice Act. Any penalty collected under this paragraph
451 (b) shall be deposited into the special fund, and shall be used by
452 the board, upon appropriation of the Legislature, to support the
453 operations of the board relating to the regulation of pharmacy
454 benefit managers.

455 (c) All employees of the board who have access to the
456 information described in paragraph (a) of this subsection shall be



457 fingerprinted, and the board shall submit a set of fingerprints
458 for each employee to the Department of Public Safety for the
459 purpose of conducting a criminal history records check. If no
460 disqualifying record is identified at the state level, the
461 Department of Public Safety shall forward the fingerprints to the
462 Federal Bureau of Investigation for a national criminal history
463 records check.

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

468 (6) The board may extend the time prescribed for any
469 pharmacy benefit manager for filing annual statements or other
470 reports or exhibits of any kind for good cause shown. However,
471 the board shall not extend the time for filing annual statements
472 beyond sixty (60) days after the time prescribed by subsection (1)
473 of this section. The board may waive the requirements for filing
474 financial information for the pharmacy benefit manager if an
475 affiliate of the pharmacy benefit manager is already required to
476 file such information under current law with the Commissioner of
477 Insurance and allow the pharmacy benefit manager to file a copy of
478 documents containing such information with the board in lieu of
479 the statement required by this section.



480 (7) The expense of administering this section shall be
481 assessed annually by the board against all pharmacy benefit
482 managers operating in this state.

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

488 (9) A pharmacy or pharmacist that belongs to a pharmacy
489 services administrative organization shall be provided with a true
490 and correct copy of any contract that the pharmacy services
491 administrative organization enters into with a pharmacy benefit
492 manager or third-party payer on the pharmacy's or pharmacist's
493 behalf.

494 **SECTION 5.** Section 73-21-161, Mississippi Code of 1972, is
495 amended as follows:

496 73-21-161. (1) As used in this section, the term "referral"
497 means:

498 (a) Ordering of a patient to a pharmacy benefit manager
499 affiliate by a pharmacy benefit manager or a pharmacy benefit
500 manager affiliate either orally or in writing, including online
501 messaging, or any form of communication;

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



504 (* * *c) Offering or implementing plan designs that
505 require patients to use affiliated pharmacies or affiliated
506 pharmacies of another pharmacy benefit manager or that penalize a
507 patient, including requiring a patient to pay the full cost for a
508 prescription or a higher cost-share, when a patient chooses not to
509 use an affiliate pharmacy or the affiliate pharmacy of another
510 pharmacy benefit manager; or

511 (* * *d) Patient or prospective patient specific
512 advertising, marketing, or promotion of a pharmacy by * * * a
513 pharmacy benefit manager or pharmacy benefit manager affiliate.

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

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

525 (a) Making referrals;

526 (b) Transferring or sharing records relative to
527 prescription information containing patient identifiable and
528 prescriber identifiable data to or from a pharmacy benefit manager



529 affiliate for any commercial purpose; however, nothing in this
530 section shall be construed to prohibit the exchange of
531 prescription information between a pharmacy and its affiliate for
532 the limited purposes of pharmacy reimbursement; formulary
533 compliance; pharmacy care; public health activities otherwise
534 authorized by law; or utilization review by a health care
535 provider; * * *

536 (c) Presenting a claim for payment to any individual,
537 third-party payor, affiliate, or other entity for a service
538 furnished pursuant to a referral from * * * a pharmacy benefit
539 manager or pharmacy benefit manager affiliate * * *; or

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

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

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



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

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

560 **SECTION 6.** The following shall be codified as Section
561 73-21-162, Mississippi Code of 1972:

562 73-21-162. (1) Retaliation is prohibited.

563 (a) A pharmacy benefit manager may not retaliate
564 against a pharmacist or pharmacy based on the pharmacist's or
565 pharmacy's exercise of any right or remedy under this chapter.
566 Retaliation prohibited by this section includes, but is not
567 limited to:

568 (i) Terminating or refusing to renew a contract
569 with the pharmacist or pharmacy;

570 (ii) Subjecting the pharmacist or pharmacy to an
571 increased frequency of audits, number of claims audited, or amount
572 of monies for claims audited; or

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



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

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

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

584 (2) A pharmacy benefit manager or pharmacy benefit manager
585 affiliate shall not penalize or retaliate against a pharmacist,
586 pharmacy or pharmacy employee for exercising any rights under this
587 chapter, initiating any judicial or regulatory actions or
588 discussing or disclosing information pertaining to an agreement
589 with a pharmacy benefit manager or a pharmacy benefit manager
590 affiliate when testifying or otherwise appearing before any
591 governmental agency, legislative member or body or any judicial
592 authority.

593 **SECTION 7.** Section 73-21-163, Mississippi Code of 1972, is
594 amended as follows:

595 73-21-163. (1) Whenever the board has reason to believe
596 that a pharmacy benefit manager or pharmacy benefit manager
597 affiliate is using, has used, or is about to use any method, act
598 or practice prohibited in Sections 73-21-151 through 73-21-163 and
599 that proceedings would be in the public interest, it may bring an
600 action in the name of the board against the pharmacy benefit



601 manager or pharmacy benefit manager affiliate to restrain by
602 temporary or permanent injunction the use of such method, act or
603 practice. The action shall be brought in the Chancery Court of
604 the First Judicial District of Hinds County, Mississippi. The
605 court is authorized to issue temporary or permanent injunctions to
606 restrain and prevent violations of Sections 73-21-151 through
607 73-21-163 and such injunctions shall be issued without bond.

608 (2) The board may impose a monetary penalty on a pharmacy
609 benefit manager or a pharmacy benefit manager affiliate for
610 noncompliance with the provisions of the Sections 73-21-151
611 through 73-21-163, in amounts of not less than One Thousand
612 Dollars (\$1,000.00) per violation and not more than Twenty-five
613 Thousand Dollars (\$25,000.00) per violation. Each day that a
614 violation continues * * * is a separate violation. The board
615 shall prepare a record entered upon its minutes that states the
616 basic facts upon which the monetary penalty was imposed. Any
617 penalty collected under this subsection (2) shall be deposited
618 into the special fund of the board created in Section 73-21-155,
619 and shall be used by the board to support the operations of the
620 board relating to the regulation of pharmacy benefit managers.

621 (3) For the purposes of conducting investigations, the
622 board, through its executive director, may conduct examinations of
623 a pharmacy benefit manager and may also issue subpoenas to any
624 individual, pharmacy, pharmacy benefit manager, or any other
625 entity having documents or records that it deems relevant to the



626 investigation. The board may contract with qualified impartial
627 outside sources to assist in examinations to determine
628 noncompliance with the provisions of Sections 73-21-151 through
629 73-21-163. Money collected by the board under subsection (2) of
630 this section may be used to pay the cost of conducting or
631 contracting for such examinations.

632 (* * *4) The board may assess a monetary penalty for those
633 reasonable costs that are expended by the board in the
634 investigation and conduct of a proceeding if the board imposes a
635 monetary penalty under subsection (2) of this section. A monetary
636 penalty assessed and levied under this section shall be paid to
637 the board by the licensee, registrant or permit holder upon the
638 expiration of the period allowed for appeal of those penalties
639 under Section 73-21-101, or may be paid sooner if the licensee,
640 registrant or permit holder elects. Any penalty collected by the
641 board under this subsection (* * *4) shall be deposited into the
642 special fund of the board created in Section 73-21-155, and shall
643 be used by the board to support the operations of the board
644 relating to the regulation of pharmacy benefit managers.

645 (* * *5) When payment of a monetary penalty assessed and
646 levied by the board against a licensee, registrant or permit
647 holder in accordance with this section is not paid by the
648 licensee, registrant or permit holder when due under this section,
649 the board shall have the power to institute and maintain
650 proceedings in its name for enforcement of payment in the chancery



651 court of the county and judicial district of residence of the
652 licensee, registrant or permit holder, or if the licensee,
653 registrant or permit holder is a nonresident of the State of
654 Mississippi, in the Chancery Court of the First Judicial District
655 of Hinds County, Mississippi. When those proceedings are
656 instituted, the board shall certify the record of its proceedings,
657 together with all documents and evidence, to the chancery court
658 and the matter shall be heard in due course by the court, which
659 shall review the record and make its determination thereon in
660 accordance with the provisions of Section 73-21-101. The hearing
661 on the matter may, in the discretion of the chancellor, be tried
662 in vacation.

663 (* * *6) The board shall develop and implement a uniform
664 penalty policy that sets the minimum and maximum penalty for any
665 given violation of Sections 73-21-151 through 73-21-163. The
666 board shall adhere to its uniform penalty policy except in those
667 cases where the board specifically finds, by majority vote, that a
668 penalty in excess of, or less than, the uniform penalty is
669 appropriate. That vote shall be reflected in the minutes of the
670 board and shall not be imposed unless it appears as having been
671 adopted by the board.

672 **SECTION 8.** This act shall take effect and be in force from
673 and after July 1, 2024.

