

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MR. PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 1265: Pharmacists; authorize reimbursement for under certain insurance policies, plans, or contracts.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

19 **SECTION 1.** (1) As used in this section, "spread pricing"
20 means any amount charged or claimed by a pharmacy benefit manager
21 in excess of the ingredient cost for a dispensed prescription drug
22 plus dispensing fee paid directly or indirectly to any pharmacy,
23 pharmacist, or other provider on behalf of the health benefit
24 plan, less a pharmacy benefit management fee.

25 (2) No pharmacy benefit manager, carrier, or health benefit
26 plan may, either directly or through an intermediary, agent, or
27 affiliate engage in, facilitate, or enter into a contract with
28 another person involving spread pricing in this state.

29 (3) A pharmacy benefit manager contract with a carrier or
30 health benefit plan entered into, renewed, or amended on or after
31 the effective date of this act must:



32 (a) Specify all forms of revenue, including pharmacy
33 benefit management fees, to be paid by the carrier or health
34 benefit plan to the pharmacy benefit manager; and

35 (b) Acknowledge that spread pricing is not permitted in
36 accordance with this section.

37 **SECTION 2.** (1) Each drug manufacturer shall submit a report
38 to the Commissioner of the Mississippi Department of Insurance no
39 later than the fifteenth day of January, April, July, and October
40 with the current wholesale acquisition cost information for the
41 prescription drugs sold in or into the state by that drug
42 manufacturer; provided, however, the first report due under this
43 subsection shall not be due until October 1, 2024.

44 (2) Not more than thirty (30) days after an increase in
45 wholesale acquisition cost of forty percent (40%) or greater over
46 the preceding five (5) calendar years or ten percent (10%) or
47 greater in the preceding twelve (12) months for a prescription
48 drug with a wholesale acquisition cost of Seventy Dollars (\$70.00)
49 or more for a manufacturer-packaged drug container, a drug
50 manufacturer shall submit a report to the commissioner. The
51 report must contain the following information:

52 (a) Name of the drug;

53 (b) Whether the drug is a brand name or a generic;

54 (c) The effective date of the change in wholesale
55 acquisition cost;



56 (d) Aggregate, company-level research and development
57 costs for the previous calendar year;

58 (e) Aggregate rebate amounts paid to each pharmacy
59 benefits manager for the previous calendar year;

60 (f) The name of each of the drug manufacturer's drugs
61 approved by the United States Food and Drug Administration in the
62 previous five (5) calendar years;

63 (g) The name of each of the drug manufacturer's drugs
64 that lost patent exclusivity in the United States in the previous
65 five (5) calendar years; and

66 (h) A concise statement of rationale regarding the
67 factor or factors that caused the increase in the wholesale
68 acquisition cost, such as raw ingredient shortage or increase in
69 pharmacy benefit manager's rebates.

70 (2) The quality and types of information and data a drug
71 manufacturer submits to the commissioner pursuant to this section
72 must be the same as the quality and types of information and data
73 the drug manufacturer includes in the drug manufacturer's annual
74 consolidated report on Securities and Exchange Commission Form
75 10-K or any other public disclosure. A drug manufacturer shall
76 notify the commissioner in writing if the drug manufacturer is
77 introducing a new prescription drug to market at a wholesale
78 acquisition cost that exceeds the threshold set for a specialty
79 drug under the Medicare Part D Program.



80 (3) The notice must include a concise statement of rationale
81 regarding the factor or factors that caused the new drug to exceed
82 the Medicare Part D Program price. The drug manufacturer shall
83 provide the written notice within three (3) calendar days
84 following the release of the drug in the commercial market. A
85 drug manufacturer may make the notification pending approval by
86 the United States Food and Drug Administration if commercial
87 availability is expected within three (3) calendar days following
88 the approval.

89 (4) On or before October 1st of each year, a pharmacy
90 benefits manager providing services for a health care plan shall
91 file a report with the commissioner. The report must contain the
92 following information for the previous state fiscal year:

93 (a) The aggregated rebates, fees, price protection
94 payments and any other payments collected from each drug
95 manufacturer;

96 (b) The aggregated dollar amount of rebates, price
97 protection payments, fees, and any other payments collected from
98 each drug manufacturer which were passed to health insurers;

99 (c) The aggregated fees, price concessions, penalties,
100 effective rates, and any other financial incentive collected from
101 pharmacies which were passed to enrollees at the point of sale;

102 (d) The aggregated dollar amount of rebates, price
103 protection payments, fees, and any other payments collected from



104 drug manufacturers which were retained as revenue by the pharmacy
105 benefits manager; and

106 (e) The aggregated rebates passed on to employers.

107 (5) Reports submitted by pharmacy benefits managers under
108 this section may not disclose the identity of a specific health
109 benefit plan or enrollee, the identity of a drug manufacturer, the
110 prices charged for specific drugs or classes of drugs, or the
111 amount of any rebates or fees provided for specific drugs or
112 classes of drugs.

113 (6) On or before October 1st of each year, each health
114 insurer shall submit a report to the commissioner. The report
115 must contain the following information for the previous two (2)
116 calendar years:

117 (a) Names of the twenty-five (25) most frequently
118 prescribed drugs across all plans;

119 (b) Names of the twenty-five (25) prescription drugs
120 dispensed with the highest dollar spend in terms of gross revenue;

121 (c) Percent of increase in annual net spending for
122 prescription drugs across all plans;

123 (d) Percent of increase in premiums which is
124 attributable to prescription drugs across all plans;

125 (e) Percentage of specialty drugs with utilization
126 management requirements across all plans; and

127 (f) Premium reductions attributable to specialty drug
128 utilization management.



129 (7) A report submitted by a health insurer may not disclose
130 the identity of a specific health benefit plan or the prices
131 charged for specific prescription drugs or classes of prescription
132 drugs.

133 (8) The provisions of this section shall apply to the
134 pharmacy benefit manager of the Mississippi State and School
135 Employees Health Insurance Plan.

136 **SECTION 3.** (1) The commissioner shall develop a website to
137 publish information the commissioner receives under this chapter.
138 The commissioner shall make the website available on the
139 commissioner's website with a dedicated link prominently displayed
140 on the home page, or by a separate, easily identifiable Internet
141 address.

142 (2) Within sixty (60) days of receipt of reported
143 information under this chapter, the commissioner shall publish the
144 reported information on the website developed under this section.
145 The information the commissioner publishes may not disclose or
146 tend to disclose trade secret, proprietary, commercial, financial,
147 or confidential information of any pharmacy, pharmacy benefits
148 manager, drug wholesaler, or hospital. For purposes of this
149 section "proprietary information" means information on pricing,
150 costs, revenue, taxes, market share, negotiating strategies,
151 customers and personnel that is held by a pharmacy benefit manager
152 and used for its business purposes.



153 (3) The commissioner may adopt rules to implement this
154 chapter. The commissioner shall develop forms that must be used
155 for reporting required under this chapter. The commissioner may
156 contract for services to implement this chapter.

157 (4) A report received by the commissioner shall not be
158 subject to the provisions of the federal Freedom of Information
159 Act or the Mississippi Public Records Act and shall not be
160 released by the department unless subject to an order from a court
161 of competent jurisdiction. The department shall destroy or delete
162 or cause to be destroyed or deleted all such information thirty
163 (30) days after the department determines that the information is
164 no longer necessary or useful.

165 (5) The provisions of this section shall apply to the
166 pharmacy benefit manager of the Mississippi State and School
167 Employees Health Insurance Plan.

168 **SECTION 4.** (1) Pharmacy benefit managers shall also
169 identify to the Department of Insurance any ownership affiliation
170 of any kind with any pharmacy which, either directly or
171 indirectly, through one or more intermediaries:

172 (a) Has an investment or ownership interest in a
173 pharmacy benefit manager holding a certificate of authority;

174 (b) Shares common ownership with a pharmacy benefit
175 manager holding a certificate of authority in this state; or



176 (c) Has an investor or a holder of an ownership
177 interest which is a pharmacy benefit manager holding a certificate
178 of authority issued in this state.

179 (2) A pharmacy benefit manager shall report any change in
180 information required by this act to the department in writing
181 within sixty (60) days after the change occurs.

182 (3) The provisions of this section shall apply to the
183 pharmacy benefit manager of the Mississippi State and School
184 Employees Health Insurance Plan.

185 **SECTION 5.** A pharmacy benefit manager shall disclose to
186 the plan sponsor or employer one hundred percent (100%) of all
187 rebates and other payments that the pharmacy benefit manager
188 receives directly or indirectly from pharmaceutical manufacturers
189 and/or rebate aggregators in connection with claims administered
190 on behalf of the plan sponsor or employer and the recipients of
191 such rebates. In addition, a pharmacy benefit manager shall
192 report annually to each plan sponsor or employer the aggregate
193 amount of all rebates and other payments and the recipients of
194 such rebates.

195 The provisions of this section shall apply to the pharmacy
196 benefit manager of the Mississippi State and School Employees
197 Health Insurance Plan.

198 **SECTION 6.** (1) The department may impose a monetary penalty
199 on a pharmacy benefit manager or a pharmacy benefit manager
200 affiliate for noncompliance with the provisions of Sections 1



201 through 5 of this act, in amounts of not less than One Thousand
202 Dollars (\$1,000.00) per violation and not more than Twenty-five
203 Thousand Dollars (\$25,000.00) per violation. The department shall
204 prepare a record entered upon its minutes that states the basic
205 facts upon which the monetary penalty was imposed.

206 (2) For the purposes of conducting investigations, the
207 Department of Insurance, through its commissioner, may conduct
208 examinations of a pharmacy benefit manager and may also issue
209 subpoenas to any individual, pharmacy, pharmacy benefit manager,
210 or any other entity having documents or records that it deems
211 relevant to the investigation.

212 (3) The department may assess a monetary penalty for those
213 reasonable costs that are expended by the department in the
214 investigation and conduct of a proceeding if the department
215 imposes a monetary penalty under subsection (1) of this section.
216 A monetary penalty assessed and levied under this section shall be
217 paid to the department by the licensee, registrant or permit
218 holder upon the expiration of the period allowed for appeal of
219 penalties in the same manner as provided under Section 73-21-101,
220 or may be paid sooner if the licensee, registrant or permit holder
221 elects.

222 (4) When payment of a monetary penalty assessed and levied
223 by the department against a licensee, registrant or permit holder
224 in accordance with this section is not paid by the licensee,
225 registrant or permit holder when due under this section, the



226 department shall have the power to institute and maintain
227 proceedings in its name for enforcement of payment in the chancery
228 court of the county and judicial district of residence of the
229 licensee, registrant or permit holder, or if the licensee,
230 registrant or permit holder is a nonresident of the State of
231 Mississippi, in the Chancery Court of the First Judicial District
232 of Hinds County, Mississippi. When those proceedings are
233 instituted, the department shall certify the record of its
234 proceedings, together with all documents and evidence, to the
235 chancery court and the matter shall be heard in due course by the
236 court, which shall review the record and make its determination
237 thereon in the same manner as provided under Section 73-21-101.
238 The hearing on the matter may, in the discretion of the
239 chancellor, be tried in vacation.

240 (5) (a) The Department of Insurance may conduct audits to
241 ensure compliance with the provisions of this Sections 1 through 5
242 of this act. In conducting audits, the department is empowered to
243 request production of documents pertaining to compliance with the
244 provisions of Sections 1 through 5 of this act, and documents so
245 requested shall be produced within seven (7) days of the request
246 unless extended by the department or its duly authorized staff.

247 (b) If, after the conclusion of the audit, the pharmacy
248 benefit manager was found to be in compliance with all of the
249 requirements of Sections 1 through 5 of this act, then the
250 department shall pay the costs of the audit. However, if the



251 pharmacy benefit manager was not in compliance with all or a part
252 of Sections 1 through 5 of this act, then the pharmacy benefit
253 manager being audited shall pay all costs of such audit. The cost
254 of the audit examination shall be deposited into a special fund
255 and shall be used by the department, upon appropriation of the
256 Legislature, to support the operations of the department relating
257 to the auditing of pharmacy benefit managers.

258 (c) The department is authorized to hire independent
259 consultants to conduct appeal audits of a pharmacy benefit manager
260 and expend funds collected under this section to pay the cost of
261 performing audit services.

262 (6) The provisions of this section shall apply to the
263 pharmacy benefit manager of the Mississippi State and School
264 Employees Health Insurance Plan.

265 **SECTION 7.** (1) Retaliation is prohibited.

266 (a) A pharmacy benefit manager may not retaliate
267 against a pharmacist or pharmacy based on the pharmacist's or
268 pharmacy's exercise of any right or remedy under this chapter.
269 Retaliation prohibited by this section includes, but is not
270 limited to:

271 (i) Terminating or refusing to renew a contract
272 with the pharmacist or pharmacy;

273 (ii) Subjecting the pharmacist or pharmacy to an
274 increased frequency of audits, number of claims audited, or amount
275 of monies for claims audited; or



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

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

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

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

287 (2) A pharmacy benefit manager or pharmacy benefit manager
288 affiliate shall not penalize or retaliate against a pharmacist,
289 pharmacy or pharmacy employee for exercising any rights under this
290 chapter, initiating any judicial or regulatory actions or
291 discussing or disclosing information pertaining to an agreement
292 with a pharmacy benefit manager or a pharmacy benefit manager
293 affiliate when testifying or otherwise appearing before any
294 governmental agency, legislative member or body or any judicial
295 authority.

296 (3) The provisions of this section shall apply to the
297 pharmacy benefit manager of the Mississippi State and School
298 Employees Health Insurance Plan.

299 **SECTION 8.** Section 7 of this act shall be codified as
300 Section 73-21-158.



301 **SECTION 9.** This act shall take effect and be in force from
302 and after July 1, 2024, and shall stand repealed on June 30, 2027.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO PROHIBIT SPREAD PRICING; TO REQUIRE EACH DRUG
2 MANUFACTURER TO SUBMIT A REPORT TO THE COMMISSIONER OF THE
3 DEPARTMENT OF INSURANCE THAT INCLUDES THE CURRENT WHOLESALE
4 ACQUISITION COST; TO REQUIRE SUCH ENTITIES TO PROVIDE THE
5 COMMISSIONER WITH VARIOUS DRUG PRICING INFORMATION WITHIN A
6 CERTAIN TIME; TO REQUIRE PHARMACY BENEFIT MANAGERS TO FILE A
7 REPORT WITH THE COMMISSIONER; TO REQUIRE EACH HEALTH INSURER TO
8 SUBMIT A REPORT TO THE COMMISSIONER THAT INCLUDES CERTAIN DRUG
9 PRESCRIPTION INFORMATION; TO REQUIRE THE COMMISSIONER TO DEVELOP A
10 WEBSITE TO PUBLISH INFORMATION RELATED TO THE ACT; TO PROHIBIT
11 PHARMACY BENEFIT MANAGERS FROM RETALIATING AGAINST PHARMACISTS OR
12 PHARMACIES FOR TAKING CERTAIN ACTIONS; TO AUTHORIZE THE DEPARTMENT
13 TO CONDUCT INVESTIGATIONS, ISSUE SUBPOENAS, CONDUCT AUDITS AND
14 IMPOSE A MONETARY PENALTY FOR VIOLATIONS RELATED TO THE ACT; TO
15 REQUIRE PHARMACY BENEFIT MANAGERS TO IDENTIFY OWNERSHIP
16 AFFILIATION OF ANY KIND TO THE DEPARTMENT; AND FOR RELATED
17 PURPOSES

CONFEREES FOR THE HOUSE

CONFEREES FOR THE SENATE

X (SIGNED)
Turner

X (SIGNED)
Michel

X (SIGNED)
Hobgood-Wilkes

X (SIGNED)
Sparks

X (SIGNED)
Yancey

X (SIGNED)
Whaley

