

HOUSE BILL NO. 4155

February 06, 2019, Introduced by Rep. Vaupel and referred to the Committee on Government Operations.

A bill to amend 1984 PA 218, entitled "Third party administrator act," by amending section 2 (MCL 550.902) and by adding sections 25, 26, and 27.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 (a) "Administrative services manager" or "manager" means an
- 3 individual responsible for conducting the daily operations of a
- 4 third party administrator.

1 (b) "Benefit plan" or "plan" means a medical, surgical,
2 dental, vision, or health care benefit plan and may include
3 coverage under a policy or certificate issued by a carrier.

4 (c) "Board" means the TPA advisory board created under section
5 19.

6 (d) "Carrier" means ~~any of the following:~~

7 ~~(i) An~~**an** insurer, ~~which is including a health maintenance~~
8 **organization**, regulated ~~pursuant to under~~ the insurance code of
9 1956, Act No. 218 of the Public Acts of 1956, being sections ~~1956~~
10 **PA 218, MCL** 500.100 to 500.8302, ~~of the Michigan Compiled Laws.~~

11 ~~(ii) A medical care corporation regulated pursuant to Act No.~~
12 ~~108 of the Public Acts of 1939, being sections 550.301 to 550.316~~
13 ~~of the Michigan Compiled Laws.~~

14 ~~(iii) A hospital service corporation regulated pursuant to Act~~
15 ~~No. 109 of the Public Acts of 1939, being sections 550.501 to~~
16 ~~550.517 of the Michigan Compiled Laws.~~

17 ~~(iv) A health care corporation regulated pursuant to the~~
18 ~~nonprofit health care corporation reform act, Act No. 350 of the~~
19 ~~Public Acts of 1980, being sections 550.1101 to 550.1704 of the~~
20 ~~Michigan Compiled Laws.~~

21 ~~(v) A health maintenance organization regulated under part 210~~
22 ~~of the public health code, Act No. 368 of the Public Acts of 1978,~~
23 ~~being sections 333.21001 to 333.21099 of the Michigan Compiled~~
24 ~~Laws.~~

25 ~~(vi) A~~**or a** dental care corporation regulated pursuant to Act
26 ~~No. 125 of the Public Acts of 1963, being sections under 1963 PA~~
27 **125, MCL** 550.351 to 550.373. ~~of the Michigan Compiled Laws.~~

28 (e) "Commissioner" means the ~~commissioner of insurance of this~~
29 ~~state.~~**director.**

1 (f) "Department" means the department of insurance and
2 financial services.

3 (g) "Director" means the director of the department.

4 (h) ~~(f)~~ "ERISA" means the employee retirement income security
5 act of 1974, ~~as amended, Public Law 93-406, 88 Stat. 829.~~

6 (i) "Manufacturer" means that term as defined in section 17706
7 of the public health code, 1978 PA 368, MCL 333.17706.

8 (j) ~~(g)~~ "Person" means an individual, sole proprietorship,
9 partnership, corporation, association, or any other legal entity.

10 (k) ~~(h)~~ "Personal data" means any record or information
11 pertaining to the diagnosis, treatment, or health of an individual
12 covered by a plan.

13 (l) "Pharmacy" means that term as defined in section 17707 of
14 the public health code, 1978 PA 368, MCL 333.17707.

15 (m) "Pharmacy benefit manager" means a person that contracts
16 with a pharmacy on behalf of an employer, multiple employer welfare
17 arrangement, public employee benefit plan, state agency, insurer,
18 managed care organization, or other third-party payer to provide
19 pharmacy health benefit services or administration.

20 (n) ~~(i)~~ "Processes claims" means the administrative services
21 performed in connection with a claim for benefits under a plan.

22 (o) ~~(j)~~ "Service contract" means the written agreement for the
23 provision of administrative services between the TPA and a plan, a
24 sponsor of a plan, or a carrier.

25 (p) ~~(k)~~ "Third party administrator" or "TPA" means a person
26 ~~who~~ **that** processes claims pursuant to a service contract and ~~who~~
27 **that** may also provide 1 or more other administrative services
28 pursuant to a service contract, other than under a worker's
29 compensation self-insurance program pursuant to section 611 of the

1 worker's disability compensation act of 1969, ~~Act No. 317 of the~~
2 ~~Public Acts of 1969, being section 1969 PA 317, MCL 418.611. of the~~
3 ~~Michigan Compiled Laws.~~ **Third party administrator includes a**
4 **pharmacy benefit manager.** Third party administrator does not
5 include a carrier or employer sponsoring a plan.

6 **Sec. 25. A person shall not establish or operate as a pharmacy**
7 **benefit manager unless the person registers with the director. A**
8 **person that violates this section is subject to a civil fine of not**
9 **more than \$7,500.00.**

10 **Sec. 26. (1) By May 1 of each year, a pharmacy benefit manager**
11 **shall provide the department with a report containing the following**
12 **information from the prior calendar year:**

13 (a) For each of the pharmacy benefit manager's contractual or
14 other relationships with an insurer, the aggregate amount of all
15 rebates that the pharmacy benefit manager received from
16 pharmaceutical manufacturers other than any of the following
17 rebates:

18 (i) A pharmaceutical rebate provided under the Medicaid rebate
19 program under 42 USC 1396r-8.

20 (ii) A pharmaceutical rebate provided under the Medicare drug
21 discount program under the social security act under title XVIII of
22 the social security act, 42 USC 1395 to 1395jjj, and the patient
23 protection and affordable care act, Public Law 111-148, as amended
24 by the health care and education reconciliation act of 2010, Public
25 Law 111-152.

26 (iii) A pharmaceutical rebate provided under the 340b drug
27 pricing program under 42 USC 256b.

28 (iv) A pharmaceutical rebate provided under the federal
29 prescription drug program as paid by the Department of Defense and

1 the Department of Veterans Affairs.

2 (b) For each of the pharmacy benefit manager's contractual or
3 other relationships with an insurer, the aggregate rebates that the
4 pharmacy benefit manager received from pharmaceutical manufacturers
5 and did not pass through to the insurer.

6 (c) For each of the pharmacy benefit manager's contractual or
7 other relationships with an insurer, the highest aggregate retained
8 rebate percentage, lowest aggregate retained rebate percentage, and
9 the mean aggregate retained rebate percentage.

10 (2) The department shall publish in a timely manner the
11 information that it receives under subsection (1) on a publicly
12 available website. However, the information must be made available
13 in a form that does not disclose the identity of a specific insurer
14 or health plan, the prices charged for specific drugs or classes of
15 drugs, or the amount of any rebates provided for specific drugs or
16 classes of drugs. In developing the information to be published in
17 this section, the department shall consult with the 5 largest
18 carriers in this state, to be determined by the number of
19 enrollees, to ensure their identity is not able to be inferred
20 unknowingly on public disclosure.

21 (3) The pharmacy benefit manager and the department shall not
22 publish or disclose any information that would reveal the identity
23 of a specific insurer or health plan, a price charged for a
24 specific drug or class of drugs, or the amount of any rebates
25 provided for a specific drug or class of drugs. The information
26 described in this subsection must be protected from disclosure as
27 confidential and proprietary information, and is exempt from
28 disclosure as a public record under section 13 of the freedom of
29 information act, 1976 PA 442, MCL 15.243.

1 (4) As used in this section:

2 (a) "Aggregated retained rebate percentage" means the
3 following percentage, calculated for each prescription drug for
4 which a pharmacy benefit manager receives rebates under a health
5 plan, and expressed without disclosing any identifying information
6 regarding the health plan, prescription drug, or therapeutic class:

7 (i) Calculate the aggregate rebates that the pharmacy benefit
8 manager received during the prior calendar year from a
9 pharmaceutical manufacturer related to utilization of the
10 manufacturer's prescription drug by health plan insureds and did
11 not pass through to the health plan or insurer.

12 (ii) Divide the result of the calculation under subparagraph (i)
13 by the aggregate rebates that the pharmacy benefit manager received
14 during the prior calendar year from a pharmaceutical manufacturer
15 related to utilization of the manufacturer's prescription drug by
16 health plan insureds.

17 (b) "Rebates" means all rebates, discounts, education or
18 promotional funds, and other price concessions, based on
19 utilization of a prescription drug and paid by the manufacturer or
20 other party, other than an insured, directly or indirectly, to the
21 pharmacy benefit manager after the claim has been adjudicated at
22 the pharmacy. Rebates include a reasonable estimate of any volume-
23 based or other discounts.

24 Sec. 27. A contract between a pharmacy benefit manager and a
25 pharmacy or between a pharmacy benefit manager and any other
26 entity, including, but not limited to, a manufacturer, must not
27 prohibit or penalize a pharmacy or any other entity for doing any
28 of the following:

29 (a) Disclosing to a customer information regarding either of

1 the following:

2 (i) The cost sharing amounts that the customer must pay for a
3 particular prescription drug under his or her health plan's
4 prescription drug benefit or, without requesting any health plan
5 reimbursement, outside his or her health plan's prescription drug
6 benefit, or both.

7 (ii) The existence and clinical efficacy of a therapeutically
8 equivalent drug that would be less expensive to the customer under
9 his or her health plan's prescription drug benefit or outside his
10 or her health plan's prescription drug benefit, or both, without
11 requesting any health plan reimbursement, than the drug that was
12 originally prescribed.

13 (b) Selling to a customer, instead of a particular prescribed
14 drug, a therapeutically equivalent drug that would be less
15 expensive to the customer under his or her health plan's
16 prescription drug benefit or outside his or her health plan's
17 prescription drug benefit, without requesting any health plan
18 reimbursement, than the drug that was originally prescribed.