

# HOUSE BILL NO. 5338

November 14, 2023, Introduced by Reps. McFall, Arbit, Price, Morgan, Rheingans, Hope, Hood, Weiss, Tsernoglou, Stone, Aiyash and Hoskins and referred to the Committee on Insurance and Financial Services.

A bill to amend 2022 PA 11, entitled  
"Pharmacy benefit manager licensure and regulation act,"  
by amending sections 5, 7, and 9 (MCL 550.815, 550.817, and  
550.819) and by adding section 10.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

- 1           Sec. 5. As used in this act:
- 2           (a) "Affiliated pharmacy" means, except as otherwise provided
- 3 in this subdivision, a network pharmacy that directly, or
- 4 indirectly through 1 or more intermediaries, controls, is
- 5 controlled by, or is under common control with, a pharmacy benefit

1 manager. As used in section 19, affiliated pharmacy does not  
2 include a pharmacy that controls, is controlled by, or is under  
3 common control with, a hospital as that term is defined in section  
4 20106 of the public health code, 1978 PA 368, MCL 333.20106.

5 (b) "Aggregate retained rebate percentage" means the  
6 percentage of all rebates received by a pharmacy benefit manager  
7 from all manufacturers, that is not passed on to the pharmacy  
8 benefit manager's Michigan health plan or insurer clients.  
9 Aggregate retained rebate percentage must be expressed without  
10 disclosing any identifying information regarding any health plan,  
11 drug, or therapeutic class, and must be calculated as follows:

12 (i) Calculate the aggregate dollar amount of all rebates that  
13 the pharmacy benefit manager received during the prior calendar  
14 year from all manufacturers and did not pass through to the  
15 pharmacy benefit manager's Michigan health plan or insurer clients.

16 (ii) Divide the result of the calculation under subparagraph (i)  
17 by the aggregate dollar amount of all rebates that the pharmacy  
18 benefit manager received during the prior calendar year from all  
19 manufacturers.

20 (c) "Carrier" means that term as defined in section 3701 of  
21 the insurance code of 1956, 1956 PA 218, MCL 500.3701.

22 (d) "Claim" means a request for payment for administering,  
23 filling, or refilling a drug or for providing a pharmacy service or  
24 a medical supply or device to an enrollee.

25 (e) "Claims processing services" means the administrative  
26 services performed in connection with the processing and  
27 adjudicating of claims relating to pharmacist services that include  
28 any of the following:

29 (i) Receiving payments for pharmacist services.

1           (ii) Making payments to pharmacists or pharmacies for  
2 pharmacist services.

3           (iii) Receiving and making the payments described in  
4 subparagraphs (i) and (ii).

5           (f) "Covered person" means a person that is insured in a  
6 health plan.

7           (g) "Department" means the department of insurance and  
8 financial services.

9           (h) **"Defined cost sharing" means a deductible payment or**  
10 **coinsurance amount that an insurer imposes on an enrollee for a**  
11 **covered prescription drug under the enrollee's health plan.**

12           (i) ~~(h)~~ "Director" means the director of the department.

13           (j) ~~(i)~~ "Enrollee" means ~~that term as defined in section 116~~  
14 ~~of the insurance code of 1956, 1956 PA 218, MCL 500.116.~~**an**  
15 **individual entitled to coverage of health care items or services**  
16 **from an insurer.**

17           (k) ~~(j)~~ "Financially viable" means that 1 of the following  
18 conditions is met:

19           (i) The pharmacy benefit manager has received an unqualified  
20 opinion from an independent public accountant showing it is solvent  
21 based on generally accepted accounting principles.

22           (ii) If no independent public accountant opinion is obtained,  
23 the pharmacy benefit manager remains solvent after adjusting for  
24 goodwill and intangible assets.

25           (l) ~~(k)~~ "Health plan" means a ~~qualified health plan as that~~  
26 ~~term is defined in section 1261 of the insurance code of 1956, 1956~~  
27 ~~PA 218, MCL 500.1261.~~**policy, contract, certificate, or agreement**  
28 **offered or issued by an insurer to provide, deliver, arrange for,**  
29 **pay for, or reimburse any of the costs of health care items or**

1 **services.**

2 (m) ~~(l)~~—"Individual responsible for the conduct of affairs of  
3 the pharmacy benefit manager" means any of the following:

4 (i) A member of the board of directors, board of trustees,  
5 executive committee, or other governing board or committee.

6 (ii) A principal officer for a corporation or a partner or  
7 member for a partnership, association, or limited liability  
8 company.

9 (iii) A shareholder or member holding directly or indirectly 10%  
10 or more of the voting stock, voting securities, or voting interest  
11 of the pharmacy benefit manager.

12 (iv) Any person who exercises control over the affairs of the  
13 pharmacy benefit manager.

14 (n) ~~(m)~~—"Insurer" means an insurer that delivers, issues for  
15 delivery, or renews in this state a health plan that ~~provides drug~~  
16 ~~coverage under the insurance code of 1956, 1956 PA 218, MCL 500.100~~  
17 ~~to 500.8302.~~ **offers health insurance coverage, as defined in 42 USC**  
18 **300gg-91, and is subject to the insurance laws of this state,**  
19 **including any entity issuing medical coverage through a group**  
20 **policy, or any state or local governmental employer plan.**

21 Sec. 7. As used in this act:

22 (a) "Mail-order pharmacy" means a pharmacy whose primary  
23 business is to receive prescriptions by mail, fax, or through  
24 electronic submissions, dispense drugs to enrollees through the use  
25 of the United States Postal Service or other common carrier  
26 services, and provide consultation with patients electronically  
27 rather than face-to-face.

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

1 (c) "Maximum allowable cost" means the maximum amount that a  
2 pharmacy benefit manager will reimburse a network pharmacy for the  
3 ingredient cost for a generic drug.

4 (d) "Maximum allowable cost list" means a listing of drugs  
5 used by a pharmacy benefit manager, directly or indirectly, to set  
6 the maximum allowable cost.

7 (e) "Multiple source drug" means a therapeutically equivalent  
8 drug that is available from 1 or more of the following:

9 (i) At least 1 brand-named manufacturer and at least 1 generic  
10 manufacturer.

11 (ii) Two or more generic manufacturers.

12 (f) "Network pharmacy" means a retail pharmacy or other  
13 pharmacy that contracts directly or through a pharmacy services  
14 administration organization with a pharmacy benefit manager.

15 (g) "Nonaffiliated pharmacy" means a network pharmacy that  
16 directly, or indirectly through 1 or more intermediaries, does not  
17 control, is not controlled by, and is not under common control  
18 with, a pharmacy benefit manager.

19 (h) "Person" means an individual, partnership, corporation,  
20 **unincorporated** association, **joint venture, limited liability**  
21 **company, trust, estate, foundation, not-for-profit corporation,**  
22 **unincorporated organization,** governmental entity, or any other  
23 legal entity.

24 (i) "Pharmacist" means that term as defined in section 17707  
25 of the public health code, 1978 PA 368, MCL 333.17707.

26 (j) "Pharmacist services" means products, goods, and services,  
27 or any combination of products, goods, and services, provided as a  
28 part of the practice of pharmacy.

29 (k) "Pharmacy" means that term as defined in section 17707 of

1 the public health code, 1978 PA 368, MCL 333.17707.

2 ~~(l) Except as otherwise provided in subdivision (m), "pharmacy~~  
3 **"Pharmacy benefit management service" means any of the following:**

4 **(i) Negotiating the price of prescription drugs, including**  
5 **negotiating and contracting for direct or indirect rebates,**  
6 **discounts, or other price concessions.**

7 **(ii) Managing any aspect of a prescription drug benefit,**  
8 **including, but not limited to, the processing and payment of claims**  
9 **for prescription drugs, the performance of drug utilization review,**  
10 **the processing of drug prior authorization requests, the**  
11 **adjudication of appeals or grievances related to the prescription**  
12 **drug benefit, contracting with network pharmacies, controlling the**  
13 **cost of covered prescription drugs, managing or providing data**  
14 **relating to the prescription drug benefit, or providing related**  
15 **services.**

16 **(iii) Performance of any administrative, managerial, clinical,**  
17 **pricing, financial, reimbursement, data administration or**  
18 **reporting, or billing service.**

19 **(iv) Services the director prescribes by rule.**

20 ~~(m) "Pharmacy benefit manager" means an entity that contracts~~  
21 ~~with a pharmacy or a pharmacy services administration organization~~  
22 ~~on behalf of a health plan or carrier to provide pharmacy health~~  
23 ~~services to individuals covered by the health plan or carrier or~~  
24 ~~administration that includes, but is not limited to, any of the~~  
25 ~~following:~~

26 ~~(i) Contracting directly or indirectly with pharmacies to~~  
27 ~~provide drugs to enrollees or other covered persons.~~

28 ~~(ii) Administering a drug benefit.~~

29 ~~(iii) Processing or paying pharmacy claims.~~

1 ~~(iv) Creating or updating drug formularies.~~

2 ~~(v) Making or assisting in making prior authorization~~  
3 ~~determinations on drugs.~~

4 ~~(vi) Administering rebates on drugs.~~

5 ~~(vii) Establishing a pharmacy network.~~

6 ~~(m) "Pharmacy benefit manager" does not include the department~~  
7 ~~of health and human services, a carrier, or an insurer.~~ **a person**  
8 **that, under a written agreement with an insurer or health plan,**  
9 **either directly or indirectly, provides 1 or more pharmacy benefit**  
10 **management services on behalf of the insurer or health plan, and**  
11 **any agent, contractor, intermediary, affiliate, subsidiary, or**  
12 **related entity of the person that facilitates, provides, directs,**  
13 **or oversees the provision of the pharmacy benefit management**  
14 **services. Pharmacy benefit manager does not include the department**  
15 **of health and human services, a carrier, or an insurer.**

16 (n) "Pharmacy benefit manager network" means a network of  
17 pharmacists or pharmacies that are offered by an agreement or  
18 contract to provide pharmacist services.

19 (o) "Pharmacy services administration organization" means an  
20 entity that provides contracting and other administrative services  
21 relating to prescription drug benefits to pharmacies.

22 (p) "Plan sponsor" means that term as defined in section 7705  
23 of the insurance code of 1956, 1956 PA 218, MCL 500.7705.

24 (q) "Practice of pharmacy" means that term as defined in  
25 section 17707 of the public health code, 1978 PA 368, MCL  
26 333.17707.

27 (r) "Preferred pharmacy" means a network pharmacy that offers  
28 covered drugs to health plan members at lower out-of-pocket costs  
29 than what the member would pay at a nonpreferred network pharmacy.

1 (s) "Price protection rebate" means a negotiated price  
2 concession that accrues directly or indirectly to the insurer, or  
3 other party on behalf of the insurer, including a pharmacy benefit  
4 manager, in the event of an increase in the wholesale acquisition  
5 cost of a drug above a specified threshold.

6 Sec. 9. As used in this act:

7 (a) "Rebate" means ~~a formulary discount or remuneration~~  
8 ~~attributable to the use of prescription drugs that is paid by a~~  
9 ~~manufacturer or third party, directly or indirectly, to a pharmacy~~  
10 ~~benefit manager after a claim has been adjudicated at a pharmacy.~~  
11 ~~Rebate does not include a fee, including, but not limited to, a~~  
12 ~~bona fide service fee or administrative fee, that is not a~~  
13 ~~formulary discount or remuneration described in this~~  
14 ~~subdivision.~~ either of the following:

15 (i) Negotiated price concessions, including, but not limited  
16 to, base price concessions and reasonable estimates of any price  
17 protection rebates and performance-based price concessions that may  
18 accrue directly or indirectly to the insurer, or other party on  
19 behalf of the insurer, including a pharmacy benefit manager, during  
20 the coverage year from a manufacturer, dispensing pharmacy, or  
21 other party in connection with the dispensing or administration of  
22 a prescription drug.

23 (ii) Reasonable estimates of any negotiated price concessions,  
24 fees, and other administrative costs that are passed through, or  
25 are reasonably anticipated to be passed through, to the insurer, or  
26 other party on behalf of the insurer, including a pharmacy benefit  
27 manager, and serve to reduce the insurer's liabilities for a  
28 prescription drug.

29 (b) "Retail pharmacy" means a pharmacy that dispenses



1 prescription drugs to the public at retail primarily to individuals  
2 that reside in close proximity to the pharmacy, typically by face-  
3 to-face interaction with the individual or the individual's  
4 caregiver.

5 (c) "Rule" means a rule promulgated under the administrative  
6 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

7 (d) "Specialty drug" means a drug that provides treatment for  
8 serious, chronic, or life-threatening diseases that is covered  
9 under a patient's health plan or by a patient's carrier to which  
10 any of the following apply:

11 (i) The cost of the drug exceeds the drug cost threshold  
12 established by the Centers for Medicare and Medicaid Services under  
13 the Medicare Part D program.

14 (ii) The drug requires special administration, including, but  
15 not limited to, injection, infusion, or inhalation.

16 (iii) The drug requires unique storage, handling, or  
17 distribution.

18 (iv) The drug requires special oversight, intensive monitoring,  
19 complex education and support, or care coordination with a person  
20 licensed under article 15 of the public health code, 1978 PA 368,  
21 MCL 333.16101 to 333.18838.

22 (e) "Specialty pharmacy" means a pharmacy that dispenses  
23 specialty drugs to patients and that is nationally accredited by an  
24 independent third party.

25 (f) "Spread pricing" means ~~the~~ **either of the following:**

26 **(i) Any amount charged or claimed by a pharmacy benefit manager**  
27 **in excess of the ingredient cost for a dispensed prescription drug**  
28 **plus dispensing fee paid directly or indirectly to any pharmacy,**  
29 **pharmacist, or other provider on behalf of the health plan, less a**

1 **pharmacy benefit management fee.**

2 (ii) **The** model of prescription drug pricing in which a pharmacy  
3 benefit manager charges a health plan a contracted price for  
4 prescription drugs, and the contracted price for the prescription  
5 drugs differs from the amount the pharmacy benefit manager directly  
6 or indirectly pays the pharmacist or pharmacy for pharmacist  
7 services.

8 (g) Except as otherwise provided in subdivision (h), "third  
9 party" means a person that is not an enrollee or insured in a  
10 health plan.

11 (h) "Third party" does not include a pharmacy benefit manager.

12 (i) "Wholesale distributor" means that term as defined in  
13 section 17709 of the public health code, 1978 PA 368, MCL  
14 333.17709.

15 **Sec. 10. (1) An enrollee's defined cost sharing for each**  
16 **prescription drug must be calculated at the point of sale based on**  
17 **a price that is reduced by an amount equal to 100% of all rebates**  
18 **received, or to be received, in connection with the dispensing or**  
19 **administration of the prescription drug.**

20 (2) In complying with this section, a pharmacy benefit manager  
21 or its agents shall not publish, or directly or indirectly disclose  
22 any of the following:

23 (a) Information regarding the amount of rebates an insurer  
24 receives on a product or therapeutic class of products,  
25 manufacturer, or pharmacy-specific basis.

26 (b) Information that reveals the identification of an  
27 individual product or therapeutic class of products.

28 (3) The information described in subsection (2) is considered  
29 a trade secret and is exempt from disclosure under the freedom of

1 information act, 1976 PA 442, MCL 15.231 to 15.246.

2 (4) This section does not prevent a pharmacy benefit manager  
3 or an insurer from decreasing an enrollee's defined cost sharing by  
4 an amount greater than the amount described in subsection (1).

5 (5) The director shall impose a civil fine on a pharmacy  
6 benefit manager of not more than \$1,000.00 for each violation of  
7 this section, not to exceed \$10,000.00 in the aggregate for  
8 multiple violations. However, if a pharmacy benefit manager knew or  
9 reasonably should have known that the pharmacy benefit manager  
10 violated this section, the director shall impose a civil fine on  
11 the pharmacy benefit manager of not more than \$2,500.00 for each  
12 violation of this section, not to exceed \$25,000.00 in the  
13 aggregate for multiple violations within 6 months.

14 (6) If the director finds that an insurer has violated this  
15 section, after an opportunity for a hearing under the  
16 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
17 24.328, the director shall impose a civil fine on an insurer of not  
18 more than \$500.00 for each violation of this section.