

1 SB483
2 169136-1
3 By Senator Marsh
4 RFD: Banking and Insurance
5 First Read: 19-MAY-15

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8 SYNOPSIS: This bill would amend the Pharmaceutical
9 Insurance Coverage Chapter of the Alabama Insurance
10 Code to provide further for the applicability of
11 Chapter 45 of Title 27, Code of Alabama, to
12 pharmacy benefit management administered by various
13 health care plans, companies, and facilities; to
14 provide for definitions, choice of pharmacy
15 services, and contracting providers, void policies,
16 non-mandated benefits and services; requirements of
17 compliance; nonconforming policies; duty of
18 Insurance Department to enforce, adoption of rules,
19 regulated activities; and violations.

20 This bill would add a new Article 3 to
21 Chapter 45 of Title 27, Code of Alabama, relating
22 to the administration of pharmaceutical insurance
23 coverage, including timely notice of changes in
24 terms of managers; reimbursement and payment;
25 cancellation procedures; denial of payment;
26 preservation of patient care; use of pharmacy data;

1 pricing of drugs; 90-day supply at retail; and
2 synchronization of medication.

3 This bill would amend the Pharmacy Audit
4 Integrity Act to provide further for audit
5 procedures and reports regarding disclosure to a
6 pharmacy prior to changes in contract or audit
7 procedures; extension of time for producing audit
8 items; qualifications of licensed pharmacists
9 giving professional judgment; amended claims;
10 requirements for documentation; confidentiality and
11 limits on audit information; validation of pharmacy
12 records for changes of certain drugs authorized by
13 federal or state law; overpayments and recoupment
14 of excess payments; and claims adjudication.

15
16 A BILL

17 TO BE ENTITLED

18 AN ACT

19
20 To amend Sections 27-45-1, 27-45-2, 27-45-3,
21 27-45-4, 27-45-5, 27-45-6, 27-45-7, 27-45-8, and 27-45-9,
22 relating to Chapter 45 of Title 27 to provide further for the
23 applicability of Chapter 45 of Title 27 to pharmacy benefit
24 management plans and to provide for definitions, choice of
25 pharmacy services, and contracting providers, void policies,
26 non-mandated benefits and services; requirements of
27 compliance; nonconforming policies; duty of Insurance

1 Department to enforce, adoption of rules, regulated
2 activities; and violations; to add Article 3 to Chapter 45 of
3 Title 27 consisting of Sections 27-45-30 to 27-45-38,
4 inclusive, Code of Alabama 1975, relating to the
5 administration of pharmaceutical coverage, including timely
6 notice of changes in terms of managers; reimbursement and
7 payment; cancellation procedures; denial of payment;
8 preservation of patient care; use of pharmacy data; pricing of
9 drugs; 90-day supply at retail; and synchronization of
10 medication; and to amend Section 34-23-184, Code of Alabama
11 1975, relating to audit and report procedures pursuant to the
12 Pharmacy Audit Integrity Act; to provide further for
13 disclosure of changes in pharmacy contract and audit
14 procedures; notice of on-site audits; qualifications of
15 pharmacists giving professional judgment in audits; amended
16 claims; limits on audit documentation; confidentiality of
17 audit information; validation of pharmacy records for changes
18 of certain drugs authorized by federal or state law;
19 overpayments and recoupment of excess payments, and claims
20 adjudication.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 27-45-1, 27-45-2, 27-45-3,
23 27-45-4, 27-45-5, 27-45-6, 27-45-7, 27-45-8, and 27-45-9, Code
24 of Alabama 1975, are amended to read as follows:

25 "§27-45-1.

26 "This article shall apply to health insurance ~~and~~
27 plans, employee benefit plans, health benefit plans, pharmacy

1 benefit management plans, administered by a managed care
2 company, nonprofit hospital or medical service organization,
3 health benefit plan, third-party payor, pharmacy benefit
4 manager, a health program administered by a department of the
5 state, or any entity that represents those companies, groups,
6 or departments providing for pharmaceutical services,
7 including without limitation, prescription drugs.

8 "§27-45-2.

9 "As used in this article, the following terms shall
10 have the respective meanings herein set forth, unless the
11 context shall otherwise require:

12 "(1) ALABAMA INSURANCE CODE. Title 27 of the Code of
13 Alabama 1975.

14 "~~(4)~~ (2) COMMISSIONER and DEPARTMENT. Such terms,
15 respectively, shall have the meanings ascribed in Section
16 27-1-2. The Commissioner of Insurance of this state.

17 "~~(5)~~ (3) CONTRACTUAL OBLIGATION. Any obligation
18 under covered policies or employee benefit plans.

19 "~~(6)~~ (4) COVERED POLICY OR PLAN. Any policy,
20 employee benefit plan, or contract within the scope of this
21 article.

22 "(5) DEPARTMENT. The Department of Insurance of this
23 state.

24 "(6) ~~(12)~~ DRUGS. All medical substances,
25 preparations, and devices recognized by the United States
26 Pharmacopoeia and National Formulary, or any revision thereof,
27 and all substances and preparations intended for external and

1 internal use in the cure, diagnosis, mitigation, treatment, or
2 prevention of disease in man or animal and all substances and
3 preparations other than food intended to affect the structure
4 or any function of the body of man or animal.

5 "(7) ~~(8)~~ EMPLOYEE BENEFIT PLAN. Any plan, fund, or
6 program heretofore or hereafter established or maintained by
7 an employer or an employee organization, or by both, to the
8 extent that such plan, fund, or program was established or is
9 maintained for the purpose of providing for its participants
10 or their beneficiaries, through the purchase of insurance or
11 otherwise, pharmaceutical services, including, without
12 limitation, prescription drugs.

13 "(8) HEALTH BENEFIT PLAN. Any individual or group
14 plan, employee welfare benefit plan, policy, or contract for
15 health care services issued, delivered, issued for delivery,
16 or renewed in this state by a health care insurer, health
17 maintenance organization, accident and sickness insurer,
18 fraternal benefit society, nonprofit hospital service
19 corporation, nonprofit medical service corporation, health
20 care service plan, or any other person, firm, corporation,
21 joint venture, or other similar business entity that pays for
22 insureds or beneficiaries in this state. The term includes,
23 but is not limited to, entities created pursuant to Article 6
24 of Chapter 4 of Title 10. A health benefit plan located or
25 domiciled outside of the State of Alabama is deemed to be
26 subject to this article if it receives, processes,
27 adjudicates, pays, or denies claims for health care services

1 submitted by or on behalf of patients, insureds, or
2 beneficiaries who reside in Alabama.

3 ~~"(7)~~ (9) HEALTH INSURANCE POLICY. Any individual,
4 group, blanket, or franchise insurance policy, insurance
5 agreement, or group hospital service contract providing for
6 pharmaceutical services, including, without limitation,
7 prescription drugs, incurred as a result of accident or
8 sickness, or to prevent same.

9 ~~"(2)~~ (10) INSURER. ~~Such term shall have the meaning~~
10 ~~ascribed in Section 27-1-2.~~ Every person engaged as
11 indemnitor, surety, or contractor in the business of entering
12 into contracts of insurance.

13 "(11) MAC. Maximum allowable cost.

14 ~~"(3)~~ (12) PERSON. ~~Such term shall have the meaning~~
15 ~~ascribed in Section 27-1-2.~~ An individual, insurer, company,
16 association, organization, Lloyd's insurer, society,
17 reciprocal insurer or interinsurance exchange, partnership,
18 syndicate, business trust, corporation, and every legal
19 entity.

20 ~~"(11)~~ (13) PHARMACEUTICAL SERVICES. Services
21 ordinarily and customarily rendered by a pharmacy or
22 pharmacist, including, without limitation, ~~the dispensing of~~
23 ~~prescriptions, drugs, medicines, chemicals, or poisons~~
24 offering for sale, compounding, or dispensing or
25 prescriptions, drugs, medicines, chemicals, or poisons.
26 Pharmaceutical services also includes the sale or provision

1 of, counseling of, or fitting of medical devices, including
2 prosthetics and durable medical equipment.

3 "~~(9)~~ (14) PHARMACIST. Any person licensed by the
4 Alabama State Board of Pharmacy to practice the profession of
5 pharmacy in the State of Alabama and whose license is in good
6 standing.

7 "~~(10)~~ (15) PHARMACY. A place licensed by the Alabama
8 State Board of Pharmacy in which prescriptions, drugs,
9 medicines, chemicals, and poisons are sold, offered for sale,
10 compounded, or dispensed, and shall include all places whose
11 title may imply the sale, offering for sale, compounding, or
12 dispensing of prescriptions, drugs, medicines, chemicals, or
13 poisons.

14 "(16) PHARMACY BENEFIT MANAGEMENT PLAN. An
15 arrangement for the delivery of pharmacist services in which a
16 pharmacy benefit manager undertakes to administer the payment
17 or reimbursement of any of the costs of pharmacist services
18 for an enrollee on a prepaid or insured basis that contains
19 one or more incentive arrangements intended to influence the
20 cost or level of pharmacist services between the plan sponsor
21 and one or more pharmacies with respect to the delivery of
22 pharmacist services and requires or creates benefit payment
23 differential incentives for enrollees to use under contract
24 with the pharmacy benefit manager.

25 "(17) PHARMACY BENEFIT MANAGER. A business that
26 administers the prescription drug or device portion of
27 pharmacy benefit management plans or health insurance plans on

1 behalf of plan sponsors, insurance companies, unions, and
2 health maintenance organizations. The term includes a person
3 or entity acting for a pharmacy benefit manager in a
4 contractual or employment relationship in the performance of
5 pharmacy benefits management for a managed care company,
6 nonprofit hospital or medical service organization, insurance
7 company, or third-party payor.

8 ~~"(13)~~ (18) PRESCRIPTION. Any order for drug or
9 medical supplies, written or signed or transmitted by word of
10 mouth, telephone, telegraph, closed circuit, television, or
11 other means of communication by a legally competent
12 practitioner, licensed by law to prescribe and administer such
13 drugs and medical supplies intended to be filled, compounded,
14 or dispensed by a pharmacist.

15 "§27-45-3.

16 ~~"No health insurance policy or employee benefit plan~~
17 ~~which is delivered, renewed, issued for delivery, or otherwise~~
18 ~~contracted for in this state shall:~~

19 ~~"(1) Prevent any person who is a party to or~~
20 ~~beneficiary of any such health insurance policy or employee~~
21 ~~benefit plan from selecting the pharmacy or pharmacist of his~~
22 ~~choice to furnish the pharmaceutical services, including~~
23 ~~without limitation, prescription drugs, offered by said policy~~
24 ~~or plan or interfere with said selection provided the pharmacy~~
25 ~~or pharmacist is licensed to furnish such pharmaceutical~~
26 ~~services in this state; or~~

1 ~~"(2) Deny any pharmacy or pharmacist the right to~~
2 ~~participate as a contracting provider for such policy or plan~~
3 ~~provided the pharmacist is licensed to furnish pharmaceutical~~
4 ~~services, including without limitation, prescription drugs~~
5 ~~offered by said policy or plan.~~

6 "(a) No health insurance policy, employee benefit
7 plan, health benefit plan, or pharmacy benefit management plan
8 which is delivered, renewed, issued for delivery, or otherwise
9 contracted for in this state shall prevent any person who is a
10 party to or beneficiary of any such health insurance policy or
11 employee benefit plan from selecting the pharmacy or
12 pharmacist of his or her choice to furnish the pharmaceutical
13 services, including, without limitation, prescription drugs,
14 offered by the policy or plan or interfere with the selection
15 provided the pharmacy or pharmacist is licensed to furnish
16 such pharmaceutical services in this state.

17 "(b) No health insurance policy, employee benefit
18 plan, health benefit plan, or pharmacy benefit management plan
19 which is delivered, renewed, issued for delivery, or otherwise
20 contracted for in this state shall deny any pharmacy or
21 pharmacist the right to participate as a contracting provider
22 for such policy or plan provided the pharmacist is licensed to
23 furnish pharmaceutical services, including, without
24 limitation, prescription drugs offered by the policy or plan.

25 "(c) A pharmacy benefit manager shall not mandate
26 that a covered individual use a specific community pharmacy,
27 mail order pharmacy, specialty pharmacy, or other pharmacy or

1 entity. Nor can the pharmacy benefit manager provide
2 incentives to beneficiaries or plan sponsors to encourage the
3 use of a specific pharmacy if only applicable to a pharmacy
4 benefit manager pharmacy.

5 "(d) A pharmacy benefit manager may not require that
6 a pharmacist or pharmacy participate in a network managed by
7 the pharmacy benefit manager as a condition for the pharmacy
8 to participate in another network managed by the same pharmacy
9 benefit manager.

10 "(e) A pharmacy benefit manager may not exclude an
11 otherwise qualified pharmacist or pharmacy from participation
12 in a particular network provided that the pharmacist or
13 pharmacy accepts the terms, conditions, and reimbursement
14 rates of the pharmacy benefit manager offered to other
15 in-network pharmacies, meets all applicable federal and state
16 licensure and permit requirements, and has not been excluded
17 from participation in any federal or state program.

18 "(f) A pharmacy benefit manager or entity shall not
19 automatically enroll or disenroll a pharmacy in a contract or
20 modify an existing agreement without written agreement of the
21 pharmacist or pharmacy.

22 "(g) If a pharmacy benefit manager establishes a
23 discount card network, the pharmacy benefit manager shall not
24 require participation in the discount card network by a
25 pharmacy in exchange for participation in the broader retail
26 network. The pharmacy benefit manager shall allow a pharmacy
27 to opt out of the discount card network and choose to only

1 participate in the pharmacy benefit manager's funded retail
2 network.

3 "(h) No pharmacy benefit manager or carrier offering
4 a managed care plan shall transfer or request that a pharmacy
5 provider transfer the prescription or prescriptions of a
6 covered person, wholly or in part, to a different
7 participating pharmacy provider than the provider selected by
8 the covered person unless the participating pharmacy provider
9 to whom the covered person's prescription is to be transferred
10 has obtained signed documentation, oral authorization verified
11 by electronic record, or the pharmacy provider is no longer a
12 participating provider in the network.

13 "§27-45-4.

14 "Any provision in a health insurance policy, ~~or~~
15 employee benefit plan, health benefit plan, or pharmacy
16 benefit management plan which is delivered, renewed, issued
17 for delivery, or otherwise contracted for in this state which
18 is contrary to this article shall to the extent of such
19 conflict be void.

20 "§27-45-5.

21 "The provisions of this article do not mandate that
22 any type of benefits for pharmaceutical services, including
23 without limitation, prescription drugs, be provided by a
24 health insurance policy, ~~or~~ an employee benefit plan, health
25 benefit plan, or pharmacy benefit management plan.

26 "§27-45-6.

1 "It shall be unlawful for any insurer or any person
2 to provide any health insurance policy, ~~or~~ employee benefit
3 plan, health benefit plan, or pharmacy benefit management plan
4 providing for pharmaceutical services, including, ~~without~~
5 limitation, prescription drugs, that does not conform to the
6 provisions of this article.

7 "§27-45-7.

8 "The Commissioner of Insurance shall not approve for
9 sale in this state any health insurance policy, ~~or~~ employee
10 benefit plan, health benefit plan, or pharmacy benefit
11 management plan providing for pharmaceutical services,
12 including, ~~without~~ limitation, prescription drugs, which does
13 not conform to the provisions of this article or to the
14 provisions of Sections 27-14-8 and 27-14-9.

15 "§27-45-8.

16 "(a) It shall be the duty and responsibility of the
17 Commissioner of Insurance to enforce the provisions of this
18 article.

19 "(b) The Commissioner of Insurance may adopt any
20 rules necessary for the implementation and administration of
21 this article.

22 "(c) The State Department of Insurance may adopt
23 rules to regulate the following activities of pharmacy benefit
24 managers:

25 "(1) Claims processing.

26 "(2) Pharmacy network management.

1 "(3) Pharmacy discount card, employer sponsored
2 plan, managed care Medicaid, and workers' compensation
3 management.

4 "(4) Payment of claims to pharmacies for
5 prescription drugs, medical devices, and durable medical
6 equipment dispensed to covered individuals.

7 "(5) Payment of claims to pharmacists for
8 pharmacist-provided services to covered individuals,
9 including, but not limited to, medication therapy management
10 services.

11 "(6) Clinical formulary development and management
12 services, including, but not limited to, utilization
13 management and quality assurance programs.

14 "(7) Rebate contracting and administration.

15 "(8) Conducting audits of contracted pharmacies.

16 "(9) Setting pharmacy reimbursement pricing and
17 methodologies, including MAC, and determining single source
18 and multiple source drugs.

19 "(10) Retention of any differential between what is
20 received from health plans as reimbursement for prescription
21 drugs or services and what is paid to pharmacies or
22 pharmacists by the pharmacy benefit manager for such drugs.

23 "§27-45-9.

24 ~~"Each willful violation of the provisions of this~~
25 ~~article shall be punishable as provided in Section 27-1-12.~~

1 "(a) The Commissioner of Insurance shall take action
2 or impose penalties to bring non-complying entities into full
3 compliance with this article.

4 "(b) Each willful violation of this title for which
5 a greater penalty is not provided by another provision of this
6 title or by other applicable laws of this state shall, in
7 addition to any applicable prescribed denial, suspension, or
8 revocation of certificate of authority or license, be
9 punishable as a misdemeanor, upon conviction, by a fine of not
10 more than five thousand dollar (\$5,000), or by imprisonment in
11 the county jail, or by sentence to hard labor for the county,
12 for a period not to exceed one year, or by both such fine and
13 imprisonment or hard labor in the discretion of the court.
14 Each instance of violation shall be considered a separate
15 offense.

16 "(c) Each violation of Sections 34-23-184,
17 34-23-185, or 34-23-186, or any combination thereof, by a
18 pharmacy benefit manager, person, or entity acting for a
19 pharmacy benefit manager shall be enforced subject to Section
20 27-45-9 for which a greater penalty is not provided by another
21 provision of this title or by other applicable laws of this
22 state."

23 Section 2. The following new Article 3 is added to
24 Chapter 45, Title 27, Code of Alabama 1975, to read as
25 follows:

26 Article 3.

27 Administration of Pharmaceutical Insurance Coverage.

1 §27-45-30.

2 (a) Notice of any change in terms of a pharmacy
3 benefit manager, including, but not limited to, drugs covered,
4 pharmacist-provided services, reimbursement rates, copayments,
5 and dosage quantity, shall be given to each enrolled pharmacy
6 at least 30 days prior to the time it becomes effective.

7 (b) Pharmacy benefit manager must disclose at the
8 time of contracting with a pharmacist and at least 30 days
9 before any contract change: The terms of reimbursement;
10 process for verifying benefits and beneficiary eligibility;
11 dispute resolution; and audit appeals process and procedures
12 for verifying drugs included on the formularies used by the
13 pharmacy benefit manager.

14 §27-45-31.

15 Any agreement or contract entered into in this state
16 between the pharmacy benefit manager and a pharmacy or
17 pharmacist shall include a statement of the method and amount
18 of reimbursement to the pharmacy or pharmacist for services
19 rendered to persons enrolled in the program, the frequency of
20 payment by the pharmacy benefit manager to the pharmacy or
21 pharmacist for those services, and a method for the
22 adjudication of complaints and the settlement of disputes
23 between the contracting parties.

24 §27-45-32.

25 (a) The pharmacy benefit manager shall notify all
26 pharmacies and pharmacists enrolled in the program of any
27 cancellation of the coverage of benefits of any group enrolled

1 in the program at least 30 days prior to the effective date of
2 such cancellation.

3 (b) When a program is terminated, all persons
4 enrolled therein shall be so notified, and any person who
5 intentionally uses a program identification card to obtain
6 services from a pharmacy or pharmacist after having received
7 notice of the cancellation of benefits shall be liable to the
8 pharmacy benefit manager program administrator for all monies
9 paid by the pharmacy benefit manager program administrator for
10 any services received.

11 §27-45-33.

12 (a) No pharmacy benefit manager shall deny payment
13 to any pharmacy or pharmacist for covered pharmaceutical
14 services, pharmacist-provided services, or prescription drug
15 products rendered as a result of the misuse, fraudulent or
16 illegal use of an identification card unless such
17 identification card had expired, been noticeably altered, or
18 the pharmacy or pharmacist was notified of the cancellation of
19 such card.

20 (b) No pharmacy benefit manager may withhold any
21 payment to any pharmacy or pharmacist for covered
22 pharmaceutical services, pharmacist-provided services, or
23 prescription drug products beyond the time period specified in
24 the payment schedule provisions of the agreement, except for
25 individual claims for payment which have been returned to the
26 pharmacy as incomplete or illegible. Such returned claims

1 shall be paid if resubmitted by the pharmacy to the pharmacy
2 benefit manager with the appropriate corrections made.

3 §27-45-34.

4 (a) The pharmacy benefit manager shall not interfere
5 with the exercise of professional responsibilities to a
6 patient by a pharmacist and shall not take any retaliatory
7 actions against a pharmacist or pharmacy because of the
8 exercise of such responsibility such as terminate, suspend, or
9 otherwise limit the participation of a pharmacy or pharmacist
10 in a pharmacy benefit manager provider network or attempt to
11 audit further claims submitted by the pharmacy or pharmacist.
12 This includes recommendation of therapy change by the pharmacy
13 or pharmacist applicable to federal or state law to therapy
14 that is more appropriate to the patient health outcome or
15 accessible to the patient.

16 (b) The pharmacy benefit manager shall not interfere
17 with the professional independence of a pharmacist or pharmacy
18 or the prescribing health care provider.

19 (c) The pharmacy benefit manager shall not engage in
20 or interfere with the practice of medicine or intervene in the
21 practice of medicine between a prescriber of medicine and the
22 prescriber's patients. The pharmacy benefit manager shall not
23 engage in the practice of medicine.

24 (d) The pharmacy benefit manager may not request a
25 therapeutic interchange or interfere directly with the care of
26 the beneficiary.

1 (e) The pharmacy benefit manager may not directly
2 solicit the prescriber, pharmacy, or individual beneficiary to
3 make a therapeutic interchange or change in provider for
4 health care services.

5 §27-45-35.

6 (a) A pharmacy benefit manager may not use a
7 pharmacy's usual and customary claims information for purposes
8 other than determining reimbursement and may not sell, lease,
9 or rent a pharmacy's customary information without the
10 pharmacy's express written consent.

11 (b) A pharmacy benefit manager may not contact
12 covered individuals without express written permission of the
13 health plan sponsor and the covered individual.

14 (c) A pharmacy benefit manager may not transmit any
15 personally identifiable utilization or claims data to a
16 pharmacy owned by a pharmacy benefit manager if the patient
17 has not voluntarily elected in writing to fill that particular
18 prescription at the pharmacy benefit manager owned pharmacy.

19 (d) Access to pharmacy or patient private banking
20 information or other related materials is prohibited for
21 providing proof of copayment during audit. Only use of
22 pharmacy point of service records not eliciting confidential
23 financial information is permitted to show collection of
24 copayment.

25 §27-45-36.

26 (a) A MAC shall be established for any drug with at
27 least three or more A-rated therapeutically equivalent

1 multiple source drugs, as defined by the federal Food and Drug
2 Administration or generally available for purchase in this
3 state from a national or regional wholesaler.

4 (b) MAC may be determined using comparable drug
5 prices obtained from multiple nationally recognized
6 comprehensive data sources, including wholesalers, drug file
7 vendors, and pharmaceutical manufacturers for drugs that are
8 nationally and locally available for purchase by multiple
9 pharmacies in this state.

10 (c) MAC shall be established for a product using
11 only equivalent drugs as determined by the Federal Drug
12 Administration (FDA).

13 (d) For those drugs in which a MAC applies, the
14 pharmacy benefit manager shall include in contracts with
15 pharmacies information regarding which of the national
16 compendia is used to obtain pricing data used in the
17 calculation of MAC pricing and shall make MAC price
18 adjustments at least twice a month and provide pharmacies with
19 prompt notification of any changes or additions made to the
20 MAC price list and MAC rates at that time, except when a price
21 for a drug changes by more than 100 percent; in such cases,
22 the MAC price adjustment for that drug shall be made within
23 three business days of the change in price.

24 (e) The pharmacy benefit manager shall provide a
25 process to allow providers to submit identified claims per MAC
26 appeal, containing National Drug Codes within the Generic
27 Product Identifier, and shall allow pharmacy providers to

1 comment on, contest, or appeal the MAC rates and MAC list. The
2 right to contest shall be limited in duration and provide for
3 retroactive payment in the event it is determined that MAC
4 pricing has been applied incorrectly. All inquiries to the
5 pharmacy benefit manager concerning MAC lists, MAC rates, and
6 pricing shall be acted upon and responded to within five
7 business days.

8 (f) The pharmacy benefit manager shall make all
9 applicable MAC lists, including all in the price of drugs,
10 available to network pharmacies upon request in a readily
11 accessible and usable format that contains a complete list of
12 the drug name, National Drug Code, size, per unit price,
13 strength of drug, Generic Price Identifier, and Generic Code
14 Number. In the event there are multiple MAC lists under the
15 same contract, the contract shall identify which MAC lists are
16 appropriately applicable.

17 (g) A pharmacy benefit manager shall also include in
18 contracts with pharmacies a process for no less than once a
19 week updates to pharmacy product pricing files used to
20 calculate prescription prices that will be used to reimburse
21 pharmacies.

22 (h) A pharmacy benefit manager shall provide a
23 contractual commitment to deliver a particular average
24 reimbursement rate for generic drugs. The average
25 reimbursement rate for generic drugs shall be calculated using
26 the actual amount paid to the pharmacy, including patient
27 copays and reimbursements from pharmacy benefit managers but

1 excluding the dispensing fee. The average reimbursement rate
2 for generic drugs shall not be calculated solely according to
3 the amount allowed by the plan and shall include all generics
4 dispensed, regardless of whether they are subject to MAC
5 pricing. The pharmacy benefit manager shall disclose to the
6 network pharmacy the methodology used in determining the
7 average reimbursement rate for generic drugs.

8 (i) A pharmacy benefit manager may not charge a
9 transaction fee for claims submissions provided in an
10 electronic format by a health care provider.

11 §27-45-37.

12 (a) A health plan must permit its enrollees to
13 receive benefits, which may include a 90-day supply of covered
14 prescription drugs, at any of its network community
15 pharmacies. A health insurance policy or government program
16 providing benefits for prescriptions may not impose on a
17 covered individual utilizing a community pharmacy a copayment,
18 deductible, fee, limitation on benefits, or other condition or
19 requirement not otherwise imposed on the covered individual
20 when using a mail order pharmacy.

21 (b) Nothing in this section shall prohibit a
22 pharmacist who is exercising his or her professional judgment
23 from dispensing additional quantities of medication up to the
24 total number of units authorized by the prescriber on the
25 original prescription and any refills.

26 §27-45-38.

1 (a) All entities providing prescription drug
2 coverage shall permit and apply a prorated daily cost-sharing
3 rate to prescriptions that are dispensed by a pharmacy for
4 less than a 30-day supply if the prescriber or pharmacist
5 indicates the fill or refill could be in the best interest of
6 the patient or is for the purpose of synchronizing the
7 patient's chronic medications.

8 (b) No entity providing prescription drug coverage
9 shall deny coverage for the dispensing of any drug prescribed
10 for the treatment of a chronic illness that is made in
11 accordance with a plan among the insured, the prescriber, and
12 a pharmacist to synchronize the refilling of multiple
13 prescriptions for the insured.

14 (c) No entity providing prescription drug coverage
15 shall use payment structures incorporating prorated dispensing
16 fees determined by calculation of the days' supply of
17 medication dispensed. Dispensing fees shall be determined
18 exclusively on the total number of prescriptions dispensed.

19 Section 3. Section 34-23-184 of the Code of Alabama
20 1975, is amended to read as follows:

21 "§34-23-184.

22 "(a) The entity conducting an audit shall follow
23 these procedures:

24 "(1) The pharmacy contract shall identify and
25 describe in detail the audit procedures. Changes in the
26 pharmacy contract and audit procedures shall be disclosed to

1 the pharmacy 30 days prior to the effective date of the
2 change.

3 "(2) The entity conducting the on-site audit shall
4 give the pharmacy written notice at least ~~two weeks~~ 30 days
5 before conducting the initial on-site audit for each audit
6 cycle. If the pharmacy benefit manager does not include their
7 auditing guidelines within their provider manual, then the
8 notice must include a documented checklist of all items being
9 audited and the manual, including the name, date, and edition
10 or volume, applicable to the audit and auditing guidelines.
11 The notice shall provide the specific prescriptions to be
12 included in the audit. For on-site audits a pharmacy benefit
13 manager shall also provide a list of material that is copied
14 or removed during the course of an audit to the pharmacy. The
15 pharmacy benefit manager may document this material on either
16 a checklist or on an audit acknowledgement form. The pharmacy
17 shall produce any items during the course of the audit or
18 within 30 days of the on-site audit, with a reasonable
19 extension to be granted upon request.

20 "(3) a. The entity conducting the on-site audit may
21 not interfere with the delivery of pharmacist services to a
22 patient and shall utilize every effort to minimize
23 inconvenience and disruption to pharmacy operations during the
24 audit process.

25 "b. The entity conducting the on-site audit shall be
26 permitted to enter the prescription area of the pharmacy only
27 when accompanied by a pharmacist employed by the pharmacy.

1 "(4) An audit that involves clinical or professional
2 judgment shall be conducted by or in consultation with a
3 licensed pharmacist familiar with the pharmacy regulations of
4 the state in which the pharmacy is located.

5 "(5) The audit shall not consider as fraud any
6 clerical or record-keeping error, such as a typographical
7 error, scrivener's error, or computer error regarding a
8 required document or record; however, such errors may be
9 subject to recoupment. The pharmacy shall have the right to
10 submit amended claims through an online submission to correct
11 clerical or record-keeping errors in lieu of recoupment of a
12 claim where no actual financial harm to the patient or plan
13 has occurred, provided that the prescription was dispensed
14 according to prescription documentation requirements set forth
15 by the Alabama Pharmacy Act ~~and within the plan limits.~~ The
16 pharmacy shall have the right to submit amended claims to
17 correct clerical or record-keeping errors within 30 days of
18 the initial audit notice. The pharmacy shall not be subject to
19 recoupment of funds by the pharmacy benefits manager unless
20 the pharmacy benefits manager can provide proof of intent to
21 commit fraud or such error results in actual financial harm to
22 the pharmacy benefits manager, a health insurance plan managed
23 by the pharmacy benefits manager, or a consumer. A person
24 shall not be subject to criminal penalties for errors provided
25 for in this subsection without proof of intent to commit
26 fraud, waste, or abuse.

1 "(6) An entity conducting an audit shall not require
2 pharmacists to perform duties in excess of, or any
3 documentation that is not required in excess of requirements
4 defined by state and federal law or Alabama Medicaid. The
5 information shall be considered to be valid if documented on
6 the prescription, computerized treatment notes, pharmacy
7 system, or other acceptable medical records.

8 "~~Unless superseded~~ Audit information shall
9 remain confidential unless disclosure is required by state or
10 federal law, ~~auditors.~~ Auditors shall only have access to
11 previous audit reports on a particular pharmacy conducted by
12 the auditing entity for the same pharmacy, pharmacy benefits
13 manager, health plan, or insurer. An auditing vendor
14 contracting with multiple pharmacy benefits managers or health
15 insurance plans shall not use audit reports or other
16 information gained from an audit on a particular pharmacy to
17 conduct another audit for a different pharmacy benefits
18 manager or health insurance plan. An auditor shall not use
19 audit reports or other information gained from an audit on a
20 particular pharmacy to conduct another audit for a separate
21 pharmacy.

22 "(8) a. Audit results shall be disclosed to the
23 health benefit plan in a manner pursuant to contract terms.

24 "b. Neither the agency conducting the audit nor its
25 agents shall receive payment based on a percentage of the
26 amount recovered. This section does not prevent the entity
27 conducting the audit from charging or assessing the

1 responsible party, directly or indirectly, based on amounts
2 recouped unless the entity has a contract that explicitly
3 states the percentage charge or assessment to the plan sponsor
4 and a commission to an agent of the entity is not based
5 directly or indirectly on amounts recouped.

6 "c. The entity conducting the audit shall not base
7 compensation of any employees of the entity involved with the
8 audit process on a percentage of the amount recovered or audit
9 findings.

10 "(9) a. A pharmacy may use the records of a
11 hospital, physician, or other authorized practitioner of the
12 healing arts for drugs or medicinal supplies written or
13 transmitted by any means of communication for purposes of
14 validating the pharmacy record with respect to orders, ~~or~~
15 refills, ~~or changes to~~ of a legend or narcotic drug authorized
16 by federal and state law.

17 "b. Validation of appropriate day's supply and drug
18 dosing must be based on manufacturer guidelines and
19 definitions or, in the case of topical products or titrated
20 products, the professional judgment of the pharmacist based
21 upon communication with the patient or prescriber.

22 "c. A pharmacy's usual and customary price for
23 medications is considered the reimbursable cost based on the
24 pricing methodology outlined in the contract unless an
25 alternative price is published in the provider contract and
26 signed by both parties.

1 "(10) Reasonable costs associated with the audit
2 shall be the responsibility of the auditing entity with the
3 exception of Alabama Medicaid if the claims sample exceeds 100
4 unique prescription hard copies.

5 "(11) A finding of an overpayment or an underpayment
6 ~~may be~~ as a projection based on the number of patients served
7 having a similar diagnosis or on the number of similar orders
8 or refills for similar drugs, ~~except that recoupment shall be~~
9 prohibited. Recoupment shall be based on the actual
10 overpayment or underpayment of actual claims. In the case of
11 overpayment, the pharmacy may be subject to recoupment only
12 following the correction of a claim, and the amount refunded
13 shall be limited to the amount paid to the pharmacy minus the
14 amount payable under the corrected claim. Recoupment of
15 disputed funds shall not be allowed if based on requirements
16 not defined in the contractual agreement plan, if limits are
17 not clearly defined at the time of claim adjudication, or if
18 the claim is not in compliance with federal or state law.

19 "(12) A finding of an overpayment may not include
20 the cost of the drugs that were dispensed in accordance with
21 the prescriber's orders, provided the prescription was
22 dispensed according to prescription documentation requirements
23 set forth by the Alabama Pharmacy Act ~~and within the plan~~
24 ~~limits~~. A finding of an overpayment may not include the
25 dispensing fee amount unless:

26 "a. A prescription was not actually dispensed.

27 "b. The prescriber denied authorization.

1 "c. The prescription dispensed was a medication
2 error by the pharmacy.

3 "d. The identified overpayment is solely based on an
4 extra dispensing fee.

5 "(13) Each pharmacy shall be audited under the same
6 standards and parameters as other similarly situated
7 pharmacies audited by the entity and must be audited under
8 rules applicable to the contractor and time period of the
9 prescription or claim adjudication.

10 "(14) Where not superseded by state or federal law,
11 the period covered by an audit may not exceed ~~two years~~ six
12 months from the date the claim was submitted to or adjudicated
13 by a managed care company, nonprofit hospital or medical
14 service organization, health benefit plan, third-party payor,
15 pharmacy benefit manager, a health program administered by a
16 department of the state, or any entity that represents those
17 companies, groups, or department. An audit may not be
18 conducted six months past the date the pharmacy benefit
19 management plan terminated its contract to adjudicate claims
20 with a pharmacy benefit manager, health plan administrator, or
21 any other entity representing those companies.

22 "(15) a. An audit may not be initiated or scheduled
23 during the first ~~five~~ seven calendar days of any month.

24 "b. The entity conducting the audit shall not audit
25 more than 40 prescriptions per audit selected by random
26 process and duration of the audit shall not exceed four hours.

1 "c. An on-site audit may not be conducted at the
2 pharmacy more than one time per calendar year unless an
3 auditor has to return to complete an audit for each
4 third-party payor.

5 "d. The pharmacy may reschedule the audit within 24
6 hours of receiving notice to a date no more than 14 days after
7 the date proposed by the auditor. If the auditor is unable to
8 reschedule within 14 days, the auditor will select and
9 reschedule the audit for a date after the 14-day period.

10 (b) The entity shall provide the pharmacy with a
11 written report of the audit and comply with the following
12 requirements:

13 (1) The preliminary audit report shall be delivered
14 to the pharmacy within ~~90~~ 30 days after the conclusion of the
15 audit, with a reasonable extension to be granted upon request,
16 and shall contain claim level information for any discrepancy
17 found and total dollar amount of claims subject to recovery.

18 (2) A pharmacy shall be allowed at least 30 days
19 following receipt of the preliminary audit report in which to
20 produce documentation to address any discrepancy found during
21 the audit, with a reasonable extension to be granted upon
22 request.

23 (3) A final audit report shall be delivered to the
24 pharmacy within ~~180~~ 30 days after receipt of the preliminary
25 audit report or final appeal, as provided for in Section
26 34-23-185, whichever is later.

1 "(4) a. The audit documents shall be signed by the
2 auditors assigned to the audit. The acknowledgement or receipt
3 shall be signed by the auditor and the audit report shall
4 contain clear contact information of the representative of the
5 auditing organization.

6 "b. An exit interview to allow the pharmacy an
7 opportunity to discuss, review, and respond to the audit
8 findings put forth by the entity must be conducted at the end
9 of an audit and at a time mutually agreed to by both parties.

10 "(5) a. Recoupments of any disputed funds, or
11 repayment of funds to the entity by the pharmacy if permitted
12 pursuant to contractual agreement, shall occur after final
13 internal disposition of the audit, including the appeals
14 process as set forth in Section 34-23-185. ~~If the identified~~
15 ~~discrepancy for an individual audit exceeds twenty-five~~
16 ~~thousand dollars (\$25,000), future payments in excess of that~~
17 ~~amount to the pharmacy may be withheld pending finalization of~~
18 ~~the audit.~~

19 "b. The entity may not recoup or offset any disputed
20 funds until the pharmacy has an opportunity to review the
21 findings and 30 days have elapsed after the date the final
22 audit report has been delivered.

23 "c. Underpayments to the pharmacy must be remitted
24 by the entity within 45 days after the appeals process has
25 been exhausted and the final audit has been issued.

26 "d. Plan restrictions should be addressed during the
27 claims adjudication process either through the rejection of the

1 claim or a rejection of the claim with direction to obtain a
2 prior authorization and may not be the basis of a
3 retrospective recoupment of a paid claim.

4 "e. With the exception of overpayments, if a PBM
5 approves a claim through adjudication, the PBM may not
6 retroactively deny or modify reimbursement based on
7 information accompanying the original claim or information
8 available to the PBM at the time of adjudication, unless the
9 claim was fraudulent, the pharmacy or pharmacist had been
10 reimbursed for the claim previously, or the services
11 reimbursed were not rendered by the pharmacy or pharmacist.

12 "f. A PBM may not require a pharmacy to agree to
13 recoupments deducted against future remittances and shall
14 invoice the pharmacy for payment if the pharmacy elects.
15 Recoupment may be deducted against future remittances without
16 mutual consent when the pharmacy is considered delinquent in
17 payment of the invoice per the contractual arrangement.

18 "g. A PBM may not recover payment of claims from the
19 pharmacy which is identified through the audit process to be
20 the responsibility of another payer. The PBM must reconcile
21 directly with the other payer for any monies owed without
22 requiring the pharmacy to reverse and rebill the original
23 claim in the retail setting.

24 "(6) Interest shall not accrue during the audit
25 period.

26 "(7) Each entity conducting an audit shall provide a
27 copy of the final audit report, after completion of any review

1 process, to the plan sponsor in a manner pursuant to a
2 contract."

3 Section 4. This act shall become effective on
4 October 1, 2015.