

SENATE FILE NO. SF0151

Wyoming prescription drug transparency act.

Sponsored by: Senator(s) Hutchings, Bouchard, Dockstader
and McKeown and Representative(s) Banks,
Bear, Davis, Pendergraft, Penn, Rodriguez-
Williams, Strock, Styvar and Winter

A BILL

for

1 AN ACT relating to the insurance code; prohibiting
2 specified actions by pharmacy benefit managers; allowing
3 individuals to choose in network retail pharmacies as
4 specified; providing definitions; amending a definition;
5 requiring pharmacy benefit managers to provide contact
6 information as specified; amending the process for when a
7 maximum allowable cost appeal is denied; requiring pharmacy
8 benefit managers to allow pharmacies to file appeals in
9 electronic batch formats; requiring pharmacy benefit
10 managers to reimburse pharmacies as specified; authorizing
11 pharmacies to decline to provide pharmacy services as
12 specified; making conforming amendments; requiring
13 rulemaking; providing appropriations; and providing for
14 effective dates.

1

2 *Be It Enacted by the Legislature of the State of Wyoming:*

3

4 **Section 1.** W.S. 26-52-105 and 26-52-106 are created
5 to read:

6

7 **26-52-105. Transparency; prohibitions.**

8

9 (a) A pharmacy benefit manager or an agent of a
10 pharmacy benefit manager shall not:

11

12 (i) Cause or knowingly permit the use of an
13 advertisement, promotion, solicitation, representation,
14 proposal or offer that is untrue, deceptive or misleading;

15

16 (ii) Charge a pharmacist or pharmacy provider a
17 fee for any of the following:

18

19 (A) The submission of a claim;

20

21 (B) Enrollment or participation in a retail
22 pharmacy network;

23

1 (C) The development or management of claims
2 processing services or claims payment services related to
3 participation in a retail pharmacy network;

4

5 (D) An application to apply for network
6 access with the pharmacy benefit manager;

7

8 (E) Credentialing or re-credentialing;

9

10 (F) Any change of ownership.

11

12 (iii) Retroactively deny or reduce reimbursement
13 for a covered pharmacy service or claim after adjudication
14 of the claim, unless:

15

16 (A) The original claim was fraudulent; or

17

18 (B) The denial or reduction is necessary to
19 correct errors found in an audit, provided that the audit
20 was conducted in compliance with W.S. 26-52-103.

21

1 (iv) Restrict a person's choice of network
2 providers for prescription drugs, except for specialty
3 medications as defined by W.S. 26-52-102(a)(xi);

4

5 (v) Conduct spread pricing;

6

7 (vi) Retain funds paid by a pharmaceutical
8 manufacturer to a pharmacy benefits manager as a result of
9 negotiations of a reduced price for a pharmaceutical
10 between a pharmacy benefits manager and a manufacturer, in
11 relation to a contract between a pharmacy benefits manager
12 and an insurer related to its insured prescription drug
13 benefits. Funds retained under this paragraph shall be
14 remitted to and retained by the insurer and shall be used
15 by the insurer to lower premiums for covered persons under
16 the insurer's health benefits plan or to allow for
17 remittance directly to the covered person at the point of
18 sale to reduce the covered person's out-of-pocket costs;

19

20 (vii) Prohibit a pharmacy, pharmacy services
21 administrative organization, contracting agent or agent of
22 a pharmacy from sharing, upon request, copies of pharmacy

1 benefit manager contracts with requesting pharmacies or the
2 department of insurance;

3

4 (viii) Prohibit, restrict or limit disclosure of
5 information to the insurance commissioner, law enforcement
6 or other state or federal government officials who are
7 investigating or examining a complaint or conducting a
8 review of the pharmacy benefit manager's compliance with
9 the requirements of this chapter;

10

11 (ix) Reimburse a pharmacy for pharmacy services
12 in an amount less than the amount that the pharmacy benefit
13 manager reimburses a pharmacy benefit manager owned or
14 pharmacy benefit manager affiliated pharmacy for providing
15 the same pharmacy services. The reimbursement amount paid
16 to the pharmacy shall be equal to the reimbursement amount
17 paid to a pharmacy benefit manager owned or pharmacy
18 benefit manager affiliated pharmacy.

19

20 (b) A person's choice of network provider shall
21 include a retail pharmacy. An insurer or pharmacy benefit
22 manager shall not require or incentivize using any
23 discounts in cost sharing or a reduction in copay or the

1 number of copays to individuals to receive prescription
2 drugs from an individual's choice of in network pharmacy,
3 except for specialty medications as defined by W.S.
4 26-52-102(a)(xi).

5

6 (c) Insurers, pharmacies and pharmacy benefit
7 managers shall adhere to all state laws and rules when
8 mailing or shipping prescription drugs into the state.

9

10 **26-52-106. Alternate reimbursement methodologies.**

11

12 (a) All contracts between a pharmacy benefits manager
13 and a pharmacy services administrative organization, or its
14 contracted pharmacies, and all contracts directly between a
15 pharmacy benefits manager and a pharmacy shall include a
16 process to investigate and resolve disputes and allow
17 appeals regarding brand and multiple-source generic drug
18 pricing, including if applicable brand effective rates,
19 generic effective rates, dispensing fee effective rates and
20 any other pricing formula for pharmacy reimbursement.

21

22 (b) Appeals authorized under this section shall
23 comply with the procedures specified in W.S. 26-52-104.

1

2 **Section 2.** W.S. 26-52-102(a)(iv), (vii) and by
3 creating new paragraphs (viii) through (xii) and
4 26-52-104(a)(i), (d)(ii), (e), (f) and by creating new
5 subsections (k) and (m) are amended to read:

6

7 **26-52-102. Definitions.**

8

9 (a) As used in this article:

10

11 (iv) "Maximum allowable cost" means the maximum
12 amount that a pharmacy benefit manager will reimburse a
13 pharmacist or pharmacy for the cost of a ~~generic~~ drug.;

14 "Maximum allowable cost" includes reimbursement for a drug
15 based on any of the following:

16

17 (A) Average manufacture price;

18

19 (B) Average wholesale price;

20

21 (C) Brand effective rate or generic
22 effective rate;

23

1 (D) Discount indexing;

2

3 (E) Federal upper limits;

4

5 (F) Wholesale acquisition cost;

6

7 (G) Any other term a pharmacy benefit
8 manager or an insurer may use to establish reimbursement
9 rates to a pharmacist or pharmacy for pharmacy services.

10

11 (vii) "Pharmacy benefit manager" means an entity
12 that contracts with a pharmacy or the pharmacy's designee
13 who holds a contract with the pharmacy benefit manager on
14 behalf of an insurer or third party administrator to
15 administer or manage prescription drug benefits; :-

16

17 (viii) "Pharmacy acquisition cost" means the
18 amount a pharmaceutical wholesaler charges for a
19 pharmaceutical product as listed on the pharmacy's billing
20 invoice;

21

1 (ix) "Pharmacy services" means any product, good
2 or service, or any combination of products, goods or
3 services, provided as part of the practice of pharmacy;

4
5 (x) "Pharmacy services administrative
6 organization" means an organization that evaluates and
7 executes pharmacy benefit manager contracts on behalf of
8 pharmacies and provides administrative, clerical, audit and
9 data analytics support services;

10
11 (xi) "Specialty medication" means a prescription
12 medication that:

13
14 (A) Is not available for order or purchase
15 by a retail community pharmacy or long-term care pharmacy,
16 regardless of whether the drug is meant to be
17 self-administered;

18
19 (B) Requires special storage and has
20 distribution or inventory limitations not available at a
21 retail community pharmacy or long-term care pharmacy.

22

1 (xii) "Spread pricing" means a prescription drug
2 pricing model utilized by a pharmacy benefit manager where
3 the pharmacy benefit manager charges a health benefit plan,
4 not including Medicare, Medicaid or any other health
5 benefit program or coverage maintained by the federal
6 government, a contracted price for prescription drugs that
7 differs from the amount the pharmacy benefit manager
8 directly or indirectly pays the pharmacy or pharmacist for
9 providing prescription drugs.

10
11 **26-52-104. Maximum allowable cost; offering**
12 **information and alternatives.**

13
14 (a) To place a drug on a maximum allowable cost list,
15 a pharmacy benefit manager shall ensure that the drug is:

16
17 (i) If the drug is a generically equivalent
18 drug, rated "A" or "B" in the most recent version of the
19 United States Food and Drug Administration's Approved Drug
20 Products with Therapeutic Equivalence Evaluations (Orange
21 Book), or rated "NR" or "NA," or has a similar rating, by a
22 nationally recognized reference;

23

1 (d) A pharmacy benefit manager shall:

2

3 (ii) Provide a telephone number, email address
4 and website at which a network pharmacy or the pharmacy's
5 designee who holds a contract with the pharmacy benefit
6 manager may contact an employee of a pharmacy benefit
7 manager to discuss the pharmacy's appeal;

8

9 (e) A pharmacy benefit manager shall establish a
10 process by which a contracted pharmacy, or the pharmacy's
11 designee who holds a contract with the pharmacy benefit
12 manager, can appeal the provider's reimbursement for a drug
13 subject to maximum allowable cost pricing. A contracted
14 pharmacy, or the pharmacy's designee who holds a contract
15 with the pharmacy benefit manager, shall have up to ten
16 (10) business days after dispensing a drug subject to a
17 maximum allowable cost in which to appeal the amount of the
18 maximum allowable cost. A pharmacy benefit manager shall
19 respond to the appeal within ten (10) business days after
20 the contracted pharmacy or the pharmacy's designee who
21 holds a contract with the pharmacy benefit manager makes
22 the appeal.

23

1 (f) If a maximum allowable cost appeal is denied, the
2 pharmacy benefit manager shall provide to the appealing
3 pharmacy, or the pharmacy's designee who holds a contract
4 with the pharmacy benefit manager, the reason for the
5 denial and the national drug code number for the drug that
6 is available for purchase by similarly situated pharmacies
7 in the state ~~from~~ and the names of national or regional
8 wholesalers that have the product available for purchase at
9 a price that is at or below the maximum allowable cost.

10
11 (k) A pharmacy benefit manager shall not prevent a
12 network pharmacy or the pharmacy's designee who holds a
13 contract with the pharmacy benefit manager from filing
14 appeals in an electronic batch format. The pharmacy benefit
15 manager shall respond in an electronic format to valid
16 reimbursement appeals filed in an electronic batch format.
17 A batch appeal shall not be considered a valid appeal
18 unless all required information for each claim in the batch
19 is submitted electronically with the correct, contractually
20 required information and in the required format. An appeal
21 shall not be considered valid for purposes of the ten (10)
22 day response timeframe until all information is received.

23

1 (m) A pharmacy or pharmacist may decline to provide
2 pharmacy services to a patient or pharmacy benefit manager
3 if the pharmacy or pharmacist is to be paid less than the
4 pharmacy acquisition cost for the pharmacy providing
5 pharmacy services.

6
7 **Section 3.**

8
9 (a) The department of insurance is authorized one (1)
10 full-time position for the purpose of implementing and
11 administering this act. There is appropriated ninety-five
12 thousand dollars (\$95,000.00) from special revenue funds
13 generated pursuant to W.S. 26-2-204 to the department of
14 insurance for the salary and benefits of the position
15 authorized under this section. This appropriation shall be
16 for the period beginning with the effective date of this
17 section and ending June 30, 2024 and shall only be expended
18 for the additional position authorized under this section.
19 This appropriation shall not be transferred or expended for
20 any other purpose and any unexpended, unobligated funds
21 remaining from this appropriation shall revert as provided
22 by law on June 30, 2024.

23

1 (b) There is appropriated one hundred thousand
2 dollars (\$100,000.00) from special revenue funds generated
3 pursuant to W.S. 26-2-204 to the department of insurance
4 for the purposes of implementing and administering this
5 act. This appropriation shall be for the period beginning
6 with the effective date of this section and ending June 30,
7 2024. This appropriation shall not be transferred or
8 expended for any other purpose and any unexpended,
9 unobligated funds remaining from this appropriation shall
10 revert as provided by law on June 30, 2024.

11

12 **Section 4.** The department of insurance shall
13 promulgate any rules necessary to implement this act.

14

1 **Section 5.**

2

3 (a) Except as otherwise provided by subsection (b) of
4 this section, this act is effective July 1, 2023.

5

6 (b) Sections 3, 4 and 5 of this act are effective
7 immediately upon completion of all acts necessary for a
8 bill to become law as provided by Article 4, Section 8 of
9 the Wyoming Constitution.

10

11

(END)