

ASSEMBLY BILL NO. 440—COMMITTEE
ON COMMERCE AND LABOR

(ON BEHALF OF THE JOINT INTERIM STANDING COMMITTEE
ON HEALTH AND HUMAN SERVICES)

MARCH 27, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to pharmacy benefit managers. (BDR 57-330)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to insurance; imposing certain requirements concerning the income generated by a pharmacy benefit manager; imposing a fiduciary duty upon a pharmacy benefit manager toward certain third parties; prohibiting a pharmacy benefit manager from engaging in certain activities or implementing certain policies or practices; requiring a pharmacy benefit manager to submit to certain audits; imposing certain fees upon a pharmacy benefit manager; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) defines the term “pharmacy benefit manager” to mean an entity that contracts with or is employed by a third-party insurer and manages the pharmacy benefits plan provided by the third-party insurer; and (2) requires a person who administers certain types of insurance, including a pharmacy benefit manager, to obtain a certificate of registration as an administrator from the Commissioner of Insurance. (NRS 683A.025, 683A.085, 683A.174) Existing law prohibits a pharmacy benefit manager from: (1) prohibiting a pharmacist or pharmacy from providing certain information to a covered person; (2) penalizing a pharmacist or pharmacy for providing such information or selling a less expensive alternative or generic drug to a covered person; (3) prohibiting a pharmacy from offering or providing delivery services directly to a covered person; and (4) if the pharmacy benefit manager manages a pharmacy benefits plan that provides coverage through a network plan, charging a copayment or coinsurance for a



prescription drug in an amount that is greater than the total amount paid to a pharmacy that is in the network of providers under contract with a third party. (NRS 683A.179) **Section 1** of this bill additionally prohibits a pharmacy benefit manager from deriving any income from the management of a pharmacy benefits plan except for income derived from administrative fees paid by the third party with which the pharmacy benefit manager has entered into an agreement to manage the pharmacy benefits plan. **Section 1** requires a pharmacy benefit manager to provide any income generated through discounts, pricing incentives or fees collected from a manufacturer to third parties and any income generated through rebates by the manufacturer to covered persons. **Sections 4 and 5** of this bill make conforming changes to indicate the proper placement of **section 1** in the Nevada Revised Statutes.

Existing law: (1) provides that a pharmacy benefit manager has an obligation of good faith and fair dealing toward a third party or pharmacy when performing duties pursuant to a contract to which the pharmacy benefit manager is a party; and (2) requires a pharmacy benefit manager to notify a third party when an activity, policy or practice of the pharmacy benefit manager presents a conflict of interest with any obligation owed to the third party. (NRS 683A.178) **Section 6** of this bill: (1) removes the duty of good faith and fair dealing toward a third party required of a pharmacy benefit manager; and (2) instead, imposes upon a pharmacy benefit manager a fiduciary duty toward a third party with which the pharmacy benefit manager has entered into an agreement with to manage its pharmacy benefits plan. **Section 6** also prohibits a pharmacy benefit manager from engaging in an activity or implementing a policy or practice that the pharmacy benefit manager reasonably anticipates will present a conflict of interest that interferes with the ability of the pharmacy benefit manager to discharge any duty to the third party. **Section 6** authorizes a third party with which the pharmacy benefit manager has entered into an agreement to audit all books and records of the pharmacy benefit manager to the extent necessary to: (1) fulfill all contractual obligations to covered persons; and (2) ensure compliance with the provisions of the agreement and any applicable law or regulations.

Existing law requires a pharmacy benefit manager to hold a certificate as an insurance administrator. (NRS 683A.025, 683A.0893) Existing law establishes a program whereby manufacturers and wholesalers of prescription drugs, pharmacy benefit managers and certain other entities involved in the distribution of prescription drugs are required to report certain information to the Department of Health and Human Services. (NRS 439B.600-439B.695) **Section 7** of this bill requires the Department to prescribe a fee for the issuance or renewal of a certificate of registration as an administrator that covers the anticipated costs to the Department of administering that program. **Sections 2 and 3** of this bill require a pharmacy benefit manager to pay that fee for the issuance or renewal of such a certificate, in addition to other fees due to the Commissioner of Insurance for such issuance or renewal.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 683A of NRS is hereby amended by adding thereto a new section to read as follows:

1. A pharmacy benefit manager shall not derive any income from the management of a pharmacy benefits plan in this State except for income derived from administrative fees paid by the



1 *third party with which the pharmacy benefit manager has entered*
2 *into an agreement to manage the pharmacy benefits plan. Such*
3 *administrative fees must be set forth in the agreement between the*
4 *pharmacy benefit manager and the third party. The amount of*
5 *such fees may be based upon premiums or charges collected, on*
6 *the number of claims paid or processed or on any other basis*
7 *agreed upon by the pharmacy benefit manager and the third party,*
8 *except as otherwise provided in this section.*

9 **2. A pharmacy benefit manager shall provide:**

10 *(a) To the third party any income generated through discounts*
11 *offered by a manufacturer of prescription drugs or pricing*
12 *incentives or fees collected from a manufacturer; and*

13 *(b) To covered persons any income generated through rebates*
14 *paid by a manufacturer of prescription drugs.*

15 **Sec. 2.** NRS 683A.08524 is hereby amended to read as
16 follows:

17 683A.08524 1. Except as otherwise provided in subsection 2
18 or 3, the Commissioner shall issue a certificate of registration as an
19 administrator to an applicant who:

20 (a) Submits an application on a form prescribed by the
21 Commissioner;

22 (b) Has complied with the provisions of NRS 683A.08522;
23 ~~and~~

24 (c) Pays the fee for the issuance of a certificate of registration
25 prescribed in NRS 680B.010 and, in addition to any other fee or
26 charge, all applicable fees required pursuant to NRS 680C.110 ~~H~~ ;
27 and

28 *(d) If the applicant is a pharmacy benefit manager, as defined*
29 *in NRS 683A.174, pays the fee for the issuance of a certificate of*
30 *registration prescribed by the Department of Health and Human*
31 *Services pursuant to NRS 439B.685.*

32 2. The Commissioner may refuse to issue a certificate of
33 registration as an administrator to an applicant if the Commissioner
34 determines that the applicant or any person who has completed an
35 affidavit pursuant to subsection 6 of NRS 683A.08522:

36 (a) Is not competent to act as an administrator;

37 (b) Is not trustworthy or financially responsible;

38 (c) Does not have a good personal or business reputation;

39 (d) Has had a license or certificate to transact insurance denied
40 for cause, suspended or revoked in this state or any other state;

41 (e) Has failed to comply with any provision of this chapter; or

42 (f) Is financially unsound.

43 3. If an applicant seeks final approval by the Division of
44 Industrial Relations of the Department of Business and Industry in
45 accordance with regulations adopted pursuant to subsection 8 of



NRS 616A.400, the Commissioner shall submit to the Division the information supplied by the applicant pursuant to subsection 1. Unless the Division provides final approval for the applicant to the Commissioner, the Commissioner shall not issue a certificate of registration as an administrator to the applicant.

Sec. 3. NRS 683A.08526 is hereby amended to read as follows:

683A.08526 1. A certificate of registration as an administrator is valid for 3 years after the date the Commissioner issues the certificate to the administrator or the administrator renews the certificate, as applicable. A certificate expires on the renewal date for the certificate if the administrator does not renew the certificate pursuant to subsection 2 on or before the renewal date.

2. An administrator may renew a certificate of registration if the administrator submits to the Commissioner:

(a) An application on a form prescribed by the Commissioner; ~~and~~

(b) The fee for the renewal of the certificate of registration prescribed in NRS 680B.010 and, in addition to any other fee or charge, all applicable fees required pursuant to NRS 680C.110 ~~H~~ ;
and

(c) If the administrator is a pharmacy benefit manager, as defined in NRS 683A.174, pays the fee for the renewal of the certificate of registration prescribed by the Department of Health and Human Services pursuant to NRS 439B.685.

3. As used in this section, "renewal date" means:

(a) For the first renewal of the certificate of registration, the last day of the month which is 3 years after the month in which the Commissioner originally issued the certificate.

(b) For each renewal after the first renewal of the certificate of registration, the last day of the month which is 3 years after the month in which the certificate was last due to be renewed.

Sec. 4. NRS 683A.171 is hereby amended to read as follows:

683A.171 As used in NRS 683A.171 to 683A.179, inclusive, *and section 1 of this act*, unless the context otherwise requires, the words and terms defined in NRS 683A.172 to 683A.176, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. NRS 683A.177 is hereby amended to read as follows:

683A.177 1. Except as otherwise provided in subsection 2, the requirements of NRS 683A.171 to 683A.179, inclusive, *and section 1 of this act* and any regulations adopted by the Commissioner pursuant thereto do not apply to the coverage of prescription drugs under a plan that is subject to the Employee Retirement Income Security Act of 1974 or any information relating to such coverage.



2. A plan described in subsection 1 may, by contract, require a pharmacy benefit manager that manages the coverage of prescription drugs under the plan to comply with the requirements of NRS 683A.171 to 683A.179, inclusive, *and section 1 of this act* and any regulations adopted by the Commissioner pursuant thereto.

Sec. 6. NRS 683A.178 is hereby amended to read as follows:
683A.178 1. A pharmacy benefit manager has ~~an~~ :

(a) A fiduciary duty to a third party with which the pharmacy benefit manager has entered into an agreement to manage the pharmacy benefits plan of the third party; and

(b) An obligation of good faith and fair dealing toward a ~~third party or~~ pharmacy when performing duties pursuant to a contract to which the pharmacy benefit manager is a party. ~~[Any provision of a contract that waives or limits that obligation is against public policy, void and unenforceable.]~~

2. A pharmacy benefit manager ~~shall~~ :

(a) Shall notify a third party or pharmacy with which it has entered into a contract in writing of any activity, policy or practice of the pharmacy benefit manager that presents a conflict of interest that interferes with the duties or obligations imposed by subsection 1 ~~H~~ ; and

(b) Shall not engage in any activity or implement any policy or practice that the pharmacy benefit manager reasonably anticipates will present a conflict of interest that interferes with the ability of the pharmacy benefit manager to discharge any duty or obligation imposed by subsection 1.

3. *A third party with which a pharmacy benefit manager has entered into an agreement may audit all books and records of the pharmacy benefit manager to the extent necessary to fulfill all contractual obligations to covered persons and ensure compliance with the provisions of the agreement, this chapter and the regulations adopted pursuant thereto. Such an audit may include, without limitation, an examination of claims for pharmacy benefits, rebates and any other information necessary to accomplish the purposes set forth in this subsection.*

4. *Any provision of a contract that waives or limits any duty or obligation imposed by this section is against public policy, void and unenforceable.*

Sec. 7. NRS 439B.685 is hereby amended to read as follows:

439B.685 The Department shall adopt such regulations as it determines to be necessary or advisable to carry out the provisions of NRS 439B.600 to 439B.695, inclusive. Such regulations must provide for, without limitation:

1. Notice to consumers stating that:



(a) Although the Department will strive to ensure that consumers receive accurate information regarding pharmacies, prescription drugs and nonprofit organizations including, without limitation, the information made available on the Department's Internet website pursuant to NRS 439B.670, the Department is unable to guarantee the accuracy of such information;

(b) If a consumer follows an Internet link from the Internet website maintained by the Department to an Internet website not maintained by the Department, the Department is unable to guarantee the accuracy of any information made available on that Internet website; and

(c) The Department advises consumers to contact a pharmacy, manufacturer or nonprofit organization directly to verify the accuracy of any information regarding the pharmacy, a prescription drug manufactured by the manufacturer or the nonprofit organization, as applicable, which is made available to consumers pursuant to NRS 439B.600 to 439B.695, inclusive;

2. Procedures adopted to direct consumers who have questions regarding the program described in NRS 439B.600 to 439B.695, inclusive, to contact the Office for Consumer Health Assistance of the Department;

3. Provisions in accordance with which the Department will allow an Internet link to the information made available on the Department's Internet website pursuant to NRS 439B.670 to be placed on other Internet websites managed or maintained by other persons and entities, including, without limitation, Internet websites managed or maintained by:

(a) Other governmental entities, including, without limitation, the State Board of Pharmacy and the Office of the Governor; and

(b) Nonprofit organizations and advocacy groups;

4. Procedures pursuant to which consumers, pharmacies, manufacturers and nonprofit organizations may report to the Department that information made available to consumers pursuant to NRS 439B.600 to 439B.695, inclusive, is inaccurate;

5. The form and manner in which pharmacies are to provide to the Department the information described in NRS 439B.655;

6. The form and manner in which manufacturers are to provide to the Department the information described in NRS 439B.635, 439B.640 and 439B.660;

7. The form and manner in which pharmacy benefit managers are to provide to the Department the information described in NRS 439B.645;

8. The form and manner in which pharmaceutical sales representatives are to provide to the Department the information described in NRS 439B.660;



9. The form and manner in which nonprofit organizations are to provide to the Department the information described in NRS 439B.665, if required;

10. The form and manner in which wholesalers are to provide the Department with the information described in NRS 439B.642; and

11. Standards and criteria pursuant to which the Department may remove from its Internet website information regarding a pharmacy or an Internet link to the Internet website maintained by a pharmacy, or both, if the Department determines that the pharmacy has:

(a) Ceased to be licensed and in good standing pursuant to chapter 639 of NRS; or

(b) Engaged in a pattern of providing to consumers information that is false or would be misleading to reasonably informed persons.

12. A fee to be paid by a pharmacy benefit manager to the Commissioner of Insurance for the issuance or renewal of a certificate of registration as an administrator, as defined in NRS 683A.025, in addition to the fees prescribed by NRS 680B.010 and any applicable fees required pursuant to NRS 680C.110. The fee must be calculated to produce the revenue estimated to cover the costs of carrying out the provisions of NRS 439B.600 to 439B.695, inclusive. The Commissioner of Insurance shall collect the fee and remit the amount collected to the Department to be used for that purpose.

Sec. 8. The provisions of section 1 of this act and the amendatory provisions of section 6 of this act do not apply to any contract existing on January 1, 2024, but apply to any renewal of such a contract.

Sec. 9. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 8, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2024, for all other purposes.

