

As Introduced

**131st General Assembly
Regular Session
2015-2016**

H. B. No. 127

Representatives Brown, Cera

A BILL

To enact sections 3901.43, 3901.431, and 3901.432 1
of the Revised Code to regulate pharmacy benefit 2
managers. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3901.43, 3901.431, and 3901.432 4
of the Revised Code be enacted to read as follows: 5

Sec. 3901.43. As used in sections 3901.43 to 3901.432 of 6
the Revised Code: 7

(A) "Contracted pharmacy" or "pharmacy" means a pharmacy 8
located in this state participating in either the network of a 9
pharmacy benefit manager or in a health care or pharmacy benefit 10
plan through a direct contract or through a contract with a 11
pharmacy services administration organization, group purchasing 12
organization, or another contracting agent. 13

(B) "Drug product reimbursement" means the amount paid by 14
a pharmacy benefit manager to a contracted pharmacy for the cost 15
of the drug dispensed to a patient and does not include a 16
dispensing or professional fee. 17

(C) "Insurer" means an entity authorized to do the 18

business of insurance in this state or, for the purposes of this 19
section, a health insuring corporation authorized to issue 20
health care plans in this state. 21

(D) "Managed care organization" means an entity that 22
provides medical management and cost containment services and 23
includes a medicaid managed care organization, as defined in 24
section 5167.01 of the Revised Code. 25

(E) "Maximum allowable cost" means a maximum drug product 26
reimbursement for an individual drug or for a group of 27
therapeutically and pharmaceutically equivalent multiple source 28
drugs that are listed in the United States food and drug 29
administration's approved drug products with therapeutic 30
equivalence evaluations, commonly referred to as the orange 31
book. 32

(F) "Maximum allowable cost list" means a list of the 33
drugs for which a pharmacy benefit manager imposes a maximum 34
allowable cost. 35

(G) "Multiple employer welfare arrangement" has the same 36
meaning as in section 1739.01 of the Revised Code. 37

(H) "Pharmacy benefit manager" means an entity that 38
contracts with pharmacies on behalf of an employer, a multiple 39
employer welfare arrangement, public employee benefit plan, 40
state agency, insurer, managed care organization, or other 41
third-party payer to provide pharmacy health benefit services or 42
administration. 43

(I) "Plan sponsor" means an employer, a multiple employer 44
welfare arrangement, public employee benefit plan, state agency, 45
insurer, managed care organization, or other third-party payer 46
that facilitates a health benefit plan that provides a drug 47

benefit that is administered by a pharmacy benefit manager. 48

(J) "Third-party payer" has the same meaning as in section 49
3901.38 of the Revised Code. 50

Sec. 3901.431. (A) A pharmacy benefit manager shall not 51
operate in this state without first registering with the 52
superintendent of insurance. 53

(B) A pharmacy benefit manager registration applicant 54
shall do both of the following: 55

(1) Complete any registration application prescribed in 56
rule by the superintendent; 57

(2) Pay any registration fee prescribed by in rule by the 58
superintendent. 59

(C) The superintendent shall register any pharmacy benefit 60
manager that completes the application and meets the 61
requirements of this section. 62

(D) A pharmacy benefit manager registration shall be for a 63
duration of two years, but may be renewed as provided in this 64
section. 65

(E) (1) A pharmacy benefit manager may renew its 66
registration if it meets all of the following requirements: 67

(a) The pharmacy benefit manager is otherwise eligible for 68
registration, as provided under this section; 69

(b) The pharmacy benefit manager completes any 70
registration renewal application prescribed in rule by the 71
superintendent; 72

(c) The pharmacy benefit manager pays any registration 73
renewal fee prescribed in rule by the superintendent. 74

(2) An application for a registration renewal shall be 75
filed in a timely manner. An application shall be considered to 76
have been filed in a timely manner if it is postmarked on or 77
before the date the pharmacy benefit manager's registration 78
expires. 79

(3) The superintendent shall renew the registration of any 80
pharmacy benefit manager that completes the renewal application 81
and otherwise meets the requirements of this section. 82

(F) Neither a plan sponsor nor a pharmacy shall enter into 83
a contract with an unregistered pharmacy benefit manager. 84

(G) (1) The superintendent may take any of the following 85
actions against a pharmacy benefit manager or a pharmacy benefit 86
manager registration applicant that engages in any of the 87
prohibited activities listed in division (H) of this section: 88

(a) Deny registration to a pharmacy benefit manager 89
registration applicant; 90

(b) Refuse to renew, suspend, or revoke the registration 91
of a pharmacy benefit manager; 92

(c) Fine the pharmacy benefit manager. 93

(2) The superintendent shall adopt rules prescribing when 94
finest are to be levied and in what amounts. 95

(H) A pharmacy benefit manager or pharmacy benefit manager 96
applicant shall not do any of the following: 97

(1) Make a material misstatement or misrepresentation in 98
an application for registration or renewal; 99

(2) Fraudulently or deceptively obtain or attempt to 100
obtain a registration or renewal; 101

(3) Commit fraud or engage in any illegal or dishonest activity in connection with the administration of pharmacy benefit management services; 102
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(4) Violate any provision of this section or section 3901.432 of the Revised Code or any rule adopted by the superintendent under this section. 105
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Sec. 3901.432. (A) (1) (a) In each contract between a pharmacy benefit manager and a pharmacy, the pharmacy shall be given the right to obtain from the pharmacy benefit manager, within ten days after any request, a current list of the sources used to determine maximum allowable cost pricing. The pharmacy benefit manager shall update and implement the pricing information at least every seven days and provide a means by which contracted pharmacies may promptly review pricing updates in a format that is readily available and accessible. 108
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(b) A pharmacy benefit manager shall maintain a procedure to eliminate products from the list of drugs subject to maximum allowable cost pricing in a timely manner in order to remain consistent with pricing changes in the marketplace. 117
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(2) In order to place a prescription drug on a maximum allowable cost list, a pharmacy benefit manager shall ensure that all of the following conditions are met: 121
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(a) The drug is listed as "A" or "AB" rated in the most recent version of the United States food and drug administration's approved drug products with therapeutic equivalence evaluations, or has an "NR" or "NA" rating or similar rating by a nationally recognized reference. 124
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(b) The drug is generally available for purchase by pharmacies in this state from a national or regional wholesaler 129
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and is not obsolete. 131

(c) The drug has at least two therapeutically equivalent 132
multiple source drugs available or at least one generic drug 133
available in this state from a national or regional wholesaler 134
and is not obsolete. 135

(3) Each contract between a pharmacy benefit manager and a 136
pharmacy shall include a process to appeal, investigate, and 137
resolve disputes regarding maximum allowable cost pricing that 138
includes all of the following: 139

(a) A twenty-one-day limit on the right to appeal 140
following the initial claim; 141

(b) A requirement that the appeal be investigated and 142
resolved within twenty-one days after the appeal; 143

(c) A telephone number at which the pharmacy may contact 144
the pharmacy benefit manager to speak to a person responsible 145
for processing appeals; 146

(d) A requirement that a pharmacy benefit manager provide 147
a reason for any appeal denial and the identification of the 148
national drug code of a drug that may be purchased in this state 149
by the pharmacy at a price at or below the benchmark price 150
determined by the pharmacy benefit manager; 151

(e) A requirement that a pharmacy benefit manager make an 152
adjustment to a date related to a claim not later than one day 153
after the date of determination of the appeal. The adjustment 154
shall be retroactive to the date the appeal was made and shall 155
apply to all similarly situated pharmacies. This requirement 156
does not prohibit a pharmacy benefit manager from retroactively 157
adjusting a claim for the appealing pharmacy or for another 158
similarly situated pharmacy. 159

(B) (1) A pharmacy benefit manager shall disclose to a plan sponsor whether or not the pharmacy benefit manager uses the same maximum allowable cost list when billing a plan sponsor as it does when reimbursing a pharmacy. 160
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(2) If a pharmacy benefit manager uses multiple maximum allowable cost lists, the pharmacy benefit manager shall disclose to a plan sponsor any difference between the amount paid to a pharmacy and the amount charged to the plan sponsor. 164
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Section 2. Sections 3901.43, 3904.431, and 3903.432 of the Revised Code, as enacted by this act, shall take effect ninety days after the effective date of this act. 168
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