

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)

PROPOSED MODEL ACT REGARDING PHARMACY BENEFIT MANAGERS*

To be considered by the NCOIL Health, Long-Term Care, and Health Retirement Issues Committee on March 1, 2007.

Sponsored by Del. Harvey Morgan (VA)

Section 1. {Short Title}

This act shall be known as the *Model Act Regarding Pharmacy Benefit Managers*.

Section 2. {Purpose and Intent}

The purpose of this Act is to establish standards and criteria for the regulation of Pharmacy Benefit Managers.

Section 3. {Prescription Drug Practices}

Pharmacy benefit managers shall, and contracts for pharmacy benefit management must, comply with the requirements of this section.

A. Definitions.

As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

1. “Clean Claim” Means [Insert State Definition]

2. ~~1.~~ “Covered entity” means (i) an insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical or major medical coverage on an expense-incurred basis, (ii) a corporation providing individual or group accident and sickness subscription contracts, (iii) a health maintenance organization providing a health care plan for health care services, (iv) a health program administered by the State or an agency of the State in the capacity of provider of health coverage, or (v) an employer, labor union, or other group of persons organized in the State, that provides health coverage to covered individuals who are employed or reside in the State. The provisions of this section shall not apply to short-term travel or accident-only policies, short-term nonrenewable policies of not more than 6

months' duration, or where the policy, subscription contract or health care plan does not include coverage for prescription drugs.

- 3.** ~~2.~~ "Covered individual" means a member, participant, enrollee, contract holder or policyholder or beneficiary of a covered entity who is provided health coverage by the covered entity. "Covered individual" includes a dependent or other person provided health coverage through a policy, contract or plan for a covered individual.
- 4.** ~~3.~~ "Generic drug" means a drug marketed or sold by two or more manufacturers or labelers or a drug marketed or sold by the same manufacturer or labeler under two or more different proprietary names or both under a proprietary name and without such a name. "Generic drug" includes but is not limited to a chemically equivalent copy of a brand-name drug with an expired patent.
- 5.** ~~4.~~ "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 270.20 (1999).
- 6.** ~~5.~~ "Pharmacy benefit management" means the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals, which may include any of the following services provided with regard to the administration of pharmacy benefits:
- a. Mail order pharmacy
 - b. Claims processing, retail pharmacy network management and payment of claims to pharmacies for prescription drugs dispensed to covered individuals
 - c. Clinical formulary development and management services
 - d. Rebate contracting and administration
 - e. Certain patient compliance, therapeutic intervention and generic substitution programs
 - f. Disease management programs
- 7.** ~~6.~~ "Pharmacy benefit manager" means an entity that performs pharmacy benefit management. "Pharmacy benefit manager" includes a person or entity acting for a pharmacy benefit manager in a contractual or employment relationship in the performance of pharmacy benefit management for a covered entity and includes mail service pharmacy owned or operated by a pharmacy benefit manager.

B. Required Practices

A pharmacy benefit manager owes a fiduciary duty to a covered entity and shall discharge that duty in accordance with the provisions of state and federal law, **including but not limited to the following:**

- 1. A pharmacy benefit manager shall perform its duties with care, skill, prudence and diligence and in accordance with the standards of conduct applicable to a fiduciary in an enterprise of a like character and with like aims.**
- 2. 1.** A pharmacy benefit manager shall make prompt **electronic** payment within 15 days of receiving **a clean claim valid reimbursement claims** from pharmacy providers. Notwithstanding ~~the above~~ **this provision**, the average number of days in which a pharmacy benefit manager processes and pays **a clean claim valid reimbursement claims** from network retail community pharmacies shall not exceed the average number of days in which a pharmacy benefit manager processes and pays **a clean claim valid reimbursement claims** received from a mail order pharmacy that is owned or operated by the pharmacy benefit manager. The pharmacy benefit manager's records of payments shall be made available to the [*insert appropriate state agency*] upon request for purposes of determining compliance with this requirement.
- 3. 2.** A pharmacy benefit manager shall notify the covered entity in writing of any activity, policy or practice of the pharmacy benefit manager that directly or indirectly presents any conflict of interests with the duties imposed by this subsection.
- 4. 3.** A pharmacy benefit manager shall provide to a covered entity all financial and utilization information requested by the covered entity relating to the provision of benefits to covered individuals through that covered entity and all financial and utilization information relating to services to that covered entity. A pharmacy benefit manager providing information under this paragraph may designate that material as confidential. Information designated as confidential by a pharmacy benefit manager and provided to a covered entity under this paragraph may not be disclosed by the covered entity to any person without the consent of the pharmacy benefit manager, except that disclosure may be ordered by a court of this State for good cause shown or made in a court filing under seal unless or until otherwise ordered by a court. **Nothing in this section shall limit the authority of the [*insert appropriate state agency*] to obtain information and use the information in any formal or informal proceeding. Nothing in this paragraph limits the authority of the [*insert appropriate state agency*] use of civil**

investigative demand authority under the Unfair Trade Practices Act to investigate violations of this section.

- 5. 4.** With regard to the dispensation of a substitute prescription drug for a prescribed drug to a covered individual the following provisions apply:
- a. If a pharmacy benefit manager makes a substitution in which the substitute drug costs the covered entity or the covered individual more than the prescribed drug, the pharmacy benefit manager shall disclose to the covered entity the cost of both drugs and any benefit or payment directly or indirectly accruing to the pharmacy benefit manager as a result of the substitution.
 - b. The pharmacy benefit manager shall transfer in full to the covered entity any benefit or payment received in any form by the pharmacy benefit manager as a result of a prescription drug substitution under subparagraph a.
 - c. The pharmacy benefit manager shall have any substitution approved by the original prescriber and shall notify the covered individual and the pharmacist at the pharmacy where the prescription is on file of the prescriber's authorization and approval of the substitution.

~~5. A pharmacy benefit manager that derives any rebate, payment or benefit for the dispensation of prescription drugs within the State based on sales, substitution, or prescribing for certain prescription drugs or classes or brands of drugs within the State shall pass that payment or benefit on in full to the covered entity.~~

6. A pharmacy benefit manager shall disclose to the covered entity all financial terms and arrangements for remuneration of any kind that apply between the pharmacy benefit manager and any prescription drug manufacturer or labeler, including, without limitation, formulary management and drug-switch programs, educational support, claims processing and pharmacy network fees that are charged from retail pharmacies, and data sales fees. **A pharmacy benefit manager that derives any rebate, payment or benefit for the dispensation of prescription drugs within the State based on sales, substitution, or prescribing for certain prescription drugs or classes or brands of drugs within the State shall pass that payment or benefit on in full to the covered entity.** A pharmacy benefit manager providing information under this paragraph may designate that material as confidential. Information designated as confidential by a pharmacy benefit manager and provided to a covered entity under this paragraph may not be disclosed by the covered entity to any person without the consent of the pharmacy benefit manager, except that disclosure may be ordered by a court of this

State for good cause shown or made in a court filing under seal unless or until otherwise ordered by a court. Nothing in this paragraph limits the authority of the [insert appropriate state agency] use of civil investigative demand authority under the Unfair Trade Practices Act to investigate violations of this section.

C. ~~Freedom of Choice~~

~~A pharmacy benefit manager shall not (i) prevent or inhibit a covered individual from choosing any pharmacy that participates in the pharmacy benefit manager's network, (ii) require a covered individual to obtain covered drugs or pharmacy services from its wholly owned or controlled a mail order pharmacy, or (iii) use any financial penalty or other disincentive, including but not limited to differential co-payments, that coerce or steer covered individuals toward its wholly owned or controlled a mail order pharmacy and away from a retail community pharmacy that has agreed to participate in the pharmacy benefit manager's network.~~

D. ~~Drug Quantity Limits~~

~~A pharmacy benefit manager may not set or enforce a limit on the quantity or days supply of covered drugs that a covered individual may obtain at any one time from a pharmacy, unless the limit is applied uniformly to all pharmacy providers within the pharmacy network, including but not limited to all mail order pharmacies and retail community pharmacies.~~

E. Compliance

Compliance with the requirements of this section is required in all contracts for pharmacy benefit management entered into in this State or by a covered entity in this State.

F. Effective Date

~~This section applies to contracts executed or renewed on or after July 1, 2007. This section applies to contracts executed or renewed on or after [Insert Month, Day, Year]. For the purposes of this subsection, a contract executed pursuant to a memorandum of agreement executed prior to [Insert Month Day, Year] is deemed to have been executed prior to [Insert Month Day, Year] even if the contract was executed after that date.~~

*Additions to the proposed Model Act indicated by **boldface underline**.*
*Deletions from the proposed Model Act indicated by **~~boldface strikethrough~~**.*

*** Based on House Bill No. 945 in the Virginia General Assembly**

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