

103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB4548

Introduced 1/31/2024, by Rep. Thaddeus Jones

SYNOPSIS AS INTRODUCED:

5 ILCS 140/7
215 ILCS 5/513b1
215 ILCS 5/513b1.5 new

Amends the Illinois Insurance Code. Defines "health benefit plan" and other terms. Provides that a pharmacy benefit manager or an affiliate acting on the pharmacy benefit manager's behalf is prohibited from conducting spread pricing, from steering a covered individual, and from limiting a covered individual's access to prescription drugs from a pharmacy or pharmacist enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area by unreasonably designating the covered prescription drugs as a specialty drug. Provides that a pharmacy benefit manager or an affiliate acting on the pharmacy benefit manager's behalf must remit 100% of rebates and fees to the health benefit plan sponsor, consumer, or employer. Provides that a pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee. Provides that a contract between a pharmacy benefit manager and an insurer or health benefit plan sponsor must allow and provide for the pharmacy benefit manager's compliance with an audit at least once per calendar year of the rebate and fee records remitted from a pharmacy benefit manager or its contracted party to a health benefit plan. Provides that provisions concerning pharmacy benefit manager contracts apply to any health benefit plan (instead of any group or individual policy of accident and health insurance or managed care plan) that provides coverage for prescription drugs and that is amended, delivered, issued, or renewed on or after July 1, 2020. Requires a pharmacy benefit manager to submit an annual report that includes specified information concerning prescription drugs. Makes other changes. Amends the Freedom of Information Act to make a conforming change. Effective July 1, 2024.

LRB103 35901 RPS 65986 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Freedom of Information Act is amended by
5 changing Section 7 as follows:

6 (5 ILCS 140/7)

7 Sec. 7. Exemptions.

8 (1) When a request is made to inspect or copy a public
9 record that contains information that is exempt from
10 disclosure under this Section, but also contains information
11 that is not exempt from disclosure, the public body may elect
12 to redact the information that is exempt. The public body
13 shall make the remaining information available for inspection
14 and copying. Subject to this requirement, the following shall
15 be exempt from inspection and copying:

16 (a) Information specifically prohibited from
17 disclosure by federal or State law or rules and
18 regulations implementing federal or State law.

19 (b) Private information, unless disclosure is required
20 by another provision of this Act, a State or federal law,
21 or a court order.

22 (b-5) Files, documents, and other data or databases
23 maintained by one or more law enforcement agencies and

1 specifically designed to provide information to one or
2 more law enforcement agencies regarding the physical or
3 mental status of one or more individual subjects.

4 (c) Personal information contained within public
5 records, the disclosure of which would constitute a
6 clearly unwarranted invasion of personal privacy, unless
7 the disclosure is consented to in writing by the
8 individual subjects of the information. "Unwarranted
9 invasion of personal privacy" means the disclosure of
10 information that is highly personal or objectionable to a
11 reasonable person and in which the subject's right to
12 privacy outweighs any legitimate public interest in
13 obtaining the information. The disclosure of information
14 that bears on the public duties of public employees and
15 officials shall not be considered an invasion of personal
16 privacy.

17 (d) Records in the possession of any public body
18 created in the course of administrative enforcement
19 proceedings, and any law enforcement or correctional
20 agency for law enforcement purposes, but only to the
21 extent that disclosure would:

22 (i) interfere with pending or actually and
23 reasonably contemplated law enforcement proceedings
24 conducted by any law enforcement or correctional
25 agency that is the recipient of the request;

26 (ii) interfere with active administrative

1 enforcement proceedings conducted by the public body
2 that is the recipient of the request;

3 (iii) create a substantial likelihood that a
4 person will be deprived of a fair trial or an impartial
5 hearing;

6 (iv) unavoidably disclose the identity of a
7 confidential source, confidential information
8 furnished only by the confidential source, or persons
9 who file complaints with or provide information to
10 administrative, investigative, law enforcement, or
11 penal agencies; except that the identities of
12 witnesses to traffic crashes, traffic crash reports,
13 and rescue reports shall be provided by agencies of
14 local government, except when disclosure would
15 interfere with an active criminal investigation
16 conducted by the agency that is the recipient of the
17 request;

18 (v) disclose unique or specialized investigative
19 techniques other than those generally used and known
20 or disclose internal documents of correctional
21 agencies related to detection, observation, or
22 investigation of incidents of crime or misconduct, and
23 disclosure would result in demonstrable harm to the
24 agency or public body that is the recipient of the
25 request;

26 (vi) endanger the life or physical safety of law

1 enforcement personnel or any other person; or
2 (vii) obstruct an ongoing criminal investigation
3 by the agency that is the recipient of the request.

4 (d-5) A law enforcement record created for law
5 enforcement purposes and contained in a shared electronic
6 record management system if the law enforcement agency
7 that is the recipient of the request did not create the
8 record, did not participate in or have a role in any of the
9 events which are the subject of the record, and only has
10 access to the record through the shared electronic record
11 management system.

12 (d-6) Records contained in the Officer Professional
13 Conduct Database under Section 9.2 of the Illinois Police
14 Training Act, except to the extent authorized under that
15 Section. This includes the documents supplied to the
16 Illinois Law Enforcement Training Standards Board from the
17 Illinois State Police and Illinois State Police Merit
18 Board.

19 (d-7) Information gathered or records created from the
20 use of automatic license plate readers in connection with
21 Section 2-130 of the Illinois Vehicle Code.

22 (e) Records that relate to or affect the security of
23 correctional institutions and detention facilities.

24 (e-5) Records requested by persons committed to the
25 Department of Corrections, Department of Human Services
26 Division of Mental Health, or a county jail if those

1 materials are available in the library of the correctional
2 institution or facility or jail where the inmate is
3 confined.

4 (e-6) Records requested by persons committed to the
5 Department of Corrections, Department of Human Services
6 Division of Mental Health, or a county jail if those
7 materials include records from staff members' personnel
8 files, staff rosters, or other staffing assignment
9 information.

10 (e-7) Records requested by persons committed to the
11 Department of Corrections or Department of Human Services
12 Division of Mental Health if those materials are available
13 through an administrative request to the Department of
14 Corrections or Department of Human Services Division of
15 Mental Health.

16 (e-8) Records requested by a person committed to the
17 Department of Corrections, Department of Human Services
18 Division of Mental Health, or a county jail, the
19 disclosure of which would result in the risk of harm to any
20 person or the risk of an escape from a jail or correctional
21 institution or facility.

22 (e-9) Records requested by a person in a county jail
23 or committed to the Department of Corrections or
24 Department of Human Services Division of Mental Health,
25 containing personal information pertaining to the person's
26 victim or the victim's family, including, but not limited

1 to, a victim's home address, home telephone number, work
2 or school address, work telephone number, social security
3 number, or any other identifying information, except as
4 may be relevant to a requester's current or potential case
5 or claim.

6 (e-10) Law enforcement records of other persons
7 requested by a person committed to the Department of
8 Corrections, Department of Human Services Division of
9 Mental Health, or a county jail, including, but not
10 limited to, arrest and booking records, mug shots, and
11 crime scene photographs, except as these records may be
12 relevant to the requester's current or potential case or
13 claim.

14 (f) Preliminary drafts, notes, recommendations,
15 memoranda, and other records in which opinions are
16 expressed, or policies or actions are formulated, except
17 that a specific record or relevant portion of a record
18 shall not be exempt when the record is publicly cited and
19 identified by the head of the public body. The exemption
20 provided in this paragraph (f) extends to all those
21 records of officers and agencies of the General Assembly
22 that pertain to the preparation of legislative documents.

23 (g) Trade secrets and commercial or financial
24 information obtained from a person or business where the
25 trade secrets or commercial or financial information are
26 furnished under a claim that they are proprietary,

1 privileged, or confidential, and that disclosure of the
2 trade secrets or commercial or financial information would
3 cause competitive harm to the person or business, and only
4 insofar as the claim directly applies to the records
5 requested.

6 The information included under this exemption includes
7 all trade secrets and commercial or financial information
8 obtained by a public body, including a public pension
9 fund, from a private equity fund or a privately held
10 company within the investment portfolio of a private
11 equity fund as a result of either investing or evaluating
12 a potential investment of public funds in a private equity
13 fund. The exemption contained in this item does not apply
14 to the aggregate financial performance information of a
15 private equity fund, nor to the identity of the fund's
16 managers or general partners. The exemption contained in
17 this item does not apply to the identity of a privately
18 held company within the investment portfolio of a private
19 equity fund, unless the disclosure of the identity of a
20 privately held company may cause competitive harm.

21 Nothing contained in this paragraph (g) shall be
22 construed to prevent a person or business from consenting
23 to disclosure.

24 (h) Proposals and bids for any contract, grant, or
25 agreement, including information which if it were
26 disclosed would frustrate procurement or give an advantage

1 to any person proposing to enter into a contractor
2 agreement with the body, until an award or final selection
3 is made. Information prepared by or for the body in
4 preparation of a bid solicitation shall be exempt until an
5 award or final selection is made.

6 (i) Valuable formulae, computer geographic systems,
7 designs, drawings, and research data obtained or produced
8 by any public body when disclosure could reasonably be
9 expected to produce private gain or public loss. The
10 exemption for "computer geographic systems" provided in
11 this paragraph (i) does not extend to requests made by
12 news media as defined in Section 2 of this Act when the
13 requested information is not otherwise exempt and the only
14 purpose of the request is to access and disseminate
15 information regarding the health, safety, welfare, or
16 legal rights of the general public.

17 (j) The following information pertaining to
18 educational matters:

19 (i) test questions, scoring keys, and other
20 examination data used to administer an academic
21 examination;

22 (ii) information received by a primary or
23 secondary school, college, or university under its
24 procedures for the evaluation of faculty members by
25 their academic peers;

26 (iii) information concerning a school or

1 university's adjudication of student disciplinary
2 cases, but only to the extent that disclosure would
3 unavoidably reveal the identity of the student; and

4 (iv) course materials or research materials used
5 by faculty members.

6 (k) Architects' plans, engineers' technical
7 submissions, and other construction related technical
8 documents for projects not constructed or developed in
9 whole or in part with public funds and the same for
10 projects constructed or developed with public funds,
11 including, but not limited to, power generating and
12 distribution stations and other transmission and
13 distribution facilities, water treatment facilities,
14 airport facilities, sport stadiums, convention centers,
15 and all government owned, operated, or occupied buildings,
16 but only to the extent that disclosure would compromise
17 security.

18 (l) Minutes of meetings of public bodies closed to the
19 public as provided in the Open Meetings Act until the
20 public body makes the minutes available to the public
21 under Section 2.06 of the Open Meetings Act.

22 (m) Communications between a public body and an
23 attorney or auditor representing the public body that
24 would not be subject to discovery in litigation, and
25 materials prepared or compiled by or for a public body in
26 anticipation of a criminal, civil, or administrative

1 proceeding upon the request of an attorney advising the
2 public body, and materials prepared or compiled with
3 respect to internal audits of public bodies.

4 (n) Records relating to a public body's adjudication
5 of employee grievances or disciplinary cases; however,
6 this exemption shall not extend to the final outcome of
7 cases in which discipline is imposed.

8 (o) Administrative or technical information associated
9 with automated data processing operations, including, but
10 not limited to, software, operating protocols, computer
11 program abstracts, file layouts, source listings, object
12 modules, load modules, user guides, documentation
13 pertaining to all logical and physical design of
14 computerized systems, employee manuals, and any other
15 information that, if disclosed, would jeopardize the
16 security of the system or its data or the security of
17 materials exempt under this Section.

18 (p) Records relating to collective negotiating matters
19 between public bodies and their employees or
20 representatives, except that any final contract or
21 agreement shall be subject to inspection and copying.

22 (q) Test questions, scoring keys, and other
23 examination data used to determine the qualifications of
24 an applicant for a license or employment.

25 (r) The records, documents, and information relating
26 to real estate purchase negotiations until those

1 negotiations have been completed or otherwise terminated.
2 With regard to a parcel involved in a pending or actually
3 and reasonably contemplated eminent domain proceeding
4 under the Eminent Domain Act, records, documents, and
5 information relating to that parcel shall be exempt except
6 as may be allowed under discovery rules adopted by the
7 Illinois Supreme Court. The records, documents, and
8 information relating to a real estate sale shall be exempt
9 until a sale is consummated.

10 (s) Any and all proprietary information and records
11 related to the operation of an intergovernmental risk
12 management association or self-insurance pool or jointly
13 self-administered health and accident cooperative or pool.
14 Insurance or self-insurance (including any
15 intergovernmental risk management association or
16 self-insurance pool) claims, loss or risk management
17 information, records, data, advice, or communications.

18 (t) Information contained in or related to
19 examination, operating, or condition reports prepared by,
20 on behalf of, or for the use of a public body responsible
21 for the regulation or supervision of financial
22 institutions, insurance companies, or pharmacy benefit
23 managers, unless disclosure is otherwise required by State
24 law.

25 (u) Information that would disclose or might lead to
26 the disclosure of secret or confidential information,

1 codes, algorithms, programs, or private keys intended to
2 be used to create electronic signatures under the Uniform
3 Electronic Transactions Act.

4 (v) Vulnerability assessments, security measures, and
5 response policies or plans that are designed to identify,
6 prevent, or respond to potential attacks upon a
7 community's population or systems, facilities, or
8 installations, but only to the extent that disclosure
9 could reasonably be expected to expose the vulnerability
10 or jeopardize the effectiveness of the measures, policies,
11 or plans, or the safety of the personnel who implement
12 them or the public. Information exempt under this item may
13 include such things as details pertaining to the
14 mobilization or deployment of personnel or equipment, to
15 the operation of communication systems or protocols, to
16 cybersecurity vulnerabilities, or to tactical operations.

17 (w) (Blank).

18 (x) Maps and other records regarding the location or
19 security of generation, transmission, distribution,
20 storage, gathering, treatment, or switching facilities
21 owned by a utility, by a power generator, or by the
22 Illinois Power Agency.

23 (y) Information contained in or related to proposals,
24 bids, or negotiations related to electric power
25 procurement under Section 1-75 of the Illinois Power
26 Agency Act and Section 16-111.5 of the Public Utilities

1 Act that is determined to be confidential and proprietary
2 by the Illinois Power Agency or by the Illinois Commerce
3 Commission.

4 (z) Information about students exempted from
5 disclosure under Section 10-20.38 or 34-18.29 of the
6 School Code, and information about undergraduate students
7 enrolled at an institution of higher education exempted
8 from disclosure under Section 25 of the Illinois Credit
9 Card Marketing Act of 2009.

10 (aa) Information the disclosure of which is exempted
11 under the Viatical Settlements Act of 2009.

12 (bb) Records and information provided to a mortality
13 review team and records maintained by a mortality review
14 team appointed under the Department of Juvenile Justice
15 Mortality Review Team Act.

16 (cc) Information regarding interments, entombments, or
17 inurnments of human remains that are submitted to the
18 Cemetery Oversight Database under the Cemetery Care Act or
19 the Cemetery Oversight Act, whichever is applicable.

20 (dd) Correspondence and records (i) that may not be
21 disclosed under Section 11-9 of the Illinois Public Aid
22 Code or (ii) that pertain to appeals under Section 11-8 of
23 the Illinois Public Aid Code.

24 (ee) The names, addresses, or other personal
25 information of persons who are minors and are also
26 participants and registrants in programs of park

1 districts, forest preserve districts, conservation
2 districts, recreation agencies, and special recreation
3 associations.

4 (ff) The names, addresses, or other personal
5 information of participants and registrants in programs of
6 park districts, forest preserve districts, conservation
7 districts, recreation agencies, and special recreation
8 associations where such programs are targeted primarily to
9 minors.

10 (gg) Confidential information described in Section
11 1-100 of the Illinois Independent Tax Tribunal Act of
12 2012.

13 (hh) The report submitted to the State Board of
14 Education by the School Security and Standards Task Force
15 under item (8) of subsection (d) of Section 2-3.160 of the
16 School Code and any information contained in that report.

17 (ii) Records requested by persons committed to or
18 detained by the Department of Human Services under the
19 Sexually Violent Persons Commitment Act or committed to
20 the Department of Corrections under the Sexually Dangerous
21 Persons Act if those materials: (i) are available in the
22 library of the facility where the individual is confined;
23 (ii) include records from staff members' personnel files,
24 staff rosters, or other staffing assignment information;
25 or (iii) are available through an administrative request
26 to the Department of Human Services or the Department of

1 Corrections.

2 (jj) Confidential information described in Section
3 5-535 of the Civil Administrative Code of Illinois.

4 (kk) The public body's credit card numbers, debit card
5 numbers, bank account numbers, Federal Employer
6 Identification Number, security code numbers, passwords,
7 and similar account information, the disclosure of which
8 could result in identity theft or impression or defrauding
9 of a governmental entity or a person.

10 (ll) Records concerning the work of the threat
11 assessment team of a school district, including, but not
12 limited to, any threat assessment procedure under the
13 School Safety Drill Act and any information contained in
14 the procedure.

15 (mm) Information prohibited from being disclosed under
16 subsections (a) and (b) of Section 15 of the Student
17 Confidential Reporting Act.

18 (nn) Proprietary information submitted to the
19 Environmental Protection Agency under the Drug Take-Back
20 Act.

21 (oo) Records described in subsection (f) of Section
22 3-5-1 of the Unified Code of Corrections.

23 (pp) Any and all information regarding burials,
24 interments, or entombments of human remains as required to
25 be reported to the Department of Natural Resources
26 pursuant either to the Archaeological and Paleontological

1 Resources Protection Act or the Human Remains Protection
2 Act.

3 (qq) ~~(pp)~~ Reports described in subsection (e) of
4 Section 16-15 of the Abortion Care Clinical Training
5 Program Act.

6 (rr) ~~(pp)~~ Information obtained by a certified local
7 health department under the Access to Public Health Data
8 Act.

9 (ss) ~~(pp)~~ For a request directed to a public body that
10 is also a HIPAA-covered entity, all information that is
11 protected health information, including demographic
12 information, that may be contained within or extracted
13 from any record held by the public body in compliance with
14 State and federal medical privacy laws and regulations,
15 including, but not limited to, the Health Insurance
16 Portability and Accountability Act and its regulations, 45
17 CFR Parts 160 and 164. As used in this paragraph,
18 "HIPAA-covered entity" has the meaning given to the term
19 "covered entity" in 45 CFR 160.103 and "protected health
20 information" has the meaning given to that term in 45 CFR
21 160.103.

22 (tt) Annual reports submitted by pharmacy benefit
23 managers under Section 513b1.5 of the Illinois Insurance
24 Code, except for the summary versions of the reports under
25 paragraph (3) of subsection (b) of Section 513b1.5 of the
26 Illinois Insurance Code.

1 (1.5) Any information exempt from disclosure under the
2 Judicial Privacy Act shall be redacted from public records
3 prior to disclosure under this Act.

4 (2) A public record that is not in the possession of a
5 public body but is in the possession of a party with whom the
6 agency has contracted to perform a governmental function on
7 behalf of the public body, and that directly relates to the
8 governmental function and is not otherwise exempt under this
9 Act, shall be considered a public record of the public body,
10 for purposes of this Act.

11 (3) This Section does not authorize withholding of
12 information or limit the availability of records to the
13 public, except as stated in this Section or otherwise provided
14 in this Act.

15 (Source: P.A. 102-38, eff. 6-25-21; 102-558, eff. 8-20-21;
16 102-694, eff. 1-7-22; 102-752, eff. 5-6-22; 102-753, eff.
17 1-1-23; 102-776, eff. 1-1-23; 102-791, eff. 5-13-22; 102-982,
18 eff. 7-1-23; 102-1055, eff. 6-10-22; 103-154, eff. 6-30-23;
19 103-423, eff. 1-1-24; 103-446, eff. 8-4-23; 103-462, eff.
20 8-4-23; 103-540, eff. 1-1-24; 103-554, eff. 1-1-24; revised
21 9-7-23.)

22 Section 10. The Illinois Insurance Code is amended by
23 changing Section 513b1 and by adding Section 513b1.5 as
24 follows:

1 (215 ILCS 5/513b1)

2 Sec. 513b1. Pharmacy benefit manager contracts.

3 (a) As used in this Section:

4 "340B drug discount program" means the program established
5 under Section 340B of the federal Public Health Service Act,
6 42 U.S.C. 256b.

7 "340B entity" means a covered entity as defined in 42
8 U.S.C. 256b(a)(4) authorized to participate in the 340B drug
9 discount program.

10 "340B pharmacy" means any pharmacy used to dispense 340B
11 drugs for a covered entity, whether entity-owned or external.

12 "Biological product" has the meaning ascribed to that term
13 in Section 19.5 of the Pharmacy Practice Act.

14 "Covered individual" means a member, participant,
15 enrollee, contract holder, policyholder, or beneficiary of a
16 health benefit plan who is provided a prescription drug
17 benefit by the health benefit plan.

18 "Health benefit plan" means a policy, contract,
19 certificate, or agreement entered into, offered, or issued by
20 an insurer to provide, deliver, arrange for, pay for, or
21 reimburse any of the costs of physical, mental, or behavioral
22 health care services.

23 "Maximum allowable cost" means the maximum amount that a
24 pharmacy benefit manager will reimburse a pharmacy for the
25 cost of a drug.

26 "Maximum allowable cost list" means a list of drugs for

1 which a maximum allowable cost has been established by a
2 pharmacy benefit manager.

3 "Pharmacy benefit manager" means a person, business, or
4 entity, including a wholly or partially owned or controlled
5 subsidiary of a pharmacy benefit manager, that provides claims
6 processing services or other prescription drug or device
7 services, or both, for health benefit plans.

8 "Rebate aggregator" means a person or entity that
9 negotiates rebates with drug manufacturers on behalf of
10 pharmacy benefit managers or their clients and may also be
11 involved in contracts that entitle the rebate aggregator or
12 its client to receive rebates from drug manufacturers based on
13 drug utilization or administration.

14 "Retail price" means the price an individual without
15 prescription drug coverage would pay at a retail pharmacy, not
16 including a pharmacist dispensing fee.

17 "Spread pricing" means the model of prescription drug
18 pricing in which the pharmacy benefit manager charges a health
19 benefit plan a contracted price for prescription drugs and the
20 contracted price for the prescription drugs differs from the
21 amount the pharmacy benefit manager directly or indirectly
22 pays the pharmacist or pharmacy for pharmacist services.

23 "Steer" includes, but is not limited to:

24 (1) requiring a covered individual to use only a
25 pharmacy, including a mail-order pharmacy, in which the
26 pharmacy benefit manager maintains an ownership interest

1 or control;

2 (2) offering or implementing a plan design that
3 encourages a covered individual to use a pharmacy in which
4 the pharmacy benefit manager maintains an ownership
5 interest or control, if such plan design increases costs
6 for the covered individual, including requiring a covered
7 individual to pay full costs for a prescription if the
8 covered individual chooses not to use a pharmacy owned or
9 controlled by the pharmacy benefit manager;

10 (3) reimbursing a pharmacy or pharmacist for a
11 pharmaceutical product or pharmacist service in an amount
12 less than the amount that the pharmacy benefit manager
13 reimburses itself or an affiliate for providing the same
14 product or services, unless the pharmacy or pharmacist
15 contractually agrees to a lower reimbursement amount; or

16 (4) any other actions determined by the Department by
17 rule.

18 "Third-party payer" means any entity that pays for
19 prescription drugs on behalf of a patient other than a health
20 care provider or sponsor of a plan subject to regulation under
21 Medicare Part D, 42 U.S.C. 1395w-101 et seq.

22 (b) A contract between a health insurer and a pharmacy
23 benefit manager must require that the pharmacy benefit
24 manager:

25 (1) Update maximum allowable cost pricing information
26 at least every 7 calendar days.

1 (2) Maintain a process that will, in a timely manner,
2 eliminate drugs from maximum allowable cost lists or
3 modify drug prices to remain consistent with changes in
4 pricing data used in formulating maximum allowable cost
5 prices and product availability.

6 (3) Provide access to its maximum allowable cost list
7 to each pharmacy or pharmacy services administrative
8 organization subject to the maximum allowable cost list.
9 Access may include a real-time pharmacy website portal to
10 be able to view the maximum allowable cost list. As used in
11 this Section, "pharmacy services administrative
12 organization" means an entity operating within the State
13 that contracts with independent pharmacies to conduct
14 business on their behalf with third-party payers. A
15 pharmacy services administrative organization may provide
16 administrative services to pharmacies and negotiate and
17 enter into contracts with third-party payers or pharmacy
18 benefit managers on behalf of pharmacies.

19 (4) Provide a process by which a contracted pharmacy
20 can appeal the provider's reimbursement for a drug subject
21 to maximum allowable cost pricing. The appeals process
22 must, at a minimum, include the following:

23 (A) A requirement that a contracted pharmacy has
24 14 calendar days after the applicable fill date to
25 appeal a maximum allowable cost if the reimbursement
26 for the drug is less than the net amount that the

1 network provider paid to the supplier of the drug.

2 (B) A requirement that a pharmacy benefit manager
3 must respond to a challenge within 14 calendar days of
4 the contracted pharmacy making the claim for which the
5 appeal has been submitted.

6 (C) A telephone number and e-mail address or
7 website to network providers, at which the provider
8 can contact the pharmacy benefit manager to process
9 and submit an appeal.

10 (D) A requirement that, if an appeal is denied,
11 the pharmacy benefit manager must provide the reason
12 for the denial and the name and the national drug code
13 number from national or regional wholesalers.

14 (E) A requirement that, if an appeal is sustained,
15 the pharmacy benefit manager must make an adjustment
16 in the drug price effective the date the challenge is
17 resolved and make the adjustment applicable to all
18 similarly situated network pharmacy providers, as
19 determined by the managed care organization or
20 pharmacy benefit manager.

21 (5) Allow a plan sponsor whose coverage is
22 administered by the ~~contracting with a~~ pharmacy benefit
23 manager an annual right to audit compliance with the terms
24 of the contract by the pharmacy benefit manager,
25 including, but not limited to, full disclosure of any and
26 all rebate amounts secured, whether product specific or

1 generalized rebates, that were provided to the pharmacy
2 benefit manager by a pharmaceutical manufacturer.

3 (6) Allow a plan sponsor whose coverage is
4 administered by the ~~contracting with a~~ pharmacy benefit
5 manager to request that the pharmacy benefit manager
6 disclose the actual amounts paid by the pharmacy benefit
7 manager to the pharmacy.

8 (7) Provide notice to the plan sponsor and the party
9 contracting with the pharmacy benefit manager of any
10 consideration that the pharmacy benefit manager receives
11 from the manufacturer for dispense as written
12 prescriptions once a generic or biologically similar
13 product becomes available.

14 (c) In order to place a particular prescription drug on a
15 maximum allowable cost list, the pharmacy benefit manager
16 must, at a minimum, ensure that:

17 (1) if the drug is a generically equivalent drug, it
18 is listed as therapeutically equivalent and
19 pharmaceutically equivalent "A" or "B" rated in the United
20 States Food and Drug Administration's most recent version
21 of the "Orange Book" or have an NR or NA rating by
22 Medi-Span, Gold Standard, or a similar rating by a
23 nationally recognized reference;

24 (2) the drug is available for purchase by each
25 pharmacy in the State from national or regional
26 wholesalers operating in Illinois; and

1 (3) the drug is not obsolete.

2 (d) A pharmacy benefit manager is prohibited from limiting
3 a pharmacist's ability to disclose whether the cost-sharing
4 obligation exceeds the retail price for a covered prescription
5 drug, and the availability of a more affordable alternative
6 drug, if one is available in accordance with Section 42 of the
7 Pharmacy Practice Act.

8 (e) A health benefit plan insurer or pharmacy benefit
9 manager shall not require a covered individual ~~an insured~~ to
10 make a payment for a prescription drug at the point of sale in
11 an amount that exceeds the lesser of:

12 (1) the applicable cost-sharing amount; or

13 (2) the retail price of the drug in the absence of
14 prescription drug coverage.

15 (f) Unless required by law, a contract between a pharmacy
16 benefit manager or third-party payer and a 340B entity or 340B
17 pharmacy shall not contain any provision that:

18 (1) distinguishes between drugs purchased through the
19 340B drug discount program and other drugs when
20 determining reimbursement or reimbursement methodologies,
21 or contains otherwise less favorable payment terms or
22 reimbursement methodologies for 340B entities or 340B
23 pharmacies when compared to similarly situated non-340B
24 entities;

25 (2) imposes any fee, chargeback, or rate adjustment
26 that is not similarly imposed on similarly situated

1 pharmacies that are not 340B entities or 340B pharmacies;

2 (3) imposes any fee, chargeback, or rate adjustment
3 that exceeds the fee, chargeback, or rate adjustment that
4 is not similarly imposed on similarly situated pharmacies
5 that are not 340B entities or 340B pharmacies;

6 (4) prevents or interferes with an individual's choice
7 to receive a covered prescription drug from a 340B entity
8 or 340B pharmacy through any legally permissible means,
9 except that nothing in this paragraph shall prohibit the
10 establishment of differing copayments or other
11 cost-sharing amounts within the health benefit plan for
12 covered individuals ~~persons~~ who acquire covered
13 prescription drugs from a nonpreferred or nonparticipating
14 provider;

15 (5) excludes a 340B entity or 340B pharmacy from a
16 pharmacy network on any basis that includes consideration
17 of whether the 340B entity or 340B pharmacy participates
18 in the 340B drug discount program;

19 (6) prevents a 340B entity or 340B pharmacy from using
20 a drug purchased under the 340B drug discount program; or

21 (7) any other provision that discriminates against a
22 340B entity or 340B pharmacy by treating the 340B entity
23 or 340B pharmacy differently than non-340B entities or
24 non-340B pharmacies for any reason relating to the
25 entity's participation in the 340B drug discount program.

26 As used in this subsection, "pharmacy benefit manager" and

1 "third-party payer" do not include pharmacy benefit managers
2 and third-party payers acting on behalf of a Medicaid program.

3 (f-5) A pharmacy benefit manager or an affiliate acting on
4 the pharmacy benefit manager's behalf is prohibited from
5 conducting spread pricing in this State.

6 (f-10) A pharmacy benefit manager or an affiliate acting
7 on the pharmacy benefit manager's behalf shall not steer a
8 covered individual.

9 (f-15) A pharmacy benefit manager or an affiliate acting
10 on the pharmacy benefit manager's behalf must remit 100% of
11 rebates and fees to the health benefit plan sponsor, consumer,
12 or employer. Records of rebates and fees remitted from the
13 pharmacy benefit manager or its contracted party shall be
14 retained for 7 years.

15 (f-20) A pharmacy benefit manager may not reimburse a
16 pharmacy or pharmacist for a prescription drug or pharmacy
17 service in an amount less than the national average drug
18 acquisition cost for the prescription drug or pharmacy service
19 at the time the drug is administered or dispensed, plus a
20 professional dispensing fee of \$10.49. However, if the
21 national average drug acquisition cost is not available at the
22 time a drug is administered or dispensed, a pharmacy benefit
23 manager may not reimburse in an amount that is less than the
24 wholesale acquisition cost of the drug, as defined in 42
25 U.S.C. 1395w-3a(c)(6)(B), plus a professional dispensing fee
26 of \$10.49.

1 (f-25) A pharmacy benefit manager or an affiliate acting
2 on the pharmacy benefit manager's behalf is prohibited from
3 limiting a covered individual's access to prescription drugs
4 from a pharmacy or pharmacist enrolled with the health benefit
5 plan under the terms offered to all pharmacies in the plan
6 coverage area by unreasonably designating the covered
7 prescription drugs as a specialty drug.

8 (f-30) The contract between the pharmacy benefit manager
9 and the insurer or health benefit plan sponsor must allow and
10 provide for the pharmacy benefit manager's compliance with an
11 audit at least once per calendar year of the rebate and fee
12 records remitted from a pharmacy benefit manager or its
13 contracted party to a health benefit plan. Contracts with
14 rebate aggregators or drug manufactures must be available for
15 audit by health benefit plan sponsors or designated third
16 parties at least once per plan year. Audits shall be performed
17 by an auditor selected by the health benefit plan sponsor.
18 Rebate contracts with rebate aggregators or drug manufactures
19 shall be available for audit by health benefit plan sponsors.

20 (g) A violation of this Section by a pharmacy benefit
21 manager constitutes an unfair or deceptive act or practice in
22 the business of insurance under Section 424.

23 (h) A provision that violates subsection (f) in a
24 contract between a pharmacy benefit manager or a third-party
25 payer and a 340B entity that is entered into, amended, or
26 renewed after July 1, 2022 shall be void and unenforceable.

1 (i)(1) A pharmacy benefit manager may not retaliate
2 against a pharmacist or pharmacy for disclosing information in
3 a court, in an administrative hearing, before a legislative
4 commission or committee, or in any other proceeding, if the
5 pharmacist or pharmacy has reasonable cause to believe that
6 the disclosed information is evidence of a violation of a
7 State or federal law, rule, or regulation.

8 (2) A pharmacy benefit manager may not retaliate against a
9 pharmacist or pharmacy for disclosing information to a
10 government or law enforcement agency, if the pharmacist or
11 pharmacy has reasonable cause to believe that the disclosed
12 information is evidence of a violation of a State or federal
13 law, rule, or regulation.

14 (3) A pharmacist or pharmacy shall make commercially
15 reasonable efforts to limit the disclosure of confidential and
16 proprietary information.

17 (4) Retaliatory actions against a pharmacy or pharmacist
18 include cancellation of, restriction of, or refusal to renew
19 or offer a contract to a pharmacy solely because the pharmacy
20 or pharmacist has:

21 (A) made disclosures of information that the
22 pharmacist or pharmacy has reasonable cause to believe is
23 evidence of a violation of a State or federal law, rule, or
24 regulation;

25 (B) filed complaints with the plan or pharmacy benefit
26 manager; or

1 (C) filed complaints against the plan or pharmacy
2 benefit manager with the Department.

3 (j) This Section applies to contracts entered into or
4 renewed on or after July 1, 2022.

5 (k) This Section applies to any health benefit ~~group or~~
6 ~~individual policy of accident and health insurance or managed~~
7 ~~care~~ plan that provides coverage for prescription drugs and
8 that is amended, delivered, issued, or renewed on or after
9 July 1, 2020.

10 (Source: P.A. 102-778, eff. 7-1-22; 103-154, eff. 6-30-23;
11 103-453, eff. 8-4-23.)

12 (215 ILCS 5/513b1.5 new)

13 Sec. 513b1.5. Pharmacy benefit manager reporting
14 requirements.

15 (a) A pharmacy benefit manager that provides services for
16 a health benefit plan must submit an annual report, by no later
17 than September 1, to the health benefit plan sponsor and
18 issuer and include the following:

19 (1) information collected from drug manufacturers on
20 copayment assistance;

21 (2) a list of drugs covered by the health benefit
22 plan, including details such as the brand name, generic
23 name, number of participants, number of prescription
24 claims, dosage units, dispensing channel used, wholesale
25 acquisition cost, and total out-of-pocket spending by

- 1 covered individual;
- 2 (3) information on each therapeutic class of drugs;
- 3 (4) the amount received by the health benefit plan in
4 rebates, fees, or discounts related to drug utilization or
5 spending;
- 6 (5) total gross spending on prescription drugs;
- 7 (6) total net spending on prescription drugs by the
8 health benefit plan;
- 9 (7) any compensation paid to brokers, consultants,
10 advisors, or any other individual or firm for referrals,
11 consideration, or retention by the health benefit plan;
12 and
- 13 (8) an explanation of benefit design parameters
14 encouraging or requiring covered individuals to use
15 affiliated pharmacies, the percentage of prescriptions
16 charged by these pharmacies, and a list of drugs dispensed
17 by affiliated pharmacies with their associated costs.
- 18 (b) Annual reports submitted pursuant to subsection (a):
- 19 (1) must be written in plain language to ensure ease
20 of reading and accessibility;
- 21 (2) may only contain summary health information to
22 ensure plan, coverage, or covered individual information
23 remains private and confidential;
- 24 (3) upon request by a covered individual, must be
25 available in summary format and provide aggregated
26 information to help covered individuals understand their

1 health benefit plan's prescription drug coverage; and

2 (4) must be filed with the Department no later than
3 September 1 of each year via the System for Electronic
4 Rates & Forms Filing. The filing shall include the summary
5 version of the report described in paragraph (3) of this
6 subsection, which shall be marked for public access.

7 (c) A pharmacy benefit manager may petition the Department
8 for a filing submission extension. The Director may grant or
9 deny the extension within 5 business days.

10 (d) Failure by a pharmacy benefit manager to submit an
11 annual report to the Department may result in a fine levied by
12 the Director not to exceed \$1,000 per day. Funds derived from
13 finances levied shall be deposited into the Insurance Producer
14 Administration Fund. Fine information shall be posted on the
15 Department's website.

16 (e) A pharmacy benefit manager found in violation of
17 subsection (a) or paragraph (4) of subsection (b) may request
18 a hearing from the Director within 10 days after being found in
19 violation.

20 (f) Except for the summary versions, the annual reports
21 submitted by pharmacy benefit managers are considered
22 confidential and privileged for all purposes, including for
23 purposes of the Freedom of Information Act, a response to a
24 subpoena, or evidence in a civil action.

25 (g) A copy of an adverse decision against a pharmacy
26 benefit manager for failing to submit an annual report to the

1 Department must be posted to the Department's website.

2 Section 99. Effective date. This Act takes effect July 1,
3 2024.