

FEB 18 2002
COMMERCE AND REGULATION

HOUSE FILE 2401
BY OSTERHAUS

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of pharmacy benefit management
2 companies and making appropriations.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2401

1 Section 1. NEW SECTION. 155B.1 SHORT TITLE.

2 This chapter shall be known and may be cited as the
3 "Pharmacy Benefit Management Company Regulation Act".

4 Sec. 2. NEW SECTION. 155B.2 PURPOSE AND INTENT.

5 The purposes of this chapter are:

6 1. To establish standards and criteria for the regulation
7 and licensing of pharmacy benefit management companies.

8 2. To promote, preserve, and protect the public health,
9 safety, and welfare by and through effective regulation and
10 licensing of pharmacy benefit management companies.

11 Sec. 3. NEW SECTION. 155B.3 DEFINITIONS.

12 For purposes of this chapter, unless the context otherwise
13 requires:

14 1. "Board of pharmacy" or "board" means the board of
15 pharmacy examiners.

16 2. "Cease and desist order" means an order of the board
17 prohibiting a pharmacy benefit management company or other
18 person from continuing a particular course of conduct which
19 violates this chapter or the rules adopted under this chapter.

20 3. "Commissioner" means the commissioner of insurance.

21 4. "Enrollee" means an individual who is enrolled in a
22 pharmacy benefit management plan.

23 5. "Health insurance plan or contract" means a third-party
24 payment provider contract or policy that is an individual or
25 group policy of accident or health insurance or individual or
26 group hospital or health care services contract issued
27 pursuant to chapter 509, 509A, 514, or 514A, or an individual
28 or group health maintenance organization contract issued and
29 regulated under chapter 514B.

30 6. "Insolvent" or "insolvency" means a financial situation
31 in which, based upon the financial information required by
32 this chapter for the preparation of a pharmacy benefit
33 management company's annual statement, the assets of the
34 pharmacy benefit management company are less than the sum of
35 all the company's liabilities and required reserves.

1 7. "Pharmacist" means pharmacist as defined in section
2 155A.3.

3 8. "Pharmacists' services" include drug therapy and other
4 patient care services provided by a licensed pharmacist
5 intended to achieve outcomes related to the cure or prevention
6 of a disease, elimination or reduction of a patient's
7 symptoms, or arresting or slowing of a disease process as
8 defined by rule of the board.

9 9. "Pharmacy" means pharmacy as defined in section 155A.3.

10 10. "Pharmacy benefit management company" means an entity
11 that administers the prescription drug or device portion of a
12 health insurance plan or contract on behalf of the sponsors of
13 the health insurance plan or contract.

14 11. "Pharmacy benefit management plan" means an
15 arrangement for the delivery of prescription services in which
16 a pharmacy benefit management company provides, arranges for,
17 pays for, or reimburses any of the costs of prescription
18 services for an enrollee on a prepaid or insured basis which
19 provides all of the following:

20 a. Contains one or more incentive arrangements intended to
21 influence the cost or level of prescription services between
22 the plan sponsor and one or more pharmacies with respect to
23 the delivery of prescription services.

24 b. Requires or creates benefit payment differential
25 incentives for enrollees to use under contract with the
26 pharmacy benefit management company.

27 "Pharmacy benefit management plan" does not mean an
28 employee welfare benefit plan as defined in the federal
29 Employee Retirement Income Security Act of 1974, 29 U.S.C. §
30 1002(1), which is self-insured or self-funded.

31 Sec. 4. NEW SECTION. 155B.4 CERTIFICATE OF AUTHORITY.

32 1. A person shall not establish or operate a pharmacy
33 benefit management company in this state to provide pharmacy
34 benefit management plans without first obtaining a certificate
35 of authority from the board of pharmacy examiners. A pharmacy

1 benefit management company providing pharmacy benefit
2 management plans in this state shall obtain a certificate of
3 authority from the board every four years.

4 2. A person may apply to the board to obtain a certificate
5 of authority to establish and operate a pharmacy benefit
6 management company in compliance with this chapter if the
7 person obtains an annual license to do business in this state
8 from the commissioner under section 155B.5.

9 3. The board may suspend or revoke a certificate of
10 authority issued to a pharmacy benefit management company
11 under this chapter or may deny an application for a
12 certificate of authority if the board finds any of the
13 following:

14 a. The pharmacy benefit management company is operating
15 significantly in contravention of its basic organizational
16 document.

17 b. The pharmacy benefit management company does not
18 arrange for pharmacists' services.

19 c. The pharmacy benefit management company has failed to
20 meet the requirements for issuance of a certificate of
21 authority established in this chapter.

22 d. The pharmacy benefit management company is unable to
23 fulfill its obligation to furnish pharmacists' services as
24 required under its pharmacy benefit management plan.

25 e. The pharmacy benefit management company is no longer
26 financially responsible and may reasonably be expected to be
27 unable to meet its obligations to enrollees or prospective
28 enrollees.

29 f. The pharmacy benefit management company, or any person
30 on the company's behalf, has advertised or merchandised its
31 services in an untrue, misrepresentative, misleading,
32 deceptive, or unfair manner.

33 g. The continued operation of the pharmacy benefit
34 management company would be hazardous to its enrollees.

35 h. The pharmacy benefit management company has failed to

1 file an annual statement with the commissioner in a timely
2 manner.

3 i. The pharmacy benefit management company has otherwise
4 failed to substantially comply with this chapter.

5 4. When the certificate of authority of a pharmacy benefit
6 management company is revoked, the company shall proceed,
7 immediately following the effective date of the order of
8 revocation, to conclude the company's affairs and shall
9 conduct no further business except as may be essential to the
10 orderly conclusion of the affairs of the company. The board
11 may permit further operation of the company as the board may
12 find to be in the best interest of enrollees so that the
13 enrollees will be afforded the greatest practical opportunity
14 to obtain pharmacists' services.

15 Sec. 5. NEW SECTION. 155B.5 LICENSE TO DO BUSINESS.

16 1. The commissioner shall not issue an annual license to
17 do business in this state to any pharmacy benefit management
18 company providing pharmacy benefit management plans until the
19 commissioner is satisfied that the pharmacy benefit management
20 company has complied with all of the following:

21 a. Paid all fees, taxes, and charges required by law.

22 b. Has made any deposit required by this chapter.

23 c. Has the minimum capital and surplus requirements
24 specified by the commissioner.

25 d. Has filed any necessary financial statement and any
26 reports, certificates, or other documents the commissioner
27 considers necessary to secure a full and accurate knowledge of
28 the company's affairs and financial condition.

29 e. Is solvent, and the company's financial condition,
30 method of operation, and manner of doing business satisfy the
31 commissioner that the company can meet the company's
32 obligations to all enrollees.

33 f. Has otherwise complied with all the requirements of
34 law.

35 2. The license shall be in addition to the certificate of

1 authority required by the board. A nonrefundable license
2 application fee of five hundred dollars shall accompany each
3 application for a license to transact business in this state.
4 The fee shall be collected by the commissioner and shall be
5 deposited in the pharmacy benefit management company fund
6 created in section 155B.15.

7 3. The license shall be signed by the commissioner or the
8 commissioner's agent and shall expire on the next June 30
9 after the date on which the license becomes effective.

10 4. A pharmacy benefit management company providing
11 pharmacy benefit management plans shall obtain an annual
12 renewal of the company's license from the commissioner. The
13 commissioner may refuse to renew the license of any pharmacy
14 benefit management company or may renew the license, subject
15 to any restrictions considered appropriate by the
16 commissioner, if the commissioner finds an impairment of
17 required capital and surplus, or if the commissioner finds
18 that the pharmacy benefit management company has not satisfied
19 all the conditions specified in this chapter. The
20 commissioner shall not fail to renew the license of any
21 pharmacy benefit management company to transact business in
22 this state without providing the pharmacy benefit management
23 company ten days' notice and providing the company an
24 opportunity to be heard. The hearing may be informal, and the
25 commissioner and the pharmacy benefit management company may
26 waive the required notice.

27 Sec. 6. NEW SECTION. 155B.6 ANNUAL STATEMENT.

28 1. A pharmacy benefit management company providing
29 pharmacy management benefit plans in this state shall file a
30 statement with the commissioner annually by March 1. The
31 statement shall be verified by at least two principal officers
32 of the pharmacy benefit management company and shall cover the
33 preceding calendar year. The pharmacy benefit management
34 company shall also submit a copy of the statement to the
35 board.

1 2. The statement shall be on forms prescribed by the
2 commissioner and shall include all of the following:

3 a. A financial statement of the company, including its
4 balance sheet and income statement for the preceding year.

5 b. The number of persons enrolled during the year, the
6 number of enrollees as of the end of the year, and the number
7 of enrollments terminated during the year.

8 c. Any other information relating to the operations of the
9 pharmacy benefit management company required by the
10 commissioner pursuant to this chapter.

11 3. If the pharmacy benefit management company is audited
12 annually by an independent certified public accountant, a copy
13 of the certified audit report shall be filed annually with the
14 commissioner by June 30.

15 4. The commissioner may extend the time prescribed for any
16 pharmacy benefit management company for filing an annual
17 statement or other reports, or exhibits of the statement or
18 report for good cause shown. However, the commissioner shall
19 not extend the time for filing annual statements beyond sixty
20 days after the time prescribed by subsection 1. A pharmacy
21 benefit management company which fails to file its annual
22 statement within the time prescribed by this section may have
23 its licensed revoked by the commissioner or its certificate of
24 authority revoked or suspended by the board until the annual
25 statement is filed.

26 Sec. 7. NEW SECTION. 155B.7 FINANCIAL EXAMINATION.

27 1. In lieu of or in addition to performing a financial
28 examination of a pharmacy benefit management company, the
29 commissioner may accept the report of a financial examination
30 by another person responsible for pharmacy benefit management
31 companies under the laws of another state who is certified by
32 the insurance supervisory official, similar regulatory agency,
33 or the state health commissioner of the other state.

34 2. The commissioner shall coordinate financial
35 examinations of pharmacy benefit management companies that

1 provide pharmacy management benefit plans in this state to
2 ensure an appropriate level of regulatory oversight and to
3 avoid any undue duplication of effort or regulation. The
4 pharmacy benefit management company being examined shall pay
5 the cost of the examination. Payments of the cost of the
6 examination shall be collected by the commissioner and shall
7 be deposited in the pharmacy benefit management company fund
8 created in section 155B.15.

9 Sec. 8. NEW SECTION. 155B.8 ASSESSMENT.

10 1. The expense of administering this chapter, including
11 the costs incurred by the commissioner and the board, shall be
12 assessed annually by the board against all pharmacy benefit
13 management companies operating in this state. Before
14 determining the assessment, the board shall request from the
15 commissioner an estimate of all expenses for the regulation,
16 supervision, and examination of all entities subject to
17 regulation under this chapter. The assessment shall be in
18 proportion to the business done in this state.

19 2. Assessments shall be collected by the commissioner and
20 shall be deposited in the pharmacy benefit management company
21 fund created in section 155B.15.

22 3. The board shall provide each pharmacy benefit
23 management company notice of the assessment, which shall be
24 paid to the board on or before March 1 of each year. A
25 pharmacy benefit management company that fails to pay the
26 assessment on or before the date prescribed shall be subject
27 to a penalty imposed by the board which is ten percent of the
28 assessment and interest for the period between the due date
29 and the date of full payment. If a payment is made in an
30 amount later found to be in error the following shall apply:

31 a. If the error found is an underpayment and an additional
32 amount is due, the commission shall notify the company of the
33 additional amount and the company shall pay the additional
34 amount within fourteen days of the date of the notice.

35 b. If the error found is an overpayment, a refund shall be

1 ordered.

2 4. If an assessment made under this chapter is not paid to
3 the board by the prescribed date, the amount of the
4 assessment, penalty, and interest may be recovered from the
5 defaulting company on motion of the board made in the name and
6 for the use of the state in the appropriate court after ten
7 days' notice to the company. The certificate of authority of
8 a defaulting company to transact business in this state may be
9 revoked or suspended by the board until the company has paid
10 the assessment.

11 Sec. 9. NEW SECTION. 155B.9 PHARMACY BENEFIT MANAGER
12 CONTRACTS.

13 1. A pharmacy benefit management company that contracts
14 with a pharmacy or pharmacist to provide pharmacists' services
15 through a pharmacy management plan for enrollees in this state
16 shall file the contract with the board thirty days before the
17 execution of the contract. The contract shall be deemed
18 approved unless the board disapproves the contract within
19 thirty days after the contract is filed with the board.

20 2. Disapproval of the contract shall be in writing,
21 stating the reasons for the disapproval, and a copy of the
22 written disapproval shall be delivered to the pharmacy benefit
23 management company.

24 3. The board, consistent with the board's responsibility
25 for protecting the public interest, shall develop formal
26 criteria for the approval and disapproval of pharmacy benefit
27 management company contracts.

28 Sec. 10. NEW SECTION. 155B.10 ENFORCEMENT.

29 1. The board shall develop formal investigation and
30 compliance procedures for responding to complaints by health
31 insurance plans or contract sponsors, pharmacists, or
32 enrollees concerning the failure of a pharmacy benefit
33 management company to comply with this chapter. If, based
34 upon an investigation or complaint, the board has reason to
35 believe that there is a violation of this chapter, the board

1 shall issue and serve upon the pharmacy benefit management
2 company concerned a statement of the charges and a notice of a
3 hearing to be held at a time and place fixed in the notice,
4 which shall not be less than thirty days after notice is
5 served. The notice shall require the pharmacy benefit
6 management company to show cause why an order should not be
7 issued directing the company to cease and desist from the
8 violation. At the hearing, the pharmacy benefit management
9 company or the pharmacy benefit manager shall have an
10 opportunity to be heard and to show cause why an order should
11 not be issued requiring the pharmacy benefit management
12 company or the pharmacy benefit manager to cease and desist
13 from the violation.

14 2. The board may perform an examination concerning the
15 quality of services of any pharmacy benefit management company
16 and providers with whom the pharmacy benefit management
17 company has contracts, agreements, or other arrangements
18 pursuant to its pharmacy benefit management plan as often as
19 the board deems necessary for the protection of the interests
20 of the people of this state. The pharmacy benefit management
21 company being examined shall pay the cost of the examination.

22 Sec. 11. NEW SECTION. 155B.11 PROHIBITED PRACTICES.

23 1. A pharmacy benefit management company or its
24 representative shall not cause or knowingly permit any of the
25 following:

- 26 a. The use of advertising that is untrue or misleading.
- 27 b. Solicitation that is untrue or misleading.
- 28 c. Any form of evidence of coverage that is deceptive.

29 2. A pharmacy benefit management company, unless licensed
30 as an insurer, shall not use in its name, contracts, or
31 literature any of the following:

- 32 a. Any form of the word "insurance", "casualty", "surety",
33 or "mutual".
- 34 b. Any other words descriptive of the insurance, casualty,
35 or surety business, or deceptively similar to the name or

1 description of any insurer or fidelity and surety insurer,
2 doing business in this state.

3 3. A pharmacy benefit management company shall not
4 discriminate on the basis of race, creed, color, sex, or
5 religion in the selection of pharmacies with whom the company
6 does business.

7 4. A pharmacy benefit management company shall not
8 unfairly discriminate against pharmacists when contracting for
9 pharmacists' services.

10 Sec. 12. NEW SECTION. 155B.12 DISCLOSURES.

11 The following shall be provided to the pharmacy benefit
12 management company's enrollees at the time of enrollment or at
13 the time the contract is issued and shall be made available
14 upon request or at least annually:

15 1. A list of the names and locations of all affiliated
16 pharmacists' services providers.

17 2. A description of the service area or areas within which
18 the pharmacy benefit management company provides prescription
19 services.

20 3. A description of the method of resolving complaints of
21 covered persons, including a description of any arbitration
22 procedure if complaints may be resolved through a specified
23 arbitration agreement.

24 4. Notice that the pharmacy benefit management company is
25 subject to regulation in this state by both the board of
26 pharmacy examiners and the commissioner of insurance.

27 5. A prominent notice included within the evidence of
28 coverage, providing substantially the following: "If you have
29 any questions regarding an appeal or grievance concerning the
30 pharmacists' services that you have been provided, which have
31 not been satisfactorily addressed by your plan, you may
32 contact the board of pharmacy examiners." The notice shall
33 also provide the toll-free telephone number, mailing address,
34 and electronic mail address of the board of pharmacy
35 examiners.

1 Sec. 13. NEW SECTION. 155B.13 PRIVACY.

2 An enrollee has the right to privacy and confidentiality in
3 the provision of pharmacists' services. This right may be
4 expressly waived in writing by the enrollee or the enrollee's
5 guardian.

6 Sec. 14. NEW SECTION. 155B.14 INSOLVENCY.

7 1. If a pharmacy benefit management company becomes
8 insolvent or ceases to be a company in this state in any
9 assessable or license year, the company shall remain liable
10 for the payment of the assessment for the period in which the
11 company operated as a pharmacy benefit management company in
12 this state.

13 2. If a pharmacy benefit management company becomes
14 insolvent, the commissioner may, after notice and hearing,
15 levy an assessment, in addition to an assessment pursuant to
16 section 155B.8, on pharmacy benefit management companies
17 licensed to do business in this state. The assessments shall
18 be paid quarterly to the commissioner, and upon receipt by the
19 commissioner shall be paid over into an escrow account in the
20 pharmacy benefit management company fund. The escrow account
21 shall be used solely for the benefit of enrollees of the
22 insolvent pharmacy benefit management company.

23 Sec. 15. NEW SECTION. 155B.15 PHARMACY BENEFIT
24 MANAGEMENT COMPANY FUND -- USES -- ESCROW ACCOUNT.

25 1. A pharmacy benefit management company fund is created
26 in the state treasury under the authority of the commissioner
27 of insurance. Moneys received from licensure of pharmacy
28 benefit management companies pursuant to section 155B.5, from
29 examinations collected pursuant to section 155B.7, and from
30 assessments collected pursuant to section 155B.8, shall be
31 deposited in the fund. Moneys in the fund shall be used and
32 an amount necessary is appropriated, annually, to the division
33 of insurance of the department of commerce for the purposes of
34 enforcing this chapter.

35 2. An escrow account is created in the pharmacy benefit

1 management company fund. Assessments collected pursuant to
2 section 155B.14 shall be deposited in the account and are
3 appropriated to the division of insurance of the department of
4 commerce to be used solely for the benefit of the enrollees of
5 an insolvent pharmacy benefit management company.

6 EXPLANATION

7 This bill establishes regulation of pharmacy benefit
8 management companies. The bill defines terms used in the
9 bill, including "pharmacy benefit management company" (PBM),
10 which is an entity that administers the prescription drug or
11 device portion of a health insurance plan or contract on
12 behalf of the sponsors of the health insurance plan or
13 contract. The bill requires a PBM to obtain a certificate of
14 authority from the board of pharmacy examiners every four
15 years. A prerequisite for obtaining a certificate of
16 authority is the obtaining of a license to do business in the
17 state from the commissioner of insurance. The bill provides
18 criteria that the board may use to suspend or revoke a PBM's
19 certificate of authority.

20 The bill requires a PBM to obtain a license to do business
21 from the commissioner of insurance. Issuance of the license
22 is based on a determination by the commissioner that the PBM
23 is financially sound. A PBM is required to pay a license
24 application fee of \$500. The license expires every June 30
25 following the date of issuance.

26 The bill requires a PBM to file an annual statement with
27 the commissioner of insurance by March 1, and also provide a
28 copy of the statement to the board of pharmacy examiners. The
29 annual statement is to be verified by at least two principal
30 officers of the PBM, cover the preceding calendar year, and
31 include: a financial statement of the company, including its
32 balance sheet and income statement for the preceding year; the
33 number of persons enrolled during the year, the number of
34 enrollees as of the end of the year, and the number of
35 enrollments terminated during the year; and any other

1 information relating to the operations of the PBM required by
2 the commissioner pursuant to the bill. If the PBM is audited
3 annually by an independent certified public accountant, a copy
4 of the certified audit report is to be filed annually with the
5 commissioner by June 30. The bill provides for an extension
6 in the time prescribed for submission of the annual statement
7 or other reports by the insurance commissioner for good cause
8 shown. If a PBM fails to file the annual statement in the
9 prescribed time, the commissioner may revoke its license and
10 the board may suspend or revoke the certificate of authority.

11 The bill provides for the coordination of financial
12 examinations of PBMs, provides that the PBM is to pay the cost
13 of the examination, and provides that the payments collected
14 are to be deposited in the pharmacy benefit management company
15 fund created in the bill.

16 The bill provides that the expenses of administering the
17 regulation of PBMs, including the costs incurred by the
18 commissioner and the board, shall be assessed annually by the
19 board against all pharmacy benefit management companies
20 operating in the state. The assessment is to be based upon
21 the commissioner's estimate, provided to the board, of all
22 expenses for the regulation, supervision, and examination of
23 all entities subject to regulation. Assessments are to be
24 collected by the commissioner by March 1, annually, and are to
25 be deposited in the pharmacy benefit management company fund
26 created in the bill. The bill directs the board to provide
27 each pharmacy benefit management company notice of the
28 assessment. A pharmacy benefit management company that fails
29 to pay the assessment on or before the date prescribed is
30 subject to a penalty imposed by the board which is 10 percent
31 of the assessment and interest for the period between the due
32 date and the date of full payment. The bill provides for
33 payment of additional amounts or refunds if a payment is made
34 in an amount later found to be in error. If an assessment is
35 not paid to the board by the prescribed date, the amount of

1 the assessment, penalty, and interest may be recovered and the
2 certificate of authority of any defaulting company to transact
3 business in this state may be revoked or suspended by the
4 board until the company has paid the assessment.

5 The bill requires a PBM that contracts with a pharmacy or
6 pharmacist to provide pharmacists' services to file the
7 contract with the board 30 days before the execution of the
8 contract. The contract is deemed approved unless the board
9 disapproves the contract within 30 days after the contract is
10 filed with the board. Disapproval of the contract is to be in
11 writing and a copy is to be delivered to the PBM. The bill
12 directs the board to develop formal criteria for the approval
13 and disapproval of PBM contracts.

14 The bill provides for enforcement of the new Code chapter,
15 specifies prohibited practices by PBMs, requires PBMs to make
16 certain disclosures to enrollees, and provides that enrollees
17 have the right to privacy and confidentiality in the provision
18 of pharmacists' services which right may be expressly waived
19 in writing by the enrollee or the enrollee's guardian. The
20 bill provides that if a PBM becomes insolvent or ceases to be
21 a company in this state in any assessable or license year, the
22 company remains liable for the payment of the assessment for
23 the period in which the company operated as a PBM in the
24 state. The bill also provides that if a PBM becomes
25 insolvent, the commissioner may, after notice and hearing,
26 levy an additional assessment on PBMs licensed to do business
27 in the state. The assessments are to be paid quarterly to the
28 commissioner, deposited in an escrow account in the pharmacy
29 benefit management company fund, and are to be used solely for
30 the benefit of enrollees of the insolvent PBM.

31 The bill creates the pharmacy benefit management company
32 fund in the state treasury under the authority of the
33 commissioner of insurance. Moneys received from licensure of
34 pharmacy benefit management companies pursuant to Code section
35 155B.5, from examination fees collected pursuant to Code

1 section 155B.7, and from assessments collected pursuant to
2 Code section 155B.8 are deposited in the fund. Moneys in the
3 fund are to be used and an amount necessary is appropriated,
4 annually, to the division of insurance of the department of
5 commerce for the purposes of enforcing the provisions of the
6 bill. The bill also creates an escrow account within the
7 fund. Assessments collected relative to an insolvent PBM are
8 to be deposited in the account and are to be used solely for
9 the benefit of the enrollees of the insolvent PBM.

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