

House File 680 - Introduced

HOUSE FILE 680
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HF 573)

A BILL FOR

1 An Act relating to prescription drug benefits, pharmacies,
2 pharmacy benefit managers, making penalties applicable, and
3 including applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 507B.2, subsection 1, Code 2019, is
2 amended to read as follows:

3 1. "Person" shall mean any individual, corporation,
4 association, partnership, reciprocal exchange, interinsurer,
5 fraternal beneficiary association, and any other legal entity
6 engaged in the business of insurance, including insurance
7 producers and adjusters. "Person" shall also mean any
8 corporation operating under the provisions of chapter 514,
9 ~~and any benevolent association as defined and operated under~~
10 chapter 512A, and any pharmacy benefit manager pursuant to
11 section 510C.1. For purposes of this chapter, corporations
12 operating under the provisions of chapter 514 and chapter 512A
13 shall be deemed to be engaged in the business of insurance.

14 Sec. 2. Section 507B.3, Code 2019, is amended by adding the
15 following new subsection:

16 NEW SUBSECTION. 3. A person who violates a provision in
17 chapter 510C.1 shall be deemed to have committed an unfair
18 trade practice under this chapter.

19 Sec. 3. NEW SECTION. 510C.1 **Pharmacy benefit managers —**
20 **retail pharmacies.**

21 1. As used in this section, unless the context otherwise
22 requires:

23 a. "Commissioner" means the commissioner of insurance or the
24 commissioner's designee.

25 b. "Cost sharing" means any copayment, coinsurance,
26 deductible, or other out-of-pocket expense requirement.

27 c. "Covered person", "health benefit plan", and "health
28 carrier" mean the same as defined in section 514J.102.

29 d. "Pharmacy" and "prescription drug" mean the same as
30 defined in section 155A.3.

31 e. "Pharmacy benefit manager" means a person who, pursuant
32 to a contract or other relationship with a health carrier,
33 either directly or through an intermediary, manages a
34 prescription drug benefit provided by the health carrier and is
35 certified pursuant to section 510B.2.

1 *f.* "Pharmacy benefit manager's retail pharmacy network" means
2 retail pharmacies who have contracted with a pharmacy benefit
3 manager to dispense or sell prescription drugs to covered
4 persons of a health carrier.

5 *g.* "Prescription drug benefit" means a health benefit plan
6 providing for third-party payment or prepayment of prescription
7 drugs.

8 *h.* "Retail pharmacy" means a pharmacy that is open to the
9 general public, dispenses prescription drugs to the general
10 public, and makes face-to-face consultations available
11 between licensed pharmacists and the general public to whom
12 prescription drugs are dispensed.

13 2. *a.* An otherwise qualified retail pharmacy that requests
14 to enter into a contract with a pharmacy benefit manager to
15 participate in the pharmacy benefit manager's retail pharmacy
16 network and that accepts the pharmacy benefit manager's
17 standard terms, conditions, formularies, and requirements
18 relating to dispensing fees, payments, reimbursement amounts,
19 and other pharmacy services shall be considered part of the
20 pharmacy benefit manager's retail pharmacy network for purposes
21 of a covered person's right to choose where to obtain the
22 covered person's prescription drugs.

23 *b.* It shall be a violation of this section for a pharmacy
24 benefit manager to refuse to accept an otherwise qualified
25 retail pharmacy as described in paragraph "a" as a part of the
26 pharmacy benefit manager's retail pharmacy network. It shall
27 also be a violation of this section for a health carrier which
28 has contracted with the pharmacy benefit manager to refuse to
29 accept an otherwise qualified retail pharmacy as described in
30 paragraph "a" as a part of the pharmacy benefit manager's retail
31 pharmacy network.

32 *c.* A contractual relationship entered into by an otherwise
33 qualified retail pharmacy and a pharmacy benefit manager
34 establishing the otherwise qualified retail pharmacy as part of
35 the pharmacy benefit manager's retail pharmacy network shall be

1 renewed annually unless otherwise agreed to by the otherwise
2 qualified retail pharmacy, the pharmacy benefit manager, and
3 the health carrier.

4 *d.* If a pharmacy benefit manager or a health carrier
5 considers a retail pharmacy not to be otherwise qualified, the
6 pharmacy benefit manager or the health carrier may file an
7 appeal relating to the retail pharmacy's qualifications with
8 the insurance commissioner. The commissioner shall establish
9 by rule the standards and requirements necessary for a retail
10 pharmacy to be deemed "otherwise qualified" for purposes of
11 this section.

12 *e.* A pharmacy benefit manager that enters into a contractual
13 relationship with an otherwise qualified retail pharmacy
14 establishing the otherwise qualified retail pharmacy as part
15 of the pharmacy benefit manager's retail pharmacy network, and
16 a health carrier whose prescription drug benefit the pharmacy
17 benefit manager is managing, shall not do any of the following:

18 (1) Require a covered person to obtain any prescription
19 exclusively from a mail order pharmacy.

20 (2) Impose any cost sharing or other condition on a covered
21 person electing to use the retail pharmacy to obtain the
22 covered person's prescription drug if the cost sharing or other
23 condition is not imposed upon a covered person electing to use
24 a mail order pharmacy to obtain the same prescription drug.

25 (3) Restrict a prescription drug dispensed by the retail
26 pharmacy to a covered person to a minimum or maximum quantity
27 limit, or impose any requirement related to refills, if the
28 limitations or requirements are not also imposed on the same
29 prescription drug dispensed by a mail order pharmacy.

30 (4) Require a covered person to pay in whole or in part
31 for any prescription drug dispensed to the covered person by
32 the retail pharmacy and require the covered person to seek
33 reimbursement, if the same requirement is not imposed on a
34 covered person for a prescription drug dispensed by a mail
35 order pharmacy.

1 (5) Impose any administrative burden, term, condition,
2 or requirement related to a covered person electing to use a
3 retail pharmacy that materially or unreasonably interferes with
4 the covered person's right to obtain a prescription drug from
5 the retail pharmacy.

6 3. a. Each pharmacy benefit manager and health carrier
7 covered by this section shall file an attestation annually with
8 the commissioner confirming compliance with all provisions of
9 this section for the preceding calendar year. The attestation
10 shall include a report that shall fully disclose the amounts,
11 terms, and conditions relating to copayments, reimbursement
12 options, and any other payments imposed on covered persons for
13 prescription drug benefits that the health carrier offers or
14 the pharmacy benefit manager manages.

15 b. The commissioner shall review and examine records of the
16 pharmacy benefit manager and the health carrier that support
17 the attestation and report. The pharmacy benefit manager and
18 the health carrier shall provide any other records requested by
19 the commissioner within ten business days of the commissioner's
20 request.

21 4. The commissioner may take any action within the
22 commissioner's authority to enforce compliance with this
23 section and may assess a pharmacy benefit manager and a health
24 carrier a fine of up to ten thousand dollars for each violation
25 of subsection 2.

26 5. Failure of a pharmacy benefit manager or of a health
27 carrier to comply with any provision of this section shall be
28 an unfair trade practice under section 507B.3, subsection 3.

29 6. A pharmacy benefit manager or a health carrier may appeal
30 any decision of the commissioner in accordance with chapter
31 17A.

32 7. The commissioner shall adopt rules pursuant to chapter
33 17A to administer this section.

34 Sec. 4. Section 514C.5, Code 2019, is amended by striking
35 the section and inserting in lieu thereof the following:

1 **514C.5 Prescription drug benefits.**

2 1. Notwithstanding the uniformity of treatment requirements
3 of section 514C.6, a policy, contract, or plan providing for
4 third-party payment or prepayment of prescription drug benefits
5 shall not impose any terms, conditions, or requirements upon
6 a person covered under the policy, contract, or plan for
7 prescription drugs dispensed by a retail pharmacy which are
8 different from the terms, conditions, or requirements imposed
9 for prescription drugs dispensed by a mail order pharmacy.

10 2. This section applies to the following classes of
11 third-party payment provider policies, contracts, or plans
12 delivered, issued for delivery, continued, or renewed in this
13 state on or after January 1, 2020:

14 *a.* Individual or group accident and sickness insurance
15 providing coverage on an expense-incurred basis.

16 *b.* An individual or group hospital or medical service
17 contract issued pursuant to chapter 509, 514, or 514A.

18 *c.* An individual or group health maintenance organization
19 contract regulated under chapter 514B.

20 *d.* A plan established pursuant to chapter 509A for public
21 employees.

22 3. This section shall not apply to accident-only,
23 specified disease, short-term hospital or medical, hospital
24 confinement indemnity, credit, dental, vision, Medicare
25 supplement, long-term care, basic hospital and medical-surgical
26 expense coverage as defined by the commissioner, disability
27 income insurance coverage, coverage issued as a supplement
28 to liability insurance, workers' compensation or similar
29 insurance, or automobile medical payment insurance.

30 4. The commissioner of insurance shall adopt rules pursuant
31 to chapter 17A to administer this section.

32 Sec. 5. APPLICABILITY. The following apply to a health
33 benefit plan that is delivered, issued for delivery, continued,
34 or renewed in this state on or after January 1, 2020:

35 The section of this Act enacting requirements for pharmacy

1 benefit managers, retail pharmacies, and participation in
2 pharmacy benefit manager retail pharmacy networks.

3 EXPLANATION

4 The inclusion of this explanation does not constitute agreement with
5 the explanation's substance by the members of the general assembly.

6 This bill relates to prescription drug benefits, pharmacies,
7 and pharmacy benefit managers.

8 The bill provides that if an otherwise qualified retail
9 pharmacy requests to enter into a contract with a pharmacy
10 benefit manager to participate in the pharmacy benefit
11 manager's retail pharmacy network and accepts the pharmacy
12 benefit manager's standard terms and conditions, the pharmacy
13 is considered part of the pharmacy benefit manager's retail
14 pharmacy network for purposes of a covered person's right to
15 choose where the covered person wants to obtain the covered
16 person's prescription drugs. The bill prohibits a pharmacy
17 benefit manager or a health carrier from refusing to accept
18 an otherwise qualified retail pharmacy as part of a pharmacy
19 benefit manager's retail pharmacy network.

20 The bill defines a "pharmacy benefit manager" as a person
21 who, pursuant to a contract or other relationship with a
22 health carrier, either directly or through an intermediary,
23 manages a prescription drug benefit provided by the health
24 carrier. "Pharmacy" is defined in the bill as a location
25 where prescription drugs are compounded, dispensed, or sold by
26 a pharmacist and where prescription drug orders are received
27 or processed in accordance with the pharmacy laws of this
28 state. "Pharmacy benefit manager's retail pharmacy network"
29 is defined as retail pharmacies who have contracted with a
30 pharmacy benefit manager to dispense or sell prescription drugs
31 to covered persons of a health carrier. "Retail pharmacy"
32 is defined as a pharmacy that is open to the general public,
33 dispenses prescription drugs to the general public, and
34 makes face-to-face consultations available between licensed
35 pharmacists and the general public.

1 A contractual relationship entered into by an otherwise
2 qualified retail pharmacy and a pharmacy benefit manager
3 establishing the otherwise qualified retail pharmacy as part
4 of the pharmacy benefit manager's retail pharmacy network must
5 be renewed annually unless otherwise agreed by the retail
6 pharmacy, the pharmacy benefit manager, and the health carrier.

7 If a pharmacy benefit manager or a health carrier considers
8 a retail pharmacy not otherwise qualified, the pharmacy benefit
9 manager or the health carrier may file an appeal relating
10 to the retail pharmacy's qualifications with the insurance
11 commissioner. The commissioner shall establish by rule the
12 standards and requirements necessary for a retail pharmacy to
13 be deemed "otherwise qualified".

14 If an otherwise qualified retail pharmacy is a part of a
15 pharmacy benefit manager's retail pharmacy network, the bill
16 prohibits a pharmacy benefit manager or a health carrier from
17 imposing certain specific restrictions and conditions on a
18 covered person who obtains prescriptions from the retail
19 pharmacy. The commissioner of insurance may assess a pharmacy
20 benefit manager or a health carrier a fine of up to \$10,000 for
21 each violation.

22 Each pharmacy benefit manager and health carrier must
23 file an annual attestation with the commissioner confirming
24 compliance with all requirements related to retail pharmacies
25 and the pharmacy benefit manager's retail pharmacy network
26 for the preceding calendar year, which shall include a report
27 disclosing certain information as described in the bill. The
28 commissioner is required to examine the pharmacy benefit
29 manager's and the health carrier's records supporting the
30 accuracy and completeness of each report. The pharmacy
31 benefit manager and health carrier are required to provide any
32 additional records requested by the commissioner within ten
33 business days of the commissioner's request.

34 The failure of a pharmacy benefit manager or of a health
35 carrier to comply with any provision of the section of the

1 bill as described above is made an unfair trade practice under
2 Code section 507B.3(3). The commissioner is authorized to
3 take any action within the commissioner's authority to enforce
4 compliance with this section of the bill and must adopt rules
5 to administer this section of the bill. A pharmacy benefit
6 manager or a health carrier may appeal any decision, in
7 accordance with chapter 17A, of the commissioner under this
8 section. This section of the bill applies to a health benefit
9 plan that is delivered, issued for delivery, continued, or
10 renewed in this state on or after January 1, 2020.

11 The bill also prohibits a policy, contract, or plan
12 providing for third-party payment or prepayment of prescription
13 drug benefits from imposing any terms, conditions, or
14 requirements upon a person covered under the policy, contract,
15 or plan for prescription drugs dispensed by a retail pharmacy
16 which are different from the terms, conditions, or requirements
17 imposed for prescription drugs dispensed by a mail order
18 pharmacy. This prohibition applies to the following classes
19 of third-party payment provider policies, contracts, or plans
20 delivered, issued for delivery, continued, or renewed in this
21 state on or after January 1, 2020, including individual or
22 group accident and sickness insurance providing coverage on
23 an expense-incurred basis; an individual or group hospital
24 or medical service contract issued pursuant to Code chapter
25 509, 514, or 514A; an individual or group health maintenance
26 organization contract regulated under Code chapter 514B; and
27 a plan established pursuant to Code chapter 509A for public
28 employees. The prohibition does not apply to accident-only,
29 specified disease, short-term hospital or medical, hospital
30 confinement indemnity, credit, dental, vision, Medicare
31 supplement, long-term care, basic hospital and medical-surgical
32 expense coverage as defined by the commissioner, disability
33 income insurance coverage, coverage issued as a supplement
34 to liability insurance, workers' compensation or similar
35 insurance, or automobile medical payment insurance. The

H.F. 680

1 commissioner of insurance must adopt rules under Code chapter
2 17A to administer the requirements established in the bill.