

House File 2401 - Reprinted

HOUSE FILE 2401
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 640)

(As Amended and Passed by the House March 12, 2024)

A BILL FOR

1 An Act relating to pharmacy benefits managers, pharmacies,
2 and prescription drug pricing, and providing applicability
3 provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

PHARMACY BENEFITS MANAGERS

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3 Section 1. Section 510B.1, Code 2024, is amended by adding
4 the following new subsections:

5 NEW SUBSECTION. 11A. *"Pass-through pricing"* means a
6 model of prescription drug pricing in which payments made
7 by a third-party payor to a pharmacy benefits manager for
8 prescription drugs are equivalent to the payments the pharmacy
9 benefits manager makes to the dispensing pharmacy or dispensing
10 health care provider for the prescription drugs, including any
11 professional dispensing fee.

12 NEW SUBSECTION. 21A. *"Spread pricing"* means a model of
13 prescription drug pricing in which a pharmacy benefits manager
14 charges a third-party payor more for prescription drugs
15 dispensed to a covered person than the amount the pharmacy
16 benefits manager reimburses the pharmacy for dispensing the
17 prescription drugs to a covered person.

18 Sec. 2. Section 510B.4, Code 2024, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 4. A pharmacy benefits manager, health
21 carrier, health benefit plan, or third-party payor shall not
22 discriminate against a pharmacy or a pharmacist with respect to
23 participation, referral, reimbursement of a covered service,
24 or indemnification if a pharmacist is acting within the scope
25 of the pharmacist's license and the pharmacy is operating in
26 compliance with all applicable laws and rules.

27 Sec. 3. NEW SECTION. 510B.8D **Pharmacy benefits manager**
28 **contracts — spread pricing.**

29 1. All contracts executed, amended, adjusted, or renewed
30 on or after July 1, 2024, that apply to prescription drug
31 benefits on or after January 1, 2025, between a pharmacy
32 benefits manager and a third-party payor, or between a person
33 and a third-party payor, shall include all of the following
34 requirements:

35 a. The pharmacy benefits manager shall use pass-through

1 pricing unless paragraph "b" applies.

2 *b.* The pharmacy benefits manager may use direct or indirect
3 spread pricing only if the difference between the amount the
4 third-party payor pays the pharmacy benefits manager for a
5 prescription drug and the amount the pharmacy benefits manager
6 reimburses the dispensing pharmacy or dispensing health care
7 provider for the prescription drug is passed through by the
8 pharmacy benefits manager to the person contracted to receive
9 third-party payor services.

10 *c.* Payments received by a pharmacy benefits manager for
11 services provided by the pharmacy benefits manager to a
12 third-party payor or to a pharmacy shall be used or distributed
13 pursuant to the pharmacy benefits manager's contract with
14 the third-party payor or with the pharmacy, or as otherwise
15 required by law.

16 2. Unless otherwise prohibited by law, subsection 1 shall
17 supersede any contractual terms to the contrary in any contract
18 executed, amended, adjusted, or renewed on or after July 1,
19 2024, that applies to prescription drug benefits on or after
20 January 1, 2025, between a pharmacy benefits manager and a
21 third-party payor, or between a person and a third-party payor.

22 Sec. 4. NEW SECTION. 510B.8E Appeals and disputes.

23 1. A pharmacy benefits manager shall provide a reasonable
24 process to allow a pharmacy to appeal a maximum allowable cost
25 or reimbursement rate for a specific prescription drug for any
26 of the following reasons:

27 *a.* The pharmacy benefits manager violated section 510B.8A.

28 *b.* The maximum allowable cost or the reimbursement rate is
29 below the pharmacy acquisition cost.

30 2. The appeals process must include all of the following:

31 *a.* A dedicated telephone number at which a pharmacy may
32 contact the pharmacy benefits manager and speak directly with
33 an individual who is involved with the appeals process.

34 *b.* A dedicated electronic mail address or internet site for
35 the purpose of submitting an appeal directly to the pharmacy

1 benefits manager.

2 *c.* A period of no less than thirty business days after the
3 date of a pharmacy's initial submission of a clean claim during
4 which the pharmacy may initiate an appeal.

5 3. The pharmacy benefits manger shall respond to an appeal
6 within seven business days after the date on which the pharmacy
7 benefits manager receives the appeal.

8 *a.* If a pharmacy's appeal is found to be substantiated, the
9 pharmacy benefits manager shall do all of the following:

10 (1) Adjust the maximum allowable cost or the reimbursement
11 rate of the prescription drug that is the subject of the appeal
12 and provide the national drug code number that the adjustment
13 is based on to the appealing pharmacy.

14 (2) Permit the appealing pharmacy to reverse and resubmit
15 the claim that is the subject of the appeal.

16 (3) Make the adjustment pursuant to subparagraph (1)
17 applicable to all of the following:

18 (a) Each pharmacy that is under common ownership with the
19 pharmacy that submitted the appeal.

20 (b) Each pharmacy in the state that demonstrates the
21 inability to purchase the prescription drug for less than the
22 established maximum allowable cost or reimbursement rate.

23 *b.* If a pharmacy's appeal is found to be unsubstantiated,
24 the pharmacy benefits manager shall do all of the following:

25 (1) Provide the appealing pharmacy the national drug
26 code number and the name of a wholesale distributor licensed
27 pursuant to section 155A.17 from which the pharmacy can obtain
28 the prescription drug at or below the maximum allowable cost
29 or reimbursement rate.

30 (2) If the prescription drug identified by the national drug
31 code number provided by the pharmacy benefits manager pursuant
32 to subparagraph (1) is not available below the pharmacy
33 acquisition cost from the wholesale distributor from whom the
34 pharmacy purchases the majority of its prescription drugs for
35 resale, the pharmacy benefits manager shall adjust the maximum

1 allowable cost or the reimbursement rate above the appealing
2 pharmacy's pharmacy acquisition cost, and permit the pharmacy
3 to reverse and resubmit each claim affected by the pharmacy's
4 inability to procure the prescription drug at a cost that is
5 equal to or less than the previously appealed maximum allowable
6 cost or the reimbursement rate. The adjustment to the maximum
7 allowable cost or the reimbursement rate shall be applicable
8 to all of the following:

9 (a) Each pharmacy that is under common ownership with the
10 pharmacy that submitted the appeal.

11 (b) Each pharmacy in the state that demonstrates the
12 inability to purchase the prescription drug for less than the
13 established maximum allowable cost or reimbursement rate.

14 Sec. 5. APPLICABILITY. This division of this Act applies
15 to pharmacy benefits managers that manage a prescription drug
16 benefit in the state on or after July 1, 2024.

17 DIVISION II

18 PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS AND WHOLESALE
19 DISTRIBUTION — REPORT

20 Sec. 6. PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS AND
21 WHOLESALE DISTRIBUTION OF PRESCRIPTION DRUGS — REPORT. Before
22 January 1, 2025, the commissioner or the commissioner's
23 designee shall review pharmacy services administrative
24 organizations and the wholesale distribution of prescription
25 drugs, and submit a report to the general assembly containing
26 findings and recommendations based on the review. The report
27 shall contain, at a minimum, all of the following:

28 1. A description and analysis of the prescription drug
29 wholesale distribution supply chain, including an analysis of
30 the concentration of the market for the wholesale distribution
31 of prescription drugs, margins in the wholesale distribution of
32 prescription drugs, and the availability of competition in the
33 wholesale distribution of prescription drugs.

34 2. A description of the role that pharmacy services
35 administrative organizations serve in the prescription drug

1 supply chain.

2 3. A description and analysis of the relationships between
3 pharmacy services administrative organizations, prescription
4 drug wholesalers, and retail pharmacies, including standard
5 contracting terms, fees charged to pharmacies, and contractual
6 restrictions and limitations applicable to retail pharmacies.

7 DIVISION III

8 PHARMACY BENEFITS MANAGER REVERSE AUCTIONS

9 Sec. 7. NEW SECTION. 8A.319 Pharmacy benefits manager
10 reverse auctions.

11 1. This section may be cited as *"The Iowa Competitive*
12 *Pharmacy Benefits Managers Marketplace Act"*.

13 2. As used in this section, unless the context otherwise
14 requires:

15 a. *"Market check"* means a technology-driven evaluation of an
16 incumbent pharmacy benefits manager's prescription drug pricing
17 based on benchmark comparators derived from pharmacy benefits
18 manager reverse auction processes conducted in the United
19 States over the immediately preceding twelve months.

20 b. *"Participant bidding agreement"* means an online
21 agreement that details common definitions, prescription drug
22 classifications, rules, data access and use rights, and other
23 optimal contract terms that benefit the state and that all
24 bidders must accept as a prerequisite for participation in a
25 pharmacy benefits manager reverse auction.

26 c. *"Pharmacy benefits manager"* means the same as defined in
27 section 510B.1.

28 d. *"Pharmacy benefits manager reverse auction"* means an
29 automated, transparent, and competitive bidding process
30 conducted online that starts with an opening round of bids
31 and allows qualified pharmacy benefits manager bidders to
32 counteroffer a lower price for as many rounds of bidding
33 as determined by the department for a multiple health plan
34 prescription drug purchasing group.

35 e. *"Price"* means the projected cost of a pharmacy benefits

1 manager's bid to provide prescription drug benefits to allow
2 direct comparison of the comparably calculated costs of
3 competing pharmacy benefits managers' proposals over the
4 duration of the pharmacy benefits manager's services contract.

5 *f. "Real-time"* means within no more than one hour.

6 *g. "Self-funded private sector health plan"* means any
7 self-funded private sector employer or multi-employer health
8 plan.

9 *h. "Self-funded public sector health plan"* means any group
10 benefit plan under chapter 509A.

11 3. Consistent with section 8A.311, and notwithstanding any
12 other law to the contrary, the department shall enter into a
13 contract for the services of a pharmacy benefits manager for
14 the administration of benefits of self-funded public sector
15 health plans in compliance with this section.

16 4. Prior to November 1, 2024, the department shall
17 procure, through solicitation of proposals from qualified
18 professional services vendors, all of the following based on
19 price, capabilities, and other factors deemed relevant by the
20 department:

21 *a.* A technology platform with the capabilities to conduct
22 a pharmacy benefits manager reverse auction. The department
23 shall ensure that the technology platform possesses, at a
24 minimum, the capacity to do all of the following:

25 (1) Conduct an automated, online, reverse auction of
26 pharmacy benefits manager services using a software application
27 and high-performance data infrastructure to intake, cleanse,
28 and normalize pharmacy benefits manager data with development
29 methods and information security standards that have been
30 validated by receiving service organization control 2 and
31 national institute of standards and technology certification,
32 or successor information technology security certifications, as
33 identified by the office of the chief information officer.

34 (2) Automate repricing of diverse and complex pharmacy
35 benefits managers' prescription drug pricing proposals to allow

1 direct comparison by the state of the comparably calculated
2 costs of pharmacy benefits managers' bids using one hundred
3 percent of annual prescription drug claims data available
4 for state-funded health plans, or a multiple health plan
5 prescription drug purchasing group, and using code-based
6 classification of drugs from nationally accepted drug sources.

7 (3) Simultaneously evaluate in real-time diverse and
8 complex multiple proposals from full-service pharmacy benefits
9 managers, including average wholesale price, guaranteed
10 net cost, and national average drug acquisition cost
11 pricing models, as well as proposals from pharmacy benefits
12 administrators and specialty drug and rebate carve-out service
13 providers.

14 (4) Produce an automated report and analysis of pharmacy
15 benefits managers' bids, including ranking of pharmacy benefits
16 managers' bids based on comparative costs and qualitative
17 aspects of the bids in real-time following the close of each
18 round of reverse auction bidding.

19 (5) Perform real-time, electronic, line-by-line,
20 claim-by-claim review of one hundred percent of invoiced
21 pharmacy benefits managers' prescription drug claims, and
22 identify all deviations from the specific terms of the pharmacy
23 benefits manager's services contract that resulted from the
24 reserve auction process.

25 *b.* Related services from the operator of the technology
26 platform identified in paragraph "a", which at a minimum shall
27 include all of the following:

28 (1) Evaluation of the qualifications of pharmacy benefits
29 manager bidders.

30 (2) Pharmacy benefits manager reverse auction services to
31 support the department in comparing pricing for the pharmacy
32 benefits manager procurement.

33 (3) Related professional services.

34 5. The department shall not award a contract for the
35 technology platform and technology operator services to a

1 vendor that is a pharmacy benefits manager or to a vendor that
2 is managed by, or a subsidiary or affiliate of, a pharmacy
3 benefits manager.

4 6. The vendor awarded the contract by the department shall
5 not outsource any part of the pharmacy benefits manager reverse
6 auction or any part of the automated, real-time, electronic,
7 line-by-line, claim-by-claim review of invoiced pharmacy
8 benefits manager prescription drug claims.

9 7. With technical assistance and support provided by the
10 technology platform operator, the department shall specify the
11 terms of the participant bidding agreement. The terms of the
12 participant bidding agreement shall not be modified except by
13 specific consent of the department.

14 8. *a.* The technology platform used to conduct the reverse
15 auction shall be repurposed over the duration of the pharmacy
16 benefits manager's services contract as an automated pharmacy
17 claims adjudication engine to perform real-time, electronic,
18 line-by-line, claim-by-claim review of one hundred percent of
19 invoiced pharmacy benefits manager's prescription drug claims,
20 and to identify all deviations from the specific terms of the
21 pharmacy benefits manager's services contract.

22 *b.* The department shall reconcile the electronically
23 adjudicated pharmacy claims, as described in paragraph "a",
24 with pharmacy benefits manager's invoices on a monthly or
25 quarterly basis to ensure that state payments shall not exceed
26 the terms specified in any pharmacy benefits manager's services
27 contract.

28 *c.* If following state payment to the pharmacy benefits
29 manager on the basis of the reconciliation under paragraph
30 "b" the pharmacy benefits manager asserts that the department
31 paid less than the amount owed, the pharmacy benefits manager
32 may seek resolution through a mutually acceptable dispute
33 resolution process that the parties agreed to in the terms of
34 the services contract under subsection 9, paragraph "a".

35 9. *a.* The first pharmacy benefits manager reverse auction

1 shall be completed and the services contract shall be awarded
2 to the winning pharmacy benefits manager with an effective date
3 beginning July 1, 2025. Subsequent contracts must be awarded
4 no later than three months prior to termination or expiration
5 of the current pharmacy benefits manager's services contract
6 for a covered group, such as the state employees benefits
7 group, that includes only active employees and dependents, but
8 does not include retiree participants in a Medicare part D
9 employer group waiver program pursuant to the federal Medicare
10 Prescription Drug, Improvement, and Modernization Act of 2003,
11 Pub. L. No. 108-173.

12 *b.* In the event an eligible covered group that includes
13 retiree participants in a Medicare part D employer group
14 waiver program pursuant to the federal Medicare Prescription
15 Drug, Improvement, and Modernization Act of 2003, Pub. L. No.
16 108-173, opts to use the processes and procedures under this
17 section, the relevant pharmacy benefits manager reverse auction
18 shall be completed and the pharmacy benefits manager services
19 contract shall be awarded to the winning pharmacy benefits
20 manager no later than six months prior to termination or
21 expiration of the pharmacy benefits manager's services contract
22 currently covering the retiree employer group waiver program
23 participants.

24 10. The department may perform a market check for providing
25 pharmacy benefits manager services during the term of the
26 current pharmacy benefits manager's services contract in order
27 to ensure continuing competitiveness of incumbent prescription
28 drug pricing during the term of a pharmacy benefits manager's
29 services contract.

30 11. To ensure that the department does not incur additional
31 expenditures associated with the pharmacy benefits manager
32 reverse auction, ongoing electronic review and validation
33 of pharmacy benefits managers' claims, and periodic market
34 checks, the department shall implement a no-pay option that
35 obligates the winning pharmacy benefits manager, rather than

1 the state, to pay the cost of the technology platform and
2 related technology platform operator services by assessing the
3 pharmacy benefits manager a per-prescription fee in an amount
4 agreed to by the department and the technology operator, and
5 requiring the pharmacy benefits manager to pay the fees to the
6 technology operator over the duration of the pharmacy benefits
7 manager's services contract. The obligation of the winning
8 pharmacy benefits manager to pay the per-prescription fee shall
9 be incorporated as a term of the participant bidding agreement
10 and the pharmacy benefits manager's services contract awarded
11 to the pharmacy benefits manager reverse auction winner.

12 12. All of the following shall be incorporated as terms of
13 the participant bidding agreement and the pharmacy benefits
14 manager's services contract awarded to the pharmacy benefits
15 manager reverse auction winner:

16 a. The department shall require an average acquisition
17 cost reimbursement methodology for pharmacy ingredient cost
18 reimbursement of all prescription drugs covered by a pharmacy
19 benefits manager.

20 b. A reasonable professional service fee shall be provided
21 to a pharmacist for the pharmacist's time and service included
22 in dispensing prescription drugs covered by a pharmacy benefits
23 manager.

24 c. A covered person shall not be prohibited from filling a
25 prescription drug order at any pharmacy in the state provided
26 that the pharmacy accepts the same terms and conditions as the
27 pharmacies participating in the covered person's health benefit
28 plan's network.

29 d. With the exception of incentives in value-based programs
30 established by a health carrier or a pharmacy benefits manager
31 to promote the use of higher quality pharmacies, a pharmacy
32 benefits manager shall not impose different cost-sharing or
33 additional fees on a covered person based on the pharmacy at
34 which the covered person fills a prescription drug order.

35 e. A pharmacy benefits manager shall not require a covered

1 person, as a condition of payment or reimbursement, to purchase
2 pharmacy services, including prescription drugs, exclusively
3 through a mail-order pharmacy.

4 13. *a.* This section shall apply to group benefit plans
5 under chapter 509A. This section shall not apply to nonprofit,
6 nongovernmental health maintenance organizations with respect
7 to managed care plans that provide a majority of covered health
8 care services through a single contracted medical group.

9 *b.* (1) Three years after the first service contract is
10 awarded to a pharmacy benefits manager pursuant to subsection
11 9, paragraph "a", any self-funded private sector health plan
12 with substantial participation by Iowa employees and the
13 employees' dependents shall have the option to conduct a
14 pharmacy benefits manager reverse auction for the specific
15 self-funded private sector health plan utilizing the technology
16 platform and technology operator services selected by the
17 department under this section. The department may charge the
18 self-funded private sector health plan a fee, as established
19 by the department by rule, sufficient to cover any incremental
20 cost associated with the pharmacy benefits manager reverse
21 auction.

22 (2) A pharmacy benefits manager selected by a self-funded
23 private sector health plan as a result of a pharmacy benefits
24 manager reverse auction conducted pursuant to subparagraph
25 (1) shall be assessed a per-prescription fee, pursuant to
26 subsection 11, in an amount determined by the department by
27 rule.

28 *c.* Any self-funded public sector health plans or self-funded
29 private sector health plans that opt to conduct a pharmacy
30 benefits manager reverse auction shall retain full autonomy
31 over determination of the individual health plan's respective
32 prescription drug formularies and pharmacy benefit designs,
33 and shall not be required to adopt a common prescription drug
34 formulary or common prescription pharmacy benefit design.

35 *d.* Any pharmacy benefits manager providing services to the

1 department, to a self-funded public sector health plan, or
2 to a self-funded private sector health plan as described in
3 this section shall provide the department, each participating
4 self-funded public sector health plan, and each participating
5 self-funded private sector health plan access to complete
6 pharmacy claims data necessary to conduct the pharmacy
7 benefits manager reverse auction and to carry out applicable
8 administrative and management duties.

9 14. Notwithstanding subsection 3, the department may elect
10 to vacate the outcome of a pharmacy benefits manager reverse
11 auction if the lowest-cost pharmacy benefits manager's bid
12 is not less than the projected cost trend for the incumbent
13 pharmacy benefits manager's services contract as verified by
14 the department. The department may utilize a consultant to
15 conduct the verification. The cost trend shall be projected
16 by the technology platform operator using industry-recognized
17 data sources and shall be subject to review and approval by
18 the department in advance of the pharmacy benefits manager
19 reverse auction. Methodology shall be applied consistently in
20 projection of cost and savings to the state with regard to the
21 incumbent pharmacy benefits manager's services contract and
22 competing pharmacy benefits manager reverse auction bids.