HOUSE FILE 2401
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 640)

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

[= New Language by the House

* = Language Stricken by the House

A BILL FOR

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

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

[DIVISION I
PHARMACY BENEFITS MANAGERS]

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

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

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

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

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

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

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

a. The pharmacy benefits manager shall use pass-through

pricing unless paragraph "*b*" applies.

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

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

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

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

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

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

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

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

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

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

benefits manager.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[DIVISION II

PHARMACY SERVICES ADMINISTRATIVE ORGANIZATIONS AND WHOLESALE DISTRIBUTION — REPORT

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

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

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

supply chain.

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

DIVISION III

PHARMACY BENEFITS MANAGER REVERSE AUCTIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Related professional services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. A pharmacy benefits manager shall not require a covered

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

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

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

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

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

d. Any pharmacy benefits manager providing services to the

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

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