

IN THE SENATE

SENATE BILL NO. 1289

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO PHARMACIES; AMENDING TITLE 41, IDAHO CODE, BY THE ADDITION OF A  
2 NEW CHAPTER 65, TITLE 41, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DE-  
3 FINE TERMS, TO PROVIDE APPLICABILITY, TO PROVIDE REQUIRED PRACTICES FOR  
4 PHARMACY BENEFIT MANAGERS, TO PROVIDE THAT WAIVERS BY COVERED ENTITIES  
5 ARE AGAINST PUBLIC POLICY, TO PROVIDE FOR ENFORCEMENT AND TO PROVIDE FOR  
6 RULEMAKING AUTHORITY; AMENDING CHAPTER 18, TITLE 41, IDAHO CODE, BY THE  
7 ADDITION OF A NEW SECTION 41-1852, IDAHO CODE, TO DEFINE TERMS, TO PRO-  
8 VIDE FOR A MAXIMUM ALLOWABLE COST, TO PROVIDE REQUIREMENTS FOR A PHAR-  
9 MACY BENEFIT MANAGER, TO PROVIDE FOR APPEALS, TO PROVIDE THE REQUIRE-  
10 MENTS FOR AN APPEAL, TO PROVIDE FOR ADJUSTMENTS IF AN APPEAL IS UPHELD  
11 AND TO PROVIDE AN EXCEPTION; AND PROVIDING SEVERABILITY.  
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Title 41, Idaho Code, be, and the same is hereby amended  
15 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
16 ter 65, Title 41, Idaho Code, and to read as follows:

17 CHAPTER 65

18 PHARMACY BENEFIT MANAGER TRANSPARENCY ACT

19 41-6501. SHORT TITLE. This chapter shall be known and may be cited as  
20 the "Pharmacy Benefit Manager Transparency Act."

21 41-6502. DEFINITIONS. For purposes of this chapter:

22 (1) "Covered entity" means a health benefit plan as defined in section  
23 41-4703, Idaho Code, a health carrier as defined in section 41-5903, Idaho  
24 Code, group disability insurance for state officers or employees as provided  
25 in section 67-5762, Idaho Code, or an employer, labor union or other group  
26 of persons organized in this state that provides health coverage to covered  
27 individuals who are employed or reside in this state.

28 (2) "Covered individual" means a member, participant, enrollee, con-  
29 tract holder or policyholder or beneficiary of a covered entity who is pro-  
30 vided health coverage by the covered entity. "Covered individual" includes  
31 a dependent or other person provided health coverage through a contract or  
32 health plan for a covered individual.

33 (3) "Generic drug" means a chemically equivalent copy of a brand-name  
34 drug with an expired patent.

35 (4) "Labeler" means a person or entity that receives prescription drugs  
36 from a manufacturer or wholesaler and repackages those drugs for later re-  
37 tail sale and that has a labeler code from the federal food and drug adminis-  
38 tration under federal law. "Labeler" does not mean a person or entity that  
39 repackages drugs for use of its participants, members or enrollees or phar-

1 macy operations of any integrated delivery system undertaken for the benefit  
2 of patients obtaining care through that system.

3 (5) (a) "Pharmacy benefit management" means the procurement of pre-  
4 scription drugs at a negotiated rate for dispensation within this state  
5 to covered individuals, the administration or management of prescrip-  
6 tion drug benefits provided by a covered entity for the benefit of  
7 covered individuals, or any of the following services provided with  
8 regard to the administration of pharmacy benefits:

9 (i) Mail order pharmacy;

10 (ii) Claims processing, retail network management and payment of  
11 claims to pharmacies for prescription drugs dispensed to covered  
12 individuals;

13 (iii) Clinical formulary development and management services;

14 (iv) Rebate contracting and administration;

15 (v) Certain patient compliance, therapeutic intervention and  
16 generic substitution programs; and

17 (vi) Disease management programs.

18 (b) "Pharmacy benefit management" does not include activities of re-  
19 tail, community, long-term care or hospital pharmacies licensed under  
20 chapter 17, title 54, Idaho Code, that are not carried out as part of a  
21 contract entered into by that pharmacy with a covered entity to adminis-  
22 ter and manage payment for pharmacy benefits for covered individuals.

23 (6) "Pharmacy benefit manager" means an entity that performs pharmacy  
24 benefit management. "Pharmacy benefit manager" includes a person or entity  
25 acting for a pharmacy benefit manager in a contractual or employment rela-  
26 tionship in the performance of pharmacy benefit management for a covered en-  
27 tity.

28 41-6503. APPLICABILITY. All pharmacy benefit managers that provide  
29 pharmacy benefit management for covered entities, or affecting covered  
30 lives, in this state, and any contract for pharmacy benefit management en-  
31 tered into in this state or by a covered entity in this state, must comply  
32 with the provisions of this chapter. The provisions of this chapter shall  
33 not apply to medical assistance as defined in chapter 2, title 56, Idaho  
34 Code.

35 41-6504. REQUIRED PRACTICES FOR PHARMACY BENEFIT MANAGERS. (1) The  
36 business of pharmacy benefit management is one affected by the public in-  
37 terest, requiring that pharmacy benefit managers act in good faith, abstain  
38 from deception and practice honesty and equity in all pharmacy benefit man-  
39 agement matters.

40 (2) As of January 1, 2020, all pharmacy benefit managers shall, pur-  
41 suant to title 41, Idaho Code, register with the director of the Idaho de-  
42 partment of insurance before providing services to covered entities and in-  
43 dividuals. Registration shall be effective for two (2) years and may be re-  
44 newed for an additional two (2) years. The director of the Idaho department  
45 of insurance may deny, suspend, revoke or refuse to renew a registration in  
46 circumstances specified in this chapter or in rules promulgated pursuant to  
47 the provisions of this chapter. When applying for registration, pharmacy  
48 benefit managers shall include, at a minimum, the following:

1 (a) All organizational documents including, but not limited to, ar-  
2 ticles of incorporation, bylaws and other similar documents and any  
3 amendments;

4 (b) The names, addresses, titles and qualifications of the members and  
5 officers of the board of directors, board of trustees or other governing  
6 body or committee or the partners or owners in the case of a partnership  
7 or other entity or association;

8 (c) A detailed description of the claims processing services, pharmacy  
9 services, insurance services, other prescription drug or device ser-  
10 vices or other administrative services provided;

11 (d) The name and address of the agent for service of process in Idaho;

12 (e) Financial statements for the current year and the preceding year  
13 showing the assets, liabilities, direct or indirect income and any  
14 other sources of financial support sufficient as deemed by the director  
15 to show financial stability and viability to meet its full obligations  
16 to participants and participating pharmacies. The director may allow a  
17 recent financial statement prepared by an independent certified public  
18 accountant to meet this requirement; and

19 (f) Such other information as the director may require.

20 (3) A pharmacy benefit manager shall notify the covered entity in writ-  
21 ing of any activity, policy or practice of the pharmacy benefit manager that  
22 directly or indirectly presents any conflict of interest with the duties im-  
23 posed by this section.

24 (4) A pharmacy benefit manager shall provide to a covered entity all  
25 financial and utilization information requested by the covered entity re-  
26 lated to providing benefits to covered individuals through that covered en-  
27 tity and all financial and utilization information related to services to  
28 that covered entity. A pharmacy benefit manager providing information under  
29 this section may designate that material as confidential. Information des-  
30 ignated as confidential by a pharmacy benefit manager and provided to a cov-  
31 ered entity under the provisions of this section may not be disclosed by the  
32 covered entity to any person without the consent of the pharmacy benefit man-  
33 ager, except that disclosure may be made in a court filing under the consumer  
34 protection act, chapter 6, title 48, Idaho Code, or when authorized by chap-  
35 ter 6, title 48, Idaho Code, or ordered by a court for good cause shown.

36 (5) With regard to the dispensation of a substitute prescription drug  
37 for a prescribed drug to a covered individual, the following provisions  
38 shall apply when a pharmacy benefit manager derives any payment or benefit  
39 related to the price or cost of a drug dispensed through a pharmacy benefit  
40 management contract.

41 (a) The pharmacy benefit manager may substitute a lower-priced generic  
42 or therapeutically equivalent drug for a higher-priced prescribed  
43 drug;

44 (b) With regard to substitutions in which the substitute drug costs  
45 more than the prescribed drug, the substitution must be made for medical  
46 reasons that benefit the covered individual. If a substitution is be-  
47 ing made under the provisions of this subsection, the pharmacy benefit  
48 manager shall obtain the approval of the prescribing health profes-  
49 sional or that person's authorized representative after disclosing to  
50 the covered individual and the covered entity the cost of both drugs and

1 any benefit or payment directly or indirectly accruing to the pharmacy  
2 benefit manager as a result of the substitution; and

3 (c) The pharmacy benefit manager shall disclose in full to the covered  
4 entity any benefit or payment received in any form by the pharmacy ben-  
5 efit manager as a result of a prescription drug substitution under the  
6 provisions of this subsection.

7 (6) A pharmacy benefit manager that derives any payment or benefit for  
8 the dispensation of prescription drugs within this state based on volume of  
9 sales for certain prescription drugs or classes or brands of drugs within the  
10 state must disclose such payment or benefit in full to the covered entity.

11 (7) A pharmacy benefit manager shall disclose to the covered entity all  
12 financial terms and arrangements for remuneration of any kind that apply be-  
13 tween the pharmacy benefit manager and any prescription drug manufacturer or  
14 labeler including, without limitation, formulary management and drug switch  
15 programs, educational support, claims processing and pharmacy network fees  
16 that are charged from retail pharmacies and data sales fees.

17 (8) The agreement between a pharmacy benefit manager and a covered en-  
18 tity must include a provision allowing the covered entity to have audited the  
19 pharmacy benefit manager's books, accounts and records, including de-iden-  
20 tified utilization information, as necessary to confirm that the benefit of  
21 a payment received by the pharmacy benefit manager is being disclosed as re-  
22 quired by the contract and that other contractual provisions are being exe-  
23 cuted as agreed by the parties.

24 (9) A pharmacy benefit manager shall take no action that would restrict  
25 a covered individual's choice of pharmacy from which to receive prescription  
26 medication.

27 41-6505. WAIVERS. Any waiver by a covered entity of the provisions of  
28 this chapter is contrary to public policy and is unenforceable and void.

29 41-6506. ENFORCEMENT. (1) The practices covered by the provisions  
30 of this chapter are matters vitally affecting the public interest for the  
31 purpose of applying chapter 13, title 41, Idaho Code. A violation of this  
32 chapter is not reasonable in relation to the development and preservation of  
33 business and is an unfair or deceptive act in trade or commerce and an unfair  
34 method of competition for the purpose of applying chapter 13, title 41, Idaho  
35 Code.

36 (2) The enforcement provisions of subsection (1) of this section relate  
37 to state law only and are not intended to create an alternative enforcement  
38 mechanism under the federal employee retirement income security act of 1974  
39 or any other federal law.

40 41-6507. RULEMAKING AUTHORITY. The director of the Idaho department  
41 of insurance shall promulgate, adopt and enforce rules necessary to imple-  
42 ment the provisions of this chapter.

43 SECTION 2. That Chapter 18, Title 41, Idaho Code, be, and the same is  
44 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
45 igned as Section 41-1852, Idaho Code, and to read as follows:

1 41-1852. MAXIMUM ALLOWABLE COST -- PHARMACY BENEFIT MANAGERS. (1) As  
2 used in this section:

3 (a) "List" means the list of drugs for which maximum allowable costs  
4 have been established.

5 (b) "Maximum allowable cost" means the maximum amount that a pharmacy  
6 benefit manager will reimburse a pharmacy for the cost of a drug.

7 (c) "Multiple source drug" means a therapeutically equivalent drug  
8 that is available from at least two (2) manufacturers.

9 (d) "Network pharmacy" means a retail drug outlet that contracts with a  
10 pharmacy benefit manager.

11 (e) "Pharmacy benefit manager" is as defined in section 41-6502, Idaho  
12 Code.

13 (f) "Therapeutically equivalent" means drugs that are approved by the  
14 United States food and drug administration for interstate distribution  
15 and that the food and drug administration has determined will provide  
16 essentially the same efficacy and toxicity when administered to an in-  
17 dividual in the same dosage regimen.

18 (2) A maximum allowable cost shall be:

19 (a) Established for any drug with at least three (3) or more therapeu-  
20 tically equivalent, multiple source drugs as determined by the food and  
21 drug administration or when only two (2) products are available during  
22 a generic exclusivity period as defined by 21 U.S.C. 355 with a signifi-  
23 cant cost difference; and

24 (b) Determined using comparable drug prices obtained from multiple na-  
25 tionally recognized comprehensive data sources including wholesalers,  
26 drug file vendors and pharmaceutical manufacturers for drugs that are  
27 nationally available and available for purchase locally by multiple  
28 pharmacies in the state.

29 (3) A pharmacy benefit manager:

30 (a) May not place a drug on a list unless there are at least two (2)  
31 therapeutically equivalent, multiple source drugs or at least one  
32 (1) generic drug available from only one (1) manufacturer generally  
33 available for purchase by network pharmacies from national or regional  
34 wholesalers and shall provide a contractual commitment to deliver a  
35 particular average reimbursement rate for generic drugs calculated by  
36 using the actual amount paid to the network pharmacy, excluding the dis-  
37 pensing fee;

38 (b) Shall ensure that all drugs on a list are generally available for  
39 purchase by pharmacies in this state from national or regional whole-  
40 salers;

41 (c) Shall ensure that all drugs on a list are not obsolete;

42 (d) Shall make available to each network pharmacy at the beginning of  
43 the term of a contract, and upon renewal of a contract, the sources uti-  
44 lized to determine the maximum allowable cost pricing of the pharmacy  
45 benefit manager;

46 (e) Shall make all applicable price lists, including all changes in the  
47 price of drugs, available to a network pharmacy upon request in a format  
48 that is readily accessible to and usable by the network pharmacy;

49 (f) Shall update each list maintained by the pharmacy benefit manager  
50 every seven (7) business days and make the updated lists, including

1 all changes in the price of drugs, available to network pharmacies in a  
2 readily accessible and usable format;

3 (g) Shall ensure that dispensing fees are not included in the calcula-  
4 tion of maximum allowable cost and shall disclose in contracts with net-  
5 work pharmacies the types of fees to be imposed;

6 (h) Shall provide a process for a network pharmacy to comment on, con-  
7 test or appeal the prescription drug reimbursement amount, including a  
8 process to allow pharmacy providers to submit two hundred (200) claims  
9 per appeal. The right to contest shall be limited in duration and shall  
10 provide for retroactive payment if it is determined that the reim-  
11 bursement amount has been calculated incorrectly. If the challenge is  
12 successful, the pharmacy benefit manager shall make an adjustment in  
13 the drug price to the date of the originally challenged claim and make  
14 the adjustment applicable to all similarly situated network pharma-  
15 cies; and

16 (i) May not charge a transaction fee, or any fee associated with pro-  
17 cessing or adjudicating a claim transaction that is not specified in the  
18 contract, for claims submissions.

19 (4) A pharmacy benefit manager shall establish a process by which a net-  
20 work pharmacy may appeal its reimbursement for a drug, subject to maximum al-  
21 lowable cost pricing. A network pharmacy may appeal a maximum allowable cost  
22 if the reimbursement for the drug is less than the net amount that the network  
23 pharmacy paid to the supplier of the drug. An appeal requested under the pro-  
24 visions of this section must be completed within thirty (30) calendar days of  
25 the pharmacy making the claim for which appeal has been requested.

26 (5) A pharmacy benefit manager shall provide as part of the appeals  
27 process established under subsection (3) of this section:

28 (a) A telephone number at which a network pharmacy may contact the phar-  
29 macy benefit manager and speak with an individual who is responsible for  
30 processing appeals;

31 (b) A final response to an appeal of a maximum allowable cost within  
32 seven (7) business days; and

33 (c) The reason for the denial, if the appeal is denied, and the national  
34 drug code of a drug that may be purchased by similarly situated pharma-  
35 cies at a price that is equal to or less than the maximum allowable cost.

36 (6) If an appeal is upheld under this section, the pharmacy benefit man-  
37 ager shall make an adjustment on the date that the pharmacy benefit manager  
38 makes the determination. The pharmacy benefit manager shall make the ad-  
39 justment effective for all similarly situated pharmacies in this state that  
40 are within the network.

41 (7) This section shall not apply to medical assistance as defined in  
42 chapter 2, title 56, Idaho Code.

43 SECTION 3. SEVERABILITY. The provisions of this act are hereby declared  
44 to be severable and if any provision of this act or the application of such  
45 provision to any person or circumstance is declared invalid for any reason,  
46 such declaration shall not affect the validity of the remaining portions of  
47 this act.