HOUSE BILL NO. 344

INTRODUCED BY K. KELKER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING PHARMACY BENEFIT MANAGER TRANSPARENCY REPORTING; ~~ALLOWING TRADE SECRET DESIGNATION;~~ PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTION 33-22-170, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, understanding the drivers and impacts of prescription drug costs is the first step toward better cost containment and greater consumer access to prescription drugs; and

WHEREAS, pharmacy benefit managers are third-party companies that serve as middlemen in the relationships between insurance companies, pharmacies, and manufacturers in an attempt to secure lower drug costs for insurers and insurance companies through negotiations with pharmacies and drug manufacturers to secure discounts on drug prices and pass those discounts on to insurance companies; and

WHEREAS, the negotiated discounts can also lead to increased charges for drugs or retention of portions of rebates to secure profits, which affect the prices (and the copayments) that consumers pay for prescribed medications, often without access to full information that the consumers, their health plans, and their pharmacists could use in choosing where and what to buy regarding prescribed medications.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Pharmacy benefit manager transparency ~~-- trade secrets~~ -- limited disclosure -- penalties.** (1) Beginning June 1, 2020, and annually after that date, a pharmacy benefit manager operating in this state shall submit to the insurance commissioner a transparency report containing the information listed in subsection (2).

(2) The transparency report required in subsection (1) must contain the pharmacy benefit manager's information from the prior calendar year for the following:

(a) the aggregate amount of all rebates that the pharmacy benefit manager received from all pharmaceutical manufacturers for all health insurance issuers ~~and for each health benefit plan~~ IN THIS STATE;

(b) the aggregate amount of administrative fees that the pharmacy benefit manager received from all

pharmaceutical manufacturers for all health insurance issuers ~~and each health benefit plan~~ IN THIS STATE;

(c) the aggregate amount of retained rebates that the pharmacy benefit manager received from all pharmaceutical manufacturers and that were not passed through to health insurance issuers; AND

(d) the aggregate retained rebate percentage ~~calculated as provided in [section 2]; and~~

~~(e) the highest, lowest, and mean aggregate retained rebate percentage for all health insurance issuers and for each health benefit plan associated with the pharmacy benefit manager~~.

~~(3) (a) A pharmacy benefit manager may designate all or some of the information provided pursuant to subsection (2) as a trade secret, as defined in 30-14-402.~~

~~(b) Disclosure of the information required under subsection (2) may be ordered by a court for good cause shown or made in a court filing.~~

~~(4) The insurance commissioner shall publish the transparency report of each pharmacy benefit manager within 60 days of receipt on the insurance commissioner's website in a way that does not violate trade secret laws under Title 30, chapter 14, part 4.~~

~~(5)~~(4)(3) The insurance commissioner may impose a civil fine of not more than $1,000 a day for each violation of this section or a penalty as provided by rule.

~~NEW SECTION. **Section 2. Calculation of aggregate retained rebate percentage.** (1) A pharmacy benefit manager shall calculate for each health insurance issuer's health benefit plan the aggregate retained rebate percentage used for rebates in the prior calendar year as provided in subsection (2).~~

~~(2) The aggregate retained rebate percentage equals the total in subsection (2)(a) divided by the total in subsection (2)(b), as follows:~~

~~(a) the sum total dollar amount of rebates not passed on to a health insurance issuer but received from all pharmaceutical manufacturers for all utilization of covered persons of a health insurance issuer; and~~

~~(b) the sum total dollar amount of all rebates received from all pharmaceutical manufacturers for covered persons of a health insurance issuer.~~

Section 2. Section 33-22-170, MCA, is amended to read:

"33-22-170. Definitions. As used in 33-22-170 through 33-22-174 and ~~[sections 1 and 2]~~ [SECTION 1], the following definitions apply:

(1) "Aggregate retained rebate percentage" means the percentage of all rebates received by a pharmacy

benefit manager from a manufacturer or other entity for prescription drug utilization and not passed on to the pharmacy benefit manager's health insurance ~~issuer's covered person. The percentage is calculated as provided in [section 2]~~ ISSUER.

~~(2) "Covered person" means a policyholder, a subscriber, a certificate holder, an enrollee, or another individual participating in a health benefit plan. A covered person includes the authorized representative of the covered person.~~

~~(3) "Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health insurance issuer to provide, deliver, arrange for, pay for, or reimburse any of the costs of physical or mental health care services.~~

~~(1)~~(4)(2) "Maximum allowable cost list" means the list of drugs used by a pharmacy benefit manager that sets the maximum cost on which reimbursement to a network pharmacy or pharmacist is based.

~~(2)~~(5)(3) "Pharmacist" means a person licensed by the state to engage in the practice of pharmacy pursuant to Title 37, chapter 7.

~~(3)~~(6)(4) "Pharmacy" means an established location, either physical or electronic, that is licensed by the board of pharmacy pursuant to Title 37, chapter 7, and that has entered into a network contract with a pharmacy benefit manager, health insurance issuer, or plan sponsor.

~~(4)~~(7)(5) "Pharmacy benefit manager" means a person who, ~~contracts~~ pursuant to a contract or employment relationship with ~~pharmacies on behalf of~~ a health insurance issuer, ~~a self-insurance plan,~~ a third-party administrator, or a plan sponsor, ~~to process~~ manages the prescription drug coverage provided by the health carrier~~, self-insurance plan,~~ or third-party administrator, including but not limited to the processing and payment of claims for prescription drugs, ~~provide~~ providing or contracting to perform retail network management for pharmacies or pharmacists, ~~and pay pharmacies or pharmacists for~~ controlling the costs of covered prescription drugs, processing of prior authorization requests for prescription drugs, performing drug utilization review, and adjudicating appeals or grievances related to prescription drug coverage.

~~(8)~~(6) "Rebates" means ~~all price concessions paid by a manufacturer to a pharmacy benefit manager or health insurance issuer, including discounts or other price concessions that are based on actual or estimated utilization of a prescription drug. Rebates include price concessions based on the effectiveness of a drug as in a value-based or performance-based contract~~ ANY RETROACTIVE, VOLUME-BASED DISCOUNT PAID BY A PHARMACEUTICAL MANUFACTURER, DEVELOPER, OR LABELER.

~~(5)~~(9)(7) "Reference pricing" means a calculation for the price of a pharmaceutical that uses the most

current nationally recognized reference price or amount to set the reimbursement for prescription drugs and other products, supplies, and services covered by a network contract between a plan sponsor, health insurance issuer, or pharmacy benefit manager and a pharmacy or pharmacist."

NEW SECTION. **Section 3. Codification instruction.** ~~[Sections 1 and 2] are~~ [SECTION 1] IS intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to ~~[sections 1 and 2]~~ [SECTION 1].

NEW SECTION. **Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 5. Effective date.** [This act] is effective July 1, 2019.

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