

HOUSE BILL No. 6435

October 4, 2018, Introduced by Reps. Canfield and Vaupel and referred to the Committee on Health Policy.

A bill to amend 1984 PA 218, entitled "Third party administrator act," by amending section 2 (MCL 550.902) and by adding sections 25, 26, and 27.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Administrative services manager" or "manager" means an
3 individual responsible for conducting the daily operations of a
4 third party administrator.

5 (b) "Benefit plan" or "plan" means a medical, surgical,
6 dental, vision, or health care benefit plan and may include
7 coverage under a policy or certificate issued by a carrier.

8 (c) "Board" means the TPA advisory board created under section
9 19.

1 (d) "Carrier" means ~~any of the following:~~

2 ~~—— (i) An **AN** insurer, which is **INCLUDING A HEALTH MAINTENANCE**~~
 3 ~~**ORGANIZATION**, regulated pursuant to **UNDER** the insurance code of~~
 4 ~~1956, Act No. 218 of the Public Acts of 1956, being sections **1956**~~
 5 ~~**PA 218, MCL** 500.100 to 500.8302, of the Michigan Compiled Laws.~~

6 ~~—— (ii) A medical care corporation regulated pursuant to Act No.~~
 7 ~~108 of the Public Acts of 1939, being sections 550.301 to 550.316~~
 8 ~~of the Michigan Compiled Laws.~~

9 ~~—— (iii) A hospital service corporation regulated pursuant to Act~~
 10 ~~No. 109 of the Public Acts of 1939, being sections 550.501 to~~
 11 ~~550.517 of the Michigan Compiled Laws.~~

12 ~~—— (iv) A health care corporation regulated pursuant to the~~
 13 ~~nonprofit health care corporation reform act, Act No. 350 of the~~
 14 ~~Public Acts of 1980, being sections 550.1101 to 550.1704 of the~~
 15 ~~Michigan Compiled Laws.~~

16 ~~—— (v) A health maintenance organization regulated under part 210~~
 17 ~~of the public health code, Act No. 368 of the Public Acts of 1978,~~
 18 ~~being sections 333.21001 to 333.21099 of the Michigan Compiled~~
 19 ~~Laws.~~

20 ~~—— (vi) A **OR A** dental care corporation regulated pursuant to Act~~
 21 ~~No. 125 of the Public Acts of 1963, being sections **UNDER 1963 PA**~~
 22 ~~**125, MCL** 550.351 to 550.373. of the Michigan Compiled Laws.~~

23 (e) "Commissioner" means the ~~commissioner of insurance of this~~
 24 ~~state.~~**DIRECTOR.**

25 **(F) "DEPARTMENT" MEANS THE DEPARTMENT OF INSURANCE AND**
 26 **FINANCIAL SERVICES.**

27 **(G) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.**

1 (H) ~~(f)~~ "ERISA" means the employee retirement income security
2 act of 1974, ~~as amended, Public Law 93-406, 88 Stat. 829.~~

3 (I) **"MANUFACTURER" MEANS THAT TERM AS DEFINED IN SECTION 17706**
4 **OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17706.**

5 (J) ~~(g)~~ "Person" means an individual, sole proprietorship,
6 partnership, corporation, association, or any other legal entity.

7 (K) ~~(h)~~ "Personal data" means any record or information
8 pertaining to the diagnosis, treatment, or health of an individual
9 covered by a plan.

10 (L) **"PHARMACY" MEANS THAT TERM AS DEFINED IN SECTION 17707 OF**
11 **THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17707.**

12 (M) **"PHARMACY BENEFIT MANAGER" MEANS A PERSON THAT CONTRACTS**
13 **WITH A PHARMACY ON BEHALF OF AN EMPLOYER, MULTIPLE EMPLOYER WELFARE**
14 **ARRANGEMENT, PUBLIC EMPLOYEE BENEFIT PLAN, STATE AGENCY, INSURER,**
15 **MANAGED CARE ORGANIZATION, OR OTHER THIRD-PARTY PAYER TO PROVIDE**
16 **PHARMACY HEALTH BENEFIT SERVICES OR ADMINISTRATION.**

17 (N) ~~(i)~~ "Processes claims" means the administrative services
18 performed in connection with a claim for benefits under a plan.

19 (O) ~~(j)~~ "Service contract" means the written agreement for the
20 provision of administrative services between the TPA and a plan, a
21 sponsor of a plan, or a carrier.

22 (P) ~~(k)~~ "Third party administrator" or "TPA" means a person
23 ~~who~~ **THAT** processes claims pursuant to a service contract and ~~who~~
24 **THAT** may also provide 1 or more other administrative services
25 pursuant to a service contract, other than under a worker's
26 compensation self-insurance program pursuant to section 611 of the
27 worker's disability compensation act of 1969, ~~Act No. 317 of the~~

1 ~~Public Acts of 1969, being section 1969 PA 317, MCL 418.611. of the~~
2 ~~Michigan Compiled Laws.~~ **THIRD PARTY ADMINISTRATOR INCLUDES A**
3 **PHARMACY BENEFIT MANAGER.** Third party administrator does not
4 include a carrier or employer sponsoring a plan.

5 **SEC. 25. A PERSON SHALL NOT ESTABLISH OR OPERATE AS A PHARMACY**
6 **BENEFIT MANAGER UNLESS THE PERSON REGISTERS WITH THE DIRECTOR. A**
7 **PERSON THAT VIOLATES THIS SECTION IS SUBJECT TO A CIVIL FINE OF NOT**
8 **MORE THAN \$7,500.00.**

9 **SEC. 26. (1) BY MAY 1 OF EACH YEAR, A PHARMACY BENEFIT MANAGER**
10 **SHALL PROVIDE THE DEPARTMENT WITH A REPORT CONTAINING THE FOLLOWING**
11 **INFORMATION FROM THE PRIOR CALENDAR YEAR:**

12 **(A) FOR EACH OF THE PHARMACY BENEFIT MANAGER'S CONTRACTUAL OR**
13 **OTHER RELATIONSHIPS WITH AN INSURER, THE AGGREGATE AMOUNT OF ALL**
14 **REBATES THAT THE PHARMACY BENEFIT MANAGER RECEIVED FROM**
15 **PHARMACEUTICAL MANUFACTURERS OTHER THAN ANY OF THE FOLLOWING**
16 **REBATES:**

17 **(i) A PHARMACEUTICAL REBATE PROVIDED UNDER THE MEDICAID REBATE**
18 **PROGRAM UNDER 42 USC 1396R-8.**

19 **(ii) A PHARMACEUTICAL REBATE PROVIDED UNDER THE MEDICARE DRUG**
20 **DISCOUNT PROGRAM UNDER THE SOCIAL SECURITY ACT UNDER TITLE XVIII OF**
21 **THE SOCIAL SECURITY ACT, 42 USC 1395 TO 1395JJJ, AND THE PATIENT**
22 **PROTECTION AND AFFORDABLE CARE ACT, PUBLIC LAW 111-148, AS AMENDED**
23 **BY THE HEALTH CARE AND EDUCATION RECONCILIATION ACT OF 2010, PUBLIC**
24 **LAW 111-152.**

25 **(iii) A PHARMACEUTICAL REBATE PROVIDED UNDER THE 340B DRUG**
26 **PRICING PROGRAM UNDER 42 USC 256B.**

27 **(iv) A PHARMACEUTICAL REBATE PROVIDED UNDER THE FEDERAL**

1 PRESCRIPTION DRUG PROGRAM AS PAID BY THE DEPARTMENT OF DEFENSE AND
2 THE DEPARTMENT OF VETERANS AFFAIRS.

3 (B) FOR EACH OF THE PHARMACY BENEFIT MANAGER'S CONTRACTUAL OR
4 OTHER RELATIONSHIPS WITH AN INSURER, THE AGGREGATE REBATES THAT THE
5 PHARMACY BENEFIT MANAGER RECEIVED FROM PHARMACEUTICAL MANUFACTURERS
6 AND DID NOT PASS THROUGH TO THE INSURER.

7 (C) FOR EACH OF THE PHARMACY BENEFIT MANAGER'S CONTRACTUAL OR
8 OTHER RELATIONSHIPS WITH AN INSURER, THE HIGHEST AGGREGATE RETAINED
9 REBATE PERCENTAGE, LOWEST AGGREGATE RETAINED REBATE PERCENTAGE, AND
10 THE MEAN AGGREGATE RETAINED REBATE PERCENTAGE.

11 (2) THE DEPARTMENT SHALL PUBLISH IN A TIMELY MANNER THE
12 INFORMATION THAT IT RECEIVES UNDER SUBSECTION (1) ON A PUBLICLY
13 AVAILABLE WEBSITE. HOWEVER, THE INFORMATION MUST BE MADE AVAILABLE
14 IN A FORM THAT DOES NOT DISCLOSE THE IDENTITY OF A SPECIFIC INSURER
15 OR HEALTH PLAN, THE PRICES CHARGED FOR SPECIFIC DRUGS OR CLASSES OF
16 DRUGS, OR THE AMOUNT OF ANY REBATES PROVIDED FOR SPECIFIC DRUGS OR
17 CLASSES OF DRUGS. IN DEVELOPING THE INFORMATION TO BE PUBLISHED IN
18 THIS SECTION, THE DEPARTMENT SHALL CONSULT WITH THE 5 LARGEST
19 CARRIERS IN THIS STATE, TO BE DETERMINED BY THE NUMBER OF
20 ENROLLEES, TO ENSURE THEIR IDENTITY IS NOT ABLE TO BE INFERRED
21 UNKNOWINGLY ON PUBLIC DISCLOSURE.

22 (3) THE PHARMACY BENEFIT MANAGER AND THE DEPARTMENT SHALL NOT
23 PUBLISH OR DISCLOSE ANY INFORMATION THAT WOULD REVEAL THE IDENTITY
24 OF A SPECIFIC INSURER OR HEALTH PLAN, A PRICE CHARGED FOR A
25 SPECIFIC DRUG OR CLASS OF DRUGS, OR THE AMOUNT OF ANY REBATES
26 PROVIDED FOR A SPECIFIC DRUG OR CLASS OF DRUGS. THE INFORMATION
27 DESCRIBED IN THIS SUBSECTION MUST BE PROTECTED FROM DISCLOSURE AS

1 CONFIDENTIAL AND PROPRIETARY INFORMATION, AND IS EXEMPT FROM
2 DISCLOSURE AS A PUBLIC RECORD UNDER SECTION 13 OF THE FREEDOM OF
3 INFORMATION ACT, 1976 PA 442, MCL 15.243.

4 (4) AS USED IN THIS SECTION:

5 (A) "AGGREGATED RETAINED REBATE PERCENTAGE" MEANS THE
6 FOLLOWING PERCENTAGE, CALCULATED FOR EACH PRESCRIPTION DRUG FOR
7 WHICH A PHARMACY BENEFIT MANAGER RECEIVES REBATES UNDER A HEALTH
8 PLAN, AND EXPRESSED WITHOUT DISCLOSING ANY IDENTIFYING INFORMATION
9 REGARDING THE HEALTH PLAN, PRESCRIPTION DRUG, OR THERAPEUTIC CLASS:

10 (i) CALCULATE THE AGGREGATE REBATES THAT THE PHARMACY BENEFIT
11 MANAGER RECEIVED DURING THE PRIOR CALENDAR YEAR FROM A
12 PHARMACEUTICAL MANUFACTURER RELATED TO UTILIZATION OF THE
13 MANUFACTURER'S PRESCRIPTION DRUG BY HEALTH PLAN INSUREDS AND DID
14 NOT PASS THROUGH TO THE HEALTH PLAN OR INSURER.

15 (ii) DIVIDE THE RESULT OF THE CALCULATION UNDER SUBPARAGRAPH
16 (i) BY THE AGGREGATE REBATES THAT THE PHARMACY BENEFIT MANAGER
17 RECEIVED DURING THE PRIOR CALENDAR YEAR FROM A PHARMACEUTICAL
18 MANUFACTURER RELATED TO UTILIZATION OF THE MANUFACTURER'S
19 PRESCRIPTION DRUG BY HEALTH PLAN INSUREDS.

20 (B) "REBATES" MEANS ALL REBATES, DISCOUNTS, EDUCATION OR
21 PROMOTIONAL FUNDS, AND OTHER PRICE CONCESSIONS, BASED ON
22 UTILIZATION OF A PRESCRIPTION DRUG AND PAID BY THE MANUFACTURER OR
23 OTHER PARTY, OTHER THAN AN INSURED, DIRECTLY OR INDIRECTLY, TO THE
24 PHARMACY BENEFIT MANAGER AFTER THE CLAIM HAS BEEN ADJUDICATED AT
25 THE PHARMACY. REBATES INCLUDE A REASONABLE ESTIMATE OF ANY VOLUME-
26 BASED OR OTHER DISCOUNTS.

27 SEC. 27. A CONTRACT BETWEEN A PHARMACY BENEFIT MANAGER AND A

1 PHARMACY OR BETWEEN A PHARMACY BENEFIT MANAGER AND ANY OTHER
2 ENTITY, INCLUDING, BUT NOT LIMITED TO, A MANUFACTURER, MUST NOT
3 PROHIBIT OR PENALIZE A PHARMACY OR ANY OTHER ENTITY FOR DOING ANY
4 OF THE FOLLOWING:

5 (A) DISCLOSING TO A CUSTOMER INFORMATION REGARDING EITHER OF
6 THE FOLLOWING:

7 (i) THE COST SHARING AMOUNTS THAT THE CUSTOMER MUST PAY FOR A
8 PARTICULAR PRESCRIPTION DRUG UNDER HIS OR HER HEALTH PLAN'S
9 PRESCRIPTION DRUG BENEFIT OR, WITHOUT REQUESTING ANY HEALTH PLAN
10 REIMBURSEMENT, OUTSIDE HIS OR HER HEALTH PLAN'S PRESCRIPTION DRUG
11 BENEFIT, OR BOTH.

12 (ii) THE EXISTENCE AND CLINICAL EFFICACY OF A THERAPEUTICALLY
13 EQUIVALENT DRUG THAT WOULD BE LESS EXPENSIVE TO THE CUSTOMER UNDER
14 HIS OR HER HEALTH PLAN'S PRESCRIPTION DRUG BENEFIT OR OUTSIDE HIS
15 OR HER HEALTH PLAN'S PRESCRIPTION DRUG BENEFIT, OR BOTH, WITHOUT
16 REQUESTING ANY HEALTH PLAN REIMBURSEMENT, THAN THE DRUG THAT WAS
17 ORIGINALLY PRESCRIBED.

18 (B) SELLING TO A CUSTOMER, INSTEAD OF A PARTICULAR PRESCRIBED
19 DRUG, A THERAPEUTICALLY EQUIVALENT DRUG THAT WOULD BE LESS
20 EXPENSIVE TO THE CUSTOMER UNDER HIS OR HER HEALTH PLAN'S
21 PRESCRIPTION DRUG BENEFIT OR OUTSIDE HIS OR HER HEALTH PLAN'S
22 PRESCRIPTION DRUG BENEFIT, WITHOUT REQUESTING ANY HEALTH PLAN
23 REIMBURSEMENT, THAN THE DRUG THAT WAS ORIGINALLY PRESCRIBED.