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3 SENATE BANKING & INSURANCE COMMITTEE SUBSTITUTE FOR SB227
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8 SYNOPSIS: Under existing law, pharmacy benefits
9 managers must be licensed by the Department of
10 Insurance. Pharmacy benefits managers provide
11 claims processing services or prescription drug and
12 other pharmacist services, or both, to health
13 benefit plans.

14 This bill would prohibit a pharmacy benefits
15 manager from limiting or incentivizing a patient's
16 choice in pharmacies, with certain exceptions.

17 This bill would prohibit a pharmacy benefits
18 manager from denying a pharmacy from participating
19 as a contract provider of pharmacy services for a
20 health benefit plan if the pharmacy meets the terms
21 and conditions of the pharmacy benefits manager's
22 contract.

23 This bill would prohibit a pharmacy benefits
24 manager from requiring or steering an insured to
25 use a mail-order pharmacy or a pharmacy affiliated
26 with a pharmacy benefits manager, with certain
27 exceptions.

1 This bill would require a pharmacy benefits
2 manager to annually report drug rebate information
3 and pricing information to health insurers and
4 health benefit plans.

5 This bill would prohibit a pharmacy benefits
6 manager from limiting certain powers of a pharmacy
7 or pharmacist to provide pharmacist services to
8 patients.

9 This bill would provide further for the
10 Commissioner of Insurance to administer and enforce
11 laws relating to pharmacy benefits managers and to
12 examine or audit the records of a pharmacy benefits
13 manager

14 This bill would provide for civil penalties
15 for violations.

16 This bill would require the Commissioner of
17 Insurance to adopt rules by a certain date for
18 further licensure of pharmacy benefits managers.

19 This bill would also provide conforming
20 changes to definitions.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 Relating to health care; to amend Sections 3 through
27 7 of Act 2019-457, 2019 Regular Session, now appearing as

1 Sections 27-45A-3, 27-45A-4, 27-45A-5, 27-45A-6, and 27-45A-7,
2 Code of Alabama 1975; and to add Sections 27-45A-8, 27-45A-9,
3 27-45A-10, 27-45A-11, and 27-45A-12 to the Code of Alabama
4 1975; to prohibit a pharmacy benefits manager from limiting or
5 incentivizing a patient's choice in pharmacies; to prohibit a
6 pharmacy benefits manager from denying a pharmacy from
7 participating as a contract provider of pharmacy services for
8 a health benefit plan if the pharmacy meets the terms and
9 conditions of the pharmacy benefits manager's contract; to
10 prohibit pharmacy benefits managers from steering an insured
11 to use a mail-order pharmacy or a pharmacy benefits manager
12 affiliate, with certain exceptions; to prohibit a pharmacy
13 benefits manager from limiting certain powers of a pharmacy or
14 pharmacist; to require certain annual reporting; to revise
15 definitions; to provide further for the Commissioner of
16 Insurance to administer and enforce laws relating to pharmacy
17 benefits managers; to provide further for the licensure of
18 pharmacy benefits managers; to require rulemaking; to provide
19 civil penalties for certain violations; and to amend Sections
20 10A-20-6.16 and 27-21A-23, Code of Alabama 1975, to subject
21 certain health insurers to the pharmacy benefits manager laws.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. Sections 3 through 7 of Act 2019-457,
24 2019 Regular Session, now appearing as Sections 27-45A-3,
25 27-45A-4, 27-45A-5, 27-45A-6, and 27-45A-7, Code of Alabama
26 1975, are amended to read as follows:

27 "§27-45A-3.

1 "a) For purposes of this chapter, the following
2 words shall have the following meanings:

3 "(1) CLAIMS PROCESSING SERVICES. The administrative
4 services performed in connection with the processing and
5 adjudicating of claims relating to pharmacist services that
6 include any of the following:

7 "a. Receiving payments for pharmacist services.

8 "b. Making payments to pharmacists or pharmacies for
9 pharmacist services.

10 "c. Both paragraphs a. and b.

11 "(2) CLIENT. A health insurer, payor, or health
12 benefit plan.

13 "(3) COVERED INDIVIDUAL. A member, policyholder,
14 subscriber, enrollee, beneficiary, dependent, or other
15 individual participating in a health benefit plan.

16 "(4) HEALTH BENEFIT PLAN. A policy, contract,
17 certificate, or agreement entered into, offered, or issued by
18 a health insurer to provide, deliver, arrange for, pay for, or
19 reimburse any of the costs of physical, mental, or behavioral
20 health care services.

21 "(5) HEALTH INSURER. An entity subject to the
22 insurance laws of this state and rules of the department, or
23 subject to the jurisdiction of the department, that contracts
24 or offers to contract to provide, deliver, arrange for, pay
25 for, or reimburse any of the costs of health care services,
26 including, but not limited to, a sickness and accident
27 insurance company, a health maintenance organization operating

1 pursuant to Chapter 21A, a nonprofit hospital or health
2 service corporation, a health care service plan organized
3 pursuant to Article 6, Chapter 20 of Title 10A, or any other
4 entity providing a plan of health insurance, health benefits,
5 or health services.

6 ~~"(2)(6)~~ OTHER PRESCRIPTION DRUG OR DEVICE SERVICES.

7 Services, other than claims processing services, provided
8 directly or indirectly, whether in connection with or separate
9 from claims processing services, including ~~without limitation,~~
10 but not limited to, any of the following:

11 "a. Negotiating rebates, discounts, or other
12 financial incentives and arrangements with drug companies.

13 "b. Disbursing or distributing rebates.

14 "c. Managing or participating in incentive programs
15 or arrangements for pharmacist services.

16 "d. Negotiating or entering into contractual
17 arrangements with pharmacists or pharmacies, or both.

18 "e. Developing formularies.

19 "f. Designing prescription benefit programs.

20 "g. Advertising or promoting services.

21 ~~"(3)(7) PHARMACIST. An individual licensed as a~~
22 ~~pharmacist by the State Board of Pharmacy~~ As defined in
23 Section 34-23-1.

24 ~~"(4)(8)~~ PHARMACIST SERVICES. Products, goods, and
25 services, or any combination of products, goods, and services,
26 provided as a part of the practice of pharmacy.

1 "~~(5)~~(9) PHARMACY. ~~The place licensed by the State~~
2 ~~Board of Pharmacy in which drugs, chemicals, medicines,~~
3 ~~prescriptions, and poisons are compounded, dispensed, or sold~~
4 ~~at retail~~ As defined in Section 34-23-1.

5 "~~(6)~~(10) PHARMACY BENEFITS MANAGER. a. A person,
6 ~~business, or entity,~~ including a wholly or partially owned or
7 controlled subsidiary of a pharmacy benefits manager, that
8 provides claims processing services or other prescription drug
9 or device services, or both, to covered individuals who are
10 employed in or are residents of this state, for health benefit
11 plans.

12 "b. Pharmacy benefits manager does not include any
13 of the following:

14 "1. A healthcare facility licensed in ~~Alabama~~ this
15 state.

16 "2. A healthcare professional licensed in ~~Alabama~~
17 this state.

18 "3. A consultant who only provides advice as to the
19 selection or performance of a pharmacy benefits manager.

20 "(11) PBM AFFILIATE. A pharmacy or pharmacist that,
21 directly or indirectly, through one or more intermediaries, is
22 owned or controlled by, or is under common control by, a
23 pharmacy benefits manager.

24 "(12) PRESCRIPTION DRUGS. Includes, but is not
25 limited to, certain infusion, compounded, and long-term care
26 prescription drugs. The term does not include specialty drugs.

1 "(13) SPECIALTY DRUGS. Prescription medications that
2 require special handling, administration, or monitoring and
3 are used for the treatment of patients with serious health
4 conditions requiring complex therapies, and that are eligible
5 for specialty tier placement by the Centers for Medicare and
6 Medicaid Services pursuant to 42 C.F.R. § 423.560.

7 "§27-45A-4.

8 "~~(a) (1) Effective January 1, 2020, to conduct~~
9 ~~business in this state,~~ A person may not establish or operate
10 as a pharmacy benefits manager must be licensed by in this
11 state without first obtaining a license from the commissioner.

12 ~~To~~

13 "(b) Effective through December 31, 2021, to
14 initially obtain a license or renew a license, a pharmacy
15 benefits manager shall submit all of the following:

16 "~~a.~~(1) A nonrefundable fee not to exceed five
17 hundred dollars (\$500).

18 "~~b.~~(2) A copy of the licensee's corporate charter,
19 articles of incorporation, or other charter document.

20 "~~c.~~(3) A completed licensure form adopted by the
21 commissioner containing:

22 "~~1.~~a. The name and address of the licensee.

23 "~~2.~~b. The name, address, and official position of an
24 employee who will serve as the primary contact for the
25 Department of Insurance.

1 ~~"3.c.~~ Any additional contact information deemed
2 appropriate by the commissioner or reasonably necessary to
3 verify the information contained in the application.

4 ~~"(2) The licensee shall inform the commissioner by~~
5 ~~any means acceptable to the commissioner of any change in the~~
6 ~~information required by this subsection within 30 days of the~~
7 ~~change. Failure to timely inform the commissioner of a change~~
8 ~~shall result in a penalty against the licensee in the amount~~
9 ~~of fifty dollars (\$50).~~

10 "(c) Not later than January 1, 2022, the
11 commissioner shall adopt rules for licensure of pharmacy
12 benefits managers to operate in this state. The rules shall
13 establish all of the following:

14 "(1) The licensing procedure and application form.

15 "(2) Requirements for licensure.

16 "(3) Reporting requirements.

17 "(4) A fee schedule for a non-refundable application
18 fee and a nonrefundable license renewal fee, set to allow the
19 regulation and oversight activities of the department to be
20 self-supporting.

21 "(d) On and after January 1, 2022, a person applying
22 for a pharmacy benefits manager license shall submit an
23 application for licensure in the form and manner prescribed by
24 the commissioner by rule, along with the application fee.

25 "(e) The commissioner may refuse to issue or renew a
26 license if the commissioner determines that the applicant has
27 been found to have violated this chapter or the insurance laws

1 of this state or any other jurisdiction, or has had an
2 insurance or other certificate of authority or license denied
3 or revoked for cause by any jurisdiction.

4 ~~"(3)(f) Upon receipt of a completed licensure form~~
5 ~~and the licensure fee, the commissioner shall issue a~~ Unless
6 denied licensure pursuant to subsection (e), a person who
7 meets the requirements of this chapter and rules adopted by
8 the commissioner shall be issued a pharmacy benefits manager
9 license. The license may be in paper or electronic form and
10 shall clearly indicate the expiration date of the ~~licensure~~
11 ~~license.~~ Licenses are nontransferable. Notwithstanding any
12 provision of law to the contrary, the ~~licensure form~~
13 application and license shall be public records.

14 ~~"(4) (g) The license shall be initially renewed in~~
15 ~~accordance with a schedule prescribed by the commissioner and~~
16 ~~shall thereafter be subject to renewal on a~~ biennial an annual
17 basis along with the nonrefundable license renewal fee. ~~The~~
18 ~~commissioner shall adopt by rule an initial licensure fee not~~
19 ~~to exceed five hundred dollars (\$500) and a renewal fee not to~~
20 ~~exceed five hundred dollars (\$500), both of which shall be~~
21 ~~nonrefundable.~~

22 "(h) A licensee shall inform the commissioner by any
23 means acceptable to the commissioner of any material change in
24 the information required by this section or rules adopted
25 pursuant to this section within 30 days of the change. Failure
26 to timely inform the commissioner of a change shall result in

1 a penalty against the licensee in the amount of fifty dollars
2 (\$50).

3 "(i) The commissioner may suspend or revoke a
4 license or may impose civil penalties for a violation of this
5 chapter or the insurance laws of this state or any other
6 jurisdiction, as determined by the commissioner in accordance
7 with rules adopted by the commissioner, provided a pharmacy
8 benefits manager shall have the same rights as insurers to
9 request a hearing in accordance with Sections 27-2-28, et seq.
10 and to appeal as provided in Section 27-2-32.

11 "(j) Unless surrendered, suspended, or revoked by
12 the commissioner, a license issued under this section shall
13 remain valid as long as the pharmacy benefits manager
14 continues to do business in this state and remains in
15 compliance with this chapter and applicable rules, including
16 the payment of an annual license renewal fee as set forth in
17 subsection (g).

18 ~~(5)~~(k) All documents, materials, or other
19 information, and copies thereof, in the possession or control
20 of the department that are obtained by or disclosed to the
21 commissioner or any other person in the course of an
22 application, examination, or investigation made pursuant to
23 this chapter shall be confidential by law and privileged,
24 shall not be subject to any open records, freedom of
25 information, sunshine, or other public record disclosure laws,
26 and shall not be subject to subpoena or discovery. This
27 subdivision only applies to disclosure of confidential

1 documents by the department and does not create any privilege
2 in favor of any other party.

3 "(1) (1) Fees collected pursuant to this section
4 shall be deposited in the State Treasury to the credit of the
5 Insurance Department Fund.

6 "(2) Civil penalties collected pursuant to this
7 chapter shall be deposited in the State Treasury to the credit
8 of the state General Fund.

9 "§27-45A-5.

10 ~~"(a) A pharmacy or pharmacist may provide a covered~~
11 ~~person with information regarding the amount of the covered~~
12 ~~person's cost share for a prescription drug. Neither a~~
13 ~~pharmacy nor a pharmacist shall be proscribed by a pharmacy~~
14 ~~benefits manager from discussing any such information or for~~
15 ~~selling a more affordable alternative to the covered person if~~
16 ~~such an alternative is available.~~

17 ~~"(b) A health benefit plan that covers prescription~~
18 ~~drugs may not include a provision that requires an enrollee to~~
19 ~~make a payment for a prescription drug at the point of sale in~~
20 ~~an amount that exceeds the lesser of: (1) the contracted~~
21 ~~co-payment amount; or (2) the amount an individual would pay~~
22 ~~for a prescription if that individual were paying with cash.~~

23 ~~"(c) For purposes of this section, the following~~
24 ~~words have the following meanings:~~

25 ~~"(1) COVERED PERSON. Any individual, family, or~~
26 ~~family member on whose behalf third-party payment or~~

1 ~~prepayment of health or medical expenses is provided under a~~
2 ~~health benefit plan.~~

3 ~~"(2) ENROLLEE. A person named on a policy or~~
4 ~~certificate of coverage under a health benefit plan.~~

5 ~~"(3) HEALTH BENEFIT PLAN. As defined in Section~~
6 ~~27-54A-2.~~

7 "(a) The commissioner may adopt rules necessary to
8 implement this chapter.

9 "(b) The powers and duties set forth in this chapter
10 shall be in addition to all other authority of the
11 commissioner.

12 "(c) The commissioner shall enforce compliance with
13 the requirements of this chapter and rules adopted thereunder.

14 "(d) (1) The commissioner may examine or audit any
15 relevant books and records of a pharmacy benefits manager
16 providing claims processing services or other prescription
17 drug or device services for a health benefit plan as may be
18 necessary to determine compliance with this chapter.

19 "(2) Examinations conducted by the commissioner
20 shall be pursuant to the same examination authority of the
21 commissioner relative to insurers as provided in Chapter 2,
22 including, but not limited to, the confidentiality of
23 documents and information submitted as provided in Section
24 27-2-24; examination expenses shall be processed in accordance
25 with Section 27-2-25; and pharmacy benefits managers shall
26 have the same rights as insurers to request a hearing in

1 accordance with Sections 27-2-28, et seq., and to appeal as
2 provided in Section 27-2-32.

3 "(e) The commissioner's examination expenses shall
4 be collected from pharmacy benefits managers in the same
5 manner as those collected from insurers.

6 "§27-45A-6.

7 ~~"(a) The commissioner may adopt reasonable rules~~
8 ~~necessary to implement Sections 27-45A-4 and 27-45A-5.~~

9 ~~"(b) The rules adopted under this chapter shall set~~
10 ~~penalties or civil fines for violations of Sections 27-45A-4~~
11 ~~and 27-45A-5 and the rules implementing this chapter~~
12 ~~including, without limitation, monetary fines and the~~
13 ~~suspension or revocation of a license.~~

14 ~~"(c) The fees collected pursuant to this chapter~~
15 ~~shall be deposited in the State Treasury to the credit of the~~
16 ~~Insurance Department Fund. Any civil fine or penalty collected~~
17 ~~shall be deposited in the State Treasury to the credit of the~~
18 ~~State General Fund.~~

19 "Nothing in this chapter is intended or shall be
20 construed to do any of the following:

21 "(1) Be in conflict with existing relevant federal
22 law.

23 "(2) Apply to any specialty drug.

24 "(3) Impact the ability of a hospital to mandate its
25 employees use of a hospital-owned pharmacy.

26 "§27-45A-7.

1 ~~"(a) This chapter is applicable to a contract or~~
2 ~~health benefit plan issued, renewed, recredentialed, amended,~~
3 ~~or extended on and after January 1, 2020.~~

4 ~~(b) A contract existing on the date of licensure of~~
5 ~~the pharmacy benefits manager shall comply with the~~
6 ~~requirements of this chapter as a condition of licensure for~~
7 ~~the pharmacy benefits manager.~~

8 ~~"(c) Nothing in this chapter is intended or shall be~~
9 ~~construed to be in conflict with existing relevant federal~~
10 ~~law.~~

11 [RESERVED]

12 Section 2. Sections 27-45A-8, 27-45A-9, 27-45A-10,
13 27-45A-11, and 27-45A-12, are added to the Code of Alabama
14 1975, to read as follows:

15 §27-45A-8.

16 A pharmacy benefits manager may not do any of the
17 following:

18 (1) Require a covered individual, as a condition of
19 payment or reimbursement, to purchase pharmacist services,
20 including, but not limited to, prescription drugs, exclusively
21 through a mail-order pharmacy or pharmacy benefits manager
22 affiliate.

23 (2) Prohibit or limit any covered individual from
24 selecting an in-network pharmacy or pharmacist of his or her
25 choice who meets and agrees to the terms and conditions,
26 including reimbursements, in the pharmacy benefits manager's
27 contract.

1 (3) Impose a monetary advantage or penalty under a
2 health benefit plan that would affect a covered individual's
3 choice of pharmacy among those pharmacies that have chosen to
4 contract with the pharmacy benefits manager under the same
5 terms and conditions, including reimbursements. For purposes
6 of this subdivision, "monetary advantage or penalty" includes,
7 but is not limited to, a higher copayment, a waiver of a
8 copayment, a reduction in reimbursement services, a
9 requirement or limit on the number of days of a drug supply
10 for which reimbursement will be allowed, or a promotion of one
11 participating pharmacy over another by these methods.

12 (4)a. Use a covered individual's pharmacy services
13 data collected pursuant to the provision of claims processing
14 services for the purpose of soliciting, marketing, or
15 referring the covered individual to a mail-order pharmacy or
16 PBM affiliate.

17 b. This subdivision shall not limit a health benefit
18 plan's use of pharmacy services data for the purpose of
19 administering the health benefit plan.

20 c. This subdivision shall not prohibit a pharmacy
21 benefits manager from notifying a covered individual that a
22 less costly option for a specific prescription drug is
23 available through a mail-order pharmacy or PBM affiliate,
24 provided the notification shall state that switching to the
25 less costly option is not mandatory. The commissioner, by
26 rule, may determine the language of the notification

1 authorized under this paragraph made by a pharmacy benefits
2 manager to a covered individual.

3 (5) Require a covered individual to make a payment
4 for a prescription drug at the point of sale in an amount that
5 exceeds the lesser of the following:

6 a. The contracted cost share amount.

7 b. An amount an individual would pay for a
8 prescription if that individual were paying without insurance.

9 §27-45A-9.

10 (a) If requested by a client under subsection (c), a
11 pharmacy benefits manager shall prepare an annual report by
12 June 1 which discloses all of the following with respect to
13 that client:

14 a. The aggregate amount of all rebates that the
15 pharmacy benefits manager received from pharmaceutical
16 manufacturers on behalf of the client.

17 (2) The aggregate amount of the rebates the pharmacy
18 benefits manager received from pharmaceutical manufacturers
19 that did not pass through to the client.

20 (3) If a pharmacy benefits manager or any consultant
21 providing pharmacy benefits management services engages in
22 spread pricing, the aggregated amount of the difference
23 between the amount paid by the client for prescription drugs
24 and the actual amount paid to the pharmacy or pharmacist for
25 pharmacist services. For purposes of this subdivision, "spread
26 pricing" means the model of prescription drug reimbursement in
27 which a pharmacy benefits manager charges a client a

1 contracted price for prescription drugs, and the contract
2 price for the prescription drugs differs from the amount the
3 pharmacy benefits manager, directly or indirectly, pays the
4 pharmacy or pharmacist for pharmacist services.

5 (b) Confidentiality of a report submitted under this
6 section shall be governed by contract between the pharmacy
7 benefits manager and the client.

8 (c) A pharmacy benefits manager shall annually
9 notify all its clients in a timely manner that a report
10 described in subsection (a) will be made available to the
11 client by the pharmacy benefits manager if requested by the
12 client.

13 §27-45A-10.

14 A pharmacy benefits manager may not do any of the
15 following:

16 (1) Reimburse a pharmacy or pharmacist in the state
17 an amount less than the amount that the pharmacy benefits
18 manager reimburses a similarly situated PBM affiliate for
19 providing the same pharmacist services to covered individuals
20 in the same health benefit plan.

21 (2) Deny a pharmacy or pharmacist the right to
22 participate as a contract provider if the pharmacy or
23 pharmacist meets and agrees to the terms and conditions,
24 including reimbursements, in the pharmacy benefits manager's
25 contract.

26 (3) Impose credentialing standards on a pharmacist
27 or pharmacy beyond or more onerous than the licensing

1 standards set by the Alabama State Board of Pharmacy or charge
2 a pharmacy a fee in connection with network enrollment,
3 provided this subdivision shall not prohibit a pharmacy
4 benefits manager from setting minimum requirements for
5 participating in a pharmacy network.

6 (4) Prohibit a pharmacist or pharmacy from providing
7 a covered individual specific information on the amount of the
8 covered individual's cost share for the covered individual's
9 prescription drug and the clinical efficacy of a more
10 affordable alternative drug if one is available, or penalize a
11 pharmacist or pharmacy for disclosing this information to a
12 covered individual or for selling to a covered individual a
13 more affordable alternative if one is available.

14 (5) Prohibit a pharmacist or pharmacy from offering
15 and providing delivery services to a covered individual as an
16 ancillary service of the pharmacy, provided all of the
17 following requirements are met:

18 a. The pharmacist or pharmacy can demonstrate
19 quality, stability, and safety standards during delivery.

20 b. The pharmacist or pharmacy does not charge any
21 delivery or service fee to a pharmacy benefits manager or
22 health insurer.

23 c. The pharmacist or pharmacy alerts the covered
24 individual that he or she will be responsible for any delivery
25 service fee associated with the delivery service, and that the
26 pharmacy benefits manager or health insurer will not reimburse
27 the delivery service fee.

1 (6) Charge or hold a pharmacist or pharmacy
2 responsible for a fee or penalty relating to an audit
3 conducted pursuant to The Pharmacy Audit Integrity Act,
4 Article 8 of Chapter 23 of Title 34, provided this prohibition
5 does not restrict recoupments made in accordance with the
6 Pharmacy Audit Integrity Act.

7 (7) Charge a pharmacist or pharmacy a point-of-sale
8 or retroactive fee or otherwise recoup funds from a pharmacy
9 in connection with claims for which the pharmacy has already
10 been paid, unless the recoupment is made pursuant to an audit
11 conducted in accordance with the Pharmacy Audit Integrity Act.

12 (8) Except for a drug reimbursed, directly or
13 indirectly, by the Medicaid program, vary the amount a
14 pharmacy benefits manager reimburses an entity for a drug on
15 the basis of whether:

16 a. The drug is subject to an agreement under 42
17 U.S.C. § 256b; or

18 b. The entity participates in the program set forth
19 in 42 U.S.C. § 256b.

20 (9) If an entity participates, directly or
21 indirectly, in the program set forth in 42 U.S.C. § 256b, do
22 any of the following:

23 a. Assess a fee, charge-back, or other adjustment on
24 the entity.

25 b. Restrict access to the pharmacy benefits
26 manager's pharmacy network.

1 c. Require the entity to enter into a contract with
2 a specific pharmacy to participate in the pharmacy benefits
3 manager's pharmacy network.

4 d. Create a restriction or an additional charge on a
5 patient who chooses to receive drugs from the entity.

6 e. Create any additional requirements or
7 restrictions on the entity.

8 (10) Require a claim for a drug to include a
9 modifier to indicate that the drug is subject to an agreement
10 under 42 U.S.C. § 256b.

11 (11) Penalize or retaliate against a pharmacist or
12 pharmacy for exercising rights under this chapter or the
13 Pharmacy Audit Integrity Act.

14 §27-45A-11.

15 A pharmacy benefits manager may not knowingly make a
16 material misrepresentation to a covered individual,
17 pharmacist, or pharmacy.

18 §27-45A-12.

19 A pharmacist or pharmacy that participates in a
20 health benefit plan's pharmacy network shall process a
21 prescription drug using the pharmacy benefits of the covered
22 individual if failure to do so will result in a higher
23 out-of-pocket cost to the covered individual.

24 Section 3. Sections 10A-20-6.16 and 27-21A-23, Code
25 of Alabama 1975, are amended to read as follows:

26 "§10A-20-6.16.

1 "(a) No statute of this state applying to insurance
2 companies shall be applicable to any corporation organized
3 under this article and amendments thereto or to any contract
4 made by the corporation; except the corporation shall be
5 subject to the following:

6 "(1) The provisions regarding annual premium tax to
7 be paid by insurers on insurance premiums.

8 "(2) Chapter 55 of Title 27.

9 "(3) Article 2 and Article 3 of Chapter 19 of Title
10 27.

11 "(4) Section 27-1-17.

12 "(5) Chapter 56 of Title 27.

13 "(6) Rules promulgated by the Commissioner of
14 Insurance pursuant to Sections 27-7-43 and 27-7-44.

15 "(7) Chapter 54 of Title 27.

16 "(8) Chapter 57 of Title 27.

17 "(9) Chapter 58 of Title 27.

18 "(10) Chapter 59 of Title 27.

19 "(11) Chapter 54A of Title 27.

20 "(12) Chapter 12A of Title 27.

21 "(13) Chapter 2B of Title 27.

22 "(14) Chapter 29 of Title 27.

23 "(15) Chapter 62 of Title 27.

24 "(16) Chapter 45A of Title 27.

25 "(b) The provisions in subsection (a) that require
26 specific types of coverage to be offered or provided shall not
27 apply when the corporation is administering a self-funded

1 benefit plan or similar plan, fund, or program that it does
2 not insure.

3 "§27-21A-23.

4 "(a) Except as otherwise provided in this chapter,
5 provisions of the insurance law and provisions of health care
6 service plan laws shall not be applicable to any health
7 maintenance organization granted a certificate of authority
8 under this chapter. This provision shall not apply to an
9 insurer or health care service plan licensed and regulated
10 pursuant to the insurance law or the health care service plan
11 laws of this state except with respect to its health
12 maintenance organization activities authorized and regulated
13 pursuant to this chapter.

14 "(b) Solicitation of enrollees by a health
15 maintenance organization granted a certificate of authority
16 shall not be construed to violate any provision of law
17 relating to solicitation or advertising by health
18 professionals.

19 "(c) Any health maintenance organization authorized
20 under this chapter shall not be deemed to be practicing
21 medicine and shall be exempt from the provisions of Section
22 34-24-310, et seq., relating to the practice of medicine.

23 "(d) No person participating in the arrangements of
24 a health maintenance organization other than the actual
25 provider of health care services or supplies directly to
26 enrollees and their families shall be liable for negligence,

1 misfeasance, nonfeasance, or malpractice in connection with
2 the furnishing of such services and supplies.

3 "(e) Nothing in this chapter shall be construed in
4 any way to repeal or conflict with any provision of the
5 certificate of need law.

6 "(f) Notwithstanding the provisions of subsection
7 (a), a health maintenance organization shall be subject to all
8 of the following:

9 "(1) Section 27-1-17.

10 "(2) Chapter 56.

11 "(3) Chapter 54.

12 "(4) Chapter 57.

13 "(5) Chapter 58.

14 "(6) Chapter 59.

15 "(7) Rules promulgated by the Commissioner of
16 Insurance pursuant to Sections 27-7-43 and 27-7-44.

17 "(8) Chapter 12A.

18 "(9) Chapter 54A.

19 "(10) Chapter 2B.

20 "(11) Chapter 29.

21 "(12) Chapter 62.

22 "(13) Chapter 45A."

23 Section 4. Commencing January 1, 2022, a pharmacy
24 benefits manager licensed by the commissioner prior to January
25 1, 2022, shall submit an application for a new license in
26 accordance with subsections (d) of Section 27-45A-4, Code of
27 Alabama 1975. The pharmacy benefits manager's previous license

1 shall expire on the date the commissioner issues a new license
2 or April 1, 2022, whichever occurs earlier.

3 Section 5. This act shall become effective July 1,
4 2021, following its passage and approval by the Governor, or
5 its otherwise becoming law, and shall apply to pharmacy
6 benefits manager contracts on and after October 1, 2021.