

CHAPTER 26.1-27.1
PHARMACY BENEFITS MANAGEMENT

26.1-27.1-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Covered entity" means a nonprofit hospital or a medical service corporation; a health insurer; a health benefit plan; a health maintenance organization; a health program administered by the state in the capacity of provider of health coverage; or a labor union, or other entity organized in the state which provides health coverage to covered individuals who are employed or reside in the state. The term does not include a plan issued for coverage for federal employees; or a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplement, disability income, long-term care, or other limited-benefit health insurance policies or contracts that do not include prescription drug coverage.
2. "Covered individual" means a member, a participant, an enrollee, a contractholder, a policyholder, or a beneficiary of a covered entity who is provided health coverage by the covered entity. The term includes a dependent or other individual provided health coverage through a policy, contract, or plan for a covered individual.
3. "De-identified information" means information from which the name, address, telephone number, and other variables have been removed in accordance with requirements of title 45, Code of Federal Regulations, part 164, section 512, subsections (a) or (b).
4. "Labeler" means a person that has been assigned a labeler code by the federal food and drug administration under title 21, Code of Federal Regulations, part 207, section 20, and that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale.
5. "Payment received by the pharmacy benefits manager" means the aggregate amount of the following types of payments:
 - a. A rebate collected by the pharmacy benefits manager or a rebate aggregator which is allocated to a covered entity, or retained by the pharmacy benefits manager;
 - b. An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer;
 - c. A pharmacy network fee, pharmacy price concessions, and any other financial payment made by a pharmacy to a pharmacy benefits manager; and
 - d. Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or labeler for a drug switch program, formulary management program, mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function.
6. "Pharmacy benefits management" means the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals; the administration or management of prescription drug benefits provided by a covered entity for the benefit of covered individuals; or the providing of any of the following services with regard to the administration of the following pharmacy benefits:
 - a. Claims processing, pharmacy network management, and payment of claims to a pharmacy for prescription drugs dispensed to a covered individual;
 - b. Clinical formulary development and management services; or
 - c. Rebate contracting and administration.
7. "Pharmacy benefits manager" means a person who performs pharmacy benefits management, as a third party, under a contract or other financial arrangement with a covered entity. The term does not include a health benefit plan that manages or directs its own pharmacy benefits.
8. "Rebate" means a retrospective reimbursement of a monetary amount by a manufacturer under a manufacturer's discount program with a pharmacy benefits manager for drugs dispensed to a covered individual.

9. "Utilization information" means de-identified information regarding the quantity of drug prescriptions dispensed to members of a health plan during a specified time period.

26.1-27.1-02. Licensing - Terms and fee - Application.

1. A person may not establish or operate as a pharmacy benefits manager in this state without first obtaining a license from the commissioner under this section. A person violating this subsection is guilty of a class C felony.
2. A person applying for a pharmacy benefits manager license shall submit an application to the commissioner. The commissioner shall make an application form available on its website which includes a request for the following information:
 - a. The identity, address, electronic mail address, and telephone number of the applicant;
 - b. The name, business address, electronic mail address, and telephone number of the contact person for the applicant;
 - c. If applicable, the federal employer identification number for the applicant; and
 - d. Any other information the commissioner considers necessary and appropriate to establish the qualifications to receive a license as a pharmacy benefits manager to complete the licensure process.
3. The term of licensure is one year from April thirtieth through March thirty-first.
4. The pharmacy benefits manager shall pay an annual renewal fee no later than April thirtieth.
5. The applicant shall submit the fee with the initial application or renewal application for licensure. The initial application fee and renewal fee are nonrefundable.
6. Each application for a license, and subsequent renewal for a license, must be accompanied by evidence of financial responsibility in an amount of one million dollars.
7. Upon receipt of a completed application, evidence of financial responsibility, and fee, the commissioner shall review each application and issue a license if the applicant is qualified in accordance with the provisions of this section and the rules promulgated by the commissioner under this section. The commissioner may require additional information or submissions from an applicant and may obtain any documents or information reasonably necessary to verify the information contained in the application.
8. The license may be in paper or electronic form. The license is nontransferable, and must prominently list the expiration date.

26.1-27.1-03. Disclosure requirements.

1. A pharmacy benefits manager shall disclose to the commissioner any ownership interest of any kind with:
 - a. Any insurance company responsible for providing benefits directly or through reinsurance to any plan for which the pharmacy benefits manager provides services.
 - b. Any parent company, subsidiary, or other organization that is related to the provision of pharmacy services, the provision of other prescription drug or device services, or a pharmaceutical manufacturer.
2. A pharmacy benefits manager shall notify the commissioner in writing within five business days of any material change in the pharmacy benefits manager's ownership.

26.1-27.1-04. Prohibited practices.

1. A pharmacy benefits manager shall comply with sections 19-02.1-01, 19-02.1-02, 19-02.1-14.2, 19-02.1-16, 19-02.1-16.1, 19-02.1-16.2, 19-02.1-16.3, 19-02.1-16.4, 19-02.1-16.5, and 19-02.1-16.6 in chapter 19-02.1.
2. A pharmacy benefits manager may not require a pharmacist or pharmacy to participate in one contract in order to participate in another contract. The pharmacy benefits manager may not exclude an otherwise qualified pharmacist or pharmacy from

- participation in a particular network if the pharmacist or pharmacy accepts the terms, conditions, and reimbursement rates of the pharmacy benefits manager's contract.
3. A pharmacy benefits manager shall offer pharmacy contracts that are opt-in contracts with at least thirty days to respond and signatures must be obtained from the pharmacy or an entity contracting on behalf of the pharmacy.
 4. A pharmacy may opt-out of a pharmacy benefits managers contract by providing at least a ninety-day notice.

26.1-27.1-05. Contents of pharmacy benefits management agreement - Requirements.

1. A pharmacy benefits manager shall offer to a covered entity options for the covered entity to contract for services that must include:
 - a. A transaction fee without a sharing of a payment received by the pharmacy benefits manager;
 - b. A combination of a transaction fee and a sharing of a payment received by the pharmacy benefits manager; or
 - c. A transaction fee based on the covered entity receiving all the benefits of a payment received by the pharmacy benefits manager.
2. The agreement between the pharmacy benefits manager and the covered entity must include a provision allowing the covered entity to have audited the pharmacy benefits manager's books, accounts, and records, including de-identified utilization information, as necessary to confirm that the benefit of a payment received by the pharmacy benefits manager is being shared as required by the contract.

26.1-27.1-06. Examination of insurer-covered entity.

1. During an examination of a covered entity as provided for in chapter 26.1-03, 26.1-17, or 26.1-18.1, the commissioner shall examine any contract between the covered entity and a pharmacy benefits manager and any related record to determine if the payment received by the pharmacy benefits manager which the covered entity received has been applied toward reducing the covered entity's rates or has been distributed to covered individuals.
2. To facilitate the examination, the covered entity shall disclose annually to the commissioner the benefits of the payment received by the pharmacy benefits manager received under any contract and shall describe the manner in which the payment received by the pharmacy benefits manager is applied toward reducing rates or is distributed to covered individuals.
3. Any information disclosed to the commissioner under this section is considered a trade secret under chapter 47-25.1. This section does not prevent the disclosure of a final order issued against a pharmacy benefits manager. Such order is an open record.

26.1-27.1-07. Rulemaking authority.

The commissioner shall adopt rules as necessary to implement this chapter.

26.1-27.1-08. Enforcement.

1. All powers granted to the commissioner under title 26.1 and chapter 28-32 are available in enforcing chapter 26.1-27.1, including subpoena power.
2. This section does not limit the attorney general from investigating and prosecuting violations of the law.
3. This section does not prohibit the commissioner, state board of pharmacy, or department of health and human services from collaborating through joint exercise of common powers agreements.

26.1-27.1-09. Administrative penalties.

1. A pharmacy benefits manager found to be in violation of this chapter or any rules adopted under this chapter is subject to:
 - a. A monetary penalty of up to ten thousand dollars per violation;

- b. Suspension or revocation of license; and
 - c. A civil penalty of up to fifty thousand dollars for a second or subsequent violation.
2. The commissioner may require a pharmacy benefits manager to provide restitution to affected covered entities, pharmacies, or individuals for losses incurred as a result of the violation.
 3. A pharmacy benefits manager subject to penalties under this section is entitled to a hearing conducted in accordance with chapter 28-32.

26.1-27.1-10. Proceedings by commissioner - Service of process - Procedure.

The commissioner shall serve process upon any licensee in any action or proceeding instituted by the commissioner under this chapter by electronic mail to the electronic mail address maintained in section 26.1-27.1-02 or by United States mail to the licensee at the licensee's last-known address of record or principal place of business. Service of process under this section is complete upon electronic mailing or United States mailing.

26.1-27.1-11. Pharmacy benefit manager enforcement fund - State board of pharmacy wholesaler and virtual wholesaler license fees - Revenue deposits or transfers. (Expired effective July 1, 2029)

The pharmacy benefit manager enforcement fund is a special fund in the state treasury. The fund consists of moneys transferred to or deposited in the fund by legislative action and moneys transferred to or deposited in the fund by the state board of pharmacy. The state board of pharmacy may deposit or transfer up to six hundred dollars of every eligible wholesaler license fee and every virtual wholesaler license fee collected by the board under section 43-15.3-12 to the pharmacy benefit manager enforcement fund. Moneys in the fund are available to the insurance commissioner, subject to legislative appropriations, for enforcing the provisions of this chapter.