

2023 South Dakota Legislature

House Bill 1135**AMENDMENT 1135B
FOR THE INTRODUCED BILL**

1 **An Act to provide for transparency in the pricing of prescription drugs.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 58-29E-1 be AMENDED:**

4 **58-29E-1.** Terms used in this chapter mean:

- 5 (1) ~~"Covered entity," a nonprofit hospital or medical service corporation, health~~
6 ~~insurer, health benefit plan, or health maintenance organization; a health program~~
7 ~~administered by a department or the state in the capacity of provider of health~~
8 ~~coverage; or an employer, labor union, or other group of persons organized in the~~
9 ~~state that provides health coverage to covered individuals who are employed or~~
10 ~~reside in the state. The term does not include a self-funded plan that is exempt~~
11 ~~from state regulation pursuant to ERISA, a plan issued for coverage for federal~~
12 ~~employees, or a health plan that provides coverage only for accidental injury,~~
13 ~~specified disease, hospital indemnity, medicare supplement, disability income,~~
14 ~~long term care, or other limited benefit health insurance policies and contracts;~~
15 ~~"Brand name," the proprietary or registered trademark name given to a drug~~
16 ~~product by its manufacturer, labeler, or distributor and placed on the drug or on~~
17 ~~its container, label, or wrapping, at the time of packaging the same as set forth in~~
18 ~~§ 36-11-2;~~
- 19 (2) "Covered individual," a member, participant, enrollee, contract holder, policy
20 holder, or beneficiary of a ~~covered entity~~ third-party payor who is provided health
21 coverage by the ~~covered entity~~ third-party payor. The term includes a dependent
22 or other ~~person~~ individual provided health coverage through a policy, contract, or
23 plan for a covered individual;
- 24 (3) "Director," ~~the director of the Division of Insurance;~~
- 25 (4) "Generic drug," a chemically equivalent copy of a brand-name drug with an expired
26 patent;

- 1 (5) "Labeler," an entity or person that receives prescription drugs from a manufacturer
2 or wholesaler and repackages those drugs for later retail sale and that has a labeler
3 code from the federal Food and Drug Administration under 21 C.F.R. § 270.20
4 (1999);
- 5 (4) ~~"Health benefit plan," a policy, contract, certificate, or agreement entered into,
6 offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or
7 reimburse any of the costs of health care services, provided the term includes
8 short term and catastrophic health insurance policies, and a policy that pays on a
9 cost incurred basis, except as otherwise specifically exempted in this definition,
10 and further provided that the term does not include:~~
- 11 ~~(a) Coverage only for accident, or disability income insurance, or any combination
12 thereof; coverage issued as a supplement to liability insurance; liability insurance,
13 including general liability insurance and automobile liability insurance; workers'
14 compensation or similar insurance; automobile medical payment insurance; credit-
15 only insurance; coverage for on site medical clinics; and other similar insurance
16 coverage, specified in federal regulations issued pursuant to Public Law 104-191,
17 as of January 1, 2011, under which benefits for medical care are secondary or
18 incidental to other insurance benefits;~~
- 19 ~~(b) The following benefits, if the benefits are provided under a separate policy,
20 certificate, or contract of insurance or are otherwise not an integral part of the
21 plan: limited scope dental or vision benefits; benefits for long term care, nursing
22 home care, home health care, community based care, or any combination thereof;
23 or other similar, limited benefits specified in federal regulations issued pursuant to
24 Public Law 104-191, as of January 1, 2011;~~
- 25 ~~(c) The following benefits, if the benefits are provided under a separate policy,
26 certificate, or contract of insurance, there is no coordination between the provision
27 of the benefits and any exclusion of benefits under any group health plan
28 maintained by the same plan sponsor, and the benefits are paid with respect to an
29 event without regard to whether benefits are provided with respect to such an
30 event under any group health plan maintained by the same plan sponsor: coverage
31 only for a specified disease or illness; or hospital indemnity or other fixed indemnity
32 insurance; or~~
- 33 ~~(d) The following, if offered as a separate policy, certificate, or contract of insurance:
34 Medicare supplemental health insurance, as defined under 42 U.S.C. § 1395ss, as
35 of January 1, 2011; coverage supplemental to the coverage provided under 10~~

- 1 ~~U.S.C. ch. 55, as of January 1, 2011; or similar supplemental coverage provided~~
2 ~~to coverage under a group health plan the same as set forth in § 58-17F-2;~~
- 3 (5) ~~"Health carrier," an entity that is subject to the insurance laws and rules of this~~
4 ~~state, or subject to the jurisdiction of the director of the Division of Insurance, and~~
5 ~~which contracts or offers to contract, or enters into an agreement to provide,~~
6 ~~deliver, arrange for, pay for, or reimburse any of the costs of health care services,~~
7 ~~including a sickness and accident insurance company, a health maintenance~~
8 ~~organization, a nonprofit hospital and health service corporation, or any other~~
9 ~~entity providing a plan of health insurance, health benefits, or health services the~~
10 ~~same as set forth in § 58-17F-1;~~
- 11 (6) ~~"Interchangeable biological product,"~~
12 ~~a biological product that the U.S. Food and Drug Administration has:~~
- 13 ~~(a) Licensed, and has determined meets the standards for interchangeability, pursuant~~
14 ~~to 42 U.S.C. § 262(k)(4), as of January 1, 2018; or~~
- 15 ~~(b) Determined is therapeutically equivalent, as set forth in the latest edition of, or~~
16 ~~any supplement to, the Food and Drug Administration's publication entitled~~
17 ~~Approved Drug Products with Therapeutic Equivalence Evaluations, as adopted by~~
18 ~~the State Board of Pharmacy, in rules promulgated pursuant to chapter 1-26 the~~
19 ~~same as set forth in § 36-11-2;~~
- 20 (7) ~~"Maximum allowable cost," the maximum amount that a pharmacy may be~~
21 ~~reimbursed, as set by a pharmacy benefit manager or a third-party payor, for a~~
22 ~~brand name or a generic drug, an interchangeable biological product, or any other~~
23 ~~prescription drug and which may include:~~
- 24 ~~(a) The average acquisition cost;~~
25 ~~(b) The national average acquisition cost;~~
26 ~~(c) The average manufacturer price;~~
27 ~~(d) The average wholesale price;~~
28 ~~(e) The brand effective rate;~~
29 ~~(f) The generic effective rate;~~
30 ~~(g) Discount indexing;~~
31 ~~(h) Federal upper limits;~~
32 ~~(i) The wholesale acquisition cost; and~~
33 ~~(j) Any other term used by a pharmacy benefit manager or a health carrier to~~
34 ~~establish reimbursement rates for a pharmacy.~~
- 35 (8) ~~"Maximum allowable cost list," a list of prescription drugs that:~~

- 1 (a) Includes the maximum allowable cost for each prescription drug; and
2 (b) Is used, directly or indirectly, by a pharmacy benefit manager;
3 (9) "Pharmaceutical manufacturer," any person engaged in the business of preparing,
4 producing, converting, processing, packaging, labeling, or distributing a
5 prescription drug, but not including a wholesale distributor or dispenser;
6 (10) ~~"Pharmacist," an individual licensed by the State Board of Pharmacy, in accordance~~
7 ~~with chapter 36-11, to engage in the practice of pharmacy the same as set forth~~
8 ~~in § 36-11-2;~~
9 (11) ~~"Pharmacy," a place that:~~
10 ~~(a) Is licensed by the State Board of Pharmacy, in accordance with chapter 36-~~
11 ~~11;~~
12 ~~(b) Is located within or outside of this state; and~~
13 ~~(c) Provides for the dispensing of drugs and rendering of pharmaceutical care~~
14 ~~to residents of this state the same as set forth in § 36-11-2;~~
15 (6)(12) "Pharmacy benefits benefit management," the procurement of prescription
16 drugs at a negotiated rate for dispensation within this state to covered individuals,
17 the administration or management of prescription drug benefits provided by a
18 covered entity third-party payor for the benefit of covered individuals, or any of
19 the following services provided with regard to the administration of the following
20 pharmacy benefits:
21 (a) Mail service pharmacy;
22 (b) Claims processing, retail network management, and payment of claims to
23 pharmacies for prescription drugs dispensed to covered individuals;
24 (c) Clinical formulary development and management services;
25 (d) Rebate contracting and administration;
26 (e) Certain patient compliance, therapeutic intervention, and generic
27 substitution programs; and
28 (f) Disease management programs involving prescription drug utilization;
29 (7)(13) "Pharmacy benefit management fee," a fee that covers the cost of providing
30 pharmacy benefit management, but does not exceed the value of the service
31 performed by the pharmacy benefit manager;
32 (14) "Pharmacy benefits benefit manager," an entity a person that performs pharmacy
33 benefits benefit management. The term, pursuant to a contract or other
34 relationship with a third-party payor and includes-a;

- 1 ~~(a)~~ A person or entity acting for a pharmacy benefits manager in a contractual
 2 or employment relationship in the performance of for a pharmacy benefit
 3 manager while providing pharmacy benefits benefit management for a
 4 ~~covered entity~~ third party payor; and includes mail
- 5 (b) A mail service pharmacy. The term does not include a health carrier licensed
 6 pursuant to Title 58 when the health carrier or its subsidiary is providing
 7 pharmacy benefits management to its own insureds; or a public self-funded
 8 pool or a private single employer self-funded plan that provides such
 9 benefits or services directly to its beneficiaries;
- 10 ~~(8)~~ (15) "Pharmacy benefit manager affiliate," a pharmacy that, or a pharmacist who,
 11 directly or indirectly, through one or more intermediaries, owns or controls, is
 12 owned and controlled by, or is under common ownership or control of, a pharmacy
 13 benefit manager;
- 14 ~~(16)~~ "Pharmacy benefit manager duty," a duty imposed upon a pharmacy benefit
 15 manager to provide to the Division of Insurance, during any action under section
 16 18 of this Act:
- 17 ~~(a)~~ The amount charged or claimed by the pharmacy benefit manager in a
 18 format that allows the division to identify all instances of spread pricing;
 19 and
- 20 ~~(b)~~ Information regarding shared ownership interest, by any person defined in
 21 this section;
- 22 ~~(17)~~ "Pharmacy network," pharmacies that have contracted with a pharmacy benefit
 23 manager to dispense or sell prescription drugs to ~~individuals~~ covered individuals
 24 under a health benefit plan for which the prescription drug benefit is managed by
 25 a pharmacy benefit manager;
- 26 ~~(18)~~ (17) "Prescription drug," a drug classified by the United States Food and Drug
 27 Administration as requiring a prescription by a health care practitioner, prior to
 28 being administered or dispensed to a patient, and including interchangeable
 29 biological products, brand names, and generic drugs;
- 30 ~~(19)~~ (18) "Prescription drug benefit," a health benefit plan providing third-party payment
 31 or prepayment for prescription drugs;
- 32 ~~(20)~~ (19) "Prescription drug order," a practitioner's written or oral order, for a drug or a
 33 drug device, for a specific patient the same as set forth in § 36-11-2;

- 1 ~~(21)~~(20) "Proprietary information," information on pricing, costs, revenue, taxes, market
2 share, negotiating strategies, customers, and personnel held by a private entities
3 entity and used for that private entity's business purposes;
- 4 ~~(9)~~~~(22)~~(21) "Rebate," a discount or other negotiated price concession that is paid directly
5 or indirectly to a pharmacy benefit manager by a pharmaceutical manufacturer or
6 by an entity in the prescription drug supply chain, other than a covered individual,
7 and which is:
- 8 (a) Based on a pharmaceutical manufacturer's list price for a prescription drug;
9 (b) Based on utilization;
10 (c) Designed to maintain, for the pharmacy benefit manager, a net price for a
11 prescription drug, during a specified period of time, in the event the
12 pharmaceutical manufacturer's list price increases; or
13 (d) Based on estimates regarding the quantity of a prescribed drug that will be
14 dispensed by a pharmacy to covered individuals;
- 15 ~~(23)~~(22) "Spread pricing," an amount charged or claimed by a pharmacy benefit
16 manager that is in excess of the ingredient cost for a dispensed prescription drug,
17 plus a dispensing fee paid directly or indirectly to a pharmacy, pharmacist, or other
18 provider, on behalf of the third-party payor, less a pharmacy benefit management
19 fee;
- 20 ~~(24)~~(23) "Third-party payor," any entity, other than a covered individual, a covered
21 individual's representative, or a healthcare provider, which is responsible for any
22 amount of reimbursement for a prescription drug benefit, provided the term
23 includes a health carrier and a health benefit plan;
- 24 ~~(25)~~(24) "Trade secret," ~~information, including a formula, pattern, compilation, program,~~
25 ~~device, method, technique, or process, that:~~
- 26 ~~(a) — Derives independent economic value, actual or potential, from not being~~
27 ~~generally known to, and not being readily ascertainable by proper means~~
28 ~~by, other persons who can obtain economic value from its disclosure or use;~~
29 ~~and~~
- 30 ~~(b) — Is the subject of efforts that are reasonable under the circumstances to~~
31 ~~maintain its secrecy the same as set forth in § 37-29-1;~~
- 32 ~~(26)~~(25) "Unaffiliated pharmacy," a dispensing pharmacy that is not:
- 33 (a) Owned, in whole or in part, by a pharmacy benefit manager;
34 (b) A subsidiary of a pharmacy benefit manager; or
35 (c) An affiliate of a pharmacy benefit manager; and

- 1 ~~(27)(26)~~ "Wholesale distributor," ~~any person engaged in wholesale distribution, but not~~
 2 ~~including:~~
 3 ~~(a) — A manufacturer;~~
 4 ~~(b) — A manufacturer's co-licensed partner;~~
 5 ~~(c) — A repackager; or~~
 6 ~~(d) — A third-party logistics provider the same as set forth in § 36-11A-25.~~

7 **Section 2. That § 58-29E-2 be AMENDED:**

8 **58-29E-2.** ~~No A person or entity may perform or not~~ act as a pharmacy benefits
 9 ~~benefit manager~~ in this state without a ~~valid license~~ ~~to operate as a third party~~
 10 ~~administrator pursuant to chapter 58-29D. Sections 58-29D-26, 58-29D-27, and 58-29D-~~
 11 ~~29 do not apply to pharmacy benefits managers.~~

12 **Section 3. That § 58-29E-3 be AMENDED:**

13 **58-29E-3.** Each pharmacy ~~benefits benefit~~ manager shall perform its duties
 14 ~~exercising in good faith and with fair dealing toward the covered entity third-party payor.~~

15 **Section 4. That § 58-29E-4 be AMENDED:**

16 **58-29E-4.** A ~~covered entity third-party payor~~ may request that ~~any a~~ pharmacy
 17 ~~benefits benefit~~ manager, with which it has a pharmacy ~~benefits benefit~~ management
 18 services contract, disclose to the ~~covered entity, third-party payor~~ the amount of all rebate
 19 revenues and the nature, type, and amounts of all other revenues that the pharmacy
 20 ~~benefits benefit~~ manager receives from each pharmaceutical manufacturer ~~or labeler~~ with
 21 ~~whom which~~ the pharmacy ~~benefits benefit~~ manager has a contract. ~~The~~

22 Annually, at the time of contract renewal, the pharmacy benefits benefit manager
 23 shall disclose in writing:

- 24 (1) The aggregate amount, and for a list of drugs to be specified in the contract, the
 25 specific amount, of all rebates and other retrospective utilization discounts that are
 26 received by the pharmacy ~~benefits benefit~~ manager, directly or indirectly, from
 27 each pharmaceutical manufacturer ~~or labeler that, and which~~ are earned in
 28 connection with the dispensing of prescription drugs to covered individuals of the
 29 health benefit plans issued by the ~~covered entity third-party payor~~ or for which the
 30 ~~covered entity third-party payor~~ is the designated administrator;

- 1 (2) The nature, type, and amount of all other revenue received by the pharmacy
 2 ~~benefits~~benefit manager, directly or indirectly, from each pharmaceutical
 3 manufacturer ~~or labeler~~, for any other products or services, provided to the
 4 pharmaceutical manufacturer ~~or labeler~~ by the pharmacy ~~benefits~~benefit manager,
 5 with respect to programs that the ~~covered entity~~third-party payor offers or
 6 provides to its ~~enrollees~~covered individuals; and
- 7 (3) Any prescription drug utilization information requested by the ~~covered entity~~third-
 8 party payor and relating to covered individuals.

9 A pharmacy ~~benefits~~benefit manager shall, within thirty days, provide ~~such the~~
 10 information requested by the ~~covered entity~~ for such disclosure ~~within thirty days of~~
 11 ~~receipt of the request~~in accordance with this section.

12 If requested, the information shall must be provided no less than once each year.

13 The contract entered into between the pharmacy ~~benefits~~benefit manager and the
 14 ~~covered entity~~third-party payor must set forth any fees to be charged for drug
 15 utilization reports requested by the ~~covered entity~~third-party payor.

16 **Section 5. That § 58-29E-5 be AMENDED:**

17 **58-29E-5.** A pharmacy ~~benefits~~benefit manager, unless authorized pursuant to
 18 the terms of its contract with a ~~covered entity~~third-party payor, may not contact any
 19 covered individual, without the express written permission of the ~~covered entity~~third-party
 20 payor.

21 **Section 6. That § 58-29E-6 be AMENDED:**

22 **58-29E-6.** Except for utilization information, a ~~covered entity~~third-party payor
 23 shall maintain ~~any~~ information disclosed in response to a request ~~pursuant to~~under § 58-
 24 29E-4 as confidential and proprietary information, and may not use ~~such that~~ information
 25 for any other purpose or disclose ~~such that~~ information to any other person, except as
 26 provided in this chapter or in the pharmacy ~~benefits~~benefit management services contract
 27 between the parties.

28 ~~Any covered entity who~~A third-party payor that discloses information, in violation
 29 of this section, is subject to an action for injunctive relief and is liable for any damages
 30 ~~which that~~ are the direct and proximate result of ~~such the~~ disclosure.

31 Nothing in this section prohibits a ~~covered entity~~third-party payor from disclosing
 32 confidential or proprietary information to the director ~~of the Division of Insurance~~, upon

1 request. ~~Any such information~~Information obtained by the director in accordance with this
2 section is confidential and privileged, and is not open to public inspection or disclosure.

3 **Section 7. That § 58-29E-7 be AMENDED:**

4 ~~**58-29E-7.** The covered entity may have the pharmacy benefits manager's books~~
5 ~~and records related to the rebates or other information described in subdivisions 58-29E-~~
6 ~~4(1), (2), and (3), to the extent the information relates directly or indirectly to such~~
7 ~~covered entity's contract, audited in accordance with the terms of the pharmacy benefits~~
8 ~~management services contract between the parties. However, if the parties have not~~
9 ~~expressly provided for audit rights and the pharmacy benefits manager has advised the~~
10 ~~covered entity that other reasonable options are available and subject to negotiation, the~~
11 ~~covered entity may have such books and records audited as follows:~~

12 (1) ~~Such audits may be conducted no more frequently than once in each~~
13 ~~twelve month period upon not less than thirty business days' written notice to the~~
14 ~~pharmacy benefits manager;~~

15 (2) ~~The covered entity may select an independent firm to conduct such audit, and~~
16 ~~such independent firm shall sign a confidentiality agreement with the covered entity and~~
17 ~~the pharmacy benefits manager ensuring that all information obtained during such audit~~
18 ~~will be treated as confidential. The firm may not use, disclose, or otherwise reveal any~~
19 ~~such information in any manner or form to any person or entity except as otherwise~~
20 ~~permitted under the confidentiality agreement. The covered entity shall treat all~~
21 ~~information obtained as a result of the audit as confidential, and may not use or disclose~~
22 ~~such information except as may be otherwise permitted under the terms of the contract~~
23 ~~between the covered entity and the pharmacy benefits manager or if ordered by a court~~
24 ~~of competent jurisdiction for good cause shown;~~

25 (3) ~~Any such audit shall be conducted at the pharmacy benefits manager's office~~
26 ~~where such records are located, during normal business hours, without undue interference~~
27 ~~with the pharmacy benefits manager's business activities, and in accordance with~~
28 ~~reasonable audit procedures.~~

29 A third-party payor that has contracted with a licensed pharmacy benefit manager
30 may audit the pharmacy benefit manager once each calendar year. The audit authorized
31 by this section is in addition to any other statutory or contractual audit rights. As part of
32 the audit, a third-party payor may request:

33 (1) All reimbursements paid to retail pharmacies, on a claim level, for all customers
34 of the pharmacy benefit manager in this state, including ancillary charges, claw

- 1 backs, dispensing fees, drug-specific reimbursements, other fees, rebates, and
2 reimbursement adjustments;
- 3 (2) Differences in reimbursement amounts paid to affiliated and unaffiliated
4 pharmacies, including differences in dispensing fees and reimbursed ingredient
5 costs;
- 6 (3) Historical claims data, including:
- 7 (a) Acquisition costs;
8 (b) Administrative fees associated with claims;
9 (c) Amounts paid by a covered individual;
10 (d) Amounts paid by a third-party payor;
11 (e) Channels, whether mail or retail;
12 (f) Dispensing fees;
13 (g) Formulary tiers;
14 (h) Ingredient costs;
15 (i) Ingredient quantity;
16 (j) Sales tax;
17 (k) Supply availability by the number of days; and
18 (l) Usual and customary prices; and
- 19 (4) Aggregate rebate amounts, received by calendar quarter, directly or indirectly from
20 manufacturers, including rebates from other entities affiliated with or related to
21 the pharmacy benefit manager, if those entities negotiate or contract with
22 manufacturers.

23 A pharmacy benefit manager shall, within thirty days, provide the information
24 requested in accordance with this section, together with a certification, signed by the chief
25 executive officer or the chief financial officer of the pharmacy benefit manager, attesting
26 to the accuracy and completeness of the information.

27 **Section 8. That chapter 58-29E be amended with a NEW SECTION:**

- 28 ~~A~~—Except as provided in chapter 58-17K, and in accordance with the audit
29 provisions in § 58-29E-7, a third-party payor that has contracted with a licensed pharmacy
30 benefit manager may not publish, or directly or indirectly disclose:
- 31 (1) Any information that reveals the identity of a specific third-party payor or
32 manufacturer;
- 33 (2) Prices charged for a specific drug or class of drugs;
- 34 (3) The amount of any rebates provided for a specific drug or class of drugs; or

1 (4) Any information that has the potential to compromise the financial, competitive, or
 2 proprietary nature of the pharmacy benefit manager's business.

3 The information referenced in ~~this section § 58-29E-7~~ is protected from disclosure
 4 as confidential and proprietary. The information is privileged and not open to public
 5 inspection or disclosure.

6 A third-party payor that has contracted with a licensed pharmacy benefit manager
 7 shall impose the confidentiality protections set forth in ~~this section § 58-29E-7~~ on any
 8 vendor or third party that may receive or have access to the information.

9 **Section 9. That § 58-29E-8 be AMENDED:**

10 **58-29E-8.** ~~With regard to the dispensation of a substitute prescription drug for a~~
 11 ~~prescribed drug to a covered individual, when the pharmacy benefits manager requests a~~
 12 ~~substitution, the following provisions apply:~~

13 ~~(1) The~~A pharmacy benefits benefit manager may request the substitution of that
 14 a lower-priced generic and therapeutically equivalent prescription drug be dispensed to a
 15 covered individual, as a substitute for a higher-priced ~~prescribed prescription drug~~;

16 ~~(2) With regard to substitutions in which,~~

17 If the substitute prescription drug's net cost is ~~more~~ higher for the covered
 18 individual or the ~~covered entity~~ third-party payor than the originally prescribed drug, the
 19 substitution ~~must~~ may be made only for medical reasons that benefit the covered
 20 individual.

21 If a substitution is being requested pursuant to this ~~subdivision~~ section, the
 22 pharmacy ~~benefits benefit manager~~ shall ~~must~~ obtain the approval of the prescribing
 23 health professional.

24 Nothing in this section permits the substitution of an equivalent drug product
 25 contrary to § 36-11-46.2.

26 **Section 10. That § 58-29E-8.1 be AMENDED:**

27 **58-29E-8.1.** A pharmacy ~~benefits benefit manager~~ may neither prohibit a
 28 pharmacist or pharmacy from, nor penalize a pharmacist or pharmacy for ~~providing cost-~~
 29 sharing information on the amount a covered individual may pay for a particular, informing
 30 ~~an a covered~~ individual about:

31 (1) The cost of a prescription drug;

32 (2) The amount of reimbursement that the pharmacy will receive for dispensing the
 33 prescription drug;

- 1 (3) The cost and clinical efficacy of a more affordable alternative prescription drug, if
 2 one is available; and
- 3 (4) Any differential between the amount ~~an a covered~~ individual would pay under the
 4 ~~covered~~ individual's prescription drug benefit and a lower price the ~~covered~~
 5 individual would pay for the prescription drug, if the ~~covered~~ individual obtained
 6 the prescription drug without making a claim for benefits on the ~~covered~~
 7 individual's prescription drug benefit.

8 **Section 11. That § 58-29E-10 be AMENDED:**

9 **58-29E-10.** ~~Any covered entity~~A third-party payor may bring a civil action to
 10 enforce ~~the provisions of this chapter or to seek civil damages for the a~~ violation of its
 11 ~~provisions~~this chapter.

12 **Section 12. That § 58-29E-12 be AMENDED:**

13 **58-29E-12.** ~~No~~A pharmacy benefit manager ~~shall~~may not contractually require
 14 a pharmacy, ~~who that~~ is a participating provider in a health benefit plan provided by a
 15 ~~covered entity, to charge or collect third-party payor, from charging a covered individual~~
 16 or collecting from an insured a covered individual a cost share for a prescription drug or
 17 pharmacy service that exceeds the amount retained by the pharmacist or pharmacy from
 18 all payment sources, ~~for the filling of the prescription or providing the pharmacy service.~~

19 **Section 13. That § 58-29E-13 be AMENDED:**

20 **58-29E-13.** ~~No~~A pharmacy benefit manager ~~contracting with a covered entity~~
 21 ~~shall~~may not, directly or indirectly, retroactively adjust a claim for reimbursement
 22 submitted by a pharmacy for a prescription drug, ~~unless the adjustment is a result of~~
 23 ~~either of the following:~~

- 24 (1) ~~A~~The adjustment is necessitated by a pharmacy audit conducted in accordance
 25 with chapter 58-29F; ~~or~~
- 26 (2) ~~A~~The adjustment is necessitated by a technical billing error; ~~or~~
- 27 (3) The original claim was found to have been fraudulently submitted; or
- 28 (4) The claim submission was a duplicate for which the pharmacy had already received
 29 payment.

30 **Section 14. That chapter 58-29E be amended with a NEW SECTION:**

1 A pharmacy benefit manager may not assess, charge, or collect, from a pharmacy
2 or pharmacist, any remuneration or fee, including:

3 (1) An accreditation fee;

4 (2) A brand effective rate fee;

5 (3) A claim processing fee;

6 (4) A credentialing fee;

7 (5) A dispensing fee;

8 (6) An effective rate fee;

9 (7) A generic effective rate fee;

10 (8) A pharmacy network participation fee; and

11 (9) A performance-based fee.

12 **Section 15. That chapter 58-29E be amended with a NEW SECTION:**

13 Prior to placing a prescription drug on a maximum allowable cost list, a pharmacy
14 benefit manager shall ensure that the prescription drug is:

15 (1) Listed as therapeutically and pharmaceutically equivalent in the latest edition of,
16 or any supplement to, the Food and Drug Administration's publication entitled
17 Approved Drug Products with Therapeutic Equivalence Evaluations, as adopted by
18 the State Board of Pharmacy, in rules promulgated pursuant to chapter 1-26;

19 (2) Not obsolete or temporarily unavailable; and

20 (3) Available for purchase, without limitation, by every pharmacy in this state, from a
21 national or regional wholesale distributor licensed in this state.

22 **Section 16. That chapter 58-29E be amended with a NEW SECTION:**

23 A pharmacy benefit manager shall:

24 (1) Provide each pharmacy in a pharmacy network with reasonable access to each
25 maximum allowable cost list to which the pharmacy is subject;

26 (2) Update a maximum allowable cost list, within seven calendar days from the date
27 of any increase, at or above ten percent, in the price charged for a prescription
28 drug on the list by one or more wholesale distributors doing business in this state;

29 (3) Update the maximum allowable cost list, within seven calendar days from the date
30 of any change in the methodology, or any change in the value of a variable applied
31 in the methodology, on which the maximum allowable cost list is based; and

- 1 (4) Provide a process under which each pharmacy in a pharmacy network may receive
 2 prompt notice of any change in a maximum allowable cost list to which the
 3 pharmacy is subject.

4 **Section 17. That chapter 58-29E be amended with a NEW SECTION:**

5 A pharmacy benefit manager may not reimburse any pharmacy located in this state
 6 an amount that is less than that which the pharmacy benefit manager reimburses a
 7 pharmacy benefit manager affiliate for dispensing the same prescription drug as that
 8 dispensed by the pharmacy.

9 The reimbursement amount must be calculated on a per unit basis, using the same
 10 generic product identifier or generic code number.

11 **Section 18. That chapter 58-29E be amended with a NEW SECTION:**

12 ~~The director of the Division of Insurance may deny an application for licensure as~~
 13 ~~a pharmacy benefit manager, may deny an application for the renewal of a pharmacy~~
 14 ~~benefit manager license, and may suspend or revoke the license of a pharmacy benefit~~
 15 ~~manager, if the director determines that the pharmacy benefit manager:~~

- 16 ~~(1) Is in an unsound financial condition;~~
 17 ~~(2) Is using methods or practices that are potentially hazardous or injurious to~~
 18 ~~covered individuals, third party payors, or providers;~~
 19 ~~(3) Has failed to pay, within sixty days, any final judgment entered against it;~~
 20 ~~(4) Has violated any statute or rule, or an order of the director;~~
 21 ~~(5) Has refused:~~
 22 ~~(a) To be examined;~~
 23 ~~(b) To produce its accounts, records, and files for examination; or~~
 24 ~~(c) To provide information regarding its business or any duties set forth in this~~
 25 ~~chapter;~~
 26 ~~(6) Has, without just cause:~~
 27 ~~(a) Refused to pay proper claims or perform services arising under its contracts;~~
 28 ~~(b) Required providers to accept less than the amount due them; or~~
 29 ~~(c) Required covered individuals to threaten or initiate legal action in order to~~
 30 ~~secure their full payment or the settlement of their claims;~~
 31 ~~(7) — Is affiliated with or under the same general management or interlocking directorate~~
 32 ~~or ownership as another pharmacy benefit manager that transacts business in this~~
 33 ~~state without a license;~~

1 ~~(8) Fails to meet or continue meeting any qualification required for the issuance of an~~
2 ~~initial license;~~

3 ~~(9) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a~~
4 ~~felony, without regard to whether adjudication was withheld;~~

5 ~~(10) Has a license that is under suspension or revocation in another state; or~~

6 ~~(11) Has provided false or misleading information to the director~~

7 A pharmacy benefit manager licensed under this chapter shall, at the request of
8 the Division of Insurance, provide:

9 (1) The amount charged or claimed by the pharmacy benefit manager, in a format that
10 allows the division to identify all instances of spread pricing; and

11 (2) Information regarding a shared ownership interest by any person defined in § 58-
12 29E-1.

13 **Section 19. That chapter 58-29E be amended with a NEW SECTION:**

14 In addition to any grounds set forth in § 58-29D-31, the director may deny a
15 pharmacy benefit manager's application for an initial or a renewed license, and may
16 suspend or revoke a pharmacy benefit manager's license, if the director determines that
17 the pharmacy benefit manager, or an applicant for a license, failed to provide information
18 as required by this chapter.

19 **Section 20. That § 58-29E-11 be REPEALED:**

20 ~~The provisions of this chapter apply only to pharmacy benefits management~~
21 ~~services contracts entered into or renewed after June 30, 2004.~~