

SENATE FILE NO. SF0078

Prescription drug practices.

Sponsored by: Senator(s) Mockler

A BILL

for

1 AN ACT relating to prescription drug practices; creating a  
2 fiduciary duty for pharmacy benefit managers; requiring  
3 pharmacy benefit managers to pass on any benefits or  
4 payments received from drug manufacturers to covered  
5 individuals; providing for disclosure of financial  
6 information; providing penalties; and providing for an  
7 effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

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11 **Section 1.** W.S. 26-13-301 and 26-13-302 are created  
12 to read:

13

14

## ARTICLE 3

15

## PRESCRIPTION DRUG PRACTICES

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17 **26-13-301. Definitions.**

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2 (a) As used in this article:

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4 (i) "Covered entity" means a nonprofit hospital  
5 or medical service organization, insurer, health coverage  
6 plan or health maintenance organization licensed under W.S.  
7 26-34-104, a health program administered by the state in  
8 the capacity of provider of health coverage or an employer,  
9 labor union or other group of persons organized in the  
10 state that provides health coverage to covered individuals  
11 who are employed or reside in the state. "Covered entity"  
12 does not include a health plan that provides coverage only  
13 for accidental injury, specified disease, hospital  
14 indemnity, Medicare supplement, disability income or other  
15 long-term care;

16

17 (ii) "Covered individual" means a member,  
18 participant, enrollee, contract holder or policy holder or  
19 beneficiary of a covered entity who is provided health  
20 coverage by the covered entity. "Covered individual"  
21 includes a dependent or other person provided health  
22 coverage through a policy, contract or plan for a covered  
23 individual;

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1           (iii) "Generic drug" means a chemically  
2 equivalent copy of a brand-name drug with an expired  
3 patent;

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5           (iv) "Labeler" means an entity or person that  
6 receives prescription drugs from a manufacturer or  
7 wholesaler and repackages those drugs for later retail sale  
8 and that has a labeler code from the federal food and drug  
9 administration under 21 C.F.R. § 270.20;

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11           (v) "Pharmacy benefits management" means the  
12 procurement of prescription drugs at a negotiated rate for  
13 dispensation within this state to covered individuals, the  
14 administration or management of prescription drug benefits  
15 provided by a covered entity for the benefit of covered  
16 individuals or any of the following services provided with  
17 regard to the administration of pharmacy benefits:

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19                   (A) Mail service pharmacies;

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21                   (B) Claims processing, retail network  
22 management and payment of claims to pharmacies for  
23 prescription drugs dispensed to covered individuals;

24

1 (C) Clinical management formulary  
2 development and management services;

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4 (D) Patient compliance, therapeutic  
5 intervention and generic substitution programs;

6

7 (E) Disease management programs;

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9 (F) Rebate contracting and administration.

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11 (vi) "Pharmacy benefits manager" means an entity  
12 or person that performs pharmacy benefits management.  
13 "Pharmacy benefits manager" includes a person or entity  
14 acting for a pharmacy benefits manager in a contractual or  
15 employment relationship in the performance of pharmacy  
16 benefits management for a covered entity and includes mail  
17 service pharmacies;

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19 (vii) "Therapeutically equivalent" means as  
20 provided in W.S. 33-24-147(a)(iv).

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22 **26-13-302. Prescription drug practices; fiduciary**  
23 **duty.**

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1           (a) A pharmacy benefits manager shall perform its  
2 duties with care, skill, prudence and diligence and in  
3 accordance with the standards or conduct applicable to a  
4 fiduciary in an enterprise of like character and with like  
5 aims.

6

7           (b) A pharmacy benefits manager shall discharge its  
8 duties with respect to the covered entity and covered  
9 individuals solely in the interests of the covered  
10 individuals and for the primary purpose of providing  
11 benefits to covered individuals and defraying reasonable  
12 expenses of administering health plans.

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14           (c) A pharmacy benefits manager shall notify a  
15 covered entity in writing of any activity, policy or  
16 practice of the pharmacy benefits manager that directly or  
17 indirectly presents any conflict of interest with the  
18 duties imposed by this section.

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20           (d) A pharmacy benefits manager shall provide to a  
21 covered entity all financial and utilization information  
22 requested by the covered entity relating to the provision  
23 of benefits to covered individuals through that covered  
24 entity and all financial and utilization information

1 relating to services to that covered entity. A pharmacy  
2 benefits manager providing information under this  
3 subsection may designate these materials confidential.  
4 Information designated as confidential by a pharmacy  
5 benefits manager and provided to a covered entity under  
6 this subsection shall not be disclosed to any person  
7 without the consent of the pharmacy benefits manager,  
8 except as otherwise provided by law.

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10 (e) The following shall apply to the pharmacy  
11 benefits manager requesting or requiring the dispensing of  
12 a substitute prescription drug for another prescribed drug  
13 to a covered individual shall only be as follows:

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15 (i) A pharmacy benefits manager may substitute a  
16 lower-priced prescribed drug for a higher-priced prescribed  
17 drug. Regular generic substitution is governed by existing  
18 state of Wyoming board of pharmacy law;

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20 (ii) A pharmacy benefits manager shall not  
21 substitute a higher-priced prescribed drug for a lower-  
22 priced prescribed drug without authorization from the  
23 prescribing health professional;

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1           (iii) Substitution of therapeutically equivalent  
2 drugs be authorized by the prescribing health professional;

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4           (iv) A pharmacy benefits manager shall disclose  
5 the costs of both drugs to the covered individual, or that  
6 person's authorized representative, and the covered entity  
7 and any benefit or payment directly or indirectly accruing  
8 to the pharmacy benefits manager as a result of the  
9 substitution;

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11           (v) The pharmacy benefits manager shall transfer  
12 in full to the covered entity or covered individuals any  
13 benefit or payment received in any form by the pharmacy  
14 benefits manager as a result of the prescription drug  
15 substitution.

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17           (f) A pharmacy benefits manager that derives any  
18 payment or benefit for the dispensation of prescription  
19 drugs within the state based on volume of sales for certain  
20 prescription drugs or classes or brands of drugs within the  
21 state shall pass that payment or benefit on in full to the  
22 covered entity or covered individuals.

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1           (g) A pharmacy benefits manager shall disclose to the  
2 covered entity all financial terms and arrangements for  
3 remuneration of any kind that apply between the pharmacy  
4 benefits manager and any prescription drug manufacturer or  
5 labeler, including, with limitation, formulary management  
6 and drug-switch programs, education support, claims  
7 processing and pharmacy network fees that are charged from  
8 retail pharmacies and data sales fees.

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10           (h) A pharmacy benefits manager shall not in a  
11 contract with a covered entity or a prescription drug  
12 manufacturer or labeler accept or agree to an obligation  
13 that is inconsistent with the fiduciary duties imposed by  
14 this section. Any agreement to waive the provisions of  
15 this section is against public policy and void.

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17           (j) The commissioner shall enforce the provisions of  
18 this article as provided in W.S. 26-2-130.

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20           **Section 2.** This act is effective July 1, 2008.

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(END)