

HOUSE BILL NO. HB0107

Pharmacy benefit managers-prohibited practices.

Sponsored by: Representative(s) Kirkbride, Blackburn, Brown, Furphy, Larsen, Sweeney and Zwonitzer and Senator(s) Boner and Pappas

A BILL

for

1 AN ACT relating to pharmacy benefit managers; prohibiting
2 specified practices by pharmacy benefit managers and
3 insurers; authorizing specified audits; establishing civil
4 liability for specified violations; making conforming
5 amendments; specifying applicability of certain provisions;
6 and providing for an effective date.

7

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

9

10 **Section 1.** W.S. 9-3-219, 26-34-136, 26-52-105 and
11 26-52-106 are created to read:

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13 **9-3-219. Applicability of specified provisions.**

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1 W.S. 26-52-105 applies to a health insurance plan issued
2 under this article.

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4 **26-34-136. Applicability of specified provisions.**

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6 W.S. 26-52-105 applies to group health insurance or a
7 health care plan issued by a health maintenance
8 organization under this chapter.

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10 **26-52-105. Prohibited practices; audits.**

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12 (a) A pharmacy benefit manager or an insurer shall
13 not require an insured person to make a payment at the
14 point of sale of a prescription in an amount greater than
15 the lesser of the:

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17 (i) Applicable copayment, coinsurance or other
18 cost-sharing requirement set forth in a private health
19 benefit plan;

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21 (ii) Amount the insurer has contracted or
22 otherwise agreed in advance to pay or reimburse the
23 pharmacy for the prescription; or

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2 (iii) Amount the insured person would pay for
3 the prescription if the person purchased the prescription
4 without coverage from a private health benefit plan.

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6 (b) An insurer, a pharmacy benefit manager and any
7 contract or agreement made by an insurer or a pharmacy
8 benefit manager with a pharmacy shall not incentivize a
9 pharmacy not to take the actions specified in paragraph (i)
10 of this subsection and shall not prohibit or penalize in
11 any manner, including through increased utilization review,
12 reduced payments or reimbursements or other financial
13 disincentives, the following actions by a pharmacy:

14

15 (i) Disclosure of any data to an insured person
16 relating to:

17

18 (A) The cost of a prescription;

19

20 (B) Any payments or reimbursements made to
21 the pharmacy by an insurer or a pharmacy benefit manager
22 relating to a prescription.

23

1 (ii) Disclosure of the availability of a
2 therapeutic equivalent or alternative methods of purchasing
3 a prescription, including paying a cash price or utilizing
4 a prescription discount or assistance program.

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6 (c) A pharmacy benefit manager shall not impose a
7 charge on a pharmacy relating to the:

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9 (i) Receipt or processing of a claim for payment
10 or reimbursement;

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12 (ii) Development or management of a claim
13 processing network;

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15 (iii) Participation of the pharmacy in a claim
16 processing network.

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18 (d) A pharmacy benefit manager shall not contract or
19 otherwise agree with an insurer to increase any premium,
20 copayment, coinsurance, deductible or other cost-sharing
21 requirement or reduce any benefit based on the requirements
22 of this section.

23

1 (e) The commissioner may examine an insurer,
2 pharmacy, pharmacy benefit manager, any designee of the
3 pharmacy who holds a contract with a pharmacy benefit
4 manager or any other related entity to ensure compliance
5 with this section, in the manner prescribed by W.S.
6 26-2-116 through 26-2-124.

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8 (f) This section shall supersede any other provision
9 of law, contract or agreement to the extent necessary to
10 implement this section.

11

12 (g) As used in this section, "pharmacy" shall include
13 a pharmacist.

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15 **26-52-106. Civil liability for specified violations;**
16 **defenses; applicability.**

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18 (a) A person injured by a violation of W.S. 26-52-105
19 may maintain a civil action against the person who
20 committed the violation and recover actual and
21 consequential damages, reasonable attorney's fees and court
22 costs relating to the injury.

23

1 (b) A defendant of a civil action brought under
2 subsection (a) of this section:

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4 (i) Shall not assert, as a partial or complete
5 defense, that the defendant did not have direct interaction
6 with a plaintiff;

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8 (ii) May, in order to avoid duplicative
9 liability, assert as a partial or complete defense that any
10 charge prohibited by W.S. 26-52-105 was passed along by a
11 person who paid the charge to another person in the chain
12 of commerce.

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14 (c) Except as otherwise provided by the Wyoming
15 Governmental Claims Act, W.S. 1-39-101 through 1-39-120,
16 this section shall not apply to an action or inaction of an
17 employee or officer of a governmental entity, as defined in
18 W.S. 1-39-103(a)(i).

19

20 **Section 2.** W.S. 26-2-117(a)(intro), 26-2-122(a) and
21 26-52-102(a)(ii), (vi) and by creating new paragraphs
22 (viii) and (ix) are amended to read:

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1 **26-2-117. Examination of other than insurers.**

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3 (a) For the purpose of ascertaining compliance with
4 law, or relationships and transactions between any person
5 and any insurer or proposed insurer, the commissioner, as
6 often as he deems advisable, may examine the accounts,
7 records, documents and transactions pertaining to or
8 affecting any requirement of W.S. 26-52-105 or the
9 insurance affairs or proposed insurance affairs of any
10 person:

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12 **26-2-122. Examinations; expense.**

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14 (a) The reasonable and proper expense of examination
15 of an insurer or of any person referred to in W.S.
16 26-2-117(a) (ii) or (iv) or any person examined pursuant to
17 W.S. 26-52-105(e) shall be borne by the person examined,
18 unless the expense has been otherwise provided for by the
19 insurer having paid the assessment established by W.S.
20 26-2-204. The expense shall include the reasonable and
21 proper expenses of the commissioner and his examiners, and
22 a reasonable per diem as to such examiners, as necessarily
23 incurred in the examination.

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2 **26-52-102. Definitions.**

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4 (a) As used in this article:

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6 (ii) "Insurer" means the entity defined in W.S.
7 26-1-102(a)(xvi) and who provides health insurance coverage
8 in this state and includes a health maintenance
9 organization, the state employees' and officials' health
10 group insurance plan and any provider of a plan made
11 available under W.S. 9-3-201;

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13 (vi) "Pharmacy" means an entity through which
14 pharmacists or other persons practice pharmacy as specified
15 in W.S. 33-24-124 and includes any designee of the pharmacy
16 who holds a contract with a pharmacy benefit manager;

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18 (viii) "Private health benefit plan" means as
19 defined in W.S. 26-1-102(a)(xxxiii), and includes a
20 nonfully funded multiple employer welfare arrangement, the
21 state employees' and officials' health group insurance plan
22 and any plan made available under W.S. 9-3-201;

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1 (ix) "Therapeutically equivalent" or
2 "therapeutic equivalent" means as defined in W.S.
3 33-24-147(a)(v).

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5 **Section 3.** This act is effective January 1, 2019.

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(END)