

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB316

Hearing Date: Monday March 04, 2019
Committee On: Banking, Commerce and Insurance
Introducer: Kolterman
One Liner: Adopt the Pharmacy Benefit Fairness and Transparency Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Gragert, Howard, Kolterman, La Grone, Lindstrom,
McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

Oral Testimony:

Proponents:

Senator Mark Kolterman
Trevor Bertsch
Connie Bolte
Bob Lassen
Joni Cover
Matt Schaefer
William Mueller

Representing:

Introducer
NE Pharmacists Association
NE Pharmacists Association
AARP
NE Pharmacists Association
NE Medical Association
Pharmaceutical Research and Manufacturers of
America

Opponents:

David Root
Eric Dunning
Noah Tabor
Robert Bell

Representing:

Prime Therapeutics
Blue Cross Blue Shield of NE
Medica
NE Insurance Federation

Neutral:

Representing:

Summary of purpose and/or changes:

This bill would enact seven new sections to be known as the Pharmacy Benefit Fairness and Transparency Act to provide for regulation of pharmacy benefit managers by the Nebraska Department of Insurance.

A pharmacy benefit manager would be defined as a person or an entity that performs pharmacy benefits management services for a covered entity. Pharmacy benefits management would be defined as the administration or management of prescription drug benefits provided by a covered entity under a contract between the pharmacy benefit manager and the covered entity. A covered entity would be defined to include (a) an insurer, a third-party payor, a managed care company, or a health maintenance organization, (b) a health program administered by the state in the capacity of provider of health insurance coverage, or (c) an employer, a labor union, or any other group that provides health insurance coverage.

The bill would provide, section by section, as follows:

Section 1 would provide for a named act: the Pharmacy Benefit Fairness and Transparency Act.

Section 2 would provide definitions: (1) "contracted pharmacy," (2) "covered entity," (3) "covered individual," (4) "director," (5) "insurer," (6) "pharmacist," (7) "pharmacy," (8) "pharmacy benefit manager," (9) "pharmacy benefits management," (10) "prescription drug," and (11) third-party payor."

Section 3 would provide that a pharmacy benefit manager doing business in this state shall obtain a certificate of authority as a third-party administrator from the Director of Insurance. A pharmacy benefit manager shall pay to the director a certification fee not to exceed \$5,000. The director shall enforce the Pharmacy Benefit Fairness and Transparency Act. A violation of the act shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act. The director may examine the financial condition, affairs, and management of a pharmacy benefit manager.

Section 4 would provide that a pharmacy benefit manager shall exercise good faith and fair dealing in performing its duties under a contract with a covered entity or a contracted pharmacy.

Section 5 would provide that a pharmacy benefit manager shall not charge or collect from a covered person a copayment for a prescription or pharmacy service that exceeds the amount retained by the network pharmacy from all payment sources for filling the prescription or providing the service. Any amount paid by an insured shall be applied toward any deductible the insured has under the insured's health plan.

This section also would provide that a pharmacy benefit manager shall not exclude a Nebraska pharmacy from participation in its specialty pharmacy network. A licensed pharmacy or pharmacist may dispense prescription drugs that are allowed pursuant to the license.

This section also would provide that covered individuals who use a mail-order pharmacy shall not be charge fees or higher copays to use a contracted pharmacy. A pharmacy benefit manager shall not prohibit a pharmacist or contracted pharmacy from mailing a prescription drug to a covered individual.

Section 6 would provide that a pharmacist or contracted pharmacy shall not be prohibited from or subject to penalties or removal from a network or plan for sharing information regarding the cost, price, or copayment of a prescription drug with a covered individual or covered individual's caregiver.

Section 7 would provide the director with rule and regulation authority.

Explanation of amendments:

The committee amendments become the bill. They would address two matters:

First, the amendments would provide that a contracted pharmacy shall not be prohibited from or subject to penalties or removal from a network or plan for sharing information regarding the cost, price, or copayment of a prescription drug with a covered individual. The amendments would further provide that a pharmacy benefit manager shall not prohibit or inhibit a contracted pharmacy from discussing any such information or selling a more affordable alternative to a covered individual.

Second, the amendments would provide that an insurer shall not require a covered individual to make a payment for a prescription drug at the point of sale in an amount that exceeds the lesser of: (a) the individual's copayment, deductible, or coinsurance for such prescription drug; or (b) the amount any individual would pay for such prescription drug if the individual paid in cash.

Matt Williams, Chairperson