

This document summarizes the Governor's vetoes exercised on 2023 Senate File 0151. Due to insertion of veto explanations, pagination in this document will not match the original enrolled act. See the Governor's veto message for vetoes on the original act.

ORIGINAL SENATE
FILE NO. SF0151

ENGROSSED

ENROLLED ACT NO. 90, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
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AN ACT relating to the insurance code; prohibiting specified actions by pharmacy benefit managers; allowing individuals to choose in network retail pharmacies as specified; providing definitions; excluding certain claims as specified; amending a definition; requiring pharmacy benefit managers to provide contact information as specified; amending the process for when a maximum allowable cost appeal is denied; requiring pharmacy benefit managers to allow pharmacies to file appeals in electronic batch formats; requiring pharmacy benefit managers to reimburse pharmacies as specified; authorizing pharmacies to decline to provide pharmacy services as specified; making conforming amendments; requiring rulemaking; providing appropriations; and providing for effective dates.

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

Section 1. W.S. 26-52-105 through 26-52-107 are created to read:

26-52-105. Transparency; prohibitions.

(a) A pharmacy benefit manager or an agent of a pharmacy benefit manager shall not:

(i) Cause or knowingly permit the use of an advertisement, promotion, solicitation, representation, proposal or offer that is untrue, deceptive or misleading;

(ii) Charge a pharmacist or pharmacy provider a fee for any of the following:

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- (A) The submission of a claim;
- (B) Enrollment or participation in a retail pharmacy network;
- (C) The development or management of claims processing services or claims payment services related to participation in a retail pharmacy network;
- (D) An application to apply for network access with the pharmacy benefit manager;
- (E) Credentialing or re-credentialing;

~~[(F) Any change of ownership.]~~ [BRACKETED LANGUAGE SHOWN IN BOLD AND AS STRICKEN WAS VETOED BY GOVERNOR MARCH 17, 2023.]

(iii) Retroactively deny or reduce reimbursement for a covered pharmacy service or claim after adjudication of the claim, unless:

- (A) The original claim was fraudulent; or
- (B) The denial or reduction is necessary to correct errors found in an audit, provided that the audit was conducted in compliance with W.S. 26-52-103.

~~[(iv) Restrict a person's choice of network providers for prescription drugs, except for specialty medications as defined by W.S. 26-52-102(a)(xi);]~~ [BRACKETED LANGUAGE SHOWN IN BOLD AND AS STRICKEN WAS VETOED BY GOVERNOR MARCH 17, 2023.]

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~~[(v) Conduct spread pricing;]~~ [BRACKETED
LANGUAGE SHOWN IN BOLD AND AS STRICKEN WAS VETOED BY
GOVERNOR MARCH 17, 2023.]

~~[(vi) Retain funds paid by a pharmaceutical
manufacturer to a pharmacy benefits manager as a result of
negotiations of a reduced price for a pharmaceutical
between a pharmacy benefits manager and a manufacturer, in
relation to a contract between a pharmacy benefits manager
and an insurer related to its insured prescription drug
benefits. Funds retained under this paragraph shall be
remitted to and retained by the insurer and shall be used
by the insurer to lower premiums for covered persons under
the insurer's health benefits plan or to allow for
remittance directly to the covered person at the point of
sale to reduce the covered person's out-of-pocket costs;]~~
[BRACKETED LANGUAGE SHOWN IN BOLD AND AS STRICKEN WAS
VETOED BY GOVERNOR MARCH 17, 2023.]

(vii) Prohibit a pharmacy, pharmacy services
administrative organization, contracting agent or agent of
a pharmacy from sharing, upon request, copies of pharmacy
benefit manager contracts with ~~[requesting pharmacies or]~~
the department of insurance; [BRACKETED LANGUAGE SHOWN IN
BOLD AND AS STRICKEN WAS VETOED BY GOVERNOR MARCH 17,
2023.]

(viii) Prohibit, restrict or limit disclosure of
information to the insurance commissioner, law enforcement
or other state or federal government officials who are
investigating or examining a complaint or conducting a
review of the pharmacy benefit manager's compliance with
the requirements of this chapter;

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~~[(ix) Reimburse a pharmacy for pharmacy services in an amount less than the amount that the pharmacy benefit manager reimburses a pharmacy benefit manager owned or pharmacy benefit manager affiliated pharmacy for providing the same pharmacy services. The reimbursement amount paid to the pharmacy shall be equal to the reimbursement amount paid to a pharmacy benefit manager owned or pharmacy benefit manager affiliated pharmacy.] [BRACKETED LANGUAGE SHOWN IN BOLD AND AS STRICKEN WAS VETOED BY GOVERNOR MARCH 17, 2023.]~~

~~[(b) A person's choice of network provider shall include a retail pharmacy. An insurer or pharmacy benefit manager shall not require or incentivize using any discounts in cost sharing or a reduction in copay or the number of copays to individuals to receive prescription drugs from an individual's choice of in network pharmacy, except for specialty medications as defined by W.S. 26-52-102(a)(xi).] [BRACKETED LANGUAGE SHOWN IN BOLD AND AS STRICKEN WAS VETOED BY GOVERNOR MARCH 17, 2023.]~~

(c) Insurers, pharmacies and pharmacy benefit managers shall adhere to all state laws and rules when mailing or shipping prescription drugs into the state.

26-52-106. Alternate reimbursement methodologies.

~~[(a)] All contracts between a pharmacy benefits manager and a pharmacy services administrative organization, or its contracted pharmacies, and all contracts directly between a pharmacy benefits manager and a pharmacy shall include a process to investigate and resolve disputes [and allow appeals regarding brand and multiple-source generic drug pricing, including if applicable brand effective rates, for pharmacy~~

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~~reimbursement~~]. [BRACKETED LANGUAGE SHOWN IN BOLD AND AS STRICKEN WAS VETOED BY GOVERNOR MARCH 17, 2023.]

~~[(b) Appeals authorized under this section shall comply with the procedures specified in W.S. 26-52-104.]~~
[BRACKETED LANGUAGE SHOWN IN BOLD AND AS STRICKEN WAS VETOED BY GOVERNOR MARCH 17, 2023.]

26-52-107. Certain claims excluded.

W.S. 26-52-104 through 26-52-106 shall apply to all health benefit plan issuers and pharmacy benefit managers except those claims associated with the Wyoming Medicaid fee-for-service program, the Wyoming workers compensation division or those claims otherwise prohibited by federal law.

Section 2. W.S. 26-52-102(a)(vii) and by creating new paragraphs (viii) through (xii) and 26-52-104(a)(i), (d)(ii), (e), (f) and by creating new subsections (k) and (m) are amended to read:

26-52-102. Definitions.

(a) As used in this article:

(vii) "Pharmacy benefit manager" means an entity that contracts with a pharmacy or the pharmacy's designee who holds a contract with the pharmacy benefit manager on behalf of an insurer or third party administrator to administer or manage prescription drug benefits~~;~~.

~~[(viii) "Pharmacy acquisition cost" means the amount a pharmaceutical wholesaler charges for a pharmaceutical product as listed on the pharmacy's billing~~

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~~invoice;~~] [BRACKETED LANGUAGE SHOWN IN BOLD AND AS STRICKEN
WAS VETOED BY GOVERNOR MARCH 17, 2023.]

~~(ix) "Pharmacy services" means any product, good or service, or any combination of products, goods or services, provided as part of the practice of pharmacy;~~

~~(x) "Pharmacy services administrative organization" means an organization that evaluates and executes pharmacy benefit manager contracts on behalf of pharmacies and provides administrative, clerical, audit and data analytics support services;~~

~~[(xi) "Specialty medication" means a prescription drug that is typically high cost and that:~~

~~(A) Is prescribed for a person with a:~~

~~(I) Chronic, complex or life-threatening condition; or~~

~~(II) Rare medical condition.~~

~~(B) Has limited or exclusive distribution;~~
~~or~~

~~(C) Requires:~~

~~(I) Specialized product handling or administration by the dispensing pharmacy; or~~

~~(II) Specialized clinical care, including frequent dosing adjustments, intensive clinical monitoring or expanded services for patients.]~~

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~~[(xii) "Spread pricing" means a prescription drug pricing model utilized by a pharmacy benefit manager where the pharmacy benefit manager charges a health benefit plan a contracted price for prescription drugs that differs from the amount the pharmacy benefit manager directly or indirectly pays the pharmacy or pharmacist for providing prescription drugs.]~~ [BRACKETED LANGUAGE SHOWN IN BOLD AND AS STRICKEN WAS VETOED BY GOVERNOR MARCH 17, 2023.]

26-52-104. Maximum allowable cost; offering information and alternatives.

(a) To place a drug on a maximum allowable cost list, a pharmacy benefit manager shall ensure that the drug is:

(i) If the drug is a generically equivalent drug, rated "A" or "B" in the most recent version of the United States Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book), or rated "NR" or "NA," or has a similar rating, by a nationally recognized reference;

(d) A pharmacy benefit manager shall:

(ii) Provide a telephone number, email address and website at which a network pharmacy or the pharmacy's designee who holds a contract with the pharmacy benefit manager may contact an employee of a pharmacy benefit manager to discuss the pharmacy's appeal;

(e) A pharmacy benefit manager shall establish a process by which a contracted pharmacy, or the pharmacy's

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designee who holds a contract with the pharmacy benefit manager, can appeal the provider's reimbursement for a drug subject to maximum allowable cost pricing. A contracted pharmacy, or the pharmacy's designee who holds a contract with the pharmacy benefit manager, shall have up to ten (10) business days after dispensing a drug subject to a maximum allowable cost in which to appeal the amount of the maximum allowable cost. A pharmacy benefit manager shall respond to the appeal within ten (10) business days after the contracted pharmacy or the pharmacy's designee who holds a contract with the pharmacy benefit manager makes the appeal.

(f) If a maximum allowable cost appeal is denied, the pharmacy benefit manager shall provide to the appealing pharmacy, or the pharmacy's designee who holds a contract with the pharmacy benefit manager, the reason for the denial and the national drug code number for the drug that is available for purchase by similarly situated pharmacies in the state ~~from~~ and the names of national or regional wholesalers that have the product available for purchase at a price that is at or below the maximum allowable cost.

(k) A pharmacy benefit manager shall not prevent a network pharmacy or the pharmacy's designee who holds a contract with the pharmacy benefit manager from filing appeals in an electronic batch format. The pharmacy benefit manager shall respond in an electronic format to valid reimbursement appeals filed in an electronic batch format. A batch appeal shall not be considered a valid appeal unless all required information for each claim in the batch is submitted electronically with the correct, contractually required information and in the required format. An appeal shall not be considered valid for purposes of the ten (10) day response timeframe until all information is received.

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(m) A pharmacy or pharmacist may decline to provide pharmacy services to a patient or pharmacy benefit manager if the pharmacy or pharmacist is to be paid less than the pharmacy acquisition cost for the pharmacy providing pharmacy services.

Section 3.

(a) The department of insurance is authorized one (1) full-time position for the purpose of implementing and administering this act. There is appropriated one hundred twenty-five thousand dollars (\$125,000.00) from the general fund to the department of insurance for the salary and benefits of the position authorized under this section. This appropriation shall be for the period beginning with the effective date of this section and ending June 30, 2024 and shall only be expended for the additional position authorized under this section. This appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2024.

(b) There is appropriated one hundred thousand dollars (\$100,000.00) from the general fund to the department of insurance for the purposes of implementing and administering this act. This appropriation shall be for the period beginning with the effective date of this section and ending June 30, 2025. This appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2025.

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Section 4. The department of insurance shall promulgate any rules necessary to implement this act.

Section 5.

(a) Except as otherwise provided by subsection (b) of this section, this act is effective July 1, 2023.

(b) Sections 3, 4 and 5 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk