

# SENATE BILL No. 999

June 12, 2014, Introduced by Senators CASPERSON, SCHUITMAKER and CASWELL and referred to the Committee on Insurance.

A bill to amend 1984 PA 218, entitled  
"Third party administrator act,"  
by amending section 2 (MCL 550.902).

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2. As used in this act:

2       (a) "Administrative services manager" or "manager" means an  
3 individual responsible for conducting the daily operations of a  
4 third party administrator.

5       (b) "Benefit plan" or "plan" means a medical, surgical,  
6 dental, vision, or health care benefit plan and may include  
7 coverage under a policy or certificate issued by a carrier.

8       (c) "Board" means the TPA advisory board created under section  
9 19.

(d) "Carrier" means ~~any of the following:~~

~~—— (i) An **AN** insurer which is **OR HEALTH MAINTENANCE ORGANIZATION** regulated pursuant to **UNDER** the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 1956 PA 218, MCL 500.100 to 500.8302, of the Michigan Compiled Laws.~~

~~—— (ii) A medical care corporation regulated pursuant to Act No. 108 of the Public Acts of 1939, being sections 550.301 to 550.316 of the Michigan Compiled Laws.~~

~~—— (iii) A hospital service corporation regulated pursuant to Act No. 109 of the Public Acts of 1939, being sections 550.501 to 550.517 of the Michigan Compiled Laws.~~

~~—— (iv) A health care corporation regulated pursuant to the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws.~~

~~—— (v) A health maintenance organization regulated under part 210 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.21001 to 333.21099 of the Michigan Compiled Laws.~~

~~—— (vi) A **OR A** dental care corporation regulated pursuant to Act No. 125 of the Public Acts of 1963, being sections **UNDER 1963 PA 125, MCL** 550.351 to 550.373. of the Michigan Compiled Laws.~~

(e) "Commissioner" means the ~~commissioner of insurance of this state.~~**DIRECTOR.**

**(F) "DEPARTMENT" MEANS THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES.**

**(G) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.**

1       (H) ~~(f)~~ "ERISA" means the employee retirement income security  
2 act of 1974, ~~as amended, Public Law 93-406, 88 Stat. 829-29 USC~~  
3 1001 TO 1461.

4       (I) "MAXIMUM ALLOWABLE COST PRICE" OR "MAC PRICE" MEANS A  
5 MAXIMUM REIMBURSEMENT AMOUNT FOR A MULTIPLE SOURCE DRUG THAT IS  
6 LISTED IN THE ORANGE BOOK AND IS NATIONALLY AVAILABLE.

7       (J) "MULTIPLE SOURCE DRUG" MEANS A DRUG FOR WHICH THERE ARE 3  
8 OR MORE DRUG PRODUCTS, EACH OF WHICH MEETS ALL OF THE FOLLOWING  
9 REQUIREMENTS, AS DETERMINED BY THE DIRECTOR:

10       (i) IS LISTED AS A- OR B-RATED IN THE ORANGE BOOK, HAS AN "NR"  
11 OR "NA" RATING BY MEDI-SPAN, OR HAS A SIMILAR RATING BY A  
12 NATIONALLY RECOGNIZED REFERENCE.

13       (ii) IS GENERALLY AND READILY AVAILABLE FOR PURCHASE BY  
14 PHARMACIES IN THIS STATE FROM NATIONAL OR REGIONAL WHOLESALERS AND  
15 IS NOT OBSOLETE.

16       (K) "NATIONALLY AVAILABLE" MEANS THAT THE DRUG PRODUCT IS  
17 AVAILABLE FOR PURCHASE BY PHARMACIES OR CHAIN-OPERATED WAREHOUSES  
18 IN SUFFICIENT SUPPLY FROM NATIONAL PHARMACEUTICAL WHOLESALERS AND  
19 IS NOT OBSOLETE OR TEMPORARILY UNAVAILABLE.

20       (L) "OBSOLETE" MEANS THAT THE DRUG PRODUCT MAY BE LISTED IN THE  
21 NATIONAL PRICING COMPENDIA BUT IS NO LONGER ACTIVELY MARKETED BY  
22 THE MANUFACTURER OR LABELER.

23       (M) "ORANGE BOOK" MEANS THE PUBLICATION ENTITLED "APPROVED  
24 DRUG PRODUCTS WITH THERAPEUTIC EQUIVALENCE EVALUATIONS" THAT  
25 IDENTIFIES DRUG PRODUCTS APPROVED ON THE BASIS OF SAFETY AND  
26 EFFECTIVENESS BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION  
27 UNDER THE AUTHORITY OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21

1 USC 301 TO 399F.

2 (N) ~~(g)~~—"Person" means an individual, sole proprietorship,  
3 partnership, corporation, association, or any other legal entity.

4 (O) ~~(h)~~—"Personal data" means any record or information  
5 pertaining to the diagnosis, treatment, or health of an individual  
6 covered by a plan.

7 (P) "PHARMACY" MEANS THAT TERM AS DEFINED IN SECTION 17707 OF  
8 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17707.

9 (Q) "PHARMACY BENEFIT MANAGER" OR "PBM" MEANS A PERSON THAT  
10 CONTRACTS WITH A PHARMACY ON BEHALF OF A BENEFIT PLAN FOR THE  
11 PHARMACY TO PROVIDE PHARMACY SERVICES TO INDIVIDUALS COVERED BY THE  
12 PLAN AND THAT DETERMINES REIMBURSEMENT TO THE PHARMACY FOR THE  
13 PHARMACY SERVICES PROVIDED TO INDIVIDUALS COVERED BY THE PLAN. A  
14 PERSON THAT ENGAGES IN, OR SUBCONTRACTS FOR, 3 OR MORE OF THE  
15 FOLLOWING ACTIVITIES IS CONSIDERED A PBM SUBJECT TO THIS ACT:

16 (i) CLAIMS PROCESSING.

17 (ii) PHARMACY NETWORK MANAGEMENT.

18 (iii) PHARMACY DISCOUNT CARD MANAGEMENT.

19 (iv) PAYMENT OF CLAIMS TO PHARMACIES FOR PRESCRIPTION DRUGS  
20 DISPENSED TO INDIVIDUALS COVERED BY THE PLAN.

21 (v) CLINICAL FORMULARY DEVELOPMENT AND MANAGEMENT SERVICES  
22 INCLUDING, BUT NOT LIMITED TO, UTILIZATION MANAGEMENT AND QUALITY  
23 ASSURANCE PROGRAMS.

24 (vi) REBATE CONTRACTING AND ADMINISTRATION.

25 (vii) CONDUCTING OF AUDITS OF NETWORK PHARMACIES.

26 (viii) SETTING OF PHARMACY REIMBURSEMENT PRICING AND  
27 METHODOLOGIES, INCLUDING MAC PRICE, AND DETERMINING SINGLE SOURCE

1 DRUGS OR MULTIPLE SOURCE DRUGS.

2 (ix) RETENTION OF ANY SPREAD OR DIFFERENTIAL BETWEEN WHAT IS  
3 RECEIVED FROM PLANS AS REIMBURSEMENT FOR PRESCRIPTION DRUGS AND  
4 WHAT IS PAID TO PHARMACIES BY THE PBM FOR THE DRUGS.

5 (R) ~~(i)~~—"Processes claims" means the administrative services  
6 performed in connection with a claim for benefits under a plan.

7 (S) ~~(j)~~—"Service contract" means the written agreement for the  
8 provision of administrative services between the TPA and a plan, a  
9 sponsor of a plan, or a carrier.

10 (T) "TEMPORARILY UNAVAILABLE" MEANS THAT THE DRUG PRODUCT IS  
11 EXPERIENCING SHORT-TERM SUPPLY INTERRUPTIONS FOR WHICH ONLY  
12 INCONSISTENT OR INTERMITTENT SUPPLY IS AVAILABLE IN THE CURRENT  
13 MARKETPLACE.

14 (U) ~~(k)~~—"Third party administrator" or "TPA" means a person  
15 who processes claims pursuant to a service contract and who may  
16 also provide 1 or more other administrative services pursuant to a  
17 service contract, other than under a worker's compensation self-  
18 insurance program pursuant to section 611 of the worker's  
19 disability compensation act of 1969, ~~Act No. 317 of the Public Acts~~  
20 ~~of 1969, being section 1969 PA 317, MCL 418.611. of the Michigan~~  
21 ~~Compiled Laws.~~ **THIRD PARTY ADMINISTRATOR INCLUDES A PHARMACY**  
22 **BENEFIT MANAGER.** Third party administrator does not include a  
23 carrier or employer sponsoring a plan.