

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4351**

A bill to amend 1984 PA 218, entitled
"Third party administrator act,"
by amending sections 2, 36, and 52 (MCL 550.902, 550.936, and
550.952) and by adding sections 26 and 27.

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

1 19.

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

3 ~~(i) An-an insurer, which is-including a health maintenance~~
 4 **organization,** regulated ~~pursuant to-under~~ the insurance code of
 5 1956, Act No. 218 of the Public Acts of 1956, being sections
 6 500.100 to 500.8302 of the Michigan Compiled Laws.

7 ~~(ii) A medical care corporation regulated pursuant to Act No.~~
 8 ~~108 of the Public Acts of 1939, being sections 550.301 to 550.316~~
 9 ~~of the Michigan Compiled Laws.~~

10 ~~(iii) A hospital service corporation regulated pursuant to Act~~
 11 ~~No. 109 of the Public Acts of 1939, being sections 550.501 to~~
 12 ~~550.517 of the Michigan Compiled Laws.~~

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

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

21 ~~(vi) A 1956 PA 218, MCL 500.100 to 500.8302, or a dental care~~
 22 ~~corporation regulated pursuant to Act No. 125 of the Public Acts of~~
 23 ~~1963, being sections 550.351 to 550.373 of the Michigan Compiled~~
 24 ~~Laws-under 1963 PA 125, MCL 550.351 to 550.373.~~

25 (e) "Claim" means a request for payment for administering,
 26 filling, or refilling a drug or for providing a pharmacy service or
 27 a medical supply or device to an enrollee as that term is defined
 28 in section 116 of the insurance code of 1956, 1956 PA 218, MCL
 29 500.116.

1 (f) ~~(e)~~ "Commissioner" means the ~~commissioner of insurance of~~
2 ~~this state.~~ **director.**

3 (g) "Department" means the department of insurance and
4 financial services.

5 (h) "Director" means the director of the department.

6 (i) ~~(f)~~ "ERISA" means the employee retirement income security
7 act of 1974, ~~as amended,~~ Public Law 93-406. ~~, 88 Stat. 829.~~

8 (j) "Health plan" means a qualified health plan as that term
9 is defined in section 1261 of the insurance code of 1956, 1956 PA
10 218, MCL 500.1261.

11 (k) "Manufacturer" means that term as defined in section 17706
12 of the public health code, 1978 PA 368, MCL 333.17706.

13 (l) ~~(g)~~ "Person" means an individual, sole proprietorship,
14 partnership, corporation, association, or any other legal entity.

15 (m) ~~(h)~~ "Personal data" means any record or information
16 pertaining to the diagnosis, treatment, or health of an individual
17 covered by a plan.

18 (n) "Pharmacy" means that term as defined in section 17707 of
19 the public health code, 1978 PA 368, MCL 333.17707.

20 (o) Except as otherwise provided in subdivision (p), "pharmacy
21 benefit manager" means an entity that contracts with a pharmacy or
22 a pharmacy services administration organization on behalf of a
23 health plan or carrier to provide pharmacy health services to
24 individuals covered by the health plan or carrier or administration
25 that includes, but is not limited to, any of the following:

26 (i) Contracting directly or indirectly with pharmacies to
27 provide drugs to enrollees or other covered persons.

28 (ii) Administering a drug benefit.

29 (iii) Processing or paying pharmacy claims.

(iv) Creating or updating drug formularies.

(v) Making or assisting in making prior authorization determinations on drugs.

(vi) Administering rebates on drugs. As used in this subparagraph, "rebate" means a formulary discount or remuneration attributable to the use of prescription drugs that is paid by a manufacturer or third party, directly or indirectly, to a pharmacy benefit manager after a claim has been adjudicated at a pharmacy. Rebate does not include a fee, including, but not limited to, a bona fide service fee or administrative fee, that is not a formulary discount or remuneration described in this subparagraph. As used in this subparagraph, "third party" does not include a pharmacy benefit manager.

(vii) Establishing a pharmacy network.

(p) "Pharmacy benefit manager" does not include the department of health and human services, a carrier, or an insurer.

(q) "Pharmacy services administration organization" means an entity that provides contracting and other administrative services relating to prescription drug benefits to pharmacies.

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

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

(t) ~~(k)~~—"Third party administrator" or "TPA" means a person ~~who that directly or indirectly~~ processes claims ~~pursuant to under~~ a service contract and ~~who that~~ may also provide 1 or more other administrative services ~~pursuant to under~~ a service contract, other than under a worker's compensation self-insurance program pursuant

1 to section 611 of the worker's disability compensation act of 1969,
2 ~~Act No. 317 of the Public Acts of 1969, being section 418.611 of~~
3 ~~the Michigan Compiled Laws. 1969 PA 317, MCL 418.611.~~ **Third party**
4 **administrator includes a pharmacy benefit manager.** Third party
5 administrator does not include a carrier or employer sponsoring a
6 plan.

7 **Sec. 26. (1) A carrier or third party administrator that is a**
8 **pharmacy benefit manager shall not prohibit a 340B Program entity**
9 **or a pharmacy that has a license in good standing in this state**
10 **under contract with a 340B Program entity from participating in the**
11 **carrier's or third party administrator that is a pharmacy benefit**
12 **manager's provider network solely because it is a 340B Program**
13 **entity or a pharmacy under contract with a 340B Program entity. A**
14 **carrier or third party administrator that is a pharmacy benefit**
15 **manager shall not reimburse a 340B Program entity or a pharmacy**
16 **under contract with a 340B Program entity differently than other**
17 **similarly situated pharmacies. As used in this subsection, "340B**
18 **Program entity" means an entity authorized to participate in the**
19 **federal 340B Program under section 340B of the public health**
20 **service act, 42 USC 256b.**

21 **(2) A carrier or other third party, or a third party**
22 **administrator that is a pharmacy benefit manager, shall not, except**
23 **as required by law to prevent a duplicate rebate, require a claim**
24 **for a drug to include a modifier or otherwise to indicate that the**
25 **drug is a 340B drug unless the claim is for payment, directly or**
26 **indirectly, by the Medicaid program. As used in this subsection:**

27 **(a) "Medicaid program" means the program for medical**
28 **assistance established under title XIX of the social security act,**
29 **42 USC 1396 to 1396w-6.**

1 (b) "Rebate" means a formulary discount or remuneration
2 attributable to the use of prescription drugs that is paid by a
3 manufacturer or third party, directly or indirectly, to a pharmacy
4 benefit manager after a claim has been adjudicated at a pharmacy.
5 Rebate does not include a fee, including, but not limited to, a
6 bona fide service fee or administrative fee, that is not a
7 formulary discount or remuneration described in this subdivision.

8 (c) "Third party" does not include a pharmacy benefit manager
9 or carrier.

10 (d) "340B drug" means a covered drug as that term is defined
11 in 42 USC 256b.

12 (3) A third party administrator that is a pharmacy benefit
13 manager shall not exclude or discriminate against a pharmacy solely
14 based on the carrier not having a vested financial interest in the
15 pharmacy. As used in this subsection, "having a vested financial
16 interest" means having ownership, having co-ownership, being a
17 shareholder, or having another connection from which financial gain
18 or loss could be realized.

19 Sec. 27. A contract between a carrier or third party
20 administrator that is a pharmacy benefit manager and a pharmacy
21 must not prohibit the pharmacy from disclosing the current selling
22 price of a drug in accordance with section 17757 of the public
23 health code, 1978 PA 368, MCL 333.17757. This section applies to a
24 contract described in this section executed, extended, or renewed
25 on or after the effective date of the amendatory act that added
26 this section.

27 Sec. 36. ~~(1) Each TPA acting within this state shall annually,~~
28 ~~on or before March 1, By July 1, 2022 and each July 1 after that~~
29 ~~date, a third party administrator shall prepare under oath and~~

1 ~~deposit-file~~ with the ~~commissioner-director~~ a statement concerning
 2 ~~its-the third party administrator's~~ affairs ~~upon-on~~ a form provided
 3 by the ~~commissioner~~. ~~The director~~. **A third party administrator**
 4 **shall file the** annual statement ~~shall be filed on or before March 1~~
 5 **required under this section by July 1** of the year following ~~that~~
 6 **the year** covered by the statement. ~~Upon-On~~ request and for good
 7 cause shown, the ~~commissioner-director~~ may grant to ~~any TPA-a third~~
 8 **party administrator** a reasonable extension of time not to exceed 30
 9 days within which the statement ~~shall-must~~ be filed. ~~The TPA-A~~
 10 **third party administrator** shall pay the **annual statement** filing fee
 11 prescribed in section 18.

12 ~~(2) The commissioner shall submit to the legislature on or~~
 13 ~~before April 1, 1985, a report detailing the impact of this act on~~
 14 ~~plans, individuals covered by plans, carriers, and TPAs. The report~~
 15 ~~shall also, in consultation with the revenue commissioner, estimate~~
 16 ~~the total financial impact on the state of Michigan during the~~
 17 ~~preceding legislative biennium.~~

18 Sec. 52. **(1)** If a TPA or manager violates a cease and desist
 19 order under this act and has been given notice and an opportunity
 20 for a hearing held ~~pursuant to-under~~ the administrative procedures
 21 act of 1969, ~~Act No. 306 of the Public Acts of 1969, being sections~~
 22 ~~24.201 to 24.315 of the Michigan Compiled Laws, 1969 PA 306, MCL~~
 23 **24.201 to 24.328**, the ~~commissioner-director~~ may order a civil fine
 24 of not more than \$10,000.00 for each violation, or a suspension or
 25 revocation of the TPA's certificate of authority or manager's
 26 license, or both the fine and suspension or revocation.

27 **(2)** The director may refuse to issue a TPA certificate of
 28 authority under this act if the director determines that the TPA or
 29 any individual responsible for the conduct of affairs of the TPA is

1 not competent, trustworthy, financially responsible or of good
2 personal and business reputation, or has had an insurance or a TPA
3 certificate of authority or license denied or revoked for cause by
4 any jurisdiction.

5 (3) The director may deny, suspend, or revoke the license of a
6 TPA, or may issue a cease and desist order if the TPA is not
7 licensed, if the director finds, after notice and opportunity for
8 hearing, any of the following:

9 (a) That the TPA has violated any lawful rule or order of the
10 director or any provision of the insurance laws of this state.

11 (b) That the TPA refused to be examined or to produce its
12 accounts, records, and files for examination, or that any
13 individual responsible for the conduct of affairs of the TPA has
14 refused to give information with respect to its affairs or has
15 refused to perform any other legal obligation as to an examination
16 when required by the director.

17 (c) That the TPA has, without just cause, refused to pay
18 proper claims or perform services arising under its contracts or
19 has, without just cause, caused covered individuals to accept less
20 than the amount due them or caused covered individuals to employ
21 attorneys or bring suit against the TPA or a payor that it
22 represents to secure full payment or settlement of the claims.

23 (d) That the TPA is required under this act to have a license
24 and fails at any time to meet any qualification for which issuance
25 of a license could have been refused had the failure then existed
26 and been known to the director, unless the director issued a
27 license with knowledge of the grounds for disqualification and had
28 the authority to waive it.

29 (e) That any of the individuals responsible for the conduct of

1 affairs of the TPA has been convicted of, or has entered a plea of
2 guilty or nolo contendere to, a felony without regard to whether
3 adjudication was withheld.

4 (f) That the TPA's license has been suspended or revoked in
5 another state.

6 (g) That the TPA has failed to file a timely statement under
7 section 36 or to pay a filing fee under section 18.

8 (4) As used in this section, "individual responsible for the
9 conduct of affairs of the TPA" means any of the following:

10 (a) A member of the board of directors, board of trustees,
11 executive committee, or other governing board or committee.

12 (b) A principal officer for a corporation or a partner or
13 member for a partnership, association, or limited liability
14 company.

15 (c) A shareholder or member holding directly or indirectly 10%
16 or more of the voting stock, voting securities, or voting interest
17 of the TPA.

18 (d) Any person who exercises control or influence over the
19 affairs of the TPA.