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AMENDED IN SENATE JUNE 23, 2004  
AMENDED IN SENATE JUNE 9, 2004  
AMENDED IN ASSEMBLY MAY 20, 2004  
AMENDED IN ASSEMBLY APRIL 22, 2004  
AMENDED IN ASSEMBLY APRIL 15, 2004  
AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1960**

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**Introduced by Assembly Members Pavley, Chu, Frommer, and  
Ridley-Thomas  
(Coauthors: Assembly Members Chan and Koretz)  
(Coauthor: Senator Kuehl)**

February 12, 2004

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An act to add Division 113 (commencing with Section 150000) to the Health and Safety Code, relating to pharmacy benefits management.

LEGISLATIVE COUNSEL'S DIGEST

AB 1960, as amended, Pavley. Pharmacy benefits management.

Existing law provides for the regulation of health care benefits.

This bill would define the term "pharmacy benefits management" as the administration or management of prescription drug benefits. The bill would also define the term "pharmacy benefits manager" as an entity that performs pharmacy benefits management. The bill would

require a pharmacy benefits manager to make specified disclosures to its purchasers and prospective purchasers, including specified information about the pharmacy benefit manager’s revenues and its drug formularies, and to make specified disclosures to the public upon request. The bill would also establish certain standards and requirements with regard to pharmacy benefits management contracts and the provision of certain drugs. The bill would impose certain requirements on the membership of a pharmacy and therapeutics committee for a pharmacy benefits manager. The bill would also require a pharmacy benefits manager to meet certain conditions before substituting a prescribed medication.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Division 113 (commencing with Section  
2 150000) is added to the Health and Safety Code, to read:

3  
4 DIVISION 113. PHARMACY BENEFITS MANAGEMENT

5  
6 150000. For purposes of this division, the following  
7 definitions shall apply:

8 (a) “Labeler” means any person who receives prescription  
9 drugs from a manufacturer or wholesaler and repackages those  
10 drugs for later retail sale and who has a labeler code from the  
11 federal Food and Drug Administration under Section 207.20 of  
12 Title 21 of the Code of Federal Regulations.

13 (b) “Pharmacy benefits management” is the administration or  
14 management of prescription drug benefits. Pharmacy benefits  
15 management ~~includes~~ *shall include all of the following:* the  
16 procurement of prescription drugs at a negotiated rate for  
17 dispensation within this state, the processing of prescription drug  
18 claims, and the administration of payments related to prescription  
19 drug claims.

20 (c) “Pharmacy benefits manager” is any person who performs  
21 pharmacy benefits management. The term does not include a  
22 health care service plan or health insurer if the health care service  
23 plan or health insurer offers or provides pharmacy benefits  
24 management services and if those services are offered or provided



1 only to enrollees, subscribers, or insureds who are also covered by  
2 health benefits offered or provided by that health care service plan  
3 or health insurer, nor does the term include an affiliate, subsidiary,  
4 or other related entity of the health care service plan or health  
5 insurer that would otherwise qualify as a pharmacy benefits  
6 manager, as long as the services offered or provided by the related  
7 entity are offered or provided only to enrollees, subscribers, or  
8 insureds who are also covered by the health benefits offered or  
9 provided by that health care service plan or health insurer.

10 (d) “Prospective purchaser” is any person to whom a  
11 pharmacy benefits manager offers to provide pharmacy benefit  
12 management services.

13 (e) “Purchaser” is any person who enters into an agreement  
14 with a pharmacy benefits manager for the provision of pharmacy  
15 benefit management services.

16 150001. A pharmacy benefits manager shall disclose to the  
17 purchaser in writing all of the following:

18 (a) The aggregate amount of all rebates and other retrospective  
19 utilization discounts that the pharmacy benefits manager receives,  
20 directly or indirectly, from pharmaceutical manufacturers or  
21 labelers in connection with prescription drug benefits specific to  
22 the purchaser.

23 (b) For a specified list of therapeutic classes, the aggregate  
24 amount for each therapeutic class of all rebates and other  
25 retrospective utilization discounts that the pharmacy benefits  
26 manager receives, directly or indirectly, from pharmaceutical  
27 manufacturers or labelers in connection with prescription drug  
28 benefits specific to the purchaser. A therapeutic class shall include  
29 at least two drugs.

30 (c) The nature, type, and amount of all other revenue that the  
31 pharmacy benefits manager receives, directly or indirectly, from  
32 pharmaceutical manufacturers or labelers in connection with  
33 prescription drug benefits related to the purchaser. *A pharmacy  
34 benefits manager shall not be required to disclose the purchase  
35 discounts based upon invoiced purchase terms for prescription  
36 drugs purchased directly or indirectly from a pharmaceutical  
37 manufacturer or labeler for sale and distribution through the mail  
38 order pharmacy of the pharmacy benefits manager.*

39 (d) Any prescription drug utilization information related to  
40 utilization by the purchaser’s enrollees or aggregate utilization



1 data that is not specific to an individual consumer, prescriber, or  
2 purchaser.

3 (e) Any administrative or other fees charged by the pharmacy  
4 benefits manager to the purchaser.

5 (f) Any arrangements with prescribing providers, medical  
6 groups, individual practice associations, pharmacists, or other  
7 entities that are associated with activities of the pharmacy benefits  
8 manager to encourage formulary compliance or otherwise manage  
9 prescription drug benefits.

10 150002. A pharmacy benefits manager shall disclose to a  
11 prospective purchaser in writing all of the following:

12 (a) The aggregate amount of all rebates and other retrospective  
13 utilization discounts that the pharmacy benefits manager estimates  
14 it ~~will~~ *would* receive, directly or indirectly, from pharmaceutical  
15 manufacturers or labelers in connection with prescription drug  
16 benefits related to the prospective purchaser, *if that prospective*  
17 *purchaser were to contract with the pharmacy benefits manager.*

18 (b) For a specified list of therapeutic classes, the aggregate  
19 amount for each therapeutic class of all rebates and other  
20 retrospective utilization discounts that the pharmacy benefits  
21 manager estimates it ~~will~~ *would* receive, directly or indirectly,  
22 from pharmaceutical manufacturers or labelers in connection with  
23 prescription drug benefits specific to the prospective purchaser, *if*  
24 *that prospective purchaser were to contract with the pharmacy*  
25 *benefits manager.* A therapeutic class shall include at least two  
26 drugs.

27 (c) The nature, type, and amount of all other revenue that the  
28 pharmacy benefits manager estimates it ~~will~~ *would* receive,  
29 directly or indirectly, from pharmaceutical manufacturers or  
30 labelers in connection with prescription drug benefits related to the  
31 prospective purchaser, *if that prospective purchaser were to*  
32 *contract with the pharmacy benefits manager. A pharmacy benefits*  
33 *manager shall not be required to disclose the purchase discounts*  
34 *based upon invoiced purchase terms for prescription drugs*  
35 *purchased directly or indirectly from a pharmaceutical*  
36 *manufacturer or labeler for sale and distribution through the mail*  
37 *order pharmacy of the pharmacy benefits manager.*

38 (d) Any administrative or other fees charged by the pharmacy  
39 benefits manager to the prospective purchaser.



1 (e) Any arrangements with prescribing providers, medical  
2 groups, individual practice associations, pharmacists, or other  
3 entities that are associated with activities of the pharmacy benefits  
4 manager to encourage formulary compliance or otherwise manage  
5 prescription drug benefits.

6 150003. (a) A pharmacy benefits manager shall provide the  
7 information described in ~~Sections 150001 and 150002 within 30~~  
8 ~~days of receipt of the request. If requested, the information shall~~  
9 ~~be provided no less than once each year. Section 150001 no less~~  
10 *frequently than on a quarterly basis.*

11 (b) Except for utilization information, a pharmacy benefits  
12 manager need not make the disclosures required in Sections  
13 150001 and 150002 unless and until the purchaser or prospective  
14 purchaser agrees in writing to maintain as confidential any  
15 proprietary information. That agreement may provide for  
16 equitable and legal remedies in the event of a violation of the  
17 agreement. That agreement may also include persons or entities  
18 with whom the purchaser or prospective purchaser contracts to  
19 provide consultation regarding pharmacy services. Proprietary  
20 information includes trade secrets, and information on pricing,  
21 costs, revenues, taxes, market share, negotiating strategies,  
22 customers and personnel held by a pharmacy benefits manager and  
23 used for its business purposes.

24 150004. A pharmacy benefits manager may not execute a  
25 contract for the provision of pharmacy benefits management  
26 services that fails to address the following items:

27 (a) The amount of the total revenues, rebates, and discounts  
28 identified in subdivisions (a), (b), and (c) of Section 150001 and  
29 subdivisions (a), (b), and (c) of Section 150002 that shall be passed  
30 on to the purchaser.

31 (b) The disclosure or sale of enrollee utilization data by the  
32 pharmacy benefits manager to any person or entity other than the  
33 purchaser.

34 (c) Any administrative or other fees charged by the pharmacy  
35 benefits manager to the purchaser.

36 (d) Conditions under which an audit will be conducted of the  
37 contract for pharmacy benefits management services, who will  
38 conduct the audit, and who will pay for the audit.

39 (e) Any revenues, rebates, or discounts received by the  
40 pharmacy benefits manager directly or indirectly from entities



1 other than manufacturers and labelers *that are related to the*  
2 *services to be provided to the purchaser.*

3 (f) The process for development of formularies and  
4 notification of changes to formularies, and approval of those  
5 changes by the purchaser, provided that the pharmacy benefits  
6 manager meets the requirements of Sections 150005, 150006, and  
7 150007.

8 (g) Whether there is a difference between the price paid to a  
9 retail pharmacy and the amount that will be billed to the purchaser  
10 for prescription drugs.

11 150005. (a) All members of a pharmacy and therapeutics  
12 committee for a pharmacy benefits manager shall be physicians,  
13 pharmacists, *academics*, or other health care professionals, and a  
14 majority of committee members shall not be employed by the  
15 pharmacy benefits manager.

16 (b) A pharmacy and therapeutics committee member shall not  
17 be an officer, employee, director, or agent of, or any person who  
18 has financial interest in, other than ownership of stock from open  
19 market purchases of less than a nominal amount of the outstanding  
20 stock of, pharmaceutical companies.

21 ~~150006. — A pharmacy benefits manager shall report not less~~  
22 ~~than quarterly to the pharmacy and therapeutics committee which~~  
23 ~~shall monitor the health effects of medication substitutions on the~~  
24 ~~health of the patients, including identifying information from~~  
25 ~~patients and prescribers concerning the efficacy or health effects~~  
26 ~~of medication substitution.~~

27 ~~150007. (a) A pharmacy benefits manager shall not~~  
28 ~~substitute a medication for another currently prescribed~~  
29 ~~medication without first obtaining express verifiable authorization~~  
30 ~~from the prescriber of the currently prescribed drug except in the~~  
31 ~~following instances:~~

32 ~~(1) As provided in Sections 4052.5 and 4073 of the Business~~  
33 ~~and Professions Code.~~

34 ~~(2) If the medication substitution is initiated for patient safety~~  
35 ~~reasons.~~

36 ~~(3) If the currently prescribed medication is no longer available~~  
37 ~~in the market.~~

38 ~~(4) If initiated pursuant to a drug utilization review.~~

39 ~~(5) If required for coverage reasons where the prescribed drug~~  
40 ~~is not covered by the individual's formulary or plan.~~



1 ~~(b) The request for authorization to the prescriber shall include~~  
2 ~~all of the following:~~

3 ~~(1) The cost savings for the purchaser, if any, that are a result~~  
4 ~~of the medication substitution.~~

5 ~~(2) The difference, if any, in copayments or other out-of-pocket~~  
6 ~~costs paid by the patient in order to obtain the medication.~~

7 ~~(3) The existence of any additional payments received by the~~  
8 ~~pharmacy benefits manager not reflected in the cost savings to the~~  
9 ~~purchaser.~~

10 ~~(4) The circumstances, if any, under which the currently~~  
11 ~~prescribed medication will be covered.~~

12 ~~(5) The circumstances and extent to which, if any, related~~  
13 ~~health care costs arising from the change in medications will be~~  
14 ~~compensated.~~

15 ~~(6) Any known differences in potential effects on patient health~~  
16 ~~and safety, including side effects.~~

17 ~~(7) The name and title of the individual authorizing the change~~  
18 ~~if the authorization by the provider is given verbally.~~

19 ~~(e)~~

20 *150006. (a) Except as provided in subdivision (b), any*  
21 *request from a pharmacy benefits manager to a prescriber for*  
22 *authorization to substitute a medication shall include all of the*  
23 *following disclosures:*

24 *(1) The cost savings for the purchaser, if any, that are a result*  
25 *of the medication substitution.*

26 *(2) The difference, if any, in copayments or other out-of-pocket*  
27 *costs paid by the patient in order to obtain the medication.*

28 *(3) The existence of additional payments received by the*  
29 *pharmacy benefits manager that are not reflected in the cost*  
30 *savings to the purchaser.*

31 *(4) The circumstances, if any, under which the currently*  
32 *prescribed medication will be covered.*

33 *(5) The circumstances and extent to which, if any, related*  
34 *health care costs arising from the medication substitution will be*  
35 *compensated.*

36 *(6) Any known differences in potential effects on a patient's*  
37 *health and safety, including side effects.*

38 *(b) A pharmacy benefits manager shall not be required to make*  
39 *the disclosures required by subdivision (a) under any of the*  
40 *following instances:*



- 1     (1) *The substitution is from a brand drug to a generic or*  
2 *chemical equivalent in accordance with applicable state law.*
- 3     (2) *The medication substitution is initiated for patient safety*  
4 *reasons.*
- 5     (3) *The currently prescribed medication is no longer available*  
6 *in the market.*
- 7     (4) *The substitution is initiated pursuant to a drug utilization*  
8 *review.*
- 9     (5) *The substitution is required for coverage reasons where the*  
10 *prescribed drug is not covered by the patient's formulary or plan.*
- 11     (c) *A pharmacy benefits manager shall record the name and*  
12 *title of the prescriber, or the person other than the prescriber,*  
13 *authorizing the medication substitution if the authorization is*  
14 *given verbally.*
- 15     (d) *The pharmacy benefits manager shall not substitute a*  
16 *medication for a currently prescribed medication unless the*  
17 *pharmacy benefits manager communicates with the patient to*  
18 *provide that patient or their representative the following*  
19 *information:*
- 20         (1) *The proposed medication and the currently prescribed*  
21 *medication.*
- 22         (2) *The difference in copayments or other out-of-pocket costs*  
23 *paid by the patient, if any.*
- 24         ~~(3) *Any known differences in potential effects on patient health*~~  
25 ~~*and safety, including side effects, if any.*~~
- 26         (3) *Potential side effects of the medication substitution.*
- 27         (4) *The circumstances, if any, under which the currently*  
28 *prescribed medication will be covered.*
- 29         ~~(5) *The cost savings for the purchaser, taking into account all*~~  
30 ~~*discounts, rebates, or other payments that lower the cost of the*~~  
31 ~~*medication to the purchaser.*~~
- 32         ~~(6) *The existence of any additional payments received by the*~~  
33 ~~*pharmacy benefits manager not reflected in the cost savings to the*~~  
34 ~~*purchaser.*~~
- 35         (5) *The circumstances and the extent to which, if any, health*  
36 *care costs related to the medication substitution will be*  
37 *compensated.*
- 38         (6) *Notification that the patient may decline the medication*  
39 *substitution if the currently prescribed drug remains on the*



1 *patient's formulary, and the patient is willing to pay any difference*  
2 *in the copayment amount.*

3 (7) A toll-free telephone number to communicate with the  
4 pharmacy benefits manager.

5 ~~(8) The circumstances and the extent to which, if any, related~~  
6 ~~health care costs will be compensated~~

7 ~~(d) Unless a prescribed drug is no longer on the purchaser's~~  
8 ~~formulary or the individual is unwilling to pay any higher~~  
9 ~~applicable copayment or other costs, the pharmacy benefits~~  
10 ~~manager shall cancel and reverse the medication substitution upon~~  
11 ~~written or verbal instructions from a prescriber or the individual.~~

12 (e) *The pharmacy benefits manager shall cancel and reverse*  
13 *the medication substitution upon written or verbal instructions*  
14 *from a prescriber or the patient. The pharmacy benefits manager*  
15 *shall not be required to cancel and reverse the medication*  
16 *substitution if the prescribed drug is no longer on the purchaser's*  
17 *formulary or the patient is unwilling to pay a higher copayment or*  
18 *other cost associated with the prescribed drug.*

19 ~~(f)~~

20 (f) The pharmacy benefits manager shall maintain a toll-free  
21 telephone number during normal business hours for a minimum of  
22 eight hours per day Monday through Friday for prescribers and  
23 patients.

24 ~~(g)~~

25 (g) The pharmacy benefits manager shall not charge the  
26 individual any additional copayments or fees related to the  
27 replacement medication.

28 150007. *A pharmacy benefits manager shall monitor the health*  
29 *effects on patients of medication substitutions requested by the*  
30 *pharmacy benefits manager. The pharmacy benefits manager*  
31 *shall, on a quarterly basis, report to his or her Pharmacy and*  
32 *Therapeutics Committee the results of the monitoring. This report*  
33 *shall include all patient and prescriber communications received*  
34 *by the pharmacy benefits manager that concern the efficacy or*  
35 *health effects of the medication substitutions.*

36 150008. All disclosures made pursuant to this division shall  
37 comply with the privacy standards of the federal Health Insurance  
38 Portability and Accountability Act.

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