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Legislative Document

No. 1504

S.P. 466

In Senate, April 4, 2019

An Act To Protect Consumers from Unfair Practices Related to Pharmacy Benefits Management

Reference to the Committee on Health Coverage, Insurance and Financial Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SANBORN, H. of Cumberland.
Cosponsored by Representative TEPLER of Topsham and
Senators: CLAXTON of Androscoggin, GRATWICK of Penobscot, President JACKSON of
Aroostook, SANBORN, L. of Cumberland, VITELLI of Sagadahoc, Representative: FOLEY
of Biddeford.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 22 MRSA §1711-E, sub-§1, ¶G**, as amended by PL 2011, c. 443, §1, is
3 further amended to read:

4 G. "Pharmacy benefits manager" has the same meaning as in Title 24-A, section
5 ~~1913~~ 4347, subsection ~~1~~, ~~paragraph A~~ 17.

6 **Sec. 2. 22 MRSA §8702, sub-§8-B**, as amended by PL 2011, c. 443, §3, is
7 further amended to read:

8 **8-B. Pharmacy benefits manager.** "Pharmacy benefits manager" has the same
9 meaning as in Title 24-A, section ~~1913~~ 4347, subsection ~~1~~, ~~paragraph A~~ 17.

10 **Sec. 3. 24-A MRSA §601, sub-§28**, as enacted by PL 2009, c. 581, §3, is
11 repealed.

12 **Sec. 4. 24-A MRSA §601, sub-§28-A** is enacted to read:

13 **28-A. Pharmacy benefits manager.** Pharmacy benefits manager licensing fees may
14 not exceed:

15 A. Original issuance fee, \$100; and

16 B. Renewal fee, \$100.

17 **Sec. 5. 24-A MRSA §1913**, as repealed and replaced by PL 2011, c. 443, §4, is
18 repealed.

19 **Sec. 6. 24-A MRSA §4317, sub-§12**, as enacted by PL 2015, c. 450, §1, is
20 repealed.

21 **Sec. 7. 24-A MRSA §4317, sub-§13**, as enacted by PL 2017, c. 44, §1, is
22 repealed.

23 **Sec. 8. 24-A MRSA c. 56-C** is enacted to read:

24 **CHAPTER 56-C**

25 **HEALTH PLANS THAT PROVIDE PRESCRIPTION DRUG BENEFITS**

26 **§4347. Definitions**

27 As used in this chapter, unless the context otherwise indicates, the following terms
28 have the following meanings.

29 **1. Average wholesale price.** "Average wholesale price" means the average
30 wholesale price of a prescription drug as identified by a national drug pricing source
31 selected by a health insurer. The average wholesale price must be identified by the
32 11-digit national drug code, as amended from time to time, for the prescription drug
33 dispensed for the quantity dispensed.

1 **2. Brand-name drug.** "Brand-name drug" means a prescription drug marketed
2 under a proprietary name or registered trademark name, including a biological product.

3 **3. Carrier.** "Carrier" has the same meaning as in section 4301-A, subsection 3.
4 "Carrier" also includes the MaineCare program pursuant to Title 22, chapter 855 and the
5 group health plan provided to state employees and other eligible persons pursuant to Title
6 5, section 285.

7 **4. Compensation.** "Compensation" means any direct or indirect financial benefit,
8 including, but not limited to, rebates, discounts, credits, fees, grants, charge-backs or
9 other payments or benefits of any kind.

10 **5. Cost-sharing amount.** "Cost-sharing amount" means the amount paid by a
11 covered person as required under the covered person's health plan for a prescription drug
12 at the point of sale.

13 **6. Covered person.** "Covered person" means a policyholder, subscriber, enrollee or
14 other individual participating in a health plan. "Covered person" includes the authorized
15 representative of a covered person.

16 **7. Dispensing fee.** "Dispensing fee" means the professional fee incurred at the point
17 of sale or service that pays for pharmacy costs, in excess of ingredient cost, associated
18 with ensuring that possession of the appropriate prescription drug is transferred to a
19 covered person.

20 **8. Formulary.** "Formulary" means a list of prescription drugs covered by a health
21 plan and any tier levels applicable to a prescription drug.

22 **9. Generic drug.** "Generic drug" means a prescription drug, whether identified by
23 its chemical, proprietary or nonproprietary name, that is not a brand-name drug and is
24 therapeutically equivalent to a brand-name drug in dosage, safety, strength, method of
25 consumption, quality, performance and intended use. "Generic drug" includes a
26 biosimilar product.

27 **10. Health plan.** "Health plan" has the same meaning as in section 4301-A,
28 subsection 7.

29 **11. Ingredient cost.** "Ingredient cost" means the actual amount paid to a pharmacy
30 provider by a carrier or the carrier's pharmacy benefits manager for a prescription drug,
31 not including the dispensing fee or cost-sharing amount.

32 **12. Mail order pharmacy.** "Mail order pharmacy" means a pharmacy whose
33 primary business is to receive prescriptions by mail, by fax or through electronic
34 submissions and to dispense medication to covered persons through the use of the United
35 States mail or other common or contract carrier services and that provides any
36 consultation with patients electronically rather than face to face.

37 **13. Maximum allowable cost.** "Maximum allowable cost" means the maximum
38 amount a health insurer will pay for a generic drug or brand-name drug that has at least
39 one generic alternative available.

1 **14. Network pharmacy.** "Network pharmacy" means a licensed retail pharmacy or
2 other pharmacy provider that contracts with a pharmacy benefits manager.

3 **15. Pharmacy.** "Pharmacy" means an established location, either physical or
4 electronic, that is licensed by the State and that has entered into a network pharmacy
5 contract with a pharmacy benefits manager or carrier.

6 **16. Pharmacy and therapeutics committee.** "Pharmacy and therapeutics
7 committee" means a committee, board or equivalent body established by a carrier to
8 develop and maintain formularies.

9 **17. Pharmacy benefits manager.** "Pharmacy benefits manager" means a person,
10 business or other entity that, pursuant to a contract or under an employment relationship
11 with a carrier, a self-insurance plan or other 3rd-party payer, either directly or through an
12 intermediary, manages the prescription drug coverage provided by the carrier,
13 self-insurance plan or other 3rd-party payer, including, but not limited to, processing and
14 paying claims for prescription drugs, performing drug utilization review, processing drug
15 prior authorization requests, adjudicating appeals or grievances related to prescription
16 drug coverage, contracting with network pharmacies and controlling the cost of covered
17 prescription drugs.

18 **18. Pharmacy provider.** "Pharmacy provider" means a retail pharmacy, mail order
19 pharmacy or licensed pharmacist.

20 **19. Retail pharmacy.** "Retail pharmacy" means a chain pharmacy, a supermarket
21 pharmacy, a mass merchandiser pharmacy, an independent pharmacy or a network of
22 independent pharmacies that is licensed as a pharmacy by this State and that dispenses
23 medications to the public.

24 **§4348. Licensure of pharmacy benefits managers**

25 Beginning January 1, 2020, a person may not act as a pharmacy benefits manager in
26 this State without first obtaining a license from the superintendent in accordance with this
27 section and paying the licensing fee required under section 601, subsection 28-A.

28 **1. Applicant information.** An applicant for licensure as a pharmacy benefits
29 manager must file with the superintendent at least the following information:

30 A. The name of the applicant;

31 B. The address and telephone number of the applicant;

32 C. The name and address of the applicant's agent for service of process in the State;

33 D. The name and address of each person beneficially interested in the applicant; and

34 E. The name and address of each person with management or control over the
35 applicant.

36 **2. Qualification.** The superintendent may issue a pharmacy benefits manager
37 license to an applicant only if the superintendent is satisfied that the applicant possesses

1 the necessary organization, expertise and financial integrity to supply the services sought
2 to be offered.

3 **3. Restrictions permitted.** The superintendent may issue a pharmacy benefits
4 manager license subject to restrictions or limitations, including the type of services that
5 may be supplied or the activities in which the pharmacy benefits manager may engage.

6 **4. Valid for 3 years.** A license issued pursuant to this section is valid for a period of
7 3 years and must be renewed.

8 **5. Nontransferable.** A license issued pursuant to this section is not transferable.

9 **6. Suspension, revocation or probationary license.** The superintendent may
10 suspend, revoke or place on probation a pharmacy benefits manager license under any of
11 the following circumstances:

12 A. The pharmacy benefits manager has engaged in fraudulent activity that constitutes
13 a violation of state or federal law;

14 B. The superintendent has received consumer complaints that justify an action under
15 this subsection to protect the safety and interests of consumers;

16 C. The pharmacy benefits manager fails to pay the original issuance or renewal fee
17 for the license; or

18 D. The pharmacy benefits manager fails to comply with a requirement set forth in
19 this chapter.

20 **7. Penalty for failure to obtain license.** If a pharmacy benefits manager acts
21 without obtaining a license pursuant to this section, the pharmacy benefits manager is
22 subject to a fine of \$5,000 per day for the period the pharmacy benefits manager is found
23 to be in violation.

24 **8. Rules.** The superintendent may adopt routine technical rules pursuant to Title 5,
25 chapter 375, subchapter 2-A to administer and enforce the requirements of this section.

26 **9. Enforcement.** The superintendent may enforce this section under sections 220
27 and 223 and other provisions of this Title.

28 **10. Registration remains effective until January 1, 2020 or registration date.**
29 The registration of a pharmacy benefits manager issued during 2019 in accordance with
30 former section 1913 remains valid until January 1, 2020 or the next yearly anniversary of
31 the registration date, whichever is later. Upon expiration of that registration, the
32 pharmacy benefits manager shall obtain a license under this section in order to do
33 business in this State.

34 **§4349. Oversight and contracting responsibilities**

35 **1. Compliance.** A carrier is responsible for monitoring all activities carried out by
36 the carrier, or all activities carried out on behalf of the carrier by a pharmacy benefits
37 manager if the carrier contracts with a pharmacy benefits manager, related to a carrier's
38 prescription drug benefits and for ensuring that all requirements of this chapter are met.

1 **2. Fiduciary duty.** A carrier that contracts with a pharmacy benefits manager to
2 perform any activities related to the carrier's prescription drug benefits is responsible for
3 ensuring that, under the contract, the pharmacy benefits manager acts as the carrier's
4 agent and owes a fiduciary duty to the carrier in the pharmacy benefits manager's
5 management of activities related to the carrier's prescription drug benefits.

6 **3. Contract requirements.** A carrier may not enter into a contract or agreement or
7 allow a pharmacy benefits manager or any person acting on the carrier's behalf to enter
8 into a contract or agreement that prohibits a pharmacy provider from:

9 A. Providing a covered person with the option of paying the pharmacy provider's
10 cash price for the purchase of a prescription drug and not filing a claim with the
11 covered person's carrier if the cash price is less than the covered person's cost-sharing
12 amount; or

13 B. Providing information to a state or federal agency, law enforcement agency or the
14 superintendent when such information is required by law.

15 **4. Excess payments at point of sale prohibited.** A carrier or pharmacy benefits
16 manager may not require a covered person to make a payment at the point of sale for a
17 covered prescription drug in an amount greater than the least of:

18 A. The applicable copayment for the prescription drug;

19 B. The amount a covered person would pay for the prescription drug if the covered
20 person purchased the prescription drug without using a health plan or any other
21 source of prescription drug benefits or discounts; and

22 C. The amount the pharmacy will be reimbursed for the prescription drug from the
23 pharmacy benefits manager or carrier.

24 **5. Adequate network.** A carrier shall provide a reasonably adequate retail
25 pharmacy network for the provision of prescription drugs for its covered persons. A mail
26 order pharmacy may not be included in determining the adequacy of a retail pharmacy
27 network. The superintendent may adopt rules as necessary to carry out the purposes of
28 this subsection. Rules adopted pursuant to this subsection are routine technical rules as
29 defined in Title 5, chapter 375, subchapter 2-A.

30 **§4350. Prescription drug pricing; maximum allowable cost**

31 **1. Single maximum allowable cost list.** A carrier, or a pharmacy benefits manager
32 under contract with a carrier, shall use a single maximum allowable cost list to establish
33 the maximum amount to be paid by a health plan to a pharmacy provider for a generic
34 drug or a brand-name drug that has at least one generic alternative available. A carrier, or
35 a pharmacy benefits manager under contract with a carrier, shall use the same maximum
36 allowable cost list for each pharmacy provider.

37 **2. Listing of prescription drug.** A maximum allowable cost may be set for a
38 prescription drug, or a prescription drug may be allowed to continue on a maximum
39 allowable cost list, only if that prescription drug:

1 A. Is rated as "A" or "B" in the most recent version of the United States Food and
2 Drug Administration's "Approved Drug Products with Therapeutic Equivalence
3 Evaluations," also known as "the Orange Book," or an equivalent rating from a
4 successor publication, or is rated as "NR" or "NA" or a similar rating by a nationally
5 recognized pricing reference; and

6 B. Is not obsolete and is generally available for purchase in this State from a national
7 or regional wholesale distributor by pharmacies having a contract with the pharmacy
8 benefits manager.

9 **3. Changes to maximum allowable cost list.** A carrier, or a pharmacy benefits
10 manager under contract with a carrier, shall establish a process for removing a
11 prescription drug from a maximum allowable cost list or modifying a maximum
12 allowable cost for a prescription drug in a timely manner to remain consistent with
13 changes to such costs and the availability of the drug in the national marketplace.

14 **4. Disclosure.** With regard to a pharmacy with which the carrier, or the pharmacy
15 benefits manager under contract with a carrier, has entered into a contract, a carrier, or a
16 pharmacy benefits manager under contract with a carrier, shall:

17 A. Upon request, disclose the sources used to establish the maximum allowable
18 costs;

19 B. Provide a process for a pharmacy to readily obtain the maximum allowable
20 payment available to that pharmacy under a maximum allowable cost list; and

21 C. At least once every 7 business days, review and update maximum allowable cost
22 list information to reflect any modification of the maximum allowable payment
23 available to a pharmacy under a maximum allowable cost list used by the carrier or
24 the pharmacy benefits manager under contract with a carrier.

25 **5. Appeal procedure.** A carrier, or a pharmacy benefits manager under contract
26 with a carrier, shall provide a reasonable administrative appeal procedure, including a
27 right to appeal that is limited to 14 days following the initial claim, to allow pharmacies
28 with which the carrier or pharmacy benefits manager has a contract to challenge
29 maximum allowable costs for a specified drug.

30 **6. Resolution of appeals.** A carrier, or a pharmacy benefits manager under contract
31 with a carrier, shall respond to, investigate and resolve an appeal under subsection 5
32 within 14 days after the receipt of the appeal. The carrier or pharmacy benefits manager
33 shall respond to an appeal as follows:

34 A. If the appeal is upheld, the carrier or pharmacy benefits manager shall make the
35 appropriate adjustment in the maximum allowable cost and permit the challenging
36 pharmacy or pharmacist to reverse and rebill the claim in question; or

37 B. If the appeal is denied, the carrier or pharmacy benefits manager shall provide the
38 challenging pharmacy or pharmacist the national drug code from national or regional
39 wholesalers of a comparable prescription drug that may be purchased at or below the
40 maximum allowable cost.

1 **7. Average wholesale price; use of a prescription drug not on maximum**
2 **allowable cost list.** A carrier, or a pharmacy benefits manager under contract with a
3 carrier, shall use the average wholesale price to establish the maximum payment for a
4 brand-name drug for which a generic equivalent is not available or a prescription drug not
5 included on a maximum allowable cost list. In order to use the average wholesale price
6 of a brand-name drug or prescription drug not included on a maximum allowable cost list,
7 a carrier, or a pharmacy benefits manager under contract with a carrier, must use only one
8 national drug pricing source during a calendar year, except that a carrier, or a pharmacy
9 benefits manager under contract with a carrier, may use a different national drug pricing
10 source if the original pricing source is no longer available. A carrier, or a pharmacy
11 benefits manager under contract with a carrier, shall use the same national drug pricing
12 source for each pharmacy provider and identify on its publicly accessible website the
13 name of the national drug pricing source used to determine the average wholesale price of
14 a prescription drug not included on the maximum allowable cost list.

15 **8. Payment.** This subsection governs payments between a carrier or a carrier's
16 pharmacy benefits manager and a pharmacy provider.

17 A. The amount paid by a carrier or a carrier's pharmacy benefits manager to a
18 pharmacy provider under contract with the carrier or the carrier's pharmacy benefits
19 manager for dispensing a prescription drug must be the ingredient cost plus the
20 dispensing fee less any cost-sharing amount paid by a covered person.

21 B. The ingredient cost may not exceed the maximum allowable cost or average
22 wholesale price, as applicable, and must be disclosed by the carrier's pharmacy
23 benefits manager to the carrier.

24 C. Only the pharmacy provider that dispensed the prescription drug may retain the
25 payment described in this subsection.

26 D. A pharmacy provider may not be denied payment or be subject to a reduced
27 payment retroactively unless the original claim was submitted fraudulently or in
28 error.

29 **§4350-A. Responsibility to use compensation for benefit of covered persons**

30 **1. Compensation used to lower premiums.** All compensation remitted by or on
31 behalf of a pharmaceutical manufacturer, developer or labeler, directly or indirectly, to a
32 carrier, or to a pharmacy benefits manager under contract with a carrier, related to its
33 prescription drug benefits must be remitted to, and retained by, the carrier and must be
34 used by the carrier to lower the premium for covered persons.

35 **2. Compliance.** Beginning March 1, 2021 and annually thereafter, a carrier shall file
36 with the superintendent a report in the manner and form determined by the superintendent
37 demonstrating how the carrier has complied with this section.

38 **§4350-B. Prescription drug formularies; pharmacy and therapeutics committee**

39 **1. Pharmacy and therapeutics committee; use of formulary.** A carrier, or a
40 pharmacy benefits manager under contract with a carrier, shall establish a pharmacy and
41 therapeutics committee. A carrier shall require its pharmacy and therapeutics committee

1 or the pharmacy and therapeutics committee of the carrier's pharmacy benefits manager to
2 use one or more formularies.

3 **2. Pharmacy and therapeutics committee; no conflict of interest for members.**

4 A carrier, or a pharmacy benefits manager under contract with a carrier, may not allow a
5 person with a conflict of interest to be a member of its pharmacy and therapeutics
6 committee. A person may not serve as a member of a pharmacy and therapeutics
7 committee if the person:

8 A. Is employed, or was employed within the preceding year, by a pharmaceutical
9 manufacturer, developer, labeler, wholesaler or distributor; or

10 B. Receives compensation, or received compensation within the preceding year,
11 from a pharmaceutical manufacturer, developer, labeler, wholesaler or distributor.

12 **3. Compensation prohibited.** A carrier, or a pharmacy benefits manager under
13 contract with a carrier, shall prohibit its pharmacy and therapeutics committee or any
14 member of the committee from receiving any compensation from a pharmaceutical
15 manufacturer, developer, labeler, wholesaler or distributor.

16 **4. Accessibility of formulary.** A carrier shall display any applicable formulary used
17 for the carrier's health plan and the prescription drug benefit levels applicable to covered
18 persons under that health plan on the carrier's publicly accessible website. The formulary
19 and benefit levels must be electronically searchable by drug name and by any other
20 means as required by the superintendent. The formulary and benefit levels available to a
21 covered person must provide, for each drug on the formulary:

22 A. An indication of whether the drug is preferred under the carrier's health plan;

23 B. An indication of whether the drug requires prior authorization or has step therapy
24 or quantity limit restrictions;

25 C. The specific tier the drug falls under, if the carrier's health plan uses a tiered
26 formulary;

27 D. The applicability of any covered person's cost-sharing amount; and

28 E. Whether the drug is subject to a deductible and, if so, the deductible amount.

29 **§4350-C. Access to records; audits**

30 **1. Requirements; record keeping.** A carrier shall maintain and have the ability to
31 access all data related to the administration and provision of prescription drug benefits
32 under a health plan of a carrier, including, but not limited to:

33 A. The names, addresses, member identification numbers, protected health
34 information and other personal information of covered persons; and

35 B. All contracts, documentation and records, including transaction and pricing data,
36 related to the dispensing of prescription drugs to covered persons under the health
37 plan.

38 **2. Compliance with federal law.** A sale or transaction involving the transfer of any
39 records, information or data described in subsection 1 must comply with the federal

1 Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and the
2 federal Health Information Technology for Economic and Clinical Health Act, Public
3 Law 111-5 and any regulations adopted pursuant to those laws.

4 **3. Audit records.** A carrier may audit all transaction records related to the
5 dispensing of prescription drugs to covered persons under a health plan of the carrier. A
6 carrier may conduct audits at a location of its choosing and with an auditor of its
7 choosing.

8 **4. Maintenance of records.** A carrier shall maintain all records, information and
9 data described in subsection 1 and all audit records described in subsection 3 for a period
10 of no less than 5 years.

11 **5. Authority of superintendent.** Upon request, a carrier shall provide to the
12 superintendent any records, contracts, documents or data held by the carrier or the
13 carrier's pharmacy benefits manager for inspection, examination or audit purposes.

14 **§4350-D. Treatment of pharmacy benefits manager compensation**

15 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
16 following terms have the following meanings.

17 A. "Anticipated loss ratio" means the ratio of the present value of the future benefits
18 payments to the present value of the future premiums of a policy form over the entire
19 period for which rates are computed to provide health insurance coverage.

20 B. "Pharmacy benefits manager compensation" means the difference between:

21 (1) The value of payments made by a carrier of a health plan to its pharmacy
22 benefits manager; and

23 (2) The value of payments made by the pharmacy benefits manager to
24 dispensing pharmacists for the provision of prescription drugs or pharmacy
25 services with regard to pharmacy benefits covered by the health plan.

26 **2. Pharmacy benefits manager compensation included as administrative cost.** If
27 a carrier uses a pharmacy benefits manager to administer or manage prescription drug
28 benefits provided for the benefit of covered persons, for purposes of calculating a carrier's
29 anticipated loss ratio, any pharmacy benefits manager compensation:

30 A. Constitutes an administrative cost incurred by the carrier in connection with a
31 health plan; and

32 B. May not constitute a benefit provided under a health plan.

33 A carrier may claim only the amounts paid by the pharmacy benefits manager to a
34 pharmacy or pharmacist as an incurred claim.

35 **3. Calculation of pharmacy benefits manager compensation.** Each rate filing
36 submitted by a carrier with respect to a health plan that provides coverage for prescription
37 drugs or pharmacy services that is administered or managed by a pharmacy benefits
38 manager must include:

1 A. A memorandum prepared by a qualified actuary describing the calculation of the
2 pharmacy benefits manager compensation; and

3 B. Such records and supporting information as the superintendent reasonably
4 determines is necessary to confirm the calculation of the pharmacy benefits manager
5 compensation.

6 **4. Records.** Upon request, a carrier shall provide any records to the superintendent
7 that relate to the calculation of the pharmacy benefits manager compensation.

8 **§4350-E. Effective date**

9 This chapter takes effect January 1, 2020.

10 **Sec. 9. Effective date.** This Act takes effect January 1, 2020.

11 **SUMMARY**

12 This bill replaces the current registration requirement for pharmacy benefits
13 managers doing business in this State with a licensing requirement beginning January 1,
14 2020. The bill imposes the following requirements on a carrier that provides prescription
15 drug benefits.

16 1. It makes a carrier responsible for monitoring all activities carried out by the
17 carrier, or all activities carried out on behalf of the carrier by a pharmacy benefits
18 manager, related to a carrier's prescription drug benefits and for ensuring that all
19 requirements of the law are met.

20 2. If a carrier contracts with a pharmacy benefits manager to perform any activities
21 related to the carrier's prescription drug benefits, it makes the carrier responsible for
22 ensuring that the pharmacy benefits manager acts as the carrier's agent and owes a
23 fiduciary duty to the carrier.

24 3. It prohibits a carrier from entering into a contract or agreement or allowing a
25 pharmacy benefits manager or any person acting on the carrier's behalf to enter into a
26 contract or agreement that prohibits a pharmacy provider from providing a consumer with
27 the option of paying the cash price for the purchase of a prescription drug and not filing a
28 claim with the consumer's carrier if the cash price is less than the covered person's cost-
29 sharing amount or providing information to a state or federal agency, law enforcement
30 agency or the Superintendent of Insurance when such information is required by law.

31 4. It prohibits a carrier or pharmacy benefits manager from requiring a consumer to
32 make an excessive payment at the point of sale for a covered prescription drug.

33 5. It requires a carrier to provide a reasonably adequate retail pharmacy network and
34 specifies that a mail order pharmacy may not be included in determining the adequacy of
35 a retail pharmacy network.

36 6. It replaces and updates current law related to the use of a maximum allowable cost
37 list by a carrier or pharmacy benefits manager under contract with a carrier. It also

1 clarifies how a carrier or pharmacy benefits manager may determine the average
2 wholesale price of a brand-name drug or generic drug not included on the maximum
3 allowable cost list.

4 7. It specifies how to calculate the amount paid by a carrier or a carrier's pharmacy
5 benefits manager to a pharmacy provider under contract with the carrier or the carrier's
6 pharmacy benefits manager for dispensing a prescription drug.

7 8. It requires that all compensation remitted by or on behalf of a pharmaceutical
8 manufacturer, developer or labeler, directly or indirectly, to a carrier or to a pharmacy
9 benefits manager related to its prescription drug benefits must be remitted to, and retained
10 by, the carrier and used to lower the premium for covered persons. The bill requires a
11 carrier to file annual reports beginning March 1, 2021 demonstrating how the carrier has
12 complied with this requirement.

13 9. It requires a carrier to use a prescription drug formulary and specifies certain
14 requirements for accessibility and disclosure of the formulary to covered persons. The
15 bill also prohibits a carrier from allowing a person to be a member of its pharmacy and
16 therapeutics committee if the member has a conflict of interest because of a relationship
17 with, or compensation from, a pharmaceutical manufacturer, developer, labeler,
18 wholesaler or distributor.

19 10. It requires a carrier to maintain certain records related to the administration and
20 provision of prescription drug benefits under a health plan and authorizes the carrier to
21 audit those activities. The bill also authorizes the superintendent to have access to
22 records upon request.

23 11. If a carrier uses a pharmacy benefits manager to administer or manage
24 prescription drug benefits provided for the benefit of covered persons, it provides that any
25 pharmacy benefits manager compensation constitutes an administrative cost incurred by a
26 carrier for purposes of calculating the anticipated loss ratio. "Pharmacy benefits manager
27 compensation" is defined in the bill as the difference between the value of payments
28 made by a carrier of a health plan to its pharmacy benefits manager and the value of
29 payments made by the pharmacy benefits manager to dispensing pharmacists for the
30 provision of prescription drugs or pharmacy services with regard to pharmacy benefits
31 covered by the health plan.

32 12. It provides that the provisions in the bill take effect January 1, 2020.