

**ONE HUNDRED SEVENTH LEGISLATURE - SECOND SESSION - 2022**  
**COMMITTEE STATEMENT**  
**LB767**

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**Hearing Date:** Monday January 24, 2022  
**Committee On:** Banking, Commerce and Insurance  
**Introducer:** Kolterman  
**One Liner:** Adopt the Pharmacy Benefit Manager Licensure and Regulation Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Aguilar, Bostar, Flood, Lindstrom, McCollister, Pahls, Slama, Williams  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Oral Testimony:**

**Proponents:**

Mark Kolterman  
Sarah Kuhl  
Olivia Little  
David Randolph  
Tim Redline  
Kaitlynn Brittan  
Carmen Chinchilla  
Rich Otto

**Representing:**

Introducer  
Nebraska Medicine  
Johnson Co. Hospital / NE Hospital Association  
Nebraska Pharmacists Association  
Nebraska Pharmacist Association  
Nebraska Medical Association / Nebraska Rheumatology  
Nebraska Oncology Society  
Nebraska Retail Federation / Nebraska Grocery Industry

**Opponents:**

**Representing:**

**Neutral:**

Bill Head  
David Root  
Jeremiah Blake  
Robert Bell

**Representing:**

Pharmaceutical Care Medical Association  
Prime Therapeutics  
Blue Cross Blue Shield of Nebraska  
Nebraska Insurance Federation

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**Summary of purpose and/or changes:**

This bill would enact 12 new sections to be known as the Pharmacy Benefit Manager Licensure and Regulation Act. The bill would establish standards and criteria for the licensure and regulation by the Director of Insurance of pharmacy benefit managers providing a claims processing service or other prescription drug or device service for a health benefit plan. The bill is based on the [State] Pharmacy Benefit Manager Licensure and Regulation Model Act of the National Association of Insurance Commissioners, except for Sections 7 to 10. The bill would provide, section by section, as follows:

Section 1 would provide for a named act: the Pharmacy Benefit Manager Licensure and Regulation Act.

Section 2 would provide for legislative purposes, those being to: (1) Provide effective regulation and licensure of pharmacy benefit managers; (2) Provide for consumer savings and encourage fairness in prescription drug benefits; (3) Provide for powers and duties of the Director of Insurance; and (4) Prescribe monetary penalties for violations of the act.

Section 3 would provide for definitions: (1) "Auditing entity" (a pharmacy benefit manager or any person that represents a pharmacy benefit manager in conducting an audit for compliance with a contract between the pharmacy benefit manager and a pharmacy); (2) "Claims processing service"; (3) "Covered person"; (4) "Director" (Director of Insurance); (5) "Health benefit plan"; (6) Health carrier"; (7) "Other prescription drug or device service"; (8) "Pharmacist"; (9) "Pharmacist service"; (10) "Pharmacy"; (11) "Pharmacy benefit manager" (a person, business, or entity including a wholly or partially owned or controlled subsidiary of a pharmacy benefit manager, that provides a claims processing service or other prescription drug or device service for a health benefit plan to a covered person who is a resident of this state); and (12) "Plan sponsor".

Section 5 would provide that no person may operate as a pharmacy benefit manager in this state for a health benefit plan without obtaining a license from the director. The director shall establish an application fee in an amount to exceed \$500 and an annual license renewal fee in an amount not to exceed \$250.

Section 6 would provide that a participation contract between a pharmacy benefit manager and a pharmacist or pharmacy shall not prohibit or restrict a pharmacy or pharmacist from or penalize a pharmacy or pharmacist for disclosing to any covered person any health care information regarding: (1) The nature of treatment, risks, or an alternative to such treatment; (2) The availability of an alternative therapy, consultation, or test; (3) The decision of a utilization reviewer to authorize or deny a service; (4) The process used to authorize or deny a service or benefit; or (5) Information on financial incentives used by a health carrier. A pharmacy benefits manager shall not prohibit a pharmacy or pharmacist from discussing information regarding the total cost for a pharmacist service for a prescription drug or from selling a more affordable alternative.

Section 7 would provide requirements regarding audits of a pharmacy by or on behalf of a pharmacy benefit manager. An auditing entity shall give a pharmacy fifteen days notice prior to conducting an initial onsite audit. The period covered by an audit shall not exceed twenty-four months from the date the claim was submitted to the auditing entity. No onsite audit shall take place during the first five business days of the month without the consent of the pharmacy. This section would provide requirements and procedures regarding recoupment.

Section 8 would provide that a pharmacy benefit manager shall update any maximum allowable cost price list at least every seven business days.

Section 9 would provide that a pharmacy benefit manager that reimburses a 340B entity for drugs shall not reimburse the 340B entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drugs to similarly situated pharmacies that are not 340B entities, and shall not assess any fee, chargeback, or other adjustment upon the 340B entity on the basis that the 340B entity participates in the program. A pharmacy benefit manager shall not discriminate against a 340B entity in a manner that prevents or interferes with a covered individual's choice to receive drugs from the 340B entity. A "340B entity" is defined as an entity participating in the federal 340B drug discount program, including its pharmacy or pharmacies, or any pharmacy or pharmacies contracting with the participating entity to dispense drugs purchased through the program.

Section 10 would provide that a pharmacy benefit manager shall not exclude a Nebraska pharmacy from participation in the pharmacy benefit manager's specialty pharmacy network if the pharmacy holds a specialty pharmacy accreditation from a nationally recognized independent accrediting organization and is willing to accept the terms and conditions of the pharmacy benefit manager's agreement with specialty pharmacies.

Section 11 would provide that the Director of Insurance shall enforce the Pharmacy Benefit Manager Licensure and Regulation Act and may examine or audit the books and records of a pharmacy benefit manager. The director may impose monetary penalties on a pharmacy benefit manager or health carrier in an amount not to exceed one thousand dollars per violation.

Section 12 would provide the Director of Insurance with rule and regulation authority.

Section 13 would provide for an operative date of January 1, 2023.

Section 14 would provide for severability.

Section 15 would outright repeal Section 71-2484 which would be made redundant by this bill.

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**Explanation of amendments:**

The committee amendments would provide that section 9 applies to "340B contract pharmacies" as well as to 340B entities.

The amendments would define "340B contract pharmacy" as a pharmacy under contract with a 340B entity to dispense drugs on behalf of such 340B entity. The amendments would redefine "340B entity" as an entity participating in the federal 340B drug discount program, as described in 42 U.S.C. 256b.

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Matt Williams, Chairperson