SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 41 (Wiener)
Version: March 17, 2025
Hearing Date: April 29, 2025
Fiscal: Yes
Urgency: No
AM

SUBJECT

Pharmacy benefits

DIGEST

This bill requires pharmacy benefit managers (PBMs) to be licensed and regulated by the California Department of Insurance (CDI). The bill imposes several contracting and compensation requirements and prohibitions affecting PBMs, health plans, insurers, and pharmacists and pharmacies. The bill creates duties and obligations on PBMs. The bill provides for the imposition of civil penalties by the Attorney General for a violation of its provisions. The bill also makes reports and data received by CDI from PBMs confidential and exempt from the California Public Records Act.

EXECUTIVE SUMMARY

This bill seeks to establish a comprehensive licensing and regulatory schemed for PBMs. The author and sponsors of the bill state that there is a lack of transparency over PBMs and that increasing vertical integration and consolidation in the industry is leading to increased prescription drug prices for consumers. To address this issue, the bill places various restrictions and requirements on PBMs, such as requiring a pass through pricing model and prohibiting spread pricing. The author agreed to make amendments in the Senate Health Committee which, due to timing, are being taken in this Committee. (*see* Comment 6), below).

This bill is sponsored by the California Pharmacist Association, the California Chronic Care Coalition, Los Angeles LGBT Center, and the San Francisco AIDS Foundation. The bill is supported by numerous organizations and associations, including the California Medical Association and the United Nurses Association, and the California Board of Pharmacy. The bill is opposed by a diverse group of associations and organizations, including those representing health insurance and health plans and several chambers of commerce, including the California Chamber of Commerce. The bill passed the Senate Health Committee on a vote of 11 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act. (Health & Saf. Code §§ 1340 et seq.); CDI to regulate health and other insurance lines (Ins. Code § 106 et seq.); and the Department of Health Care Services (DHCS) to administer the Medi-Cal program. (Welf. & Inst. Code § 14000 et. seq.)

2) Defines a "pharmacy benefit manager" as a person, business, or other entity that, pursuant to a contract with a health plan, manages the prescription drug coverage provided by the health plan, including, but not limited to: processing and payment of claims for prescription drugs; performing drug utilization review; processing drug prior authorization requests; adjudicating appeals or grievances related to prescription drug coverage; contracting with network pharmacies; and controlling the cost of covered prescription drugs. (Health & Saf. Code § 1385.001.)

3) Requires DMHC to enforce specified provisions of law regarding PBMs, including:
    a) Requirements on health plans to disclose to a contracted pharmacy provider or its contracting agent, specified prescription drug information including the telephone number pharmacy providers may call for assistance and the information necessary to process a pharmacy claim;
    b) Prohibitions on health plans from including in a contract with a pharmacy provider or its contracting agent, a provision that prohibits the provider from informing a patient of a less costly alternative to a prescribed medication;
    c) Requirements on health plans to require contracted PBMs to register with DMHC, exercise good faith and fair dealing in the performance of its contractual duties, comply with laws regarding audits of pharmacy benefits, and inform pharmacists of their right to complain to DMHC about unfair payment patterns and the health care provider's bill of rights; and,
    d) Requirements that a PBM notify a health plan in writing of any activity, policy, or practice that directly or indirectly presents a conflict of interest with the discharge of its duty to the health plan to exercise good faith and fair dealing in the performance of its contractual duties. (Health & Saf. Code §§ 1385.003 & 1385.004.)

4) Requires a PBM to exercise good faith and fair dealing in its contractual duties to a health plan and register with DMHC, as specified. Prohibits the registration from being transferred. (Health & Saf. Code § §1385.004 & 1385.005.)

5) Establishes that failure of a plan to comply with 3), above, constitutes grounds for disciplinary action, and authorizes DMHC to investigate and take enforcement actions. Requires DMHC to periodically evaluate contracts between health plans and PBMs to determine if any audit, evaluation, or enforcement actions should be undertaken. (Health & Saf. Code § 1385.006.)

6) Requires a plan or insurer that provides essential health benefits to allow any enrollee or insured to access prescription drug benefits at an in-network retail pharmacy, except as specified.
    a) Authorizes a nongrandfathered individual or small group health plan contract or insurance policy to charge an enrollee or insured different cost-sharing for obtaining a covered drug at a retail pharmacy, but requires all cost-sharing to count toward the annual limitation on cost-sharing. (Health & Saf. Code § 1367.42; Ins. Code § 10123.201.)

7) Establishes a pilot project to assess the impact of health plan and PBM prohibitions on the dispensing of certain amounts of prescription drugs by network retail pharmacies in Riverside County and Sonoma County.
    a) Prohibits a health plan from prohibiting, or permitting any delegated PBMs to prohibit, a pharmacy provider from dispensing a particular amount of a prescribed medication if the plan or PBM allows that amount to be dispensed through a pharmacy owned or controlled by the plan or PBM, except as provided.
    b) Requires health plans subject to the pilot to annually report specified information and data to DMHC relating to changes to costs and utilization of prescription drugs attributable to the prohibition of contract terms.
    c) Requires DMHC to summarize data received and provide the summary to the Governor and health policy committees of the Legislature. (Health & Saf. Code §1368.6.)

8) Establishes the Unfair Competition Law (UCL), which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Bus. & Prof. Code §§ 17200 et seq.)
    a) Establishes an Unfair Competition Law Fund, created as a special account within the General Fund, which is funded by penalties assessed by public prosecutors for violations of the UCL. (Bus. & Prof. Code § 17206.)

9) Prohibits the law on audits of pharmacy benefits from being construed to suggest or imply that the Department of Consumer Affairs or the California State Board of Pharmacy has any jurisdiction or authority over that law. (Bus. & Prof. Code § 4439.)

10) Requires a PBM that reimburses a contracting pharmacy for a drug on a maximum allowable cost basis to comply with specified contracting requirements. (Bus. & Prof.

Code § 4440.)

11) Requires a PBM to disclose specified information to purchasers, upon request, including:
    a) The aggregate wholesale acquisition costs (WAC) for each therapeutic category of drugs containing three or more drugs, as specified;
    b) The aggregate amount of rebates received by therapeutic category of drugs containing three or more drugs, including any utilization discounts received from the manufacturer or labeler;
    c) Any administrative fees received from the manufacturer or labeler;
    d) Whether the PBM has a contract, agreement, or other arrangement to exclusively dispense or provide a drug to a purchaser's employees, insured, or enrollees, and the application of all consideration or economic benefits collected or received per the arrangement;
    e) Prescription drug utilization information of purchaser's enrollees or insureds that is not specific to any individual enrollee or insured;
    f) The aggregate of payments, or the equivalent economic benefit to pharmacies owned or controlled by the PBM;
    g) The aggregate of payments made by the PBM to pharmacies not owned or collected by the PBM; and
    h) The aggregate amount of the fees imposed on, or collected from, network pharmacies or other assessments against network pharmacies, and the application of those amounts collected pursuant to contract with the purchaser. (Bus. & Prof. Code § 4440.)

This bill:

1) Requires CDI to license and regulate PBMs, and authorizes CDI to enforce these provisions and provisions of existing law regulating pharmacy audits by PBMs and other entities, as specified.

2) Prohibits, commencing January 1, 2026, a health plan contract or health insurance policy that provides prescription drug coverage from calculating an enrollee's or insured's cost-sharing, at an amount that exceeds the actual rate paid for the prescription drug, and, requires cost-sharing provisions consistent with specified existing law.
    a) Requires activity conducted by a PBM, as specified, to be construed as the business of insurance.
    b) Authorizes CDI to examine or audit any books and records of a PBM and requires CDI to establish a retention schedule, as specified. Authorizes disclosure of this information to the Attorney General.

3) Authorizes CDI to deny, suspend, or revoke a PBM license, and requires any hearing had by CDI to be held in accordance with the Administrative Procedures Act (APA), as specified.

4) Prohibits a PBM from imposing requirements, conditions, or exclusions that discriminate against a nonaffiliated pharmacy in connection with dispensing drugs.

5) Prohibits a contract issued, amended, or renewed on or after January 1, 2026, between a nonaffiliated pharmacy and a PBM from prohibiting the pharmacy from offering either of the following as an ancillary service of the pharmacy:
    a) The delivery of a prescription drug by mail or common carrier to a patient or personal representative on request of the patient or personal representative if the request is made before the drug is delivered; or,
    b) The delivery of a prescription by an employee or contractor of the pharmacy to a patient or personal representative.

6) Prohibits the pharmacy from charging a PBM for the delivery service. This does not prohibit the use of remote pharmacies, secure locker systems, or other types of pickup stations if those services are otherwise permitted by law.

7) Prohibits, beginning January 1, 2026, a contract executed, or a contract amendment or renewal between a PBM and health plan or insurer, from authorizing spread pricing, as provided. Requires a PBM to use a "pass through pricing model."

8) Places prohibitions and requirements on PBMs as it relates to pharmacies and pharmacist services.

9) Specifies that a PBM has a duty and obligation to the health plan, the subscriber and enrollee, the health insurer, the policyholder and the insured, to perform its services with care, skill, prudence, diligence, and professionalism.

10) Makes any person that violates this bill subject to an injunction and liable for a civil penalty of not less than $1,000 or more than $7,500 for each violation, assessed and recovered in a civil action brought by the AG. This provision does not alter or abrogate CDI's authority to enforce the requirements of the bill.

11) Specifies that certain violations of the act are considered an act of unfair competition, and specifies that this provision does not limit any other statutory or common law rights or remedies, including liability under the Unfair Competition Law.

12) Specifies that the authority of the Attorney General to maintain or restore competitive, fair, and honest markets and prosecute violations of state and federal

antitrust, consumer protection, unfair competition, unfair practices, or any other related law is not be narrowed, abrogated, or otherwise altered by this bill.

13) Requires, on and after July 1, 2028, and annually thereafter, a PBM to file with CDI a report that contains specified information related to costs, fees, rebates, payments, and contracts from the preceding calendar year.
    a) Requires CDI to prepare a report based on this information and publish the report in its website.

14) Requires on or before July 1, 2027, and annually thereafter, a PBM to report to CDI, and for CDI to publish a report, of the data listed below:
    a) A list of the 50 costliest drugs, the 50 most frequently prescribed drugs, and the 50 highest revenue-producing drugs, grouped by generic, brand, specialty, and other, as specified.
    b) Specified information, in the aggregate, related to PBMs revenue, purchasers, and expenses.
    c) Certain information regarding group purchasing organizations.

15) Provides that the information submitted to the department pursuant to s 12) and 13), above, is deemed confidential and is not to be disclosed to the public pursuant to the California Public Records Act. This does not prevent disclosure to the AG to investigate, prosecute, or defend any legal claim or cause or action, or to use the reports in any court or proceeding of law.

COMMENTS

1. Stated need for the bill

The author writes:

> Senate Bill 41 reins in the worst abuses by pharmacy benefit managers (PBMs), insurance-industry middlemen who are driving up the price of prescription medication for Californians. This legislation will protect consumer choice, provide transparency on prescription drug prices, and improve our healthcare system by ensuring that PBMs are appropriately regulated. Vertical integration and a lack of oversight have allowed some PBMs to engage in unfair business practices that undermine healthcare access and drive up the cost of prescription drugs. PBMs have developed a compensation scheme that creates perverse incentives to raise drug prices in some circumstances, and the complete lack of oversight has also allowed some PBMs to steer patients toward pharmacies they own, pocket large portions of the rebates they negotiate with drug manufacturers, and make misleading statements to customers. By raising fees and lowering reimbursement rates, PBMs are also making it hard for many independent pharmacies to stock vital medications, and forcing many of them to close. These business practices drive up the cost of

> prescription drugs, and force consumers and pharmacies to pay the price. SB 41 fills that regulatory gap by requiring that all PBMs be licensed by the Department of Insurance and disclose basic information regarding their business practices to the state.

2. Background

a. PBMs generally

PBMs are intermediaries in the prescription drug supply chain that act as a go-between to help negotiate costs and payments between drug manufacturers, pharmacies, and healthcare insurance providers. "PBMs negotiate with drug manufacturers and pharmacies to set prices, determine patients' access to different medications, and contract with pharmacies to participate in networks. Insurers pay fees to PBMs for performing these functions. PBMs also derive revenue in other ways: for example, they receive a share of the drug rebates they negotiate with pharmaceutical companies; they collect the difference between what insurers are reimbursed and the amount that pharmacies are paid (the 'spread'); and they steer business to their affiliated pharmacies."[1]

b. SB 966 (Wiener, 2024)

SB 966 was substantially similar to this bill. One of the biggest differences is SB 966, as introduced, required the Board of Pharmacy to license and regulate PBMs. SB 966 (Wiener) was not heard by this Committee as it was double referred to the Senate Business Professions, and Economic Development Committee and the Senate Health Committee. SB 966 was eventually amended to require the California Department of Insurance to license and regulate PBMs. SB 966 was vetoed by Governor Newsom stating:

> Without a doubt, the public and the Legislature need a clearer understanding of how much PBM practices are driving up prescription drug costs. I commend the author for working to further tackle this issue through regulating PBM participation in the pharmacy delivery system. Currently, PBMs manage all aspects of prescription drug services for California's commercial health care market. I believe that PBMs must be held accountable to ensure that prescription drugs remain accessible throughout pharmacies across California and available at the lowest price possible. However, I am not convinced that SB 966's expansive licensing scheme will achieve such results.
>
> My Administration is committed to increasing access and lowering the costs of prescription drugs. As such, I am directing the California Health and Human

[1] The Commonwealth Fund, *What Pharmacy Benefit Managers Do, and How They Contribute to Drug Spending*, available at https://www.commonwealthfund.org/publications/explainer/2025/mar/what-pharmacy-benefit-managers-do-how-they-contribute-drug-spending.

Services Agency to propose a legislative approach to gather much needed data on PBMs next year, which can be considered in conjunction with data from our entire health care delivery system. There is some existing transparency regarding prescription drug prices provided through the reporting required by SB 17 (Hernandez, Chapter 603, Statutes of 2017) and the establishment of the Healthcare Payments Database. However, we need more granular information to fully understand the cost drivers in the prescription drug market and the role that PMBs play in pricing. Specifically, California should collect comprehensive information from the pharmacy delivery system about the total cost of care for providing individual prescription drug products, including but not limited to wholesale acquisition costs, fees, payments, discounts, and rebates paid to and received by PBMs.

These next steps, together with the CalRx program and the Office of Health Care Affordability's work, will offer a multi-pronged approach to improving affordability of prescription drugs in California.

c. Federal Trade Commission reports

The Federal Trade Commission (FTC) issued a report in July 2024 on PBMs and a second interim staff report on PBMs in January of this year. The FTC noted in 2024 that "PBMs oversee critical decisions about access to and affordability of medications without transparency or accountability to the public."[2] The 2025 report's key findings include:

- The three biggest PBMs, Caremark Rx, LLC (CVS), Express Scripts, Inc. (ESI), and OptumRx, Inc. (OptumRx), imposed markups of hundreds and thousands of percent on numerous specialty generic drugs dispensed at their affiliated pharmacies, including drugs used to treat cancer.
- Dispensing patterns suggest that the Big 3 PBMs may be steering highly profitable prescriptions to their own affiliated pharmacies and away from unaffiliated pharmacies.
- The three biggest PBMs generated over $7.3 billion of dispensing revenue in excess of their estimated acquisition cost, as measured by the National Average Drug Acquisition Cost (NADAC), on specialty generic drugs over the study period. Affiliated pharmacies dispensing revenue in excess of NADAC had a dramatic increase at a compound annual growth rate of 42 percent from 2017-2021.

[2] Fed. Trade Comm., Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies, (July 2024), available at https://www.ftc.gov/system/files/ftc_gov/pdf/pharmacy-benefit-managers-staff-report.pdf.

- Separate income, estimated at $1.4 billion, was generated from spread pricing, which is when a PBM bills their plan sponsor clients more than they reimburse pharmacies for a drug.
- Plan sponsors paid $4.8 billion for specialty generic drugs, while patient cost sharing totaled $297 million in 2021, which was the last year for which the FTC received full-year data for the study.
- Plan sponsors and patient payments each increased at compound annual growth rates of 21 percent for commercial claims, and 14 to 15 percent for Medicare Part D claims.[3]

The report stated that the problem of enormous markups on dozens of lifesavings drugs by PBMs is "growing at an alarming rate, which means there is an urgent need for policymakers to address it."[4]

d. PBM funded study

In July of 2024, research funded by the three biggest PBMS was published arguing that the data does not back up the claims made by critics of PBMs. This study reported the following findings:

- PBM operating margins are below 5 percent in recent years and were lower in 2022 than they were in 2017.
- The average pass-through rate for the three largest PBMs has increased over time and was close to 100 percent by 2020 and 2021.
- The analysis shows that there is no statistical evidence that rebate percentages are positively correlated with the rate of growth in list prices.
- The average retail pharmacy spread retained by PBMs is below 2 percent;
- The list price of non-rebated branded drugs increased 8 percent between 2017 and 2022, and during the same period the list price of rebated branded drugs increased 4 percent;
- The real overall net prices of non-rebated branded drugs increased 6 percent, while the rebated branded drugs real overall net price decreased 13 percent;
- Reimbursements paid to independent pharmacies are generally higher than reimbursement rates paid to non-affiliated chain pharmacies for both non-specialty branded drugs (4 percent) and non-specialty generic drugs (24 percent).[5]

---

[3] Fed. Trade. Comm., *FTC Releases Second Interim Staff Report on Prescription Drug Middlemen*, (Jan. 14, 2025), available at https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-releases-second-interim-staff-report-prescription-drug-middlemen.

[4] *Id.*

[5] PBMs and Prescription Drug Distribution" An Economic Analysis of Criticisms Levied Against Pharmacy Benefit Managers available at https://carltonreport.org/wp-content/uploads/2024/07/Carlton_CompassLexecon_AN-ECONOMIC-ANALYSIS-OF-CRITICISMS-LEVIED-AGAINST-PHARMACY-BENEFIT-MANAGERS.pdf.

3. This bill creates a comprehensive regulatory and licensing frameworks for PBMs

The bill seeks to establish a comprehensive licensing and regulatory scheme for PBMs in the state under CDI. The provisions of the bill in this Committee's jurisdiction are the provisions related to enforcement by the AG, civil penalties, unfair competition, and the confidentiality and limitation on the access to public records.

a. AG Enforcement and civil penalties

The bill provides that any person who violates its provisions is subject to a civil penalty, which is to be assessed and recovered in a civil action brought in the name of the people of the State of California by the AG. The minimum penalty amount is $1,000 and the maximum is $7,500 for each violation. The AG is entitled to specific performance, injunctive relief, and other equitable remedies a court deems appropriate for enforcement of this bill, and is also entitled to recover attorney's fees and costs incurred in remedying each violation. The bill provides that the remedies or penalties provided are cumulative to each other and to remedies or penalties available under all other laws of this state.

The bill also requires that, if the violation of specified provisions of the bill are alleged or at issue in any proceeding in any court of this state, then the person filing a brief or petition with the court in that proceeding is required to serve a copy of that brief or petition on the AG within three days of filing it with the court. A person who has filed any other document with the court in addition to a brief or petition must provide a copy of that document, without charge, to the AG, upon request, within five days of the request. The time for service may be extended by the court for good cause shown. The bill prohibits any judgment or relief, temporary or permanent, from being granted, or an opinion issued, until proof of service of the brief or petition on the AG is filed with the court. This provision ensures that if anyone pursues a cause of action against a PBM under any other law, such as the Unfair Competition Law, the AG will receive notice of the alleged violation.

b. Unfair Competition Law

The bill provides that a violation of the prohibition against a nonaffiliated pharmacy in connection with dispensing drugs and other specified acts are an act of unfair competition under the Unfair Competition Law (UCL). The UCL (Bus. & Prof. Code § 17200) provides remedies for "anything that can properly be called a business practice and that at the same time is forbidden by law." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 [citations omitted].) The UCL provides that a court "may make such orders or judgments . . . as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (Bus. & Prof. Code § 17203; see also Korea Supply Co. v. Lockheed Martin Corp. (2003) 29 Cal.4th 1134, 1146 ["An

order for restitution, then, is authorized by the clear language of the [UCL."]].) The law also permits courts to award injunctive relief and, in certain cases, to assess civil penalties against the violator. (Bus. & Prof. Code §§ 17203, 17206.)

c. Confidentiality and limitation on the access to public records

Under the CPRA, public records are open to inspection by the public at all times during the office hours of the agency, unless they are exempt from disclosure. (Gov. Code § 7922.525.) A public record is defined as any writing containing information relating to the conduct of the public's business that is prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 7920.530.) There are several general categories of documents or information that are permissively exempt from disclosure under the CPRA essentially due to the character of the information. The exempt information can be withheld by the public agency with custody of the information, but it also may be disclosed if it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information. (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, at 652.). Additionally, some records are prohibited from disclosure or are specifically stated to not be public records. (*see* Gov. Code § 7924.110(a).)

California generally recognizes that public access to information concerning the conduct of the people's business is a fundamental and necessary right.[6] At the same time, the state recognizes that this right must be balanced against the right to privacy.[7] The general right of access to public records may, therefore, be limited when records include personal information or proprietary business information. Under the bill, PBMs are required to report various data to CDI. In recognition that some of this data is proprietary business information, the bill makes most of the data reported confidential and not subject to public disclosure under the CPRA. The bill does provide that some data can be shared with the AG to investigate, prosecute, or defend any legal claim or cause or action. The bill states that it is necessary to make these documents presumptively confidential in order to protect the confidentiality of information received by state agencies from pharmacy benefit managers.

4. Statements in support

The California Pharmacist Association, the California Chronic Care Coalition, the Los Angeles LGBT Center, and the San Francisco AIDS Foundation, sponsors of the bill, write in support stating:

> […] While the initial purpose of PBMs was to negotiate contracts on behalf of their clients (health plans), there is now an inherent conflict of interest and lack of

[6] Cal. Const., art. I, § 3; Gov. Code, § 7921.000.
[7] Cal. Const., art. I, § 1.

transparency in how they operate. PBMs are squarely in the middle of negotiating prices, demanding rebates, and driving formulary decisions— controlling virtually every aspect of prescription drug programs. The self-dealing nature of PBMs is on full display when they steer patients to their company-owned mail-order, community and specialty pharmacies, all of which calls into question the ability of PBMs to fairly represent the employers, providers, and patients they purport to serve.

In recent years, the largest PBMs merged with large health insurers. CVS acquired Aetna Inc., Express Scripts was acquired by Cigna and OptumRx was already affiliated with UnitedHealthcare. These acquisitions have significantly increased PBM profit margins and shone an even brighter light on perverse incentives that are targeted by SB 41. These relationships—forged by vertical integration and bolstered by record profits—have caused most states to begin to regulate and the Federal government and several states attorney generals to investigate PBMs, including our own Attorney General, Rob Bonta. […]

By providing transparency and oversight of PBMs, the following harmful practices can be subject to scrutiny and, in some cases, prohibited:

- Rebate Pumping: PBMs favoring higher-cost drugs on a formulary because the PBM can negotiate a higher rebate, which they retain as profit.
- Spread Pricing: PBMs charge the health plan a higher cost than what it pays to the pharmacy. This can lead to higher costs for the plan sponsor, which in turn can increase premiums and co-pays for patients.
- Claw-backs: After a prescription is filled, PBMs retroactively recoup the difference between a patient's copay and the actual price of a drug when the copay amount is higher. It is important to note that the PBMs require a pharmacy to collect a copay from a patient that is set by the PBM. If the patient copay imposed by the PBM is higher than the ultimate reimbursement to the pharmacy, the PBM claws back the excess copay from the pharmacy, keeping it as a profit.
- Rebate retention: PBMs retain a portion of the drug manufacturer rebate as profit instead of returning full amount to the consumer or health plan.
- Patient Steering: PBMs require patients to transfer prescriptions to the PBM-owned mailorder or community pharmacies or the consumer faces higher copay amounts for their medications.

It is time that California joins the vast majority of states in ensuring that pharmacy benefit managers are held to the same standard as every other person and entity in health care.

5. Statements in opposition

The California Association of Health Plans and the Association of California Life and Health Insurance Companies write in opposition, stating:

> SB 41 introduces a licensing and regulatory framework managed by the California Department of Insurance (CDI). Layering another regulatory system on top of the existing one managed by the Department of Managed Health Care (DMHC) creates redundancies that will strain state and health plan/insurer resources. We are deeply concerned that this new structure will not address the root problem of rising drug prices but will likely create additional financial burdens that are ultimately passed on to consumers through higher premiums, leading to adverse effects on the overall affordability of healthcare for Californians
>
> While we understand that transparency in healthcare is critical, we do not believe the approach outlined in SB 41 will achieve its intended objectives. Furthermore, the implications of this regulatory shift are significant, and as such, we are very concerned that the licensing and regulatory scheme outlined does nothing to reduce the overall price of prescription drugs but instead adds unnecessary costs to the healthcare system.

6. Senate Health Amendments

Amendment 1

In the heading, below line 3, insert:

(Coauthor: Assembly Member Pellerin)

Amendment 2

In the title, in line 1, strike out "Section 1367.243" and insert:

Sections 1367.243, 1385.005, and 1385.006

Amendment 3

On page 3, in line 6, after "paid" insert:

by the plan

Amendment 4

On page 3, in line 8, after the period insert:

Cost sharing shall include deductibles and copayments.

Amendment 5

On page 4, in line 14, strike out "Medicaid covered" and insert:

Medicaid-covered

Amendment 6

On page 5, in line 4, strike out "collected" and insert:

controlled

Amendment 7

On page 5, between lines 34 and 35, insert:

SEC. 4. Section 1385.005 of the Health and Safety Code is amended to read:

1385.005. (a) A pharmacy benefit manager required to register with the department pursuant to Section 1385.004 shall complete an application for registration with the department that shall include, but not be limited to, all of the information required by subdivision (c).

(b) A pharmacy benefit manager registration obtained pursuant to this section is not transferable.

(c) The department shall develop an application form for pharmacy benefit manager registration. The application form for a pharmacy benefit manager registration shall require the pharmacy benefit manager to submit the following information to the department:

(1) The name of the pharmacy benefit manager.

(2) The address and contact telephone number for the pharmacy benefit manager.

(3) The name and address of the pharmacy benefit manager's agent for service of process in the state.

(4) The name and address of each person beneficially interested in the pharmacy benefit manager.

(5) The name and address of each person with management or control over the pharmacy benefit manager.

(d) If the applicant is a partnership or other unincorporated association, a limited liability company, or a corporation, and the number of partners, members, or stockholders, as the case may be, exceeds five, the application shall so state, and shall further state the name, address, usual occupation, and professional qualifications of each of the five partners, members, or stockholders who own the five largest interests in the applicant entity. Upon request by the department, the applicant shall furnish the department with the name, address, usual occupation, and professional qualifications

of partners, members, or stockholders not named in the application, or shall refer the department to an appropriate source for that information.

(e) The application shall contain a statement to the effect that the applicant has not been convicted of a felony and has not violated any of the provisions of this article. If the applicant cannot make this statement, the application shall contain a statement of the violation, if any, or shall describe the reasons that prevent the applicant from being able to comply with the requirements with respect to the statement.

(f) The department may set a fee for a registration required by this article. *The application fee shall not exceed the reasonable costs of the department in carrying out its duties under this article.*

(g) Within 30 days of a change in any of the information disclosed to the department on an application for a registration, the pharmacy benefit manager shall notify the department of that change in writing.

(h) *On or before July 1, 2027, and on or before each July 1 thereafter, a pharmacy benefit manager shall report to a plan with which it contracts the information necessary for a plan to report to the department pursuant to subparagraph (D) of paragraph (2) of subdivision (a) of Section 1367.243.*

~~(h)~~

(i) For purposes of this section, "person beneficially interested" with respect to a pharmacy benefit manager means and includes the following:

(1) If the applicant is a partnership or other unincorporated association, each partner or member.

(2) If the applicant is a corporation, each of its officers, directors, and stockholders, provided that a natural person shall not be deemed to be beneficially interested in a nonprofit corporation.

(3) If the applicant is a limited liability company, each officer, manager, or member.

SEC. 5. Section 1385.006 of the Health and Safety Code is amended to read:

1385.006. The failure by a health care service plan *or pharmacy benefit manager* to comply with the contractual requirements pursuant to this article shall constitute grounds for disciplinary action. The director shall, as appropriate, investigate and take enforcement action against a health care service plan *or pharmacy benefit manager* that fails to comply with these requirements and shall periodically evaluate contracts between health care service plans and pharmacy benefit managers to determine if any audit, evaluation, or enforcement actions should be undertaken by the department.

Amendment 8

On page 5, in line 35, strike out "SEC. 4." and insert:

SEC. 6.

Amendment 9

On page 5, in line 40, after "paid" insert:

by the insurer

Amendment 10

On page 5, in line 40, after the period insert:

Cost sharing shall include deductibles and coinsurance.

Amendment 11

On page 6, in line 24, strike out "Medicaid covered" and insert:

Medicaid-covered

Amendment 12

On page 6, in line 27, strike out "SEC. 5." and insert:

SEC. 7.

Amendment 13

On page 7, in line 14, strike out "collected" and insert:

controlled

Amendment 14

On page 7, in line 38, strike out "SEC. 6." and insert:

SEC. 8.

Amendment 15

On page 8, in line 7, strike out "SEC. 7." and insert:

SEC. 9.

Amendment 16

On page 13, in line 7, strike out "Section" and insert:

Sec.

Amendment 17

On page 14, in line 3, strike out "rule or"

Amendment 18

On page 19, in line 14, strike out "collected" and insert:

controlled

Amendment 19

On page 20, between lines 16 and 17, insert:

(e) On or before July 1, 2027, and on or before each July 1 thereafter, a pharmacy benefit manager shall report to an insurer with which it contracts the information necessary for an insurer to report to the department pursuant to subparagraph (D) of paragraph (2) of subdivision (a) of Section 10123.205.

Amendment 20

On page 20, in line 17, strike out "(e)" and insert:

(f)

Amendment 21

On page 20, in line 26, strike out "(f)" and insert:

(g)

Amendment 22

On page 21, in line 23, strike out "subdivision" and insert:

section

Amendment 23

On page 21, in line 24, strike out "and communicating"

Amendment 24

On page 21, in line 32, after "to" insert:

or mislead

Amendment 25

On page 23, in line 1, after "(d)" insert:

(1)

Amendment 26

On page 23, in line 4, strike out "affects rated" and insert:

decreases premiums

Amendment 27

On page 23, in line 5, strike out "policy holder," and insert:

policyholder, or that results in enrollees or insureds paying the lowest level of cost sharing, deductibles, and coinsurance for a drug,

Amendment 28

On page 23, in line 7, strike out "(1)" and insert:

(A)

Amendment 29

On page 23, in line 7, after "The" insert:

wholesale

Amendment 30

On page 23, in line 7, strike out "or any other price metric"

Amendment 31

On page 23, in line 8, strike out "(2)" and insert:

(B)

Amendment 32

On page 23, in line 12, strike out "(3)" and insert:

(C)

Amendment 33

On page 23, in line 14, strike out "patient." and insert:

patient, except for performance bonuses that are based or contingent on a decrease in premiums, deductibles, or other cost sharing.

Amendment 34

On page 23, in line 15, strike out "(4)" and insert:

(2)

Amendment 35

On page 24, in line 16, strike out "audits." and insert:

audits without cause.

Amendment 36

On page 25, in line 2, strike out "expressly or implicitly restrict, or"

Amendment 37

On page 25, in line 3, strike out "for," and insert:

for

Amendment 38

On page 25, strike out line 4 and insert:

unless the pharmacy benefit manager can demonstrate the extent to which exclusivity results in the lowest cost to the plan or insurer, and the lowest cost sharing for the plan's enrollee or insurer's insured.

Amendment 39

On page 25, between lines 11 and 12, insert:

(c) Contracts entered into pursuant to this section shall be open for inspection and audit by the department.

Amendment 40

On page 28, in line 19, strike out "SEC. 8." and insert:

SEC. 10

Amendment 41

On page 28, in line 24, strike out "SEC. 9." and insert:

Amendment 42

On page 28, between lines 27 and 28, insert:

SEC. 12. The Legislature finds and declares that Section 9 of this act, which adds Sections 17025 and 17075 to the Insurance Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the confidentiality of information received by state agencies from pharmacy benefit managers, it is necessary that those documents be presumptively confidential, except as otherwise provided by law.

Amendment 43

On page 28, in line 28, strike out "SEC. 10." and insert:

SEC. 13.

Amendment 44

On page 28, strike out lines 37 to 40, inclusive, and strike out page 29

SUPPORT

California Pharmacists Association (sponsor)
California Chronic Care Coalition (sponsor)
Los Angeles LGBT Center (sponsor)
San Francisco AIDS Foundation (sponsor)
AiArthritis
Alliance for Patient Access
ALS Association
American Diabetes Association
Applied Pharmacy Solutions
Axis Advocacy
Biocom California
California Health Collaborative
California Life Sciences Association
California Physicians Alliance
California Rheumatology Alliance

California State Board of Pharmacy
Coalition of State Rheumatology Organizations
Crohns and Colitis Foundation
Cystic Fibrosis Research, Inc.
End the Epidemics: Californians Mobilizing to End HIV, Viral Hepatitis, STIs, and Overdose
Hemophilia Council of California
Infusion Access Foundation
International Bipolar Foundation
Liver Coalition of San Diego
Lupus and Allied Diseases Association
Lupus LA
National Community Pharmacists Association
National Infusion Center Association
National Multiple Sclerosis Society
Pharmaceutical Research and Manufacturers of America
Santa Monica Democratic Club
Spondylitis Association of America
United Nurses Associations of California/union of Health Care Professionals
50 Individuals

OPPOSITION

Association of California Life & Health Insurance Companies
Cal Asian Chamber of Commerce
California Chamber of Commerce
California African American Chamber of Commerce
California Association of Health Plans
California Hispanic Chambers of Commerce
Californians for Lower Drug Costs
Clergy and Laity United for Economic Justice
Flasher Barricade Association
Los Angeles Civil Rights Association
Shalom International
Sherman Oaks United Methodist Church
Sperantia

RELATED LEGISLATION

Pending Legislation: AB 910 (Bonta, 2025) modifies various provisions related to PBMs, including requiring the PBM to hold a fiduciary duty in the performance of its contractual duties and carry out that duty in accordance with state and federal law. AB 910 is currently pending in the Assembly Appropriations Committee.

Prior Legislation: SB 966 (Wiener, 2024) *see* Comment 2)b), above.

PRIOR VOTES:

Senate Health Committee (11 Ayes, 0 Noes)

****