



Side-by-Side: Montana SB 71 “Requirements for Prescription Drug Benefits offered under Health Benefit Plan” and NASHP Model Act “Pharmacy Benefits Managers”

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<i>Topic</i>	<i>Montana Bill – SB 71</i>	<i>NASHP Model Act</i>
Bill Focus	Bill is directed at Health Insurer. Health Insurer to receive all compensation for benefit of consumer. If pharmacy benefit designated to a third party, the Health Insurer must contract and monitor that party to ensure all provisions are met.	Bill is directed at PBM. Purpose of act is to “improve the business practice and transparency of pharmacy benefit managers”.
Responsible for Enforcement	Insurance Commissioner	“State Agency”
Applicability	Individual coverage issued by a healthcare insurer.	“Health Benefit Plans” with policy or contract with “Health Carrier”, defined as entity subject to insurance laws of the State and under jurisdiction of Commissioner.
Compensation	Compensation defined as <i>all direct or indirect financial benefits</i> , including but not limited to rebates, discounts, credits, fees, grants, chargebacks and other payments. All compensation must go to Health Insurer for benefit of consumer in reduced premiums and/or cost sharing.	“Rebates” <i>defined as all price concessions paid by manufacturer</i> to PBM or Health carrier, including rebates, discounts and other price concessions. “Aggregate Retained Rebate Percentages” defined as percentage of all rebates NOT passed on to health carrier clients. Specific calculation defined: Total dollar amount of rebates not passed on divided by total dollar amounts of all rebates received.
Fiduciary Responsibility	PBM fiduciary duty not in bill.	PBM has fiduciary duty to health carrier client and shall discharge that duty in accordance with provisions of state and federal law. <i>(Note: Appeals courts have overturned state laws placing fiduciary role on PBMs per ERISA Exemption)</i>
PBM Licensing	Exists in Montana Code already, so not included in SB 71.	Requires PBM to license with “State Agency”. License is valid for period of 3 years. Application must include listing of persons beneficially interested in PBM and persons with management or control of PBM.

Spread Pricing	Amount reimbursed to pharmacy (ingredient cost, dispensing fee, less member cost sharing) is the same amount paid by payer. Eliminates Spread Pricing.	Not addressed in model act.
Formulary	Health insurer prohibits conflicts of interest for members of P&T committee. Formulary posted on website for public accessibility. Brand-name drugs must be reviewed for formulary inclusion within 90 days after receiving FDA approval.	Not addressed in model act.
Annual Reporting	Health Insurer reports savings achieved through eliminating spread pricing and 100% pass through of PBM Compensation to the Insurance Commissioner as part of annual reporting.	<p>PBM submits “transparency report” annually to state agency containing:</p> <ul style="list-style-type: none"> • Aggregate amount of all rebates received from manufacturers • Aggregate administrative fees received from all manufacturers • Aggregate retained rebates received from all manufacturers • Aggregate retained rebate percentage (as defined in definition section) • Highest, lowest and mean aggregate retained rebate percentage of all health carrier clients <p>PBM may designate report material as trade secret, however, may be ordered by court of this state to disclose.</p> <p>Transparency report is published on state agency website in way that does not violate state trade secret law.</p>
Consumer cost savings	Health Insurer reports savings achieved through receiving all compensation and how savings was utilized to reduce premiums and/or cost sharing to Insurance Commissioner.	No cost savings addressed in Model Act.
Pharmacist Audits	May not retroactively deny or reduce claim payment to Pharmacy unless claim submitted fraudulently.	Not addressed in Model Act.
“Gag Clauses”	Pharmacist may provide covered person with option of paying cash price if less than cost-sharing amount.	<p>Pharmacist may provide information to covered person about price and drug properties.</p> <p>PBM may not require covered person to make payment at point of sale for amount greater than copay, claim amount, cash price, or pharmacy reimbursement.</p>
Average Wholesale Price (AWP)	Health Insurer uses “published, independent national pricing source that is readily available to any person” to establish AWP. All rebates pass to insurer.	Not addressed in Model Act.

Maximum Allowable Cost List (MAC) – Drugs included	Health Insurer utilizes MAC list for generic drugs or brand name drugs that have at least one generic alternative. Listed as generic drug on “published, independent national pricing source that is readily available to any person.”	Not addressed in Model Act.
Maximum Allowable Cost List (MAC) – List distribution	Reviewed and updated in accordance with existing MAC laws, provided to Commissioner and each provider in retail pharmacy network at least once every 10 days.	Not addressed in Model Act.
Retail Pharmacy Network	Health Insurer shall provide adequate retail network; may not include a mail-order pharmacy in its calculation of adequate network.	Health Carrier or PBM prohibited from requiring, providing incentives, or steering through cost share benefits to covered persons as incentives to use specific retail, mail order, or other network pharmacy provider in which PBM has ownership interest or has ownership interest in PBM.
Pharmacist reporting	Pharmacist shall not be restricted in providing information to state or federal agencies, law enforcement or commissioner.	PBM shall not prohibit, restrict or limit disclosure of information to the Insurance Commissioner, law enforcement or state and federal government conducting a review of PBM compliance with Act.
Penalties	In accordance with existing code (33-1-317 and 33-1-318), the commissioner may impose a fine not to exceed the sum of \$25,000 upon a person found to have violated a provision in the bill.	<ul style="list-style-type: none"> • If PBM acts without registering, it is subject to fine of \$5,000 per day. • If PBM violates “transparency report” requirement, Attorney General may impose civil fines of not more than \$1,000 per day.