October 4, 2018, Introduced by Reps. Canfield and Vaupel and referred to the Committee on Health Policy.

A bill to amend 1984 PA 218, entitled "Third party administrator act," by amending section 2 (MCL 550.902) and by adding sections 25, 26, and 27.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2. As used in this act:

(a) "Administrative services manager" or "manager" means an individual responsible for conducting the daily operations of a third party administrator.

(b) "Benefit plan" or "plan" means a medical, surgical, dental, vision, or health care benefit plan and may include coverage under a policy or certificate issued by a carrier.

(c) "Board" means the TPA advisory board created under section 19.
(d) "Carrier" means any of the following:

(i) An insurer, which is including a health maintenance organization, regulated pursuant to the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 1956 PA 218, MCL 500.100 to 500.8302, of the Michigan Compiled Laws.


(v) A health maintenance organization regulated under part 210 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.21001 to 333.21099 of the Michigan Compiled Laws.


(e) "Commissioner" means the commissioner of insurance of this state.

(F) "DEPARTMENT" MEANS THE DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES.

(G) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.

(I) "MANUFACTURER" means that term as defined in Section 17706 of the Public Health Code, 1978 PA 368, MCL 333.17706.

(J) "Person" means an individual, sole proprietorship, partnership, corporation, association, or any other legal entity.

(K) "Personal data" means any record or information pertaining to the diagnosis, treatment, or health of an individual covered by a plan.

(l) "PHARMACY" means that term as defined in Section 17707 of the Public Health Code, 1978 PA 368, MCL 333.17707.

(M) "PHARMACY BENEFIT MANAGER" means a person that contracts with a pharmacy on behalf of an employer, multiple employer welfare arrangement, public employee benefit plan, state agency, insurer, managed care organization, or other third-party payer to provide pharmacy health benefit services or administration.

(N) "Processes claims" means the administrative services performed in connection with a claim for benefits under a plan.

(O) "Service contract" means the written agreement for the provision of administrative services between the TPA and a plan, a sponsor of a plan, or a carrier.

(P) "Third party administrator" or "TPA" means a person that processes claims pursuant to a service contract and who may also provide 1 or more other administrative services pursuant to a service contract, other than under a worker's compensation self-insurance program pursuant to section 611 of the worker's disability compensation act of 1969, Act No. 317 of the
Public Acts of 1969, being section 1969 PA 317, MCL 418.611. of the Michigan Compiled Laws. THIRD PARTY ADMINISTRATOR INCLUDES A PHARMACY BENEFIT MANAGER. Third party administrator does not include a carrier or employer sponsoring a plan.

SEC. 25. A PERSON SHALL NOT ESTABLISH OR OPERATE AS A PHARMACY BENEFIT MANAGER UNLESS THE PERSON REGISTERS WITH THE DIRECTOR. A PERSON THAT VIOLATES THIS SECTION IS SUBJECT TO A CIVIL FINE OF NOT MORE THAN $7,500.00.

SEC. 26. (1) BY MAY 1 OF EACH YEAR, A PHARMACY BENEFIT MANAGER SHALL PROVIDE THE DEPARTMENT WITH A REPORT CONTAINING THE FOLLOWING INFORMATION FROM THE PRIOR CALENDAR YEAR:

(A) FOR EACH OF THE PHARMACY BENEFIT MANAGER’S CONTRACTUAL OR OTHER RELATIONSHIPS WITH AN INSURER, THE AGGREGATE AMOUNT OF ALL REBATES THAT THE PHARMACY BENEFIT MANAGER RECEIVED FROM PHARMACEUTICAL MANUFACTURERS OTHER THAN ANY OF THE FOLLOWING REBATES:

(i) A PHARMACEUTICAL REBATE PROVIDED UNDER THE MEDICAID REBATE PROGRAM UNDER 42 USC 1396R-8.


(iii) A PHARMACEUTICAL REBATE PROVIDED UNDER THE 340B DRUG PRICING PROGRAM UNDER 42 USC 256B.

(iv) A PHARMACEUTICAL REBATE PROVIDED UNDER THE FEDERAL
PRESCRIPTION DRUG PROGRAM AS PAID BY THE DEPARTMENT OF DEFENSE AND
THE DEPARTMENT OF VETERANS AFFAIRS.

(B) FOR EACH OF THE PHARMACY BENEFIT MANAGER’S CONTRACTUAL OR
OTHER RELATIONSHIPS WITH AN INSURER, THE AGGREGATE REBATES THAT THE
PHARMACY BENEFIT MANAGER RECEIVED FROM PHARMACEUTICAL MANUFACTURERS
AND DID NOT PASS THROUGH TO THE INSURER.

(C) FOR EACH OF THE PHARMACY BENEFIT MANAGER’S CONTRACTUAL OR
OTHER RELATIONSHIPS WITH AN INSURER, THE HIGHEST AGGREGATE RETAINED
REBATE PERCENTAGE, LOWEST AGGREGATE RETAINED REBATE PERCENTAGE, AND
THE MEAN AGGREGATE RETAINED REBATE PERCENTAGE.

(2) THE DEPARTMENT SHALL PUBLISH IN A TIMELY MANNER THE
INFORMATION THAT IT RECEIVES UNDER SUBSECTION (1) ON A PUBLICLY
AVAILABLE WEBSITE. HOWEVER, THE INFORMATION MUST BE MADE AVAILABLE
IN A FORM THAT DOES NOT DISCLOSE THE IDENTITY OF A SPECIFIC INSURER
OR HEALTH PLAN, THE PRICES CHARGED FOR SPECIFIC DRUGS OR CLASSES OF
DRUGS, OR THE AMOUNT OF ANY REBATES PROVIDED FOR SPECIFIC DRUGS OR
CLASSES OF DRUGS. IN DEVELOPING THE INFORMATION TO BE PUBLISHED IN
THIS SECTION, THE DEPARTMENT SHALL CONSULT WITH THE 5 LARGEST
CARRIERS IN THIS STATE, TO BE DETERMINED BY THE NUMBER OF
ENROLLEES, TO ENSURE THEIR IDENTITY IS NOT ABLE TO BE INFERRED
UNKNOWINGLY ON PUBLIC DISCLOSURE.

(3) THE PHARMACY BENEFIT MANAGER AND THE DEPARTMENT SHALL NOT
PUBLISH OR DISCLOSE ANY INFORMATION THAT WOULD REVEAL THE IDENTITY
OF A SPECIFIC INSURER OR HEALTH PLAN, A PRICE CHARGED FOR A
SPECIFIC DRUG OR CLASS OF DRUGS, OR THE AMOUNT OF ANY REBATES
PROVIDED FOR A SPECIFIC DRUG OR CLASS OF DRUGS. THE INFORMATION
DESCRIBED IN THIS SUBSECTION MUST BE PROTECTED FROM DISCLOSURE AS

(4) AS USED IN THIS SECTION:

(A) "AGGREGATED RETAINED REBATE PERCENTAGE" MEANS THE FOLLOWING PERCENTAGE, CALCULATED FOR EACH PRESCRIPTION DRUG FOR WHICH A PHARMACY BENEFIT MANAGER RECEIVES REBATES UNDER A HEALTH PLAN, AND EXPRESSED WITHOUT DISCLOSING ANY IDENTIFYING INFORMATION REGARDING THE HEALTH PLAN, PRESCRIPTION DRUG, OR THERAPEUTIC CLASS:

(i) CALCULATE THE AGGREGATE REBATES THAT THE PHARMACY BENEFIT MANAGER RECEIVED DURING THE PRIOR CALENDAR YEAR FROM A PHARMACEUTICAL MANUFACTURER RELATED TO UTILIZATION OF THE MANUFACTURER'S PRESCRIPTION DRUG BY HEALTH PLAN INSUREDS AND DID NOT PASS THROUGH TO THE HEALTH PLAN OR INSURER.

(ii) DIVIDE THE RESULT OF THE CALCULATION UNDER SUBPARAGRAPH (i) BY THE AGGREGATE REBATES THAT THE PHARMACY BENEFIT MANAGER RECEIVED DURING THE PRIOR CALENDAR YEAR FROM A PHARMACEUTICAL MANUFACTURER RELATED TO UTILIZATION OF THE MANUFACTURER'S PRESCRIPTION DRUG BY HEALTH PLAN INSUREDS.

(B) "REBATES" MEANS ALL REBATES, DISCOUNTS, EDUCATION OR PROMOTIONAL FUNDS, AND OTHER PRICE CONCESSIONS, BASED ON UTILIZATION OF A PRESCRIPTION DRUG AND PAID BY THE MANUFACTURER OR OTHER PARTY, OTHER THAN AN INSURED, DIRECTLY OR INDIRECTLY, TO THE PHARMACY BENEFIT MANAGER AFTER THE CLAIM HAS BEEN ADJUDICATED AT THE PHARMACY. REBATES INCLUDE A REASONABLE ESTIMATE OF ANY VOLUME-BASED OR OTHER DISCOUNTS.

SEC. 27. A CONTRACT BETWEEN A PHARMACY BENEFIT MANAGER AND A
PHARMACY OR BETWEEN A PHARMACY BENEFIT MANAGER AND ANY OTHER ENTITY, INCLUDING, BUT NOT LIMITED TO, A MANUFACTURER, MUST NOT PROHIBIT OR PENALIZE A PHARMACY OR ANY OTHER ENTITY FOR DOING ANY OF THE FOLLOWING:

(A) DISCLOSING TO A CUSTOMER INFORMATION REGARDING EITHER OF THE FOLLOWING:

(i) THE COST SHARING AMOUNTS THAT THE CUSTOMER MUST PAY FOR A PARTICULAR PRESCRIPTION DRUG UNDER HIS OR HER HEALTH PLAN’S PRESCRIPTION DRUG BENEFIT OR, WITHOUT REQUESTING ANY HEALTH PLAN REIMBURSEMENT, OUTSIDE HIS OR HER HEALTH PLAN’S PRESCRIPTION DRUG BENEFIT, OR BOTH.

(ii) THE EXISTENCE AND CLINICAL EFFICACY OF A THERAPEUTICALLY EQUIVALENT DRUG THAT WOULD BE LESS EXPENSIVE TO THE CUSTOMER UNDER HIS OR HER HEALTH PLAN’S PRESCRIPTION DRUG BENEFIT OR OUTSIDE HIS OR HER HEALTH PLAN’S PRESCRIPTION DRUG BENEFIT, OR BOTH, WITHOUT REQUESTING ANY HEALTH PLAN REIMBURSEMENT, THAN THE DRUG THAT WAS ORIGINALLY PRESCRIBED.

(B) SELLING TO A CUSTOMER, INSTEAD OF A PARTICULAR PRESCRIBED DRUG, A THERAPEUTICALLY EQUIVALENT DRUG THAT WOULD BE LESS EXPENSIVE TO THE CUSTOMER UNDER HIS OR HER HEALTH PLAN’S PRESCRIPTION DRUG BENEFIT OR OUTSIDE HIS OR HER HEALTH PLAN’S PRESCRIPTION DRUG BENEFIT, WITHOUT REQUESTING ANY HEALTH PLAN REIMBURSEMENT, THAN THE DRUG THAT WAS ORIGINALLY PRESCRIBED.