

Delaware to Regulate Multi-Billion-Dollar Pharmacy Benefit Manager Industry, Protecting Consumers and Local Businesses

Department of Insurance will lead effort to rein in monopolistic behavior and excessive pharmaceutical costs

Insurance Commissioner Trinidad Navarro announced today that the Delaware Department of Insurance will begin the process of building and enforcing regulations regarding Pharmacy Benefit Managers (PBMs) as a new law goes into effect. The new authorities of the department will ensure consumer access to affordable medications and protect local pharmacies from the predatory behaviors exhibited by the PBM industry through measures of transparency and corporate accountability.

“Alongside members of the General Assembly, advocates, pharmacy representatives, and industry stakeholders, we have been working towards this goal for years. We have heard the voices of those who have had to travel hundreds of miles for their children’s medications. We have heard the plight of the local pharmacies, the way they have been financially devastated by PBM’s preference of their own chains. We have watched as other states were taken advantage of by these companies and cheered those states on as they took action to stop predatory practices. We have seen partners in this fight retaliated against by these companies, and we mourned as more and more neighborhood pharmacies had to close their doors,” said **Insurance Commissioner Trinidad Navarro**, referencing the work of the Pharmacy Reimbursement Task Force and other legislative initiatives and discussions. “Now, with these new

powers, we say 'No more.'”

HB 219, sponsored by Rep. Andria Bennett, Sen. Spiros Mantzavinos, Senate President Pro Tempore David Sokola, and Rep. Mike Smith, was passed by the General Assembly unanimously and recently became law, bringing Delaware’s oversight of the multi-billion-dollar industry on par with leading states.

PBMs act as intermediaries for prescription drug plans, influencing what medications will be covered and the costs of those drugs for both consumers and pharmacies. These companies bring in billions through manufacturer rebates, limiting generic drug offerings, and retaining negotiated savings, while costs for consumers continue to rise. The largest PBMs operate their own pharmacy chains, and their consolidated market power has, prior to this law, allowed them to pay unaffiliated pharmacies unsustainably low reimbursement rates – rates lower than it costs the pharmacy to dispense the drug to a consumer. PBMs’ move toward monopolization has contributed to waves of independent pharmacy closures across the nation, especially in rural, inner city, and under-served areas that already crave equity and access.

“I have worked on this issue for years and have seen firsthand how pharmacy benefit managers’ predatory practices have increased consumer costs while decreasing consumer access and driving out small, unaffiliated pharmacies. With healthcare cost emphasized throughout the pandemic, it is more important than ever to have these protections in place,” said **Rep. Andria Bennett**, the prime sponsor of HB 219 and chair of the Pharmacy Reimbursement Task Force. “This new law passed the General Assembly unanimously, and it did so because there are two things we all agree on: that the cost of prescription drugs is far too high, and that billionaire corporations should not be above the law.”

The new law aims to solve many issues of access and unequal

treatment through use of the National Average Drug Acquisition Cost for pharmacy reimbursement, prohibiting unequal payments to unaffiliated pharmacies, and providing the Department of Insurance the ability to investigate PBMs, enforce consumer protection measures, and incentivize corrections through increased regulatory authority. In order to better understand PBM's existing processes, the department recently began introductory Market Conduct exams on registered PBMs, known to be the first investigations of this kind in the nation. These initial examinations will not result in fines or enforcement actions, but will highlight areas for improvement, including those that are not compliant with the new law, and will require corrective action plans.

Rep. Mike Smith – a prime sponsor of HB 219 – stated, “This is an exciting moment for Delaware. This was a collaborative effort to support Delaware’s small, independent pharmacies and all Delawareans. At the end of the day, consumer protection won, and I’m proud of the work we did to bring accountability to PBMs.”

“Reducing prescription drug prices will directly improve the health and welfare of our neighbors,” said **Sen. Spiros Mantzavinos**, Senate prime sponsor of HB 219. “This new law will provide for greater oversight of the pharmacy benefit manager industry, allowing for more consistent prescription drug prices and ensuring expanded access to the medications Delawareans rely on. I am proud to have helped champion HB 219 alongside Rep. Bennett and look forward to Delawareans reaping the benefits of this expanded oversight.”

While independent pharmacies faced retaliation from the multi-billion-dollar giants, including through costly audits, they continued to advocate for change. Now, they are celebrating the new law and the protections it holds for their customers.

“The true beneficiaries of this new PBM oversight will be the patients. They have always deserved health care that is

accessible, affordable and transparent – not barriers to care, higher costs and excuses while PBMs lined their pockets. Having the Delaware Insurance Commissioner’s office oversee PBMs will greatly assist underserved and vulnerable populations who struggle to afford their medications, and who have experienced barriers to patient care,” explained **Kevin Musto**, R.Ph., FAPhA, an independent pharmacist.

The **Delaware Pharmacy Society** also shared their enthusiasm for the new law. “We are tremendously delighted with enactment of HB 219, which increases transparency and equity in pharmacy benefit management. It is our belief that this law will result in increased access to health benefits for Delawareans, provided at the most accessible health care providers – pharmacies. This law makes Delaware a pioneer in controlling health care costs,” they stated.

In the coming months, the Department of Insurance will draft relevant regulations, receiving input from stakeholders during that process. After draft regulations are developed, they will be published, and the public will have 30 days to comment.