



General Assembly

February Session, 2006

***Raised Bill No. 483***

LCO No. 2342

\*02342\_\_\_\_\_INS\*

Referred to Committee on Insurance and Real Estate

Introduced by:  
(INS)

***AN ACT CONCERNING PHARMACY BENEFIT MANAGEMENT PLANS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2006*) As used in sections 1 to 3,  
2 inclusive, of this act:

3 (1) "Commissioner" means the Insurance Commissioner;

4 (2) "Department" means the Insurance Department;

5 (3) "Drug" means drug, as defined in section 21a-92 of the general  
6 statutes;

7 (4) "Covered entity" means a nonprofit hospital or medical service  
8 organization, insurer, health coverage plan or health maintenance  
9 organization licensed pursuant to title 38 of the general statutes, a  
10 health program administered by the department or the state in the  
11 capacity of provider of health coverage; or an employer, labor union or  
12 other group of persons organized in the state that provides health  
13 coverage to covered individuals who are employed or reside in the  
14 state. "Covered entity" does not include a health plan that provides

15 coverage only for accidental injury, specified disease, hospital  
16 indemnity, disability income, long-term care or other limited benefit  
17 health insurance policies and contracts;

18 (5) "Covered individual" means a member, participant, enrollee,  
19 contract holder or policy holder or beneficiary of a covered entity who  
20 is provided health coverage by the covered entity. "Covered  
21 individual" includes a dependent or other person provided health  
22 coverage through a policy, contract or plan for a covered individual;

23 (6) "Insolvent" or "insolvency" means a financial situation in which  
24 the assets of the pharmacy benefits manager are less than the sum of  
25 the manager's liabilities and required reserves based upon the financial  
26 information required pursuant to section 2 of this act;

27 (7) "Generic drug" means a chemically equivalent copy of a brand  
28 name drug with an expired patent;

29 (8) "Labeler" means an entity or person that receives prescription  
30 drugs from a manufacturer or wholesaler and repackages such drugs  
31 for later retail sale and that has a labeler code from the federal Food  
32 and Drug Administration under 21 CFR 270.20;

33 (9) "Pharmacist" means an individual licensed to practice pharmacy  
34 under section 20-590, 20-591, 20-592 or 20-593 of the general statutes,  
35 and who is thereby recognized as a health care provider by the state of  
36 Connecticut;

37 (10) "Pharmacist services" includes (A) drug therapy and other  
38 patient care services provided by a licensed pharmacist intended to  
39 achieve outcomes related to the cure or prevention of a disease,  
40 elimination or reduction of a patient's symptoms, and (B) education or  
41 intervention by a licensed pharmacist intended to arrest or slow a  
42 disease process;

43 (11) "Pharmacy" means a place of business where drugs may be sold  
44 at retail and for which a pharmacy license has been issued to an

45 applicant pursuant to section 20-598 of the general statutes;

46 (12) "Pharmacy benefits management" means the procurement of  
47 prescription drugs at a negotiated rate for dispensation within this  
48 state to covered individuals, the administration or management of  
49 prescription drug benefits provided by a covered entity for the benefit  
50 of covered individuals or any of the following services provided with  
51 regard to the administration of pharmacy benefits: (A) Mail order  
52 pharmacy; (B) claims processing, retail network management and  
53 payment of claims to pharmacies for prescription drugs dispensed to  
54 covered individuals; (C) clinical formulary development and  
55 management services; (D) rebate contracting and administration; (E)  
56 certain patient compliance, therapeutic intervention and generic  
57 substitution programs; and (F) disease management programs;

58 (13) "Pharmacy benefits manager" means an entity that performs  
59 pharmacy benefits management. "Pharmacy benefits manager"  
60 includes a person or entity acting for a pharmacy benefits manager in a  
61 contractual or employment relationship in the performance of  
62 pharmacy benefits management for a covered entity and mail order  
63 pharmacy; and

64 (14) "Pharmacy benefit management plan" or "plan" means an  
65 arrangement for the delivery of prescription services or pharmacist  
66 services in which a pharmacy benefits manager undertakes to provide,  
67 arrange for, pay for or reimburse any of the costs of prescription  
68 services for an enrollee on a prepaid or insured basis which (A)  
69 contains one or more incentive arrangements intended to influence the  
70 cost or level of prescription services between the plan sponsor and one  
71 or more pharmacies with respect to the delivery of prescription  
72 services, and (B) requires or creates benefit payment differential  
73 incentives for enrollees under contract with the pharmacy benefits  
74 manager. "Pharmacy benefit management plan" or "plan" does not  
75 include an employee welfare benefit plan unless it is administered  
76 through a pharmacy benefits manager.

77       Sec. 2. (NEW) (*Effective October 1, 2006*) (a) Each pharmacy benefits  
78 manager that provides a pharmacy benefit management plan to a  
79 resident of this state shall obtain a pharmacy benefits manager license  
80 from the Insurance Commissioner in accordance with this section and  
81 shall file an annual statement with the commissioner on such form as  
82 the commissioner may prescribe. The annual statement shall include:  
83 (1) A financial statement for the pharmacy benefits manager's  
84 organization, including its balance sheet and income statement which  
85 shall include all identified sources of revenue for the preceding  
86 calendar year; (2) the number of individuals enrolled during the year,  
87 the number of enrollees as of the end of the year and the number of  
88 enrollments terminated during the year; and (3) any other information  
89 related to the operations of the pharmacy benefits manager required  
90 by the commissioner.

91       (b) Such pharmacy benefits manager shall (1) pay all fees, taxes and  
92 charges required by law; (2) maintain the minimum capital and  
93 surplus required by the commissioner; (3) file any financial statement  
94 or report, certificate or other document that the commissioner deems  
95 necessary to obtain a full and accurate knowledge of the manager's  
96 affairs and financial condition; (4) maintain solvency; (5) maintain a  
97 financial condition, method of operation and manner of doing business  
98 sufficient to satisfy the commissioner that the manager can meet its  
99 obligations to all enrollees; and (6) comply with all requirements of  
100 law.

101       (c) A nonrefundable application fee required in section 38a-11 of the  
102 2006 supplement to the general statutes, as amended by this act, shall  
103 accompany each application for a pharmacy benefits manager license  
104 submitted to the commissioner. The commissioner shall use the  
105 amount of such fees solely for the purpose of regulating pharmacy  
106 benefits managers.

107       (d) Each pharmacy benefits manager that offers a pharmacy benefit  
108 management plan in this state shall maintain a license as a pharmacy

109 benefits manager. The pharmacy benefits manager may renew its  
110 license if it meets the requirements of this section by completing a  
111 renewal application on such form as the commissioner may prescribe.  
112 The commissioner may refuse to renew a license or may place  
113 restrictions on the license of any pharmacy benefits manager if the  
114 commissioner finds the manager lacks required capital or surplus or if  
115 the commissioner finds that the manager has not satisfied the  
116 requirements of this section, except that prior to refusing to renew a  
117 license, the commissioner shall provide the manager with ten days  
118 written notice and shall give the manager an opportunity to be heard  
119 at a hearing held by the commissioner or a designee. The manager may  
120 waive the right to such notice and hearing.

121       Sec. 3. (NEW) (*Effective October 1, 2006*) (a) A pharmacy benefits  
122 manager owes a fiduciary duty to a covered entity and shall discharge  
123 such duty in accordance with the provisions of state and federal law.

124       (b) A pharmacy benefits manager shall perform its duties with care,  
125 skill, prudence and diligence and in accordance with the standards of  
126 conduct applicable to a fiduciary in an enterprise of a like character  
127 and with like aims.

128       (c) A pharmacy benefits manager shall notify the covered entity in  
129 writing of any activity, policy or practice of the pharmacy benefits  
130 manager that directly or indirectly presents any conflict of interest  
131 with the duties imposed by this subsection.

132       (d) A pharmacy benefits manager shall provide to a covered entity  
133 all financial and utilization information requested by the covered  
134 entity relating to the provision of benefits to covered individuals  
135 through that covered entity and all financial and utilization  
136 information relating to services to that covered entity. A pharmacy  
137 benefits manager providing information under this paragraph may  
138 designate that material as confidential. Information designated as  
139 confidential by a pharmacy benefits manager and provided to a  
140 covered entity under this paragraph may not be disclosed by the

141 covered entity to any person without the consent of the pharmacy  
142 benefits manager, except that disclosure may be ordered by a court of  
143 this state for good cause shown or made in a court filing under seal  
144 unless or until otherwise ordered by a court.

145 (e) With regard to the dispensation of a substitute prescription drug  
146 for a prescribed drug to a covered individual, the following provisions  
147 apply:

148 (1) If a pharmacy benefits manager makes a substitution in which  
149 the substitute drug costs more than the prescribed drug, the pharmacy  
150 benefits manager shall disclose to the covered entity the cost of both  
151 drugs and any benefit or payment directly or indirectly accruing to the  
152 pharmacy benefits manager as a result of the substitution; and

153 (2) The pharmacy benefits manager shall transfer in full to the  
154 covered entity any benefit or payment received in any form by the  
155 pharmacy benefits manager either as a result of a prescription drug  
156 substitution under this subsection or as a result of the pharmacy  
157 benefits manager's substituting a lower-priced generic and  
158 therapeutically equivalent drug for a higher-priced prescribed drug.

159 (f) A pharmacy benefits manager that derives any payment or  
160 benefit for the dispensation of prescription drugs within the state  
161 based on volume of sales for certain prescription drugs or classes or  
162 brands of drugs within the state shall pass that payment or benefit on  
163 in full to the covered entity.

164 (g) A pharmacy benefits manager shall disclose to the covered  
165 entity all financial terms and arrangements for remuneration of any  
166 kind that apply between the pharmacy benefits manager and any  
167 prescription drug manufacturer or labeler, including, without  
168 limitation, formulary management and drug-switch programs,  
169 educational support, claims processing and pharmacy network fees  
170 that are charged from retail pharmacies and data sales fees. A  
171 pharmacy benefits manager providing information under this

172 subsection may designate that material as confidential. Information  
173 designated as confidential by a pharmacy benefits manager and  
174 provided to a covered entity under this subsection may not be  
175 disclosed by the covered entity to any person without the consent of  
176 the pharmacy benefits manager, except that disclosure may be ordered  
177 by a court of this state for good cause shown or made in a court filing  
178 under seal unless or until otherwise ordered by a court.

179 (h) A violation of any of the provisions of this section shall be  
180 deemed an unfair or deceptive trade practice under chapter 735a of the  
181 general statutes.

182 Sec. 4. Subsection (a) of section 38a-11 of the 2006 supplement to the  
183 general statutes is repealed and the following is substituted in lieu  
184 thereof (*Effective October 1, 2006*):

185 (a) The commissioner shall demand and receive the following fees:  
186 (1) For the annual fee for each license issued to a domestic insurance  
187 company, one hundred dollars; (2) for receiving and filing annual  
188 reports of domestic insurance companies, twenty-five dollars; (3) for  
189 filing all documents prerequisite to the issuance of a license to an  
190 insurance company, one hundred seventy-five dollars, except that the  
191 fee for such filings by any health care center, as defined in section 38a-  
192 175, shall be one thousand one hundred dollars; (4) for filing any  
193 additional paper required by law, fifteen dollars; (5) for each certificate  
194 of valuation, organization, reciprocity or compliance, twenty dollars;  
195 (6) for each certified copy of a license to a company, twenty dollars; (7)  
196 for each certified copy of a report or certificate of condition of a  
197 company to be filed in any other state, twenty dollars; (8) for  
198 amending a certificate of authority, one hundred dollars; (9) for each  
199 license issued to a rating organization, one hundred dollars. In  
200 addition, insurance companies shall pay any fees imposed under  
201 section 12-211, as amended; (10) a filing fee of twenty-five dollars for  
202 each initial application for a license made pursuant to section 38a-769,  
203 as amended; (11) with respect to insurance agents' appointments: (A)

204 A filing fee of twenty-five dollars for each request for any agent  
205 appointment, except that no filing fee shall be payable for a request for  
206 agent appointment by an insurance company domiciled in a state or  
207 foreign country which does not require any filing fee for a request for  
208 agent appointment for a Connecticut insurance company; (B) a fee of  
209 forty dollars for each appointment issued to an agent of a domestic  
210 insurance company or for each appointment continued; and (C) a fee  
211 of twenty dollars for each appointment issued to an agent of any other  
212 insurance company or for each appointment continued, except that no  
213 fee shall be payable for an appointment issued to an agent of an  
214 insurance company domiciled in a state or foreign country which does  
215 not require any fee for an appointment issued to an agent of a  
216 Connecticut insurance company; (12) with respect to insurance  
217 producers: (A) An examination fee of seven dollars for each  
218 examination taken, except when a testing service is used, the testing  
219 service shall pay a fee of seven dollars to the commissioner for each  
220 examination taken by an applicant; (B) a fee of forty dollars for each  
221 license issued; (C) a fee of forty dollars per year, or any portion thereof,  
222 for each license renewed; and (D) a fee of forty dollars for any license  
223 renewed under the transitional process established in section 38a-784,  
224 as amended; (13) with respect to public adjusters: (A) An examination  
225 fee of seven dollars for each examination taken, except when a testing  
226 service is used, the testing service shall pay a fee of seven dollars to the  
227 commissioner for each examination taken by an applicant; and (B) a fee  
228 of one hundred twenty-five dollars for each license issued or renewed;  
229 (14) with respect to casualty adjusters: (A) An examination fee of ten  
230 dollars for each examination taken, except when a testing service is  
231 used, the testing service shall pay a fee of ten dollars to the  
232 commissioner for each examination taken by an applicant; (B) a fee of  
233 forty dollars for each license issued or renewed; and (C) the expense of  
234 any examination administered outside the state shall be the  
235 responsibility of the entity making the request and such entity shall  
236 pay to the commissioner one hundred dollars for such examination  
237 and the actual traveling expenses of the examination administrator to

238 administer such examination; (15) with respect to motor vehicle  
239 physical damage appraisers: (A) An examination fee of forty dollars  
240 for each examination taken, except when a testing service is used, the  
241 testing service shall pay a fee of forty dollars to the commissioner for  
242 each examination taken by an applicant; (B) a fee of forty dollars for  
243 each license issued or renewed; and (C) the expense of any  
244 examination administered outside the state shall be the responsibility  
245 of the entity making the request and such entity shall pay to the  
246 commissioner one hundred dollars for such examination and the  
247 actual traveling expenses of the examination administrator to  
248 administer such examination; (16) with respect to certified insurance  
249 consultants: (A) An examination fee of thirteen dollars for each  
250 examination taken, except when a testing service is used, the testing  
251 service shall pay a fee of thirteen dollars to the commissioner for each  
252 examination taken by an applicant; (B) a fee of two hundred dollars for  
253 each license issued; and (C) a fee of one hundred twenty-five dollars  
254 for each license renewed; (17) with respect to surplus lines brokers: (A)  
255 An examination fee of ten dollars for each examination taken, except  
256 when a testing service is used, the testing service shall pay a fee of ten  
257 dollars to the commissioner for each examination taken by an  
258 applicant; and (B) a fee of five hundred dollars for each license issued  
259 or renewed; (18) with respect to fraternal agents, a fee of forty dollars  
260 for each license issued or renewed; (19) a fee of thirteen dollars for  
261 each license certificate requested, whether or not a license has been  
262 issued; (20) with respect to domestic and foreign benefit societies shall  
263 pay: (A) For service of process, twenty-five dollars for each person or  
264 insurer to be served; (B) for filing a certified copy of its charter or  
265 articles of association, five dollars; (C) for filing the annual report, ten  
266 dollars; and (D) for filing any additional paper required by law, three  
267 dollars; (21) with respect to foreign benefit societies: (A) For each  
268 certificate of organization or compliance, four dollars; (B) for each  
269 certified copy of permit, two dollars; and (C) for each copy of a report  
270 or certificate of condition of a society to be filed in any other state, four  
271 dollars; (22) with respect to reinsurance intermediaries: A fee of five

272 hundred dollars for each license issued or renewed; (23) with respect  
 273 to viatical settlement providers: (A) A filing fee of thirteen dollars for  
 274 each initial application for a license made pursuant to section 38a-465a;  
 275 and (B) a fee of twenty dollars for each license issued or renewed; (24)  
 276 with respect to viatical settlement brokers: (A) A filing fee of thirteen  
 277 dollars for each initial application for a license made pursuant to  
 278 section 38a-465a; and (B) a fee of twenty dollars for each license issued  
 279 or renewed; (25) with respect to viatical settlement investment agents:  
 280 (A) A filing fee of thirteen dollars for each initial application for a  
 281 license made pursuant to section 38a-465a; and (B) a fee of twenty  
 282 dollars for each license issued or renewed; (26) with respect to  
 283 preferred provider networks, a fee of two thousand five hundred  
 284 dollars for each license issued or renewed; (27) with respect to rental  
 285 companies, as defined in section 38a-799, a fee of forty dollars for each  
 286 permit issued or renewed; (28) with respect to medical discount plan  
 287 organizations licensed under section 38a-479rr, a fee of five hundred  
 288 dollars for each license issued or renewed; (29) with respect to  
 289 pharmacy benefits managers, an application fee of twenty-five dollars  
 290 for each license issued or renewed; and [(29)] (30) with respect to each  
 291 duplicate license issued a fee of twenty-five dollars for each license  
 292 issued.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2006</i>	New section
Sec. 2	<i>October 1, 2006</i>	New section
Sec. 3	<i>October 1, 2006</i>	New section
Sec. 4	<i>October 1, 2006</i>	38a-11(a)

**Statement of Purpose:**

To provide greater transparency and disclosure between pharmacy benefit managers and the entities which employ them to manage their prescription drug benefit plans.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*