



General Assembly

January Session, 2007

**Committee Bill No. 74**

LCO No. 5309

\* SB00074INS\_\_031507\_\_\*

Referred to Committee on Insurance and Real Estate

Introduced by:  
(INS)

**AN ACT CONCERNING OVERSIGHT OF 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, 2007*) As used in sections 1 to  
2 10, inclusive, of this act:

3 (1) "Commission of Pharmacy" or "commission" means the  
4 Commission of Pharmacy appointed under section 20-572 of the  
5 general statutes;

6 (2) "Commissioner" means the Insurance Commissioner;

7 (3) "Cosmetic" means cosmetic, as defined in section 21a-92 of the  
8 general statutes;

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

10 (5) "Device" means device, as defined in section 21a-92 of the  
11 general statutes;

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

14 (7) "Enrollee" means a person eligible to receive benefits under a  
15 health benefit plan;

16 (8) "Equivalent drug product" means a drug product which has the  
17 same established name, active ingredient, strength or concentration,  
18 dosage form, and route of administration and which is formulated to  
19 contain the same amount of active ingredient in the same dosage form  
20 and to meet the same compendial or other applicable standards, such  
21 as strength, quality, purity and identity, but which may differ in  
22 characteristics such as shape, scoring, configuration, packaging,  
23 expiration time or date, and excipients, including, but not limited to,  
24 colors, flavors and preservatives;

25 (9) "Manufacturer" means a person, whether within or outside of  
26 this state, who produces, prepares, cultivates, grows, propagates,  
27 compounds, converts or processes, directly or indirectly, by extraction  
28 from substances of natural origin or by means of chemical synthesis or  
29 by a combination of extraction and chemical synthesis, or who  
30 packages, replicates, labels or relabels a container, under such  
31 manufacturer's own or any other trademark or label, any drug, device  
32 or cosmetic for the purpose of selling such items;

33 (10) "Insolvent" or "insolvency" means a financial situation in which,  
34 based upon the financial information required pursuant to sections 1 to  
35 10, inclusive, of this act for the preparation of the pharmacy benefits  
36 manager's annual statement, the assets of the pharmacy benefits  
37 manager are less than the sum of the manager's liabilities and requires  
38 reserves;

39 (11) "Person" means person, as defined in section 38a-1 of the  
40 general statutes;

41 (12) "Pharmacist services" includes (A) drug therapy and other  
42 patient care services provided by a licensed pharmacist intended to  
43 achieve outcomes related to the cure or prevention of a disease,  
44 elimination or reduction of a patient's symptoms, and (B) education or  
45 intervention by a licensed pharmacist intended to arrest or slow a

46 disease process;

47 (13) "Pharmacist" means an individual licensed to practice  
48 pharmacy under section 20-590, 20-591, 20-592 or 20-593 of the general  
49 statutes, and who is thereby recognized as a health care provider by  
50 the state of Connecticut;

51 (14) "Pharmacy" means a place of business where drugs may be sold  
52 at retail and for which a pharmacy license has been issued to an  
53 applicant pursuant to section 20-594 of the general statutes;

54 (15) "Pharmacy benefits manager" or "manager" means any person  
55 that administers the prescription drug, prescription device, pharmacist  
56 services or prescription drug and device and pharmacist services  
57 portion of a health benefit plan on behalf of plan sponsors such as self-  
58 insured employers, insurance companies, labor unions and health care  
59 centers;

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

73 (17) "Wholesaler" or "distributor" means a person, whether within or  
74 outside of this state, who supplies drugs, devices or cosmetics  
75 prepared, produced or packaged by manufacturers, to other  
76 wholesalers, manufacturers, distributors, hospitals, prescribing  
77 practitioners, as defined in section 20-571 of the general statutes,

78 pharmacies, federal, state or municipal agencies or clinics.  
79 "Wholesaler" or "distributor" does not include: (A) A retail pharmacy  
80 or a pharmacy within a licensed hospital which supplies to another  
81 such pharmacy a quantity of a noncontrolled drug or a schedule III, IV  
82 or V controlled substance ordinarily stocked by such pharmacies to  
83 provide for the immediate needs of a patient pursuant to a prescription  
84 or medication order of an authorized practitioner, (B) a pharmacy  
85 within a hospital which supplies drugs to another hospital or an  
86 authorized practitioner for research purposes, or (C) a retail pharmacy  
87 which supplies a limited quantity of a noncontrolled drug or of a  
88 schedule II, III, IV or V controlled substance for emergency stock to a  
89 practitioner who is a medical director of a chronic and convalescent  
90 nursing home, or a rest home with nursing supervision or of a state  
91 correctional institution.

92       Sec. 2. (NEW) (*Effective October 1, 2007*) (a) Each pharmacy benefits  
93 manager that provides a pharmacy benefit management plan to a  
94 resident of this state shall obtain a license from the Insurance  
95 Department and shall file an annual statement with the Insurance  
96 Commissioner on such form as the commissioner may prescribe. The  
97 annual statement shall include: (1) A financial statement for the  
98 pharmacy benefits manager's organization, including its balance sheet  
99 and income statement which shall include all identified sources of  
100 revenue for the preceding calendar year; (2) the number of individuals  
101 enrolled during the year, the number of enrollees as of the end of the  
102 year and the number of enrollments terminated during the year; (3)  
103 any other information related to the operations of the pharmacy  
104 benefits manager required by the commissioner; and (4) a copy of a  
105 certified annual audit performed by an independent certified public  
106 accountant for the most recent year.

107       (b) Such pharmacy benefits manager shall (1) pay all fees, taxes and  
108 charges required by law; (2) maintain the minimum capital and  
109 surplus required by the commissioner; (3) file any financial statement  
110 or report, certificate or other document that the commissioner deems  
111 necessary to obtain a full and accurate knowledge of the manager's

112 affairs and financial condition; (4) maintain solvency; (5) maintain a  
113 financial condition, method of operation and manner of doing business  
114 sufficient to satisfy the commissioner that the manager can meet its  
115 obligations to all enrollees; (6) comply with all requirements of law;  
116 and (7) obtain a certificate of pharmacy practice from the Commission  
117 of Pharmacy.

118 (c) A nonrefundable application fee required in section 38a-11 of the  
119 general statutes, as amended by this act, shall accompany each  
120 application for a pharmacy benefits manager license submitted to the  
121 commissioner. The commissioner shall use the amount of such fees  
122 solely for the purpose of regulating pharmacy benefits managers.

123 (d) Each pharmacy benefits manager that offers a pharmacy benefit  
124 management plan shall obtain and renew its license as a pharmacy  
125 benefits manager. The commissioner may refuse to reissue a license or  
126 may place restrictions on the license of any pharmacy benefits  
127 managers if the commissioner finds the manager lacks required capital  
128 or surplus or if the commissioner finds that the manager has not  
129 satisfied the requirements of this section, except that prior to refusing  
130 to reissue a license, the commissioner shall provide the manager with  
131 ten days written notice and shall give the manager an opportunity to  
132 be heard at an informal hearing held by the commissioner or a  
133 designee. The manager may waive the right to such notice and  
134 hearing.

135 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) Each pharmacy benefits  
136 manager that offers a pharmacy benefit management plan in this state  
137 shall obtain a certificate of pharmacy practice from the Commission of  
138 Pharmacy and shall (1) provide proof to the commission that the  
139 pharmacy benefits manager is operating in accordance with its basic  
140 organizational document; (2) pay all applicable fees; (3) maintain its  
141 license to operate as a pharmacy benefits manager in this state; (4) pay  
142 any certificate and license renewal fees to the Department of  
143 Consumer Protection or the commission, as the case may be; (5)  
144 maintain its license from the Insurance Department pursuant to section

145 2 of this act; (6) pay pharmacies or pharmacists for pharmacists'  
146 services a ten per cent rebate for each drug or device dispensed  
147 through the plan to ensure proper education and safe prescription  
148 practices for the patient; (7) pay pharmacies and pharmacists a  
149 reasonable dispensing fee as determined by an independent cost of  
150 dispensing survey to ensure safe prescription practices; (8) pay  
151 pharmacies' transmittal costs; and (9) reimburse to the pharmacy at a  
152 rate of fifty per cent any funds generated from the selling of aggregate  
153 patient information whether specific or nonspecific.

154 (b) The Commissioner of Consumer Protection and the commission  
155 shall use the amount of any fee collected from a pharmacy benefit  
156 manager solely for the purpose of regulating pharmacy benefits  
157 managers.

158 Sec. 4. (NEW) (*Effective October 1, 2007*) Each pharmacy benefits  
159 manager that contracts with an approved pharmacy or pharmacist to  
160 provide services through a pharmacy benefit management plan for  
161 enrollees in this state shall file such contract with the Commission of  
162 Pharmacy at least thirty days before the execution of the contract. The  
163 contract shall be deemed approved unless disapproved by the  
164 commission not later than thirty days after the contract is filed. The  
165 commission shall adopt regulations, in accordance with chapter 54 of  
166 the general statutes, to develop formal criteria for the approval and  
167 disapproval of pharmacy benefits manager contracts.

168 Sec. 5. (NEW) (*Effective October 1, 2007*) Except as otherwise required  
169 by subdivision (6), (8) or (9) of section 3 of this act, no person may (1)  
170 pay, allow or give, or offer to pay, allow or give, directly or indirectly,  
171 as an inducement to any contract, rebate, special favor or other  
172 benefits, for switching to an equivalent or therapeutic drug product,  
173 unless the contract is filed and approved by the Commission of  
174 Pharmacy at least thirty days before execution of the contract; or (2)  
175 receive or accept any rebate or any special favor or advantage of any  
176 valuable consideration or inducement not specified in the contract.

177 Sec. 6. (NEW) (*Effective October 1, 2007*) (a) No pharmacy benefits  
178 manager or its representative may cause or knowingly permit the use  
179 of (1) any advertising or solicitation that is untrue or misleading, or (2)  
180 any form of evidence of coverage that is deceptive.

181 (b) No pharmacy benefits manager that is not licensed as an insurer  
182 may use in its name, contracts or literature (1) the word "insurance",  
183 "casualty", "surety" or "mutual", or (2) any other words descriptive of  
184 insurance, casualty or surety business or deceptively similar to the  
185 name or description of any insurance or fidelity and surety insurer.

186 (c) No pharmacy benefits manager may discriminate on the basis of  
187 race, creed, color, gender or religion in the selection of pharmacies for  
188 participation in a plan operated by the manager.

189 (d) No pharmacy benefits manager may unreasonably discriminate  
190 against a pharmacy or pharmacist when contracting for pharmacy or  
191 pharmacist services.

192 (e) No pharmacy or pharmaceutical manufacturer may own a  
193 pharmacy benefits manager.

194 (f) No pharmacy benefits manager may discriminate when  
195 contracting with pharmacies on the basis of copayments or days of  
196 supply.

197 (g) No pharmacy benefits manager may discriminate when  
198 advertising which pharmacies are participating pharmacies. This list  
199 shall be complete and all inclusive.

200 Sec. 7. (NEW) (*Effective October 1, 2007*) Each pharmacy benefits  
201 manager shall provide the following information to enrollees in its  
202 plans at the time of enrollment or at the time the contract is issued, and  
203 shall make available upon request or at least annually:

204 (1) A list of the names and locations of all affiliated providers;

205 (2) A description of the service area or areas within which the

206 pharmacy benefits manager provides prescription services;

207 (3) A description of the method of resolving complaints of covered  
208 persons, including a description of any arbitration procedure if  
209 complaints may be resolved through a specified arbitration agreement;

210 (4) Notice that the pharmacy benefits manager is subject to  
211 regulation by the Insurance Department; and

212 (5) A prominent notice included within the evidence of coverage  
213 which provides the following: "If you have any questions regarding an  
214 appeal or grievance concerning the pharmacist services that you have  
215 been provided which have not been satisfactorily addressed by your  
216 plan, you may contact the Insurance Department". Such notice shall  
217 provide the toll-free telephone number, mailing address and electronic  
218 mail address of the Insurance Department.

219 Sec. 8. (NEW) (*Effective October 1, 2007*) (a) The Insurance  
220 Department shall develop formal investigation and compliance  
221 procedures with respect to complaints by plan sponsors, pharmacists  
222 or enrollees concerning the failure of a pharmacy benefits manager to  
223 comply with the provisions of sections 1 to 7, inclusive, of this act. If  
224 the department has reason to believe that there is a violation of  
225 sections 1 to 7, inclusive, of this act, the department shall serve upon  
226 the manager a statement of the charges and a notice of a hearing to be  
227 held at a time and place set forth in the notice, which shall not be less  
228 than thirty days after the notice is served. The notice shall require the  
229 pharmacy benefits manager to show cause why an order should not be  
230 issued directing the manager to cease and desist from the violation. At  
231 such hearing, the pharmacy benefits manager shall have the  
232 opportunity to be heard and to show cause why an order should not  
233 be issued requiring the pharmacy benefits manager to cease and desist  
234 from the violation.

235 (b) The department, with the advice of the Commission of  
236 Pharmacy, may make an examination concerning the quality of  
237 services of any pharmacy benefits manager and providers with whom

238 the pharmacy benefits manager has contracts, agreements or other  
239 arrangements pursuant to its pharmacy benefit management plan.  
240 Such examination may be made as often as the department deems  
241 necessary, or at the request of the commission. The pharmacy benefits  
242 manager being examined shall pay the cost of the examination.

243 Sec. 9. (NEW) (*Effective October 1, 2007*) An enrollee in a pharmacy  
244 benefit management plan shall have the right to privacy and  
245 confidentiality in pharmacy services, except that the enrollee or the  
246 enrollee's guardian may expressly waive such right in writing.

247 Sec. 10. (NEW) (*Effective October 1, 2007*) (a) If a pharmacy benefits  
248 manager becomes insolvent or ceases to operate in this state in any  
249 assessable year or any year during which licensure is required, the  
250 manager shall remain liable for the payment of any assessment for any  
251 period in which it operated as a pharmacy benefits manager in this  
252 state.

253 (b) In the event of an insolvency of a pharmacy benefits manager,  
254 the Insurance Commissioner may, after notice and a hearing, levy an  
255 assessment on pharmacy benefits managers licensed in this state. The  
256 Insurance Commissioner shall use the amount of any assessment  
257 collected pursuant to this section solely for the benefit of enrollees of  
258 the insolvent pharmacy benefits manager.

259 Sec. 11. Subsection (a) of section 38a-11 of the general statutes is  
260 repealed and the following is substituted in lieu thereof (*Effective*  
261 *October 1, 2007*):

262 (a) The commissioner shall demand and receive the following fees:  
263 (1) For the annual fee for each license issued to a domestic insurance  
264 company, one hundred dollars; (2) for receiving and filing annual  
265 reports of domestic insurance companies, twenty-five dollars; (3) for  
266 filing all documents prerequisite to the issuance of a license to an  
267 insurance company, one hundred seventy-five dollars, except that the  
268 fee for such filings by any health care center, as defined in section 38a-  
269 175, shall be one thousand one hundred dollars; (4) for filing any

270 additional paper required by law, fifteen dollars; (5) for each certificate  
271 of valuation, organization, reciprocity or compliance, twenty dollars;  
272 (6) for each certified copy of a license to a company, twenty dollars; (7)  
273 for each certified copy of a report or certificate of condition of a  
274 company to be filed in any other state, twenty dollars; (8) for  
275 amending a certificate of authority, one hundred dollars; (9) for each  
276 license issued to a rating organization, one hundred dollars. In  
277 addition, insurance companies shall pay any fees imposed under  
278 section 12-211; (10) a filing fee of twenty-five dollars for each initial  
279 application for a license made pursuant to section 38a-769; (11) with  
280 respect to insurance agents' appointments: (A) A filing fee of twenty-  
281 five dollars for each request for any agent appointment, except that no  
282 filing fee shall be payable for a request for agent appointment by an  
283 insurance company domiciled in a state or foreign country which does  
284 not require any filing fee for a request for agent appointment for a  
285 Connecticut insurance company; (B) a fee of forty dollars for each  
286 appointment issued to an agent of a domestic insurance company or  
287 for each appointment continued; and (C) a fee of twenty dollars for  
288 each appointment issued to an agent of any other insurance company  
289 or for each appointment continued, except that no fee shall be payable  
290 for an appointment issued to an agent of an insurance company  
291 domiciled in a state or foreign country which does not require any fee  
292 for an appointment issued to an agent of a Connecticut insurance  
293 company; (12) with respect to insurance producers: (A) An  
294 examination fee of seven dollars for each examination taken, except  
295 when a testing service is used, the testing service shall pay a fee of  
296 seven dollars to the commissioner for each examination taken by an  
297 applicant; (B) a fee of forty dollars for each license issued; (C) a fee of  
298 forty dollars per year, or any portion thereof, for each license renewed;  
299 and (D) a fee of forty dollars for any license renewed under the  
300 transitional process established in section 38a-784; (13) with respect to  
301 public adjusters: (A) An examination fee of seven dollars for each  
302 examination taken, except when a testing service is used, the testing  
303 service shall pay a fee of seven dollars to the commissioner for each  
304 examination taken by an applicant; and (B) a fee of one hundred

305 twenty-five dollars for each license issued or renewed; (14) with  
306 respect to casualty adjusters: (A) An examination fee of ten dollars for  
307 each examination taken, except when a testing service is used, the  
308 testing service shall pay a fee of ten dollars to the commissioner for  
309 each examination taken by an applicant; (B) a fee of forty dollars for  
310 each license issued or renewed; and (C) the expense of any  
311 examination administered outside the state shall be the responsibility  
312 of the entity making the request and such entity shall pay to the  
313 commissioner one hundred dollars for such examination and the  
314 actual traveling expenses of the examination administrator to  
315 administer such examination; (15) with respect to motor vehicle  
316 physical damage appraisers: (A) An examination fee of forty dollars  
317 for each examination taken, except when a testing service is used, the  
318 testing service shall pay a fee of forty dollars to the commissioner for  
319 each examination taken by an applicant; (B) a fee of forty dollars for  
320 each license issued or renewed; and (C) the expense of any  
321 examination administered outside the state shall be the responsibility  
322 of the entity making the request and such entity shall pay to the  
323 commissioner one hundred dollars for such examination and the  
324 actual traveling expenses of the examination administrator to  
325 administer such examination; (16) with respect to certified insurance  
326 consultants: (A) An examination fee of thirteen dollars for each  
327 examination taken, except when a testing service is used, the testing  
328 service shall pay a fee of thirteen dollars to the commissioner for each  
329 examination taken by an applicant; (B) a fee of two hundred dollars for  
330 each license issued; and (C) a fee of one hundred twenty-five dollars  
331 for each license renewed; (17) with respect to surplus lines brokers: (A)  
332 An examination fee of ten dollars for each examination taken, except  
333 when a testing service is used, the testing service shall pay a fee of ten  
334 dollars to the commissioner for each examination taken by an  
335 applicant; and (B) a fee of five hundred dollars for each license issued  
336 or renewed; (18) with respect to fraternal agents, a fee of forty dollars  
337 for each license issued or renewed; (19) a fee of thirteen dollars for  
338 each license certificate requested, whether or not a license has been  
339 issued; (20) with respect to domestic and foreign benefit societies shall

340 pay: (A) For service of process, twenty-five dollars for each person or  
 341 insurer to be served; (B) for filing a certified copy of its charter or  
 342 articles of association, five dollars; (C) for filing the annual report, ten  
 343 dollars; and (D) for filing any additional paper required by law, three  
 344 dollars; (21) with respect to foreign benefit societies: (A) For each  
 345 certificate of organization or compliance, four dollars; (B) for each  
 346 certified copy of permit, two dollars; and (C) for each copy of a report  
 347 or certificate of condition of a society to be filed in any other state, four  
 348 dollars; (22) with respect to reinsurance intermediaries: A fee of five  
 349 hundred dollars for each license issued or renewed; (23) with respect  
 350 to viatical settlement providers: (A) A filing fee of thirteen dollars for  
 351 each initial application for a license made pursuant to section 38a-465a;  
 352 and (B) a fee of twenty dollars for each license issued or renewed; (24)  
 353 with respect to viatical settlement brokers: (A) A filing fee of thirteen  
 354 dollars for each initial application for a license made pursuant to  
 355 section 38a-465a; and (B) a fee of twenty dollars for each license issued  
 356 or renewed; (25) with respect to viatical settlement investment agents:  
 357 (A) A filing fee of thirteen dollars for each initial application for a  
 358 license made pursuant to section 38a-465a; and (B) a fee of twenty  
 359 dollars for each license issued or renewed; (26) with respect to  
 360 preferred provider networks, a fee of two thousand five hundred  
 361 dollars for each license issued or renewed; (27) with respect to rental  
 362 companies, as defined in section 38a-799, a fee of forty dollars for each  
 363 permit issued or renewed; (28) with respect to medical discount plan  
 364 organizations licensed under section 38a-479rr, a fee of five hundred  
 365 dollars for each license issued or renewed; (29) with respect to  
 366 pharmacy benefits managers, an application fee of fifty dollars for each  
 367 license issued or renewed; and ~~[(29)]~~ (30) with respect to each  
 368 duplicate license issued a fee of twenty-five dollars for each license  
 369 issued.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2007</i>	New section
Sec. 2	<i>October 1, 2007</i>	New section

Sec. 3	<i>October 1, 2007</i>	New section
Sec. 4	<i>October 1, 2007</i>	New section
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	New section
Sec. 8	<i>October 1, 2007</i>	New section
Sec. 9	<i>October 1, 2007</i>	New section
Sec. 10	<i>October 1, 2007</i>	New section
Sec. 11	<i>October 1, 2007</i>	38a-11(a)

**INS**      *Joint Favorable*