

December 15, 2021

VIA EMAIL ONLY

Nancy Breems
Secretary of State, Elections Division
180 State Office Building
100 Rev Dr Martin Luther King Jr Blvd
St. Paul, Minnesota 55155-1299
official.documents@state.mn.us

**Re: *In the Matter of Proposed Adoption of New Rules Governing
Pharmacy Benefit Manager (PBM) Licensure and Regulation*
OAH 21-9009-37561; Revisor R-4625**

Dear Ms. Breems:

Enclosed for filing is an electronic copy of the above-entitled adopted rules.

Please send the agency copy of the rules to:

Eric Taubel
85 Seventh Pl E Ste 280
Saint Paul, MN 55101
eric.taubel@state.mn.us

If you have any questions regarding this matter, please contact Denise Collins at (651) 361-7875, denise.collins@state.mn.us or via facsimile at (651) 539-0310.

Sincerely,



Michelle Severson
Legal Assistant

Enclosures

cc: Eric Taubel (via email)

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Office of the Minnesota
Secretary of State, Steve Simon

Office of the Revisor of Statutes

Administrative Rules



TITLE: Adopted Permanent Rules Relating to Pharmacy Benefit Management

AGENCY: Department of Commerce

REVISOR ID: R-4625

MINNESOTA RULES: Chapter 2737

The attached rules are approved for
filing with the Secretary of State

A handwritten signature in blue ink, appearing to read "R. S. Inman", is written over a horizontal line.

Ryan S. Inman
Revisor

1.1 **Department of Commerce**

1.2 **Adopted Permanent Rules Relating to Pharmacy Benefit Management**

1.3 **2737.0100 DEFINITIONS.**

1.4 Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in Minnesota
1.5 Statutes, chapter 62W, have the meanings given them. For purposes of this chapter, the
1.6 terms defined in this part have the meanings given them.

1.7 Subp. 2. **Aggregate.** "Aggregate" means the sum total of the particular reporting
1.8 element at the national drug code level.

1.9 Subp. 3. **Doing business in Minnesota.** "Doing business in Minnesota" means a
1.10 pharmacy benefit manager is in contract to perform pharmacy benefits services with a plan
1.11 sponsor that either (1) is a Minnesota entity, or (2) makes a contract or engages in a terms
1.12 of service agreement with a Minnesota resident that is performed in whole or in part by
1.13 either party in Minnesota.

1.14 Subp. 4. **Machine readable format.** "Machine readable format" has the meaning
1.15 given in United States Code, title 44, section 3502(18).

1.16 Subp. 5. **Owned pharmacy.** "Owned pharmacy" means (1) a pharmacy, whether
1.17 retail, mail order, specialty, or other, or a pharmacy provider in which a pharmacy benefit
1.18 manager has a direct or indirect ownership interest, or (2) a pharmacy provider has an
1.19 ownership interest, whether direct or indirect, in the pharmacy benefit manager.

1.20 **2737.0200 AUTHORITY, SCOPE, AND PURPOSE.**

1.21 This chapter is promulgated pursuant to Minnesota Statutes, chapter 62W, and Laws
1.22 2019, chapter 39, section 20. This chapter applies to all pharmacy benefit managers that are
1.23 licensed or authorized to do business in or otherwise doing business in Minnesota and subject
1.24 to the provisions of the Minnesota Pharmacy Benefit Manager Licensure and Regulation

2.1 Act. This chapter is promulgated to carry out the act, as amended, and to facilitate the act's
2.2 full and uniform implementation, enforcement, and application.

2.3 **2737.0300 GOVERNMENT PROGRAMS.**

2.4 Subpart 1. **Governmental agencies providing pharmacy management**
2.5 **services.** Where an agency of the state of Minnesota directly provides pharmacy management
2.6 services, the agency is extended the exemption granted to the Department of Human Services
2.7 under Minnesota Statutes, section 62W.02, subdivision 16.

2.8 Subp. 2. **Managed care plans in contract with state agencies.** A managed care plan
2.9 that has entered into a contract with the Department of Human Services that otherwise meets
2.10 the definition of a plan sponsor under Minnesota Statutes, section 62W.02, subdivision 16,
2.11 is not entitled to the exemption granted to the Department of Human Services.

2.12 **2737.0400 BUSINESS LICENSE REQUIREMENTS; INITIAL APPLICATION.**

2.13 Subpart 1. **Application.** A pharmacy benefit manager doing business in Minnesota
2.14 on or after January 1, 2020, must apply to the commissioner in the manner and form
2.15 prescribed by the commissioner in order to perform, act, or do business in Minnesota as a
2.16 pharmacy benefit manager. The forms must be submitted no later than 90 days prior to the
2.17 first day business is effective, offered, or maintained.

2.18 Subp. 2. **Application contents.** Each application for a license as pharmacy benefit
2.19 manager must:

2.20 A. be signed and sworn to by the applicant, or the applicant's owners, and be
2.21 accompanied by the license fee required by Minnesota Statutes, section 62W.03. If the
2.22 applicant is a corporate applicant, the application must be verified by the president and
2.23 secretary of the corporation;

2.24 B. designate an agent for service of process in Minnesota;

C. provide the name, address, identifying information, official position, and professional qualifications of each person responsible for conducting the affairs of the pharmacy benefit manager, including owners, key employees, as well as all members of the board of directors, board of trustees, executive committee, or other governing board or committee; for a corporation, the principal officers; or for a partnership or association, the partners or members;

D. for the applicant and each person identified under item C:

(1) provide detailed resumes, which must contain at a minimum each person's name, licensing history, and qualifications and experience relating to the work the person performs for the applicant;

(2) for an owner, partner, officer, or director of the applicant, fully describe any contract or other business relationship terminated for alleged misconduct on the part of any owner, partner, officer, or director of the applicant;

(3) fully describe any violations or investigations by any governmental agency;

(4) fully describe any professional or occupational license discipline or suspension;

(5) fully describe any criminal charges or convictions; and

(6) fully describe any delinquent tax obligation, bankruptcy, or demand or judgment for overdue money by an insurer, insured, pharmacy, or any other claimant, whether involving fraud, misappropriation of funds, failure to exercise good faith and fair dealing in the performance of contractual duties, or for any other reason;

E. provide the identities of any plan sponsors for whom the applicant provides pharmacy benefit manager services in Minnesota, and the identity of any utilization review companies required to be licensed under Minnesota Statutes, chapter 62W, that the applicant uses in Minnesota; and

4.1 F. provide the total number of insureds residing in Minnesota for each plan sponsor
4.2 for which the applicant provides services.

4.3 Subp. 3. **Network adequacy report.** As part of any application for a license under
4.4 this chapter, an applicant must provide a pharmacy network adequacy report to the
4.5 Department of Health in the manner and form prescribed by the Department of Health.
4.6 Pharmacy benefit managers must have a network adequacy report approval issued by the
4.7 Department of Health no less than 90 days prior to the desired license effective date. The
4.8 Department of Health's review of the report, and any geographic or other restrictions
4.9 determined by the Department of Health, may become part of any license issued.

4.10 Subp. 4. **Fee.** Each initial pharmacy benefit manager application for licensure must
4.11 be accompanied by a nonrefundable fee of \$8,500. An additional administration fee may
4.12 be charged by the service provider retained by the commissioner.

4.13 Subp. 5. **Updated information required.** If any of the information provided on the
4.14 initial application under subpart 2, item C, D, or E, changes at any time following submission,
4.15 the applicant must provide updated information to the commissioner within 30 days of the
4.16 date the applicant becomes aware of the changed information. If any of the information
4.17 provided on the network adequacy report changes at any time following submission, the
4.18 applicant must provide updated information to the Department of Health within 30 days of
4.19 the date the applicant becomes aware of the changed information.

4.20 **2737.0500 BUSINESS LICENSE REQUIREMENTS; RENEWAL APPLICATION.**

4.21 Subpart 1. **Renewal application.** In order to obtain a renewal of a license, a pharmacy
4.22 benefit manager must annually meet the requirements needed to obtain an initial pharmacy
4.23 benefit management license under part 2737.0400. The commissioner must consider those
4.24 areas of law described in part 2737.0700, subpart 2, in order to determine whether to approve
4.25 the renewal of a pharmacy benefit manager's license each year.

5.1 Subp. 2. **Timeline.**

5.2 A. **Renewal application.** Applications for renewal may be submitted as soon as
5.3 90 days before the date the current license expires, but must be submitted no later than 60
5.4 days before the date the current license expires. Renewal applications must be submitted
5.5 in the manner and form prescribed by the commissioner. Applications submitted after the
5.6 required date are considered a late application and may result in enforcement action, in
5.7 addition to the late fee provided under subpart 3.

5.8 B. **Network adequacy report.** As part of any renewal application for a license
5.9 under this chapter, an applicant must provide a pharmacy network adequacy report to the
5.10 Department of Health, in the manner and from prescribed by the Department of Health.
5.11 Pharmacy benefit managers must submit a complete network adequacy report to the
5.12 Department of Health no less than 90 days prior to the date the current license expires. The
5.13 Department of Health's review of the report, and any geographic or other restrictions
5.14 determined by the Department of Health, may become part of any license issued.

5.15 C. **Determination.** Within 90 days after the date a completed renewal application,
5.16 the network adequacy report, and the license fee are received, the commissioner must review
5.17 the application and issue a license if the applicant is deemed qualified under this part. If the
5.18 commissioner determines the applicant is not qualified, the commissioner must notify the
5.19 applicant and must specify the reason or reasons for the denial.

5.20 Subp. 3. **Fee.** Each application for pharmacy benefit manager licensure renewal must
5.21 be accompanied by a nonrefundable fee of \$8,500. The deadline for submitting the renewal
5.22 application is 60 days before the date the license expires. A renewal application submitted
5.23 after the renewal deadline must be accompanied by a nonrefundable \$500 late fee. An
5.24 additional administration fee may be charged by the service provider retained by the
5.25 commissioner.

6.1 Subp. 4. **Updated information required.** If any of the information provided on the
6.2 renewal application changes at any time following submission, the applicant must provide
6.3 updated information to the commissioner within 30 days after the date the applicant becomes
6.4 aware the information changed. If any of the information provided on the network adequacy
6.5 report changes at any time following submission, the applicant must provide updated
6.6 information to the Department of Health within 30 days after the date the applicant becomes
6.7 aware the information changed.

6.8 **2737.0600 REVIEW BY COMMISSIONER.**

6.9 Subpart 1. **Additional information.** The commissioner may request additional
6.10 information within 30 days of receiving completed initial or renewal application data. The
6.11 30-day initial review period does not begin until complete application data has been submitted
6.12 to the commissioners of commerce and health. Incomplete applications will not be reviewed,
6.13 but incomplete items will be identified and communicated within 30 days.

6.14 Subp. 2. **Determination.** Within 90 days after the date a complete initial or renewal
6.15 application is received, the commissioner must:

- 6.16 A. issue an initial or renewal license if the applicant is determined to be qualified;
- 6.17 B. issue a limited or restricted license; or
- 6.18 C. notify the applicant if the submission is denied, specifying the reason for the
6.19 denial. If the applicant provides a remedy for the denial within 30 days of the date the denial
6.20 notice is received, or submits and receives approval for a corrective action plan to cure and
6.21 correct deficiencies within 30 days of the date the denial notice is received, the commissioner
6.22 must not assess a new application fee. The commissioner may provide temporary, contingent
6.23 approval for a pharmacy benefit manager while the pharmacy benefit manager is participating
6.24 in the corrective action plan process.

7.1 Subp. 3. **Limited or restricted license.** As part of a license application review, the
7.2 commissioner may issue a restricted or limited license, including limitations based on the
7.3 network adequacy report. A pharmacy benefit manager whose application for a full license
7.4 results in a limited or restricted license may provide the Department of Commerce with
7.5 additional information that addresses the basis for the limited or restricted license and request
7.6 that a full license be restored.

7.7 Subp. 4. **Appeals process.** The commissioner's decision to deny a license, deny a
7.8 renewal, or issue a limited or restricted license may be appealed subject to the following
7.9 procedure:

7.10 A. within 30 days of the date the denial or limited or restricted license is issued,
7.11 a pharmacy benefit manager must make a written request to the commissioner for a hearing
7.12 to determine whether the decision or action complies with this chapter and Minnesota
7.13 Statutes, chapter 62W;

7.14 B. ~~the commissioner must conduct a hearing~~ within 30 days after the date the
7.15 hearing request is made, the commissioner must provide notice of a hearing to be conducted
7.16 under Minnesota Statutes, chapter 14, and must give not less than ten days' written notice
7.17 of the hearing date, time, and location; and

7.18 C. ~~within 15 days after the hearing date, the commissioner must affirm, reverse,~~
7.19 ~~or modify the denial or limited or restricted license issuance and specify in writing the~~
7.20 ~~reasons for the decision or action. The effective date of the commissioner's action or decision~~
7.21 ~~may be suspended or postponed pending the completion of the hearing before the~~
7.22 ~~commissioner;~~

7.23 D. ~~nothing in this subpart requires the commissioner to observe formal rules of~~
7.24 ~~pleading or evidence at any hearing; and~~

8.1 ~~E. C.~~ the commissioner's order or decision is a final decision subject to appeal
8.2 under Minnesota Statutes, chapter 14.

8.3 Subp. 5. **License continuity.** If a renewal license is not granted before the previous
8.4 year's license expires and the pharmacy benefit manager has a timely filed renewal application
8.5 pending, the pharmacy benefit manager may continue to provide services under the terms
8.6 of the previous year's license until the renewal application is approved or denied.

8.7 **2737.0700 ENFORCEMENT BY COMMISSIONER.**

8.8 Subpart 1. **Acting without a license.** If a pharmacy benefit manager acts without a
8.9 license, the pharmacy benefit manager may be subject to a fine of up to \$5,000 per day for
8.10 the period the pharmacy benefit manager is found to be in violation. The commissioner
8.11 must consider timeliness of responses, content of responses, and progress toward licensure
8.12 when assessing fines.

8.13 Subp. 2. **Basis for suspension, revocation, or probation.** The commissioner may
8.14 consider the following when suspending, revoking, or placing a pharmacy benefit manager
8.15 license on probation:

8.16 A. failure to comply with relevant state and federal law, as determined by the
8.17 relevant regulatory body:

8.18 (1) Minnesota Statutes, chapter 62W; and

8.19 (2) state health care and pharmacy laws:

8.20 (a) insurance laws codified in Minnesota Statutes, chapters 60A, 62A to
8.21 62W, and related rules;

8.22 (b) health laws codified in Minnesota Statutes, chapter 151, and related
8.23 rules;

(c) the electronic health record technology requirements under Minnesota Statutes, section 62J.495, the electronic prescription drug program requirements under Minnesota Statutes, section 62J.497, the uniform electronic transactions standards under Minnesota Statutes, section 62J.536, the implementation of electronic data interchange standards under Minnesota Statutes, section 62J.56, and the Minnesota uniform health care identification card requirements under Minnesota Statutes, section 62J.60; and

(d) for pharmacy benefit managers providing benefits to a person covered by workers' compensation, the pharmacy benefit manager must comply with the processes, cost sharing, and treatment access described in Minnesota Statutes, section 176.135, in relation to compensable prescriptions, including the requirement that a pharmacy or network of pharmacies may be required only if a designated pharmacy is located within 15 miles of the employee's place of residence;

B. fraudulent activity that constitutes a violation of state or federal law;

C. consumer, plan sponsor, or health care provider complaints that have led to a civil or criminal action to protect the safety and interests of consumers;

D. failure to pay any fees and penalties; and

E. compliance with federal pharmacy laws, including but not limited to the following laws, regulations, and guidance, as applicable to the plan sponsor or product that the pharmacy benefit manager serves.

Subp. 3. **Notice.** The commissioner must provide a 30-day notice before suspending, revoking, or placing a pharmacy benefit manager license on probation. If the pharmacy benefit manager demonstrates remedy or good faith progress toward remediation before the 30-day notice period expires, the commissioner may approve the license, reduce the enforcement action to probation, or provide an extended timeline for probation and remediation.

10.1 **2737.0800 ADEQUATE NETWORK.**

10.2 Subpart 1. **Pharmacy type.** A network is adequate if it contains at least one of each
10.3 of the following types of pharmacies:

10.4 A. retail;

10.5 B. specialty;

10.6 C. home infusion;

10.7 D. mail order;

10.8 E. long-term care; ~~or~~ and

10.9 F. Indian health service, Tribal organizations, and urban Indian organizations.

10.10 Subp. 2. **Plan to provide services.** If a pharmacy benefit manager does not include
10.11 a pharmacy type listed in subpart 1, the pharmacy benefit manager must provide the
10.12 Department of Health an explanation why the pharmacy type is excluded and describe how
10.13 an enrollee requiring services from the excluded pharmacy types may access them.

10.14 ~~**2737.0900 ACCESSIBLE NETWORK; RETAIL PHARMACY.**~~

10.15 ~~The relevant portion of Minnesota Statutes, section 62K.10, for purposes of determining~~
10.16 ~~accessibility for retail pharmacies is subdivision 2.~~

10.17 **2737.1000 TRANSPARENCY REPORTS TO PLAN SPONSORS.**

10.18 Subpart 1. **Publication of template.** The commissioner must post on the Department
10.19 of Commerce's website a template that a plan sponsor may use to submit a transparency
10.20 request of the data provided under Minnesota Statutes, section 62W.06, subdivision 1,
10.21 paragraph (a). A plan sponsor is not required to use this template to submit a transparency
10.22 data request.

11.1 Subp. 2. **Time to respond.** A pharmacy benefit manager doing business in Minnesota
11.2 must reply to a formal transparency report request within 60 days of the date the request is
11.3 made. A formal request is made when:

11.4 A. the plan sponsor has met criteria to request a transparency report from the
11.5 pharmacy benefit manager under Minnesota Statutes, section 62W.06, subdivision 1, for
11.6 the first time (but not for data prior to the execution of the initial contract start date); or

11.7 B. the plan sponsor provides evidence of perceived negligence with respect to a
11.8 contractual duty between the pharmacy benefit manager and plan sponsor during the last
11.9 contractual year.

11.10 Subp. 3. **Penalties and fines.** If a plan sponsor believes a pharmacy benefit manager
11.11 has violated Minnesota Statutes, section 62W.06, subdivision 1, paragraph (a), the plan
11.12 sponsor may file a complaint with the department 60 days after the date the transparency
11.13 report request was made. A transparency report requested under Minnesota Statutes, section
11.14 62W.06, subdivision 1, paragraph (a), is untimely and subject to penalties on the 61st day
11.15 after the date the report was requested by the plan sponsor.

11.16 **2737.1100 TRANSPARENCY REPORTS TO COMMISSIONER.**

11.17 Subpart 1. **Publication of submission form.** Annually no later than 60 days before
11.18 the transparency reporting deadline date, the commissioner must post to the department's
11.19 website the transparency report submission process, including the format, data specifications,
11.20 and other pertinent information necessary to collect and report all data, including templates
11.21 used for submission of the aggregate data required by Minnesota Statutes, section 62W.06,
11.22 subdivision 2, paragraph (a), clauses (1) to (6), the claims-level data required by Minnesota
11.23 Statutes, section 62W.02, subdivision 2, paragraph (a), clause (7), and the data publicly
11.24 reported by the commissioner under Minnesota Statutes, section 62W.02, paragraph (b).

12.1 Subp. 2. **Use of submission forms and templates.** Unless given written permission
12.2 by the commissioner not to, the templates annually published by the commissioner for
12.3 submission of aggregate data, claims-level data, and data to be publicly reported, must be
12.4 used.

12.5 Subp. 3. **Notice of no data to report.** A pharmacy benefit manager that claims to be
12.6 exempt from the requirement to submit the transparency reports under Minnesota Statutes,
12.7 section 62W.06, subdivision 2, must, no later than the date the reports are due, submit to
12.8 the commissioner a statement specifying the basis for nonreporting.

12.9 Subp. 4. **Therapeutic categories.** The commissioner must select a preexisting and
12.10 commonly used therapeutic classification system to group drugs into like categories. The
12.11 commissioner may consult with state agencies and other experts in the field in order to
12.12 determine the best classification system. The commissioner must publish the classification
12.13 system on the department's website at the same time transparency report templates are
12.14 published. The classification system must be consistent with industry standards and must
12.15 be reviewed on a periodic basis.

12.16 Subp. 5. **Delegation of data collection.** The commissioner may delegate or engage
12.17 staff within the various divisions of the Department of Commerce, an outside third party,
12.18 or another state agency to assist in data collection and analysis. The commissioner must
12.19 ensure that delegated persons do not have a conflict of interest with respect to a particular
12.20 data review.

12.21 Subp. 6. **Use of third party for data submission.** A pharmacy benefit manager may
12.22 satisfy the requirements of Minnesota Statutes, section 62W.06, subdivision 2, paragraph
12.23 (a), clause (7), by delegating data submission to a third-party administrator, health carrier,
12.24 or another pharmacy benefit manager. The pharmacy benefit manager and the third-party
12.25 administrator, health carrier, or other pharmacy benefit manager must have a contract
12.26 provision that dictates which party is responsible for claims-level reporting. If a contract

13.1 provision does not exist, the commissioner must enforce the data submission requirements
13.2 of this subpart on the pharmacy benefit manager responsible for processing pharmacy claims.
13.3 The transparency reporting submission process must provide an opportunity for a pharmacy
13.4 benefit manager doing business in Minnesota to indicate the party that is submitting
13.5 claims-level data on behalf of the pharmacy benefit manager. A pharmacy benefit manager's
13.6 use of third parties for data submission does not absolve the licensed pharmacy benefit
13.7 manager of any responsibility for compliance issues determined during the department's
13.8 report review.

13.9 Subp. 7. **Penalties and fines.** If a pharmacy benefit manager has violated Minnesota
13.10 Statutes, section 62W.06, by failing to timely submit a transparency report, the commissioner
13.11 may assess a penalty of up to \$1,000 per day until the pharmacy benefit manager provides
13.12 the requested transparency report. A transparency report requested under Minnesota Statutes,
13.13 section 62W.06, subdivision 2, paragraph (a), is untimely and subject to penalties beginning
13.14 the day after the date the report is due.

13.15 **2737.1200 PHARMACY OWNERSHIP INTEREST.**

13.16 Subpart 1. **Networks with only owned pharmacies.** A pharmacy benefit manager
13.17 requires an enrollee to use a pharmacy if the pharmacy benefit manager establishes a network
13.18 of pharmacies that includes only pharmacies directly or indirectly owned by the pharmacy
13.19 benefit manager.

13.20 Subp. 2. **Exemptions to prohibitions.** A pharmacy benefit manager is exempt from
13.21 the prohibitions in Minnesota Statutes, section 62W.07, paragraph (b), if the owned and
13.22 nonowned pharmacies are of the same type, as provided in this subpart.

13.23 A. **Retail.** To be exempt from Minnesota Statutes, section 62W.07, paragraph
13.24 (b), if the pharmacy benefit manager or health carrier attempts to incentivize use of an
13.25 owned retail pharmacy, the pharmacy benefit manager or health carrier must provide the
13.26 same incentive at a nonowned retail pharmacy.

14.1 B. **Specialty.** To be exempt from Minnesota Statutes, section 62W.07, paragraph
14.2 (b), if the pharmacy benefit manager or health carrier attempts to incentivize use of an
14.3 owned specialty pharmacy, the pharmacy benefit manager or health carrier must provide
14.4 the same incentive at a nonowned specialty pharmacy.

14.5 C. **Mail order.** To be exempt from Minnesota Statutes, section 62W.07, paragraph
14.6 (b), if the pharmacy benefit manager or health carrier attempts to incentivize use of an
14.7 owned mail order pharmacy, the pharmacy benefit manager or health carrier must provide
14.8 the same incentive at a nonowned mail order pharmacy.

14.9 Subp. 3. **Use of quantity and refill limits.** A pharmacy benefit manager may use
14.10 quantity and refill limits only as provided in this subpart.

14.11 A. **Retail.** A pharmacy benefit manager or health carrier may only impose quantity
14.12 limits or refill frequency limits at ~~an owned~~ a nonowned retail pharmacy ~~where~~ when the
14.13 pharmacy benefit manager or health carrier ~~provides the enrollee access to a nonowned~~
14.14 ~~retail pharmacy with~~ has imposed the same limits at the pharmacy benefit manager's or
14.15 health carrier's owned retail pharmacies.

14.16 B. **Mail order.** A pharmacy benefit manager or health carrier may only impose
14.17 quantity limits or refill frequency limits at ~~an owned~~ a nonowned mail order pharmacy
14.18 ~~where~~ when the pharmacy benefit manager or health carrier ~~provides the enrollee access to~~
14.19 ~~a nonowned mail order pharmacy with~~ has imposed the same limits at the pharmacy benefit
14.20 manager's or health carrier's owned mail order pharmacies.

14.21 Subp. 4. **Single Exclusively owned mail order pharmacy networks.** If a pharmacy
14.22 benefit manager administers a network with ~~a single~~ only mail order ~~pharmacy~~ pharmacies
14.23 ~~that is an~~ are owned ~~pharmacy~~ pharmacies, the pharmacy benefit manager is prohibited
14.24 from (1) offering financial incentives to use the mail order ~~pharmacy~~ pharmacies, or (2)
14.25 imposing limits on an enrollee's access to medication.

15.1 **2737.1300 SECTION 340B PARTICIPANTS.**

15.2 Subpart 1. **Prohibition on 340B participants.** A pharmacy benefit manager is
15.3 prohibited from adopting a rule, requirement, or condition that provides that, in order to be
15.4 included in the pharmacy benefit manager's pharmacy network, a pharmacy, mail order
15.5 pharmacy, or specialty pharmacy is prohibited from participating in the federal 340B Drug
15.6 Pricing Program under section 340B of the Public Health Service Act, United States Code,
15.7 title 42, chapter 6A.

15.8 Subp. 2. **Continued access.** A pharmacy benefit manager is prohibited from
15.9 conditioning continued access to network status on nonparticipation in the 340B program.

15.10 Subp. 3. **Specific terms or reimbursement rates.** A pharmacy benefit manager is
15.11 prohibited from requiring that 340B participants agree to specific terms or reimbursement
15.12 rates, based on the participant's participation in the 340B program, in order to access network
15.13 status.

15.14 **2737.1400 OUT-OF-POCKET COST COMPARISONS.**

15.15 Subpart 1. **Request format.** A pharmacy benefit manager may create specific forms,
15.16 rules, or guidelines for an enrollee to request out-of-pocket cost information. Any forms,
15.17 rules, or guidelines a pharmacy benefit manager creates must not be unreasonably onerous
15.18 or burdensome.

15.19 Subp. 2. **Response format.** The pharmacy benefit manager's response to an enrollee's
15.20 request must be consistent with the manner in which the request is made. If a pharmacy
15.21 benefit manager creates specific forms, rules, or guidelines for out-of-pocket cost information
15.22 requests, the pharmacy benefit manager must provide an enrollee with information regarding
15.23 the format of the pharmacy benefit manager's response. The response must use plain language
15.24 that clearly delineates the difference in out-of-pocket costs based on the pharmacy used.

16.1 Subp. 3. **Time to respond.** A pharmacy benefit manager must respond to an enrollee's
16.2 request for out-of-pocket cost information within five business days of the date of the request.

16.3 Subp. 4. **Existing system.** If an enrollee seeks the information available under
16.4 Minnesota Statutes, section 62W.076 or 62W.077, and if a pharmacy benefit manager
16.5 maintains an online system that is easily accessible, the pharmacy benefit manager may
16.6 comply with this part by directing the enrollee to the online system.

16.7 **2737.1500 MAXIMUM ALLOWABLE COST PRICING.**

16.8 Subpart 1. **Maximum allowable cost price list.** A pharmacy benefit manager subject
16.9 to Minnesota Statutes, section 62W.08, must make available to all pharmacies the pharmacy
16.10 benefit manager has a contract with a version of the pharmacy benefit manager's maximum
16.11 allowable cost price list that comports with the following requirements:

16.12 A. **Form.** Pharmacy benefit managers must allow pharmacies the pharmacy benefit
16.13 manager contracts with to review the maximum allowable cost price list in electronic, ~~paper~~
16.14 print, or telephonic format.

16.15 B. **Electronic availability.** A pharmacy benefit manager must ensure that the
16.16 electronically available maximum allowable cost price list is presented in a machine readable
16.17 format, such as CSV, JSON, XML, or another commonly available digital format.

16.18 C. **Date updated.** The date the maximum allowable cost price list was last updated
16.19 must be prominently displayed on both electronic and paper formats of the list and must be
16.20 clearly announced via the telephonic format.

16.21 D. **Updated items.** A list must clearly identify prices that have changed.

16.22 Subp. 2. **Contracts.** A pharmacy benefit manager is prohibited from requiring a
16.23 pharmacy to waive or modify Minnesota Statutes, section 62W.08, as a condition of inclusion
16.24 in a network. Contract provisions related to appeal, investigation, and dispute resolution
16.25 processes regarding maximum allowable cost pricing that are in addition to the requirements

17.1 under Minnesota Statutes, section 62W.08, paragraph (c), clauses (1) to (3), are not a
17.2 modification to Minnesota Statutes, section 62W.08.

17.3 **2737.1600 PHARMACY AUDITS.**

17.4 Subpart 1. **Publication of pharmacy audit standards.**

17.5 A. A pharmacy benefit manager must make available to a pharmacy or pharmacist
17.6 the standards and parameters under which the pharmacy or pharmacist is audited.

17.7 B. The entity conducting the audit must provide the entity under audit with
17.8 information regarding the written appeals process at the commencement of the audit, as
17.9 well as at any time the entity under an audit is provided a report that could be appealed.

17.10 Subp. 2. **Contracts.** Except as authorized under Minnesota Statutes, section 62W.09,
17.11 subdivision 6, a pharmacy benefit manager is prohibited from requiring a pharmacy to waive
17.12 or modify Minnesota Statutes, section 62W.09, as a condition of inclusion in a network.

17.13 **2737.1700 ALLOWABLE CLAIM AMOUNT.**

17.14 The allowable claim amount is equivalent to the net amount the pharmacy receives
17.15 ~~from the pharmacy benefit manager for dispensing the prescription~~ health carrier or pharmacy
17.16 benefit manager has agreed to pay the pharmacy for the prescription medication.

17.17 **2737.1800 RETROACTIVE ADJUSTMENTS.**

17.18 Subpart 1. **Contracts.** Minnesota Statutes, section 62W.13, must not be waived or
17.19 modified by contract.

17.20 Subp. 2. **Billing errors.** A claim for a billing error must be documented and the
17.21 information supporting the claim, if any, must be provided to the pharmacy upon request.
17.22 A pharmacy benefit manager must allow a pharmacy an opportunity to rebut a billing error
17.23 claim.

- 18.1 Subp. 3. **Fees not subject to adjustment.** Payment for quality performance metrics
18.2 included in a prescription drug plan that are based on a pharmacy's quality performance and
18.3 calculated on prescription count are not retroactive claim adjustments. ~~Retroactive~~
18.4 ~~adjustments must not include payments to the pharmacy based on meeting certain~~
18.5 ~~performance metrics and must not be based on related prescription count.~~

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