

REFERENCE TITLE: pharmacy benefit managers; certificate requirements

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1382

Introduced by
Senator Shamp

AN ACT

AMENDING TITLE 20, CHAPTER 25, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTIONS 20-3333, 20-3334, 20-3335 AND 20-3336; RELATING TO
PHARMACY BENEFIT MANAGERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 20, chapter 25, article 2, Arizona Revised
3 Statutes, is amended by adding sections 20-3333, 20-3334, 20-3335 and
4 20-3336, to read:

5 20-3333. Pharmacy benefit manager; certificate of authority;
6 department; rules

7 A. A PHARMACY BENEFIT MANAGER SHALL APPLY FOR, OBTAIN AND MAINTAIN
8 A VALID CERTIFICATE OF AUTHORITY TO OPERATE AS A PHARMACY BENEFIT MANAGER
9 IN THIS STATE. A CERTIFICATE OF AUTHORITY IS RENEWABLE BIENNIALY AND IS
10 NONTRANSFERABLE.

11 B. A PHARMACY BENEFIT MANAGER THAT APPLIES FOR A CERTIFICATE OF
12 AUTHORITY SHALL SUBMIT TO THE DIRECTOR BOTH OF THE FOLLOWING:

13 1. AN APPLICATION IN A FORM AND MANNER PRESCRIBED BY THE
14 DIRECTOR. AN OFFICER OR INDIVIDUAL WHO IS RESPONSIBLE FOR THE CONDUCT OF
15 THE ACTIVITIES OF THE PHARMACY BENEFIT MANAGER SHALL SIGN THE APPLICATION
16 AND VERIFY THAT THE CONTENTS OF THE APPLICATION AND ANY ATTACHMENTS ARE
17 CORRECT. THE APPLICATION FORM SHALL INCLUDE THE FOLLOWING:

18 (a) A COPY OF ALL BASIC ORGANIZATIONAL DOCUMENTS OF THE PHARMACY
19 BENEFIT MANAGER, INCLUDING THE ARTICLES OF INCORPORATION, BYLAWS, ARTICLES
20 OF ASSOCIATION AND TRADE NAME CERTIFICATE, ANY OTHER SIMILAR DOCUMENTS AND
21 ALL AMENDMENTS TO THE DOCUMENTS.

22 (b) A COPY OF A POWER OF ATTORNEY THAT IS DULY EXECUTED BY THE
23 PHARMACY BENEFIT MANAGER IF THE PHARMACY BENEFIT MANAGER IS NOT DOMICILED
24 IN THIS STATE AND THAT APPOINTS A DIRECTOR, THE DIRECTOR'S SUCCESSORS IN
25 OFFICE AND THE DIRECTOR'S AUTHORIZED DEPUTIES AS THE POWER OF ATTORNEY FOR
26 THE PHARMACY BENEFIT MANAGER IN THIS STATE THAT MAY RECEIVE SERVICE OF
27 PROCESS.

28 (c) THE NAMES, ADDRESSES, OFFICIAL POSITIONS AND PROFESSIONAL
29 QUALIFICATIONS OF EACH INDIVIDUAL WHO IS RESPONSIBLE FOR THE CONDUCT OF
30 THE ACTIVITIES OF THE PHARMACY BENEFIT MANAGER.

31 (d) A COPY OF RECENT FINANCIAL STATEMENTS SHOWING THE PHARMACY
32 BENEFIT MANAGER'S ASSETS, LIABILITIES AND SOURCES OF FINANCIAL SUPPORT
33 THAT THE DIRECTOR DETERMINES ARE SUFFICIENT TO SHOW THAT THE PHARMACY
34 BENEFIT MANAGER IS FINANCIALLY VIABLE. IF A PHARMACY BENEFIT MANAGER'S
35 FINANCIAL STATEMENTS ARE PREPARED BY AN INDEPENDENT PUBLIC ACCOUNTANT, A
36 COPY OF THE MOST RECENT REGULAR FINANCIAL STATEMENT SATISFIES THIS
37 REQUIREMENT UNLESS THE DIRECTOR DETERMINES THAT ADDITIONAL OR MORE RECENT
38 FINANCIAL INFORMATION IS NECESSARY.

39 (e) A DESCRIPTION OF THE PHARMACY BENEFIT MANAGER AND ITS SERVICES,
40 FACILITIES AND PERSONNEL.

41 (f) A DOCUMENT IN WHICH THE PHARMACY BENEFIT MANAGER CONFIRMS THAT
42 ITS BUSINESS PRACTICES AND EACH ONGOING CONTRACT COMPLY WITH THIS ARTICLE
43 AND ALL LAWS OF THIS STATE.

44 2. AN APPLICATION FEE PRESCRIBED BY THE DIRECTOR.

45 C. WITHIN THIRTY DAYS AFTER ANY SIGNIFICANT MODIFICATION OF THE
46 INFORMATION SUBMITTED WITH THE APPLICATION FOR A CERTIFICATE OF AUTHORITY,

1 THE PHARMACY BENEFIT MANAGER SHALL FILE A NOTICE OF MODIFICATION WITH THE
2 DIRECTOR.

3 D. THE DIRECTOR MAY REFUSE TO ISSUE A CERTIFICATE OF AUTHORITY IF
4 THE DIRECTOR DETERMINES THAT THE PHARMACY BENEFIT MANAGER EITHER:

5 1. IS NOT FINANCIALLY VIABLE.

6 2. HAD A PHARMACY BENEFIT MANAGER CERTIFICATE OF AUTHORITY OR
7 LICENSE DENIED OR REVOKED FOR CAUSE IN ANOTHER STATE OR ANY INDIVIDUAL
8 RESPONSIBLE FOR THE CONDUCT OF THE ACTIVITIES OF THE PHARMACY BENEFIT
9 MANAGER HAD A LICENSE DENIED OR REVOKED FOR CAUSE IN ANOTHER STATE.

10 E. THE DIRECTOR MAY ISSUE A CEASE AND DESIST ORDER IF THE PHARMACY
11 BENEFIT MANAGER DOES NOT HOLD A VALID CERTIFICATE OF AUTHORITY. THE
12 DIRECTOR MAY DENY, SUSPEND OR REVOKE A PHARMACY BENEFIT MANAGER'S
13 CERTIFICATE OF AUTHORITY IF THE DIRECTOR FINDS, AFTER NOTICE AND
14 OPPORTUNITY FOR HEARING, THAT ANY OF THE FOLLOWING APPLIES:

15 1. THE PHARMACY BENEFIT MANAGER VIOLATED ANY RULE OR ORDER OF THE
16 DIRECTOR OR ANY LAW OF THIS STATE APPLICABLE TO A PHARMACY BENEFIT
17 MANAGER.

18 2. THE PHARMACY BENEFIT MANAGER REFUSED TO BE EXAMINED OR TO
19 PRODUCE ITS ACCOUNTS, RECORDS AND FILES FOR EXAMINATION OR AUDIT, OR IF
20 ANY INDIVIDUAL RESPONSIBLE FOR THE CONDUCT OF THE ACTIVITIES OF THE
21 PHARMACY BENEFIT MANAGER REFUSED TO PROVIDE INFORMATION WITH RESPECT TO
22 ITS ACTIVITIES OR REFUSED TO PERFORM ANY OTHER LEGAL OBLIGATION REQUIRED
23 BY THE DIRECTOR.

24 3. THE PHARMACY BENEFIT MANAGER HAS, WITHOUT JUST CAUSE, REFUSED TO
25 PAY PROPER CLAIMS OR PERFORM SERVICES ARISING UNDER ITS CONTRACT OR HAS,
26 WITHOUT JUST CAUSE, CAUSED COVERED PERSONS OR ENROLLEES TO ACCEPT LESS
27 THAN THE AMOUNT DUE TO ENROLLEES OR COVERED PERSONS, WHICH MAY RESULT IN
28 AN ENROLLEE OR A COVERED PERSON PROCURING LEGAL COUNSEL TO BRING A LAWSUIT
29 AGAINST THE PHARMACY BENEFIT MANAGER OR A PAYOR THAT IT REPRESENTS TO
30 SECURE FULL PAYMENT OR SETTLEMENT OF CLAIMS.

31 4. THE PHARMACY BENEFIT MANAGER IS REQUIRED UNDER THIS SECTION TO
32 HAVE A CERTIFICATE OF AUTHORITY AND FAILS AT ANY TIME TO MEET ANY
33 QUALIFICATION FOR WHICH ISSUANCE OF A CERTIFICATE OF AUTHORITY COULD HAVE
34 BEEN REFUSED HAD THE FAILURE EXISTED AT THE TIME OF ISSUANCE AND BEEN
35 KNOWN TO THE DIRECTOR, UNLESS THE DIRECTOR ISSUED A CERTIFICATE OF
36 AUTHORITY WITH KNOWLEDGE OF THE GROUND FOR DISQUALIFICATION AND HAD THE
37 AUTHORITY TO WAIVE IT.

38 5. ANY INDIVIDUAL WHO IS RESPONSIBLE FOR THE CONDUCT OF THE
39 ACTIVITIES OF THE PHARMACY BENEFIT MANAGER IS CONVICTED OF OR ENTERS A
40 PLEA OF GUILTY OR NO CONTEST TO A FELONY.

41 6. THE PHARMACY BENEFIT MANAGER'S CERTIFICATE OF AUTHORITY OR
42 LICENSE HAS BEEN SUSPENDED OR REVOKED IN ANOTHER STATE.

43 F. IF A PHARMACY BENEFIT MANAGER'S CERTIFICATE OF AUTHORITY IS
44 SUSPENDED OR RESTRICTED, THE DIRECTOR MAY ALLOW THE OPERATION OF THE
45 PHARMACY BENEFIT MANAGER FOR A LIMITED TIME NOT TO EXCEED SIXTY DAYS. THE
46 DIRECTOR MAY ALLOW A PHARMACY BENEFIT MANAGER WHOSE CERTIFICATE OF

1 AUTHORITY HAS BEEN SUSPENDED OR RESTRICTED TO OPERATE FOR A PERIOD THAT
2 EXCEEDS SIXTY DAYS IF THE DIRECTOR DETERMINES THAT THE CONTINUED OPERATION
3 OF THE PHARMACY BENEFIT MANAGER IS IN THE BENEFICIAL INTERESTS OF THE
4 COVERED PERSONS BY ENSURING MINIMAL DISRUPTIONS TO THE CONTINUITY OF CARE.
5 A PHARMACY BENEFIT MANAGER WHOSE CERTIFICATE OF AUTHORITY HAS BEEN
6 SUSPENDED OR RESTRICTED IS SUBJECT TO A FINE EACH MONTH, AS DETERMINED BY
7 THE DIRECTOR IN AN AMOUNT NOT TO EXCEED \$20,000 PER MONTH, UNTIL THE
8 PHARMACY BENEFIT MANAGER REMEDIES THE VIOLATION.

9 G. THE DIRECTOR MAY REVOKE THE CERTIFICATE OF AUTHORITY IF THE
10 PHARMACY BENEFIT MANAGER HAS BEEN OPERATING UNDER A SUSPENDED CERTIFICATE
11 OF AUTHORITY FOR A PERIOD OF MORE THAN SIXTY DAYS.

12 H. FOR THE PURPOSES OF THIS SECTION, A PHARMACY BENEFIT MANAGER HAS
13 THE SAME RIGHTS TO NOTICE AND A HEARING PRESCRIBED IN TITLE 41, CHAPTER 6,
14 ARTICLE 10.

15 I. THE DIRECTOR MAY INVESTIGATE OFFICERS, DIRECTORS AND OWNERS OF A
16 PHARMACY BENEFIT MANAGER TO COMPLY WITH THIS SECTION.

17 J. TO RENEW A CERTIFICATE OF AUTHORITY, A PHARMACY BENEFIT MANAGER
18 SHALL SUBMIT TO THE DIRECTOR ALL OF THE FOLLOWING:

19 1. A RENEWAL APPLICATION IN A FORM AND MANNER PRESCRIBED BY THE
20 DIRECTOR. AN OFFICER OR AUTHORIZED REPRESENTATIVE OF THE PHARMACY BENEFIT
21 MANAGER SHALL SIGN THE APPLICATION AND VERIFY THAT THE CONTENTS OF THE
22 RENEWAL FORM ARE CORRECT.

23 2. A RENEWAL SCHEDULE AND A FEE PRESCRIBED BY THE DIRECTOR.

24 3. A RETAIL PHARMACY BENEFIT MANAGER NETWORK ADEQUACY REPORT AS
25 PRESCRIBED IN SECTION 20-3334.

26 K. A PHARMACY BENEFIT MANAGER'S CERTIFICATE OF AUTHORITY EXPIRES BY
27 OPERATION OF LAW IF A COMPLETE RENEWAL APPLICATION AND FEE IS NOT RECEIVED
28 BY THE DUE DATE AS ESTABLISHED IN RULE.

29 L. IF A PHARMACY BENEFIT MANAGER AND AN INSURER ENTER INTO A
30 CONTRACTUAL AGREEMENT, THE PHARMACY BENEFIT MANAGER SHALL COMPLY WITH THE
31 LAWS AND RULES THAT GOVERN THE CONTRACTUAL AGREEMENT AS OF THE DATE OF
32 ISSUANCE OF THE CERTIFICATE OF AUTHORITY.

33 M. A PHARMACY BENEFIT MANAGER SHALL COMPLY WITH THE RECORDS
34 RETENTION SCHEDULES AS PRESCRIBED IN RULE AND SECTION 20-3336.

35 N. THE DIRECTOR MAY ADOPT RULES TO IMPLEMENT THIS SECTION.

36 20-3334. Retail pharmacy benefit manager network adequacy;
37 report; waiver

38 A. A PHARMACY BENEFIT MANAGER SHALL PROVIDE A REASONABLY ADEQUATE
39 AND ACCESSIBLE RETAIL PHARMACY BENEFIT MANAGER NETWORK FOR THE
40 DISTRIBUTION OF PRESCRIPTION DRUGS FOR A HEALTH CARE PLAN THAT PROVIDES
41 CONVENIENT ENROLLEE ACCESS TO PHARMACIES WITHIN A REASONABLE DISTANCE FROM
42 AN ENROLLEE'S RESIDENCE, AS DETERMINED BY THE DIRECTOR. FOR THE PURPOSES
43 OF THIS SUBSECTION, RETAIL PHARMACY BENEFIT MANAGER NETWORK DOES NOT
44 INCLUDE A MAIL-ORDER PHARMACY OR SPECIALTY PHARMACY.

1 B. A PHARMACY BENEFIT MANAGER SHALL SUBMIT TO THE DIRECTOR A RETAIL
2 PHARMACY BENEFIT MANAGER NETWORK ADEQUACY REPORT THAT DESCRIBES THE RETAIL
3 PHARMACY BENEFIT MANAGER NETWORK AND THE RETAIL PHARMACY BENEFIT MANAGER
4 NETWORK'S ACCESSIBILITY IN THIS STATE. THE REPORT MUST CATEGORIZE THE
5 NETWORK BY URBAN, SUBURBAN AND RURAL GEOGRAPHIC AREAS AND APPLICABLE ZIP
6 CODES.

7 C. IF THE PHARMACY BENEFIT MANAGER IS UNABLE TO MEET THE NETWORK
8 ADEQUACY REQUIREMENTS UNDER SUBSECTION A OF THIS SECTION, A PHARMACY
9 BENEFIT MANAGER MAY APPLY FOR A WAIVER. TO APPLY FOR A WAIVER, A PHARMACY
10 BENEFIT MANAGER MUST SUBMIT AN APPLICATION IN A FORM AND MANNER PRESCRIBED
11 BY THE DIRECTOR THAT DOES BOTH OF THE FOLLOWING:

12 1. DEMONSTRATES WITH SPECIFIC DATA WHY THE PHARMACY BENEFIT MANAGER
13 IS NOT ABLE TO MEET THE NETWORK ADEQUACY REQUIREMENTS UNDER SUBSECTION A
14 OF THIS SECTION.

15 2. INCLUDES INFORMATION AS TO THE STEPS THAT THE PHARMACY BENEFIT
16 MANAGER HAS TAKEN AND WILL TAKE TO ADDRESS NETWORK ADEQUACY.

17 D. A WAIVER UNDER SUBSECTION C OF THIS SECTION EXPIRES AFTER TWO
18 YEARS. IF A PHARMACY BENEFIT MANAGER SEEKS A RENEWAL OF THE WAIVER, THE
19 DIRECTOR MUST CONSIDER THE STEPS TAKEN BY THE PHARMACY BENEFIT MANAGER TO
20 ADDRESS NETWORK ADEQUACY BEFORE GRANTING ANOTHER WAIVER.

21 20-3335. Pharmacy benefit manager audit

22 A. THE DIRECTOR MAY EXAMINE OR AUDIT RELEVANT BOOKS AND RECORDS OF
23 A PHARMACY BENEFIT MANAGER THAT PROVIDE CLAIMS PROCESSING SERVICES OR
24 OTHER DRUG OR DEVICE SERVICES FOR A HEALTH CARE PLAN TO DETERMINE IF THE
25 PHARMACY BENEFIT MANAGER IS IN COMPLIANCE WITH THIS ARTICLE.

26 B. ALL OF THE FOLLOWING APPLY TO THE INFORMATION OR DATA THAT IS
27 OBTAINED DURING AN EXAMINATION, AUDIT OR INVESTIGATION:

28 1. THE INFORMATION IS CONSIDERED AND TREATED AS PROPRIETARY AND
29 CONFIDENTIAL.

30 2. THE INFORMATION IS NOT A PUBLIC RECORD AND IS EXEMPT FROM TITLE
31 39, CHAPTER 1.

32 3. THE INFORMATION IS TO BE USED ONLY FOR THE PURPOSE OF ENSURING A
33 PHARMACY BENEFIT MANAGER'S COMPLIANCE WITH THIS ARTICLE.

34 20-3336. Records retention; schedule

35 A. THE DIRECTOR SHALL ESTABLISH A RETENTION SCHEDULE FOR ALL
36 RECORDS, BOOKS, DOCUMENTATION AND OTHER DATA ON FILE WITH THE DEPARTMENT
37 RELATED TO THE ENFORCEMENT OF THIS ARTICLE.

38 B. THE DIRECTOR SHALL NOT ORDER THE DESTRUCTION OR OTHER DISPOSAL
39 OF ANY RECORD, BOOK, DOCUMENT OR OTHER DATA THAT IS:

40 1. REQUIRED BY LAW TO BE MAINTAINED.

41 2. KEPT ON FILE WITH THE DEPARTMENT UNTIL TEN YEARS HAVE PASSED.

42 3. FILED DURING THE DIRECTOR'S ADMINISTRATION OR ADMINISTRATIONS.

43 Sec. 2. Effective date

44 This act is effective from and after December 31, 2024.