
A BILL FOR AN ACT

RELATING TO PHARMACY BENEFIT MANAGERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that pharmacy benefit
2 managers are third party administrators that contract with
3 health plans, employers, unions, and government entities to
4 manage prescription drug programs on behalf of health plan
5 beneficiaries. Over the past decade, the role of pharmacy
6 benefit managers in the delivery of health care has
7 significantly increased. However, a recent report has found
8 that pharmacy benefit managers have had an adverse impact on the
9 overall costs and prices of prescription drugs.

10 The legislature further finds that a maximum allowable cost
11 list is a list of the maximum amounts that a pharmacy benefit
12 manager will reimburse a pharmacy for various drugs. In
13 general, no two maximum allowable cost lists are alike and lists
14 will vary according to drug, pharmacy benefit manager, and plan
15 sponsor. However, the lack of transparency surrounding maximum
16 allowable cost pricing has enabled pharmacy benefit managers to
17 pay aggressively low reimbursements to pharmacies, while



1 charging significantly higher amounts for the same drug to plan
2 sponsors. This large discrepancy between the list price of
3 prescription drugs and the transaction price often results in
4 much higher patient copayments.

5 The legislature also finds that nearly all health plans
6 require some level of cost sharing, either via a fixed copayment
7 or some percentage of the cost of care. However, in certain
8 situations, a pharmacy benefit manager may set an insurance
9 copayment at a higher amount than the actual cost of the
10 medication and later take back the excess amount from a
11 pharmacy, in a practice known as copay clawbacks. A pharmacy is
12 generally prohibited, through its contract with a pharmacy
13 benefit manager, from telling patients what the pharmacy is
14 being reimbursed. In these situations, if a pharmacy's usual
15 and customary price is lower than a patient's copayment, the
16 pharmacy is then barred from informing that patient about the
17 price, unless the patient specifically asks for the price of a
18 drug without insurance.

19 The legislature additionally finds that although Hawaii has
20 an existing pharmacy benefit manager transparency law, the law
21 lacks an appropriate enforcement mechanism or incentive for



1 pharmacy benefit managers to comply with disclosure of maximum
2 allowable cost lists. Furthermore, while this law is currently
3 under the responsibility of the department of health, the
4 legislature notes that it would be more appropriate for these
5 requirements to be within the purview of the department of
6 commerce and consumer affairs, as that is the department with
7 existing regulatory control over pharmacy benefit managers.

8 Finally, the legislature notes that strengthening the
9 ability of pharmacies to receive timely maximum allowable cost
10 lists, establishing a complaints process for violations, and
11 clarifying penalties will encourage transparency among pharmacy
12 benefit managers, while protecting the State's independent
13 pharmacies and consumers.

14 Accordingly, the purpose of this Act is to:

15 (1) Establish requirements for pharmacy benefit managers
16 and maximum allowable cost, including the ability of
17 pharmacies to receive comprehensive maximum allowable
18 cost lists and bring complaints, within the purview of
19 the department of commerce and consumer affairs,
20 rather than the department of health;



1 (2) Require pharmacy benefit managers to disclose where an
2 equivalent drug can be obtained at or below the
3 maximum allowable cost when a maximum allowable cost
4 is upheld on appeal;

5 (3) Allow contracting pharmacies to reverse and rebill
6 claims if the pharmacy benefit manager establishes a
7 maximum allowable cost that is denied on appeal;
8 provided that the pharmacy benefit manager shall pay
9 the difference to the contracting pharmacies; and

10 (4) Preserves the prohibition that a contracting pharmacy
11 from disclosing the maximum allowable cost list and
12 related information to any third party.

13 SECTION 2. Chapter 431R, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§431R- Pharmacy benefit manager; maximum allowable
17 cost. (a) A pharmacy benefit manager that reimburses a
18 contracting pharmacy for a drug on a maximum allowable cost
19 basis shall comply with the requirements of this section.

20 (b) The pharmacy benefit manager shall make available to a
21 contracting pharmacy, upon request, the most up-to-date maximum



1 allowable cost price or prices used by the pharmacy benefit
2 manager for patients served by the pharmacy, in a readily
3 accessible and secure electronic or usable web-based format.

4 (c) A drug shall not be included on a maximum allowable
5 cost list or reimbursed on a maximum allowable cost basis unless
6 all of the following apply:

7 (1) The drug is listed as "A" or "B" rated in the most
8 recent version of the Orange Book or has a rating of
9 "NR", "NA", or similar rating by a nationally
10 recognized reference;

11 (2) The drug is generally available for purchase in this
12 State from a national or regional wholesaler; and

13 (3) The drug is not obsolete.

14 (d) The pharmacy benefit manager shall review and make
15 necessary adjustments to the maximum allowable cost of each drug
16 on a maximum allowable cost list at least once every seven days
17 using the most recent data sources available, and shall apply
18 the updated maximum allowable cost list beginning that same day
19 to reimburse the contracting pharmacy until the pharmacy benefit
20 manager next updates the maximum allowable cost list in
21 accordance with this section.



1 (e) The pharmacy benefit manager shall have a clearly
2 defined process for a contracting pharmacy to appeal the maximum
3 allowable cost for a drug on a maximum allowable cost list that
4 complies with all of the following:

5 (1) A contracting pharmacy may base its appeal on one or
6 more of the following:

7 (A) The maximum allowable cost for a drug is below
8 the cost at which the drug is available for
9 purchase by similarly situated pharmacies in this
10 State from a national or regional wholesaler; or

11 (B) The drug does not meet the requirements of
12 subsection (d) for reimbursement on a maximum
13 allowable cost basis;

14 (2) A contracting pharmacy shall be provided no less than
15 fourteen business days following receipt of payment
16 for a claim to file the appeal with the pharmacy
17 benefit manager;

18 (3) The pharmacy benefit manager shall make a final
19 determination on the contracting pharmacy's appeal no
20 later than fourteen business days after the pharmacy
21 benefit manager's receipt of the appeal;



1 (4) If the maximum allowable cost is upheld on appeal, the
2 pharmacy benefit manager shall provide to the
3 contracting pharmacy the reason therefor and the
4 national drug code of an equivalent drug that may be
5 purchased by a similarly situated pharmacy at a price
6 that is equal to or less than the maximum allowable
7 cost of the drug that is the subject of the appeal;
8 and

9 (5) If the maximum allowable cost is not upheld on appeal,
10 the pharmacy benefit manager shall adjust, for the
11 appealing contracting pharmacy, the maximum allowable
12 cost of the drug that is the subject of the appeal,
13 within one calendar day of the date of the decision on
14 the appeal and allow the contracting pharmacy to
15 reverse and rebill the appealed claim; provided that
16 the pharmacy benefit manager shall pay the appealing
17 contracting pharmacy the difference between the
18 maximum allowable cost as adjusted by the pharmacy
19 benefit manager after resolution of the appeal and the
20 maximum allowable cost appealed by the contracting
21 pharmacy.



1 (f) A contracting pharmacy shall not disclose to any third
2 party the maximum allowable cost list and any related
3 information it receives, either directly from a pharmacy benefit
4 manager or through a pharmacy services administrative
5 organization or similar entity with which the pharmacy has a
6 contract to provide administrative services for that pharmacy.

7 (g) The insurance commissioner may adopt rules pursuant to
8 chapter 91 to enforce the provisions of this section."

9 SECTION 3. Section 431R-1, Hawaii Revised Statutes, is
10 amended by adding three new definitions to be appropriately
11 inserted and to read as follows:

12 "Maximum allowable cost" means the maximum amount that a
13 pharmacy benefit manager shall reimburse a pharmacy for the cost
14 of a drug.

15 "Maximum allowable cost list" means a list of drugs for
16 which a maximum allowable cost has been established by a
17 pharmacy benefit manager.

18 "Orange Book" means the United States Food and Drug
19 Administration's "Approved Drug Products with Therapeutic
20 Equivalence Evaluations" publication and its cumulative



1 supplements, which include a list of approved prescription drug
2 products with therapeutic equivalence evaluations."

3 SECTION 4. Section 431R-5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The insurance commissioner may assess a fine of up to
6 \$10,000 for each violation by a pharmacy benefit manager or
7 prescription drug benefit plan provider who is in violation of
8 section 431R-2 [~~e~~], 431R-3 [~~r~~], or 431R- . In addition, the
9 insurance commissioner may order the pharmacy benefit manager to
10 take specific affirmative corrective action or make
11 restitution."

12 SECTION 5. Section 328-91, Hawaii Revised Statutes, is
13 amended by deleting the definitions of "maximum allowable cost"
14 and "maximum allowable cost list".

15 [~~"Maximum allowable cost" means the maximum amount that a~~
16 ~~pharmacy benefit manager shall reimburse a pharmacy for the cost~~
17 ~~of a drug.~~

18 [~~"Maximum allowable cost list" means a list of drugs for~~
19 ~~which a maximum allowable cost has been established by a~~
20 ~~pharmacy benefit manager."~~]



1 SECTION 6. Section 328-106, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§328-106] Pharmacy benefit manager; maximum allowable~~

4 ~~cost. (a) A pharmacy benefit manager that reimburses a~~
5 ~~contracting pharmacy for a drug on a maximum allowable cost~~
6 ~~basis shall comply with the requirements of this section.~~

7 ~~(b) The pharmacy benefit manager shall include the~~
8 ~~following in the contract information with a contracting~~
9 ~~pharmacy:~~

10 ~~(1) Information identifying any national drug pricing~~
11 ~~compendia; or~~

12 ~~(2) Other data sources for the maximum allowable cost~~
13 ~~list.~~

14 ~~(c) The pharmacy benefit manager shall make available to a~~
15 ~~contracting pharmacy, upon request, the most up to date maximum~~
16 ~~allowable cost price or prices used by the pharmacy benefit~~
17 ~~manager for patients served by the pharmacy in a readily~~
18 ~~accessible, secure, and usable web based or other comparable~~
19 ~~format.~~



1 ~~(d) A drug shall not be included on a maximum allowable~~
2 ~~cost list or reimbursed on a maximum allowable cost basis unless~~
3 ~~all of the following apply:~~

4 ~~(1) The drug is listed as "A" or "B" rated in the most~~
5 ~~recent version of the Orange Book or has a rating of~~
6 ~~"NR", "NA", or similar rating by a nationally~~
7 ~~recognized reference;~~

8 ~~(2) The drug is generally available for purchase in this~~
9 ~~State from a national or regional wholesaler; and~~

10 ~~(3) The drug is not obsolete.~~

11 ~~(e) The pharmacy benefit manager shall review and make~~
12 ~~necessary adjustments to the maximum allowable cost of each drug~~
13 ~~on a maximum allowable cost list at least once every seven days~~
14 ~~using the most recent data sources available, and shall apply~~
15 ~~the updated maximum allowable cost list beginning that same day~~
16 ~~to reimburse the contracted pharmacy until the pharmacy benefit~~
17 ~~manager next updates the maximum allowable cost list in~~
18 ~~accordance with this section.~~

19 ~~(f) The pharmacy benefit manager shall have a clearly~~
20 ~~defined process for a contracting pharmacy to appeal the maximum~~



1 ~~allowable cost for a drug on a maximum allowable cost list that~~
2 ~~complies with all of the following:~~

3 ~~(1) A contracting pharmacy may base its appeal on one or~~
4 ~~more of the following:~~

5 ~~(A) The maximum allowable cost for a drug is below~~
6 ~~the cost at which the drug is available for~~
7 ~~purchase by similarly situated pharmacies in this~~
8 ~~State from a national or regional wholesaler; or~~

9 ~~(B) The drug does not meet the requirements of~~
10 ~~subsection (d);~~

11 ~~(2) A contracting pharmacy shall be provided no less than~~
12 ~~fourteen business days following receipt of payment~~
13 ~~for a claim to file the appeal with the pharmacy~~
14 ~~benefit manager;~~

15 ~~(3) The pharmacy benefit manager shall make a final~~
16 ~~determination on the contracting pharmacy's appeal no~~
17 ~~later than fourteen business days after the pharmacy~~
18 ~~benefit manager's receipt of the appeal;~~

19 ~~(4) If the maximum allowable cost is upheld on appeal, the~~
20 ~~pharmacy benefit manager shall provide to the~~
21 ~~contracting pharmacy the reason therefor and the~~



1 ~~national drug code of an equivalent drug that may be~~
2 ~~purchased by a similarly situated pharmacy at a price~~
3 ~~that is equal to or less than the maximum allowable~~
4 ~~cost of the drug that is the subject of the appeal,~~
5 ~~and~~

6 ~~(5) If the maximum allowable cost is not upheld on appeal,~~
7 ~~the pharmacy benefit manager shall adjust, for the~~
8 ~~appealing contracting pharmacy, the maximum allowable~~
9 ~~cost of the drug that is the subject of the appeal,~~
10 ~~within one calendar day of the date of the decision on~~
11 ~~the appeal and allow the contracting pharmacy to~~
12 ~~reverse and rebill the appealed claim.~~

13 ~~(g) A contracting pharmacy shall not disclose to any third~~
14 ~~party the maximum allowable cost list and any related~~
15 ~~information it receives, either directly from a pharmacy benefit~~
16 ~~manager or through a pharmacy services administrative~~
17 ~~organization or similar entity with which the pharmacy has a~~
18 ~~contract to provide administrative services for that pharmacy."]~~

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 8. This Act shall take effect on July 1, 3000.



Report Title:

Pharmacy Benefit Managers; Maximum Allowable Cost; Requirements;
Contracting Pharmacies

Description:

Establishes requirements for pharmacy benefit managers and maximum allowable cost, including the ability of pharmacies to receive comprehensive maximum allowable cost lists and bring complaints within the purview of the Department of Commerce and Consumer Affairs, rather than the Department of Health. Requires pharmacy benefit managers to disclose where an equivalent drug can be obtained at or below the maximum allowable cost when a maximum allowable cost is upheld on appeal. Allows contracting pharmacies to reverse and rebill claims if the pharmacy benefit manager establishes a maximum allowable cost that is denied on appeal and is required to pay the difference to the contracting pharmacies. Preserves the prohibition of a contracting pharmacy from disclosing the maximum allowable cost list and related information to any third party. (SB3104 HD1)

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