

JAN 21 2011

S.B. NO. 645

A BILL FOR AN ACT

RELATING TO MEDICAID.

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

1 SECTION 1. The legislature finds that the Hawaii managed
2 care organizations who handle the State's medicaid drug plans
3 use different formularies to determine what drugs they will
4 provide to medicaid patients. Through guidelines and individual
5 contracts, the department of human services guides the managed
6 care organizations regarding what classes of drugs for specific
7 conditions they must have in their formularies but there is a
8 wide berth within the guidelines for variation. This situation
9 is exacerbated by the fact that many managed care organizations
10 outsource determination of their medicaid drug formularies and
11 drug prior authorization policies to out-of-state "pharmacy
12 benefit managers". Many pharmacists and physicians in the State
13 have found many of these policies to appear arbitrary and
14 unreasonable. This has created confusion and severe
15 administrative burdens for physicians and pharmacists across the
16 State to the point where many are inclined to stop accepting
17 medicaid. The various formularies and policies have also
18 created difficulty for medicaid patients in obtaining their



1 medications, particularly if they move between the different
2 medicaid programs, which are managed by different organizations,
3 as their age or life circumstances change. The department of
4 human services uses a single state-determined formulary for
5 Hawaii's medicaid fee-for-service patients, who constitute
6 approximately one per cent of the State's medicaid recipients.

7 A single statewide formulary for all medicaid recipients
8 will decrease prior authorization burdens, eliminate confusion
9 for healthcare providers, and provide more accountability to
10 doctors, pharmacists, and patients. Single formularies have
11 proven to be cost-effective and patient-friendly in Ohio,
12 Massachusetts, New York, and a number of other states, with
13 prior authorizations in Ohio being reduced by as much as seventy
14 per cent.

15 The legislature further finds that under current federal
16 law, drug manufacturers who want their drugs covered by medicaid
17 must rebate a portion of those payments to the federal and state
18 governments. Currently these rebates are only available for the
19 drugs purchased for the State's fee-for-service medicaid
20 program; drugs purchased by managed care organizations under
21 contract with state medicaid agencies are not eligible for the
22 rebate. To receive these rebates on all drugs purchased for



1 state medicaid, the State must "carve out" medicaid prescription
2 drug coverage from the managed care organization's managed care
3 plans and convert it to the state fee-for service program. The
4 "carve out" would only be for drugs to be administered in the
5 patient's home and would not include drugs administered in a
6 provider setting such as a physician's office, hospital, clinic,
7 dialysis center, or infusion center. The Ohio department of
8 jobs and family services estimates that its pharmacy "carve-out"
9 for medicaid will save \$243,600,000 throughout fiscal year 2011.

10 Prior to switching the majority of medicaid drug benefit
11 plans to managed care organizations, the State had both a drug
12 utilization committee and a pharmacy and therapeutics committee.
13 The federal Centers for Medicare and Medicaid Services requires
14 that some form of board or committee exist to handle drug
15 formularies in order for federal assistance and cooperation in
16 state medicaid programs. Currently the State has only the drug
17 utilization committee to handle duties as required by the
18 Centers.

19 The purpose of this Act is to create a state pharmacy and
20 therapeutics board under the department of human services to
21 develop and determine a single statewide drug formulary,
22 including prior authorization policies for all medicaid



1 programs, and to require the department to "carve out"
2 prescription drugs from the services included in contracts with
3 the managed care organizations. Under the "carve-out" the State
4 will manage the drug benefit and pay for it on a fee-for-service
5 basis. The pharmacy and therapeutics board will carry out price
6 negotiations with drug companies for the State's medicaid
7 programs.

8 SECTION 2. Chapter 346, Hawaii Revised Statutes, is
9 amended by adding two new sections to be appropriately
10 designated and to read as follows:

11 "§346-A Prescription drug coverage; standardized statewide
12 formulary. (a) No later than July 1, 2012, the department
13 shall develop and implement a standardized statewide formulary
14 for prescription drugs for medicaid recipients' prescription
15 drug plans. The formulary shall include anti-seizure
16 medications, human immunodeficiency virus medications, and
17 anti-psychotics and be in accordance with section 346-59.9. The
18 formulary shall be determined by the pharmacy and therapeutics
19 board established in section 346-B and shall follow all
20 applicable federal and state laws, rules, and guidelines.

21 (b) No later than July 1, 2012, the department shall
22 remove prescription drugs that are to be administered in the



1 home from the services included in medicaid contracts with
2 managed care organizations. The department shall directly
3 administer its medicaid drug plans through its fee-for-service
4 program. This section applies only to drugs to be administered
5 in the patient's home and does not include drugs administered in
6 a provider setting such as a physician's office, hospital,
7 clinic, dialysis center, or infusion center, which will continue
8 to be covered by the managed care organizations.

9 (c) The department shall adopt rules pursuant to chapter
10 91 for the purposes of this section.

11 §346-B State pharmacy and therapeutics board. (a) There
12 is established within the department of human services for
13 administrative purposes the pharmacy and therapeutics board to
14 be appointed by the governor as provided in section 26-34. The
15 board shall consist of nine members as follows:

16 (1) The director of human services, or the director's
17 designee, as an ex officio voting member;

18 (2) The director of health, or the director's designee, as
19 an ex officio voting member;

20 (3) The insurance commissioner, or the commissioner's
21 designee, as an ex officio voting member;



- 1 (4) Three licensed physicians who are currently practicing
2 medicine in the state of Hawaii; provided that one
3 shall be appointed from a list of nominees submitted
4 by the speaker of the house of representatives, and
5 one shall be appointed from a list of nominees
6 submitted by the president of the senate; and
- 7 (5) Three licensed pharmacists who are currently
8 practicing pharmacy in the state of Hawaii; provided,
9 that one shall be appointed from a list of nominees
10 submitted by the speaker of the house of
11 representatives and one shall be appointed from a list
12 of nominees submitted by the president of the senate.
- 13 (b) The duties of the board shall include:
- 14 (1) Developing, determining, and updating a single
15 statewide standardized pharmacy formulary for drugs
16 and therapeutic devices pursuant to section 346-A;
- 17 (2) Developing prior authorization policies; and
18 (3) Negotiating prices with drug manufacturers.
- 19 (c) The board shall select a chairperson by a majority
20 vote of its members. A majority of the members serving on the
21 board shall constitute a quorum to do business. The board may



1 form workgroups and subcommittees, including individuals who are
2 not board members, to:

3 (1) Obtain resource information from medical
4 professionals, insurers, health care providers,
5 community advocates, and other individuals as deemed
6 necessary by the board;

7 (2) Make recommendations to the board; and

8 (3) Perform other functions as deemed necessary by the
9 board to fulfill its duties and responsibilities.

10 Two or more board members, but less than a quorum, may
11 discuss matters relating to official council business in the
12 course of their participation in a workgroup or subcommittee,
13 and discussion shall be a permitted interaction as provided for
14 in section 92-2.5.

15 (d) Members of the board shall serve without compensation
16 but shall be reimbursed for expenses, including travel expenses,
17 necessary for the performance of their duties.

18 (e) The board may require reports as necessary in the form
19 specified by the board, from state agencies, and program and
20 service providers of any state health care program."

21 SECTION 3. The board shall submit to the governor, the
22 legislature, the director of health, and the director of human



1 services no later than twenty days prior to the convening of the
2 regular session of 2012 a report detailing any and all criteria,
3 standards, measurements, payment methodology, and other
4 requirements of the formulary developed and determined by the
5 board pursuant to this Act.

6 SECTION 4. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 5. In codifying the new sections added by section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

13 SECTION 6. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: Rosalyn H Baker

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Report Title:

Medicaid; Statewide Standardized Formulary, Pharmacy and Therapeutics Board; Managed Care Organizations

Description:

Requires the department of human services to create a standardized drug formulary, and transfer medicaid coverage for prescription drugs administered in the home from managed care organizations to the department. Establishes a pharmacy and therapeutics board.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

