
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) Prohibit a pharmacy benefit manager from penalizing a
- 11 contracting pharmacy for disclosing information
- 12 related to an insurance cost-share for a prescription
- 13 drug or selling a lower-priced drug.

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

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



1 (b) The pharmacy benefit manager shall make available to a
2 contracting pharmacy, upon request, the most up-to-date maximum
3 allowable cost price or prices used by the pharmacy benefit
4 manager for patients served by the pharmacy, in a readily
5 accessible and secure electronic or usable web-based format.

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

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

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

15 (3) The drug is not obsolete.

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



1 manager next updates the maximum allowable cost list in
2 accordance with this section.

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

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

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

13 (B) The drug does not meet the requirements of
14 subsection (c) for reimbursement on a maximum
15 allowable cost basis;

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

20 (3) The pharmacy benefit manager shall make a final
21 determination on the contracting pharmacy's appeal no



1 later than fourteen business days after the pharmacy
2 benefit manager's receipt of the appeal;

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

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



1 maximum allowable cost appealed by the contracting
2 pharmacy.

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

9 (g) A contracting pharmacy or pharmacist shall have the
10 right to provide to an insured the information regarding the
11 amount of the insured's cost share for a prescription drug. A
12 contracting pharmacy or a pharmacist shall not be penalized by a
13 pharmacy benefits manager for discussing any information
14 described in this section or for selling a lower priced
15 prescription drug to the insured if one is available.

16 (h) The insurance commissioner may adopt rules pursuant to
17 chapter 91 to enforce the provisions of this section."

18 SECTION 3. Section 431R-1, Hawaii Revised Statutes, is
19 amended by adding four new definitions to be appropriately
20 inserted and to read as follows:

1 "Contracting pharmacy" means an independent pharmacy that
2 is not part of a regional or national chain, or part of a
3 pharmacy services administration organization, and that is the
4 only pharmacy available within a ten-mile radius.

5 "Maximum allowable cost" means the maximum amount that a
6 pharmacy benefit manager shall reimburse a pharmacy for the cost
7 of a drug.

8 "Maximum allowable cost list" means a list of drugs for
9 which a maximum allowable cost has been established by a
10 pharmacy benefit manager.

11 "Orange Book" means the United States Food and Drug
12 Administration's "Approved Drug Products with Therapeutic
13 Equivalence Evaluations" publication and its cumulative
14 supplements, which include a list of approved prescription drug
15 products with therapeutic equivalence evaluations."

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

18 "(a) The insurance commissioner may assess a fine of up to
19 \$10,000 for each violation by a pharmacy benefit manager or
20 prescription drug benefit plan provider who is in violation of
21 section 431R-2 [~~o~~], 431R-3 [~~r~~], or 431R- . In addition, the



1 insurance commissioner may order the pharmacy benefit manager to
2 take specific affirmative corrective action or make
3 restitution."

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

7 [~~"Maximum allowable cost" means the maximum amount that a
8 pharmacy benefit manager shall reimburse a pharmacy for the cost
9 of a drug.~~

10 [~~"Maximum allowable cost list" means a list of drugs for
11 which a maximum allowable cost has been established by a
12 pharmacy benefit manager."~~]

13 SECTION 6. Section 328-106, Hawaii Revised Statutes, is
14 repealed.

15 [~~["§328-106] Pharmacy benefit manager; maximum allowable
16 cost. (a) A pharmacy benefit manager that reimburses a
17 contracting pharmacy for a drug on a maximum allowable cost
18 basis shall comply with the requirements of this section.~~

19 [~~(b) The pharmacy benefit manager shall include the
20 following in the contract information with a contracting
21 pharmacy:~~



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

3 ~~(2) Other data sources for the maximum allowable cost~~
4 ~~list.~~

5 ~~(c) The pharmacy benefit manager shall make available to a~~
6 ~~contracting pharmacy, upon request, the most up to date maximum~~
7 ~~allowable cost price or prices used by the pharmacy benefit~~
8 ~~manager for patients served by the pharmacy in a readily~~
9 ~~accessible, secure, and usable web based or other comparable~~
10 ~~format.~~

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

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

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

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



1 ~~(e) The pharmacy benefit manager shall review and make~~
2 ~~necessary adjustments to the maximum allowable cost of each drug~~
3 ~~on a maximum allowable cost list at least once every seven days~~
4 ~~using the most recent data sources available, and shall apply~~
5 ~~the updated maximum allowable cost list beginning that same day~~
6 ~~to reimburse the contracted pharmacy until the pharmacy benefit~~
7 ~~manager next updates the maximum allowable cost list in~~
8 ~~accordance with this section.~~

9 ~~(f) The pharmacy benefit manager shall have a clearly~~
10 ~~defined process for a contracting pharmacy to appeal the maximum~~
11 ~~allowable cost for a drug on a maximum allowable cost list that~~
12 ~~complies with all of the following:~~

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

15 ~~(A) The maximum allowable cost for a drug is below~~
16 ~~the cost at which the drug is available for~~
17 ~~purchase by similarly situated pharmacies in this~~
18 ~~State from a national or regional wholesaler; or~~

19 ~~(B) The drug does not meet the requirements of~~
20 ~~subsection (d);~~



- 1 ~~(2) A contracting pharmacy shall be provided no less than~~
2 ~~fourteen business days following receipt of payment~~
3 ~~for a claim to file the appeal with the pharmacy~~
4 ~~benefit manager;~~
- 5 ~~(3) The pharmacy benefit manager shall make a final~~
6 ~~determination on the contracting pharmacy's appeal no~~
7 ~~later than fourteen business days after the pharmacy~~
8 ~~benefit manager's receipt of the appeal;~~
- 9 ~~(4) If the maximum allowable cost is upheld on appeal, the~~
10 ~~pharmacy benefit manager shall provide to the~~
11 ~~contracting pharmacy the reason therefor and the~~
12 ~~national drug code of an equivalent drug that may be~~
13 ~~purchased by a similarly situated pharmacy at a price~~
14 ~~that is equal to or less than the maximum allowable~~
15 ~~cost of the drug that is the subject of the appeal;~~
16 ~~and~~
- 17 ~~(5) If the maximum allowable cost is not upheld on appeal,~~
18 ~~the pharmacy benefit manager shall adjust, for the~~
19 ~~appealing contracting pharmacy, the maximum allowable~~
20 ~~cost of the drug that is the subject of the appeal,~~
21 ~~within one calendar day of the date of the decision on~~



1 ~~the appeal and allow the contracting pharmacy to~~
2 ~~reverse and rebill the appealed claim.~~

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

9 SECTION 7. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 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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