

JAN 24 2018

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 drugs, that includes the maximum amount that a
12 pharmacy benefit manager will reimburse a pharmacy for a drug.
13 In general, no two maximum allowable cost lists are alike and
14 will vary according to drug, pharmacy benefit manager, and plan
15 sponsors. 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 amongst
12 pharmacy benefit managers, while protecting the State's
13 independent 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) Clarify the available penalties for violations of
- 2 maximum allowable cost requirements; and
- 3 (3) Delete a requirement that prohibited a contracting
- 4 pharmacy from disclosing the maximum allowable cost
- 5 list and related information to any third party.

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

9 "§431R- Pharmacy benefit manager; maximum allowable
10 cost. (a) A pharmacy benefit manager that reimburses a
11 contracting pharmacy for a drug on a maximum allowable cost
12 basis shall comply with the requirements of this section.

13 (b) The pharmacy benefit manager shall include the
14 following in the contract information with a contracting
15 pharmacy:

16 (1) Information identifying any national drug pricing
17 compendia; or

18 (2) Other data sources for the maximum allowable cost
19 list.

20 (c) The pharmacy benefit manager shall make available to a
21 contracting pharmacy not less than once per quarter, and upon



1 request, a comprehensive report for all drugs on the maximum
2 allowable cost list, which contains 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, secure, and usable web-based or other comparable
6 format.

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

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

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

16 (3) The drug is not obsolete.

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



1 to reimburse the contracted pharmacy until the pharmacy benefit
2 manager next updates the maximum allowable cost list in
3 accordance with this section.

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

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

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

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

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



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- 1 (3) The pharmacy benefit manager shall make a final
2 determination on the contracting pharmacy's appeal no
3 later than fourteen business days after the pharmacy
4 benefit manager's receipt of the appeal;
- 5 (4) If the maximum allowable cost is upheld on appeal, the
6 pharmacy benefit manager shall provide to the
7 contracting pharmacy the reason therefor and the
8 national drug code of an equivalent drug that may be
9 purchased by a similarly situated pharmacy at a price
10 that is equal to or less than the maximum allowable
11 cost of the drug that is the subject of the appeal;
12 and
- 13 (5) If the maximum allowable cost is not upheld on appeal,
14 the pharmacy benefit manager shall adjust, for the
15 appealing contracting pharmacy, the maximum allowable
16 cost of the drug that is the subject of the appeal,
17 within one calendar day of the date of the decision on
18 the appeal and allow the contracting pharmacy to
19 reverse and rebill the appealed claim.
- 20 (g) The insurance commissioner may adopt rules pursuant to
21 chapter 91 to establish a process to subject complaints of



1 violations of this section to an external review process, which
2 may be binding on a complaining contracting pharmacy and a
3 pharmacy benefit manager against whom a complaint is made,
4 except to the extent that the parties have other remedies
5 available under applicable federal or state law, and which may
6 assign the costs associated with the external review process to
7 a complaining contracting pharmacy and a pharmacy benefit
8 manager against whom a complaint is made."

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 [~~or~~], 431R-3 [~~-~~], 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.



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1 SECTION 8. This Act shall take effect on January 1, 2020;
 2 provided that the repeal of subsection 328-106(g), Hawaii
 3 Revised Statutes, pursuant to section 6 of this Act shall take
 4 effect upon this Act's approval.
 5

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Report Title:

Pharmacy Benefit Managers; Maximum Allowable Cost; Requirements

Description:

Effective 1/1/2020: 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; and clarifies the available penalties for violations of maximum allowable cost requirements. Effective upon approval: removes requirement that prohibits a contracting pharmacy from disclosing the maximum allowable cost list and related information to any third party.

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

