
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 will
14 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 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) 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 and allow contracting pharmacies
 5 to reverse and rebill claims if the pharmacy benefit
 6 manager establishes a maximum allowable cost that is
 7 denied on appeal and pay the difference to the
 8 contracting pharmacies;

9 (3) Clarify the available penalties for violations of
 10 maximum allowable cost requirements; and

11 (4) Delete a requirement that prohibits a contracting
 12 pharmacy from disclosing the maximum allowable cost
 13 list and related information to any third party.

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 include the
2 following in the contract information with a contracting
3 pharmacy:

4 (1) Information identifying any national drug pricing
5 compendia; or

6 (2) Other data sources for the maximum allowable cost
7 list.

8 (c) The pharmacy benefit manager shall make available to a
9 contracting pharmacy not less than once per quarter, and upon
10 request, a comprehensive report for all drugs on the maximum
11 allowable cost list, which contains the most up-to-date maximum
12 allowable cost price or prices used by the pharmacy benefit
13 manager for patients served by the pharmacy, in a readily
14 accessible, secure, and usable web-based or other comparable
15 format.

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

19 (1) The drug is listed as "A" or "B" rated in the most
20 recent version of the Orange Book or has a rating of



1 "NR", "NA", or similar rating by a nationally
2 recognized reference;

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

5 (3) The drug is not obsolete.

6 (e) The pharmacy benefit manager shall review and make
7 necessary adjustments to the maximum allowable cost of each drug
8 on a maximum allowable cost list only once every fourteen days
9 using the most recent data sources available, and shall apply
10 the updated maximum allowable cost list beginning that same day
11 to reimburse the contracting pharmacy until the pharmacy benefit
12 manager next updates the maximum allowable cost list in
13 accordance with this section; provided that the pharmacy benefit
14 manager shall reimburse a contracting pharmacy for a drug based
15 on the maximum allowable cost of that drug on the day the drug
16 is dispensed.

17 (f) The pharmacy benefit manager shall notify all
18 contracting pharmacies of a change to the maximum allowable cost
19 for any drug, which shall be identified by its national drug
20 code, at least seven days prior to initiating the change;



1 provided that notification under this subsection may be provided
2 electronically.

3 (g) 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 (d) 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 with the name of the source, including but not limited
11 to the wholesaler or distributor, where the drug may
12 be purchased; 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 claims submitted from the date
20 of the original submission; provided that the pharmacy
21 benefit manager shall pay the appealing contracting



1 pharmacy the difference between the maximum allowable
2 cost on the day of the claim and the maximum allowable
3 cost being appealed.

4 (h) Any pharmacy benefit manager that refuses a maximum
5 allowable cost reimbursement for a properly documented claim by
6 a contracting pharmacy under this section shall be deemed to
7 have engaged in an unfair or deceptive act or practice in the
8 conduct of trade or commerce, within the meaning of section 480-
9 2.

10 (i) The insurance commissioner shall adopt rules pursuant
11 to chapter 91 to establish a process to subject complaints of
12 violations of this section to an external review process and
13 resolve disputed claims, which may be binding on a complaining
14 contracting pharmacy and a pharmacy benefit manager against whom
15 a complaint is made, except to the extent that the parties have
16 other remedies available under applicable federal or state law,
17 and which may assign the costs associated with the external
18 review process to a complaining contracting pharmacy and a
19 pharmacy benefit manager against whom a complaint is made."



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

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

7 "Maximum allowable cost list" means a list of the maximum
8 allowable reimbursement costs of multi-source generic drugs
9 established by a pharmacy benefit manager.

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

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

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



1 take specific affirmative corrective action or make
2 restitution."

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

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

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

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

14 [~~["§328-106] Pharmacy benefit manager; maximum allowable
15 cost. (a) A pharmacy benefit manager that reimburses a
16 contracting pharmacy for a drug on a maximum allowable cost
17 basis shall comply with the requirements of this section.~~

18 ~~(b) The pharmacy benefit manager shall include the
19 following in the contract information with a contracting
20 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, 2018.

12



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, and allow contracting pharmacies to reverse and rebill claims if the pharmacy benefit manager establishes a maximum allowable cost that is denied on appeal and pay the difference to the contracting pharmacies. Clarifies the available penalties for violations of maximum allowable cost requirements. Removes requirement that prohibits a contracting pharmacy from disclosing the maximum allowable cost list and related information to any third party. (SD1)

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