RELATING TO PHARMACY BENEFIT MANAGERS.

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

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

The legislature further finds that a maximum allowable cost list is a list of the maximum amounts that a pharmacy benefit manager will reimburse a pharmacy for various drugs. In general, no two maximum allowable cost lists are alike and will vary according to drug, pharmacy benefit manager, and plan sponsor. However, the lack of transparency surrounding maximum allowable cost pricing has enabled pharmacy benefit managers to pay aggressively low reimbursements to pharmacies, while...
charging significantly higher amounts for the same drug to plan sponsors. This large discrepancy between the list price of prescription drugs and the transaction price often results in much higher patient copayments.

The legislature also finds that nearly all health plans require some level of cost sharing, either via a fixed copayment or some percentage of the cost of care. However, in certain situations, a pharmacy benefit manager may set an insurance copayment at a higher amount than the actual cost of the medication and later take back the excess amount from a pharmacy, in a practice known as copay clawbacks.

The legislature additionally finds that although Hawaii has an existing pharmacy benefit manager transparency law, the law lacks an appropriate enforcement mechanism or incentive for pharmacy benefit managers to comply with disclosure of maximum allowable cost lists. Furthermore, while this law is currently under the responsibility of the department of health, the legislature notes that it would be more appropriate for these requirements to be within the purview of the department of commerce and consumer affairs, as that is the department with existing regulatory control over pharmacy benefit managers.
Finally, the legislature notes that strengthening the ability of pharmacies to receive timely maximum allowable cost lists, establishing a complaints process for violations, and clarifying penalties will encourage transparency amongst pharmacy benefit managers, while protecting the State's independent pharmacies and consumers.

Accordingly, the purpose of this Act is to:

(1) Establish 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;

(2) Require 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; and
(3) Clarify the available penalties for violations of maximum allowable cost requirements.

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

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

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

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

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

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

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

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

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

(3) The drug is not obsolete.

(e) The pharmacy benefit manager shall review and make
necessary adjustments to the maximum allowable cost of each drug
on a maximum allowable cost list at least once every seven days
using the most recent data sources available, and shall apply
the updated maximum allowable cost list beginning that same day
to reimburse the contracting pharmacy until the pharmacy benefit
manager next updates the maximum allowable cost list in
accordance with this section; provided that the pharmacy benefit
manager shall reimburse a contracting pharmacy for a drug based on the maximum allowable cost of that drug on the day the drug is dispensed.

(f) The pharmacy benefit manager shall notify all contracting pharmacies of a ten per cent or greater increase in drug acquisition cost for any drug on the maximum allowable cost list from sixty per cent or more regional pharmaceutical wholesalers at least three days prior to initiating any changes to the maximum allowable cost for that drug. The notification required under this subsection may be provided electronically and shall contain the national drug code of the drug whose acquisition cost is increasing.

(g) The pharmacy benefit manager shall have a clearly defined process for a contracting pharmacy to appeal the maximum allowable cost for a drug on a maximum allowable cost list that compiles with all of the following:

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

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

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

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

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

(4) If the maximum allowable cost is upheld on appeal, the pharmacy benefit manager shall provide to the contracting pharmacy the reason therefor and the national drug code of an equivalent drug that may be purchased by a similarly situated pharmacy at a price that is equal to or less than the maximum allowable cost of the drug that is the subject of the appeal, with the name of the source, including but not limited
to the wholesaler or distributor, where the drug may
be purchased; and

(5) If the maximum allowable cost is not upheld on appeal,
the pharmacy benefit manager shall adjust, for the
appealing contracting pharmacy, the maximum allowable
cost of the drug that is the subject of the appeal,
within one calendar day of the date of the decision on
the appeal and allow the contracting pharmacy to
reverse and rebill the claim that is the subject of
the appeal, and all claims for the same drug, until
the maximum allowable cost list is updated pursuant to
subsection (e), to be reimbursed at the maximum
allowable cost established by the appeal.

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

(i) A contracting pharmacy shall not disclose to any third
party the maximum allowable cost list and any related
information it receives, either directly from a pharmacy benefit manager or through a pharmacy services administrative organization or similar entity with which the pharmacy has a contract to provide administrative services for that pharmacy, except to the insurance commissioner or an elected representative. The maximum allowable cost list and related information disclosed to the insurance commissioner or an elected representative shall be considered proprietary and confidential and not subject to public records requests under chapter 92F.

(j) The insurance commissioner shall adopt rules pursuant to chapter 91 to establish a process to subject complaints of violations of this section to an external review process and resolve disputed claims, which may be binding on a complaining contracting pharmacy and a pharmacy benefit manager against whom a complaint is made, except to the extent that the parties have other remedies available under applicable federal or state law, and which may assign the costs associated with the external review process to a complaining contracting pharmacy and a pharmacy benefit manager against whom a complaint is made."
SECTION 3. Section 431R-1, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

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

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

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

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

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

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

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

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

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

"[§328-106]—Pharmacy benefit manager, maximum allowable
cost. (a) A pharmacy benefit manager that reimburses a
contracting pharmacy for a drug on a maximum allowable cost
basis shall comply with the requirements of this section.
(b) The pharmacy benefit manager shall include the
following in the contract information with a contracting
pharmacy.
(1) Information identifying any national drug pricing compendia; or

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

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

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

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

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

(3) The drug is not obsolete.
(e) The pharmacy benefit manager shall review and make necessary adjustments to the maximum allowable cost of each drug on a maximum allowable cost list at least once every seven days using the most recent data sources available, and shall apply the updated maximum allowable cost list beginning that same day to reimburse the contracted pharmacy until the pharmacy benefit manager next updates the maximum allowable cost list in accordance with this section.

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

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

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

(B) The drug does not meet the requirements of subsection (d).
(2) A contracting pharmacy shall be provided no less than fourteen business days following receipt of payment for a claim to file the appeal with the pharmacy benefit manager;

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

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

and

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

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

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

SECTION 8. This Act shall take effect on July 1, 2019.

INTRODUCED BY: [Signature]

JAN 24 2019
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.

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