

JAN 24 2019

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.

12 The legislature additionally finds that although Hawaii has
13 an existing pharmacy benefit manager transparency law, the law
14 lacks an appropriate enforcement mechanism or incentive for
15 pharmacy benefit managers to comply with disclosure of maximum
16 allowable cost lists. Furthermore, while this law is currently
17 under the responsibility of the department of health, the
18 legislature notes that it would be more appropriate for these
19 requirements to be within the purview of the department of
20 commerce and consumer affairs, as that is the department with
21 existing regulatory control over pharmacy benefit managers.



1 Finally, the legislature notes that strengthening the
2 ability of pharmacies to receive timely maximum allowable cost
3 lists, establishing a complaints process for violations, and
4 clarifying penalties will encourage transparency amongst
5 pharmacy benefit managers, while protecting the State's
6 independent pharmacies and consumers.

7 Accordingly, the purpose of this Act is to:

- 8 (1) Establish requirements for pharmacy benefit managers
9 and maximum allowable cost, including the ability of
10 pharmacies to receive comprehensive maximum allowable
11 cost lists and bring complaints, within the purview of
12 the department of commerce and consumer affairs,
13 rather than the department of health;
- 14 (2) Require pharmacy benefit managers to disclose where an
15 equivalent drug can be obtained at or below the
16 maximum allowable cost, when a maximum allowable cost
17 is upheld on appeal, and allow contracting pharmacies
18 to reverse and rebill claims if the pharmacy benefit
19 manager establishes a maximum allowable cost that is
20 denied on appeal and pay the difference to the
21 contracting pharmacies; and



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

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

6 "§431R- Pharmacy benefit manager; maximum allowable
7 cost. (a) A pharmacy benefit manager that reimburses a
8 contracting pharmacy for a drug on a maximum allowable cost
9 basis shall comply with the requirements of this section.

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

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

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

17 (c) The pharmacy benefit manager shall make available to a
18 contracting pharmacy not less than once per quarter, and upon
19 request, a comprehensive report for all drugs on the maximum
20 allowable cost list, which contains the most up-to-date maximum
21 allowable cost price or prices used by the pharmacy benefit



1 manager for patients served by the pharmacy, in a readily
2 accessible, secure, and usable web-based or other comparable
3 format.

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

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

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

13 (3) The drug is not obsolete.

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



1 manager shall reimburse a contracting pharmacy for a drug based
2 on the maximum allowable cost of that drug on the day the drug
3 is dispensed.

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

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

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

19 (A) The maximum allowable cost for a drug is below
20 the cost at which the drug is available for



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- 1 purchase by similarly situated pharmacies in this
2 State from a national or regional wholesaler; or
3 (B) The drug does not meet the requirements of
4 subsection (d) for reimbursement on a maximum
5 allowable cost basis;
- 6 (2) A contracting pharmacy shall be provided no less than
7 fourteen business days following receipt of payment
8 for a claim to file the appeal with the pharmacy
9 benefit manager;
- 10 (3) The pharmacy benefit manager shall make a final
11 determination on the contracting pharmacy's appeal no
12 later than fourteen business days after the pharmacy
13 benefit manager's receipt of the appeal;
- 14 (4) If the maximum allowable cost is upheld on appeal, the
15 pharmacy benefit manager shall provide to the
16 contracting pharmacy the reason therefor and the
17 national drug code of an equivalent drug that may be
18 purchased by a similarly situated pharmacy at a price
19 that is equal to or less than the maximum allowable
20 cost of the drug that is the subject of the appeal,
21 with the name of the source, including but not limited



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1 to the wholesaler or distributor, where the drug may
2 be purchased; and

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

14 (h) Any pharmacy benefit manager that refuses a maximum
15 allowable cost reimbursement for a properly documented claim by
16 a contracting pharmacy under this section shall be deemed to
17 have engaged in an unfair or deceptive act or practice in the
18 conduct of trade or commerce, within the meaning of section
19 480-2.

20 (i) A contracting pharmacy shall not disclose to any third
21 party the maximum allowable cost list and any related



1 information it receives, either directly from a pharmacy benefit
2 manager or through a pharmacy services administrative
3 organization or similar entity with which the pharmacy has a
4 contract to provide administrative services for that pharmacy,
5 except to the insurance commissioner or an elected
6 representative. The maximum allowable cost list and related
7 information disclosed to the insurance commissioner or an
8 elected representative shall be considered proprietary and
9 confidential and not subject to public records requests under
10 chapter 92F.

11 (j) The insurance commissioner shall adopt rules pursuant
12 to chapter 91 to establish a process to subject complaints of
13 violations of this section to an external review process and
14 resolve disputed claims, which may be binding on a complaining
15 contracting pharmacy and a pharmacy benefit manager against whom
16 a complaint is made, except to the extent that the parties have
17 other remedies available under applicable federal or state law,
18 and which may assign the costs associated with the external
19 review process to a complaining contracting pharmacy and a
20 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 [~~v~~], 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, 2019.

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INTRODUCED BY: Rosalyn de Bok

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S.B. NO. 1521

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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