

JAN 24 2019

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# 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 existing law  
2 requires pharmacy benefit managers to register with the  
3 insurance commissioner. The National Council of Insurance  
4 Legislators and the National Academy for State Health Policy  
5 have adopted model acts that establish the standard criteria for  
6 the regulation and licensure of pharmacy benefit managers  
7 providing claims processing services or other prescription drug  
8 or device services for health benefit plans.

9           The purpose of this Act is to increase transparency and  
10 promote, preserve, and protect the public health, safety, and  
11 welfare by adopting certain provisions of these models acts to:

- 12           (1) Prohibit pharmacy benefit managers from engaging in  
13           self-serving business practices;
- 14           (2) Increase the pharmacy benefit managers' annual  
15           reporting requirements; and
- 16           (3) Replace the registration requirement for pharmacy  
17           benefit managers with a licensure requirement.



1 SECTION 2. Chapter 431S, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4 "§431S- Pharmacy benefit manager business practices. A  
5 pharmacy benefit manager shall be prohibited from penalizing,  
6 requiring, or providing financial incentives, including  
7 variations in premiums, deductibles, copayments, or coinsurance,  
8 to covered persons as incentives to use specific retail, mail  
9 service pharmacy, or other network pharmacy provider in which a  
10 pharmacy benefit manager has an ownership interest or that has  
11 an ownership interest in a pharmacy benefit manager.

12 §431S- Transparency report. (a) No later than  
13 January 1, 2020, and annually thereafter, each pharmacy benefit  
14 manager shall submit a transparency report containing data from  
15 the preceding calendar year to the insurance commissioner that  
16 shall include:

17 (1) The aggregate amount of all rebates that the pharmacy  
18 benefit manager received from all pharmaceutical  
19 manufacturers for all covered entity clients and for  
20 each covered entity client;



1        (2) The aggregate administrative fees that the pharmacy  
2        benefit manager received from all manufacturers for  
3        all covered entity clients and for each covered entity  
4        client;

5        (3) The aggregate retained rebates that the pharmacy  
6        benefit manager received from all pharmaceutical  
7        manufacturers and did not pass through to covered  
8        entities;

9        (4) The aggregate retained rebate percentage; and

10       (5) The highest, lowest, and mean aggregate retained  
11       rebate percentage for all covered entity clients and  
12       for each covered entity client.

13       (b) A pharmacy benefit manager providing information under  
14       this section may designate that material as a trade secret;  
15       provided that disclosure may be ordered by a court of this State  
16       for good cause shown or made in a court filing.

17       (c) The insurance commissioner shall review the  
18       transparency report required under subsection (a) and, no later  
19       than sixty days after the receipt of the report, shall publish  
20       the transparency report on the insurance division's website in a



1 manner that would not be considered an unauthorized disclosure  
2 of a pharmacy benefit manager's trade secrets."

3 SECTION 3. Section 431R-1, Hawaii Revised Statutes, is  
4 amended by amending the definition of "pharmacy benefit manager"  
5 to read as follows:

6 "Pharmacy benefit manager" means any person, business, or  
7 entity that performs pharmacy benefit management, including but  
8 not limited to a person or entity under contract with a pharmacy  
9 benefit manager to perform pharmacy benefit management on behalf  
10 of a managed care company, nonprofit hospital or medical service  
11 organization, insurance company, third-party payor, or health  
12 program administered by the State[-] and that is duly licensed  
13 pursuant to chapter 431S."

14 SECTION 4. Section 431S-1, Hawaii Revised Statutes, is  
15 amended as follows:

16 1. By adding six new definitions to be appropriately  
17 inserted and to read:

18 "Aggregate retained rebate percentage" means the  
19 percentage of all rebates received from a manufacturer or other  
20 entity to a pharmacy benefit manager for prescription drug  
21 utilization which is not passed on to pharmacy benefit managers'



1 covered entity clients. The percentage shall be calculated for  
2 each covered entity for rebates in the prior calendar year as  
3 follows:

4 (1) The sum total dollar amount of rebates received from  
5 all pharmaceutical manufacturers for all utilization  
6 of covered persons of a covered entity that was not  
7 passed through to the covered entity; and

8 (2) Divided by the sum total dollar amount of all rebates  
9 received from all pharmaceutical manufacturers for  
10 covered persons of a covered entity.

11 "Mail service pharmacy" means a pharmacy whose primary  
12 business is to receive prescriptions by mail, telefax, or  
13 electronic submissions, and dispense medications to covered  
14 persons through the use of the United State postal service or  
15 other contract carrier services and that provides electronic,  
16 rather than face-to-face consultations, with patients.

17 "Network pharmacy" means a retail pharmacy located and  
18 licensed in the State and contracted by the pharmacy benefit  
19 manager to sell prescription drugs to beneficiaries of a  
20 prescription drug benefit plan administered by the pharmacy  
21 benefit manager.



1       "Rebates" means all price concessions paid by a  
2 manufacturer to a pharmacy benefit manager or covered entity,  
3 including rebates, discounts, and other price concessions that  
4 are based on actual or estimated utilization of a prescription  
5 drug. "Rebates" also includes price concessions based on the  
6 effectiveness of a drug as in a value-based or performance-based  
7 contract.

8       "Retail pharmacy" means a pharmacy, permitted by the board  
9 of pharmacy pursuant to section 461-14, that is open to the  
10 public, dispenses prescription drugs to the general public, and  
11 makes available face-to-face consultations between licensed  
12 pharmacists and the general public to whom prescription drugs  
13 are dispensed.

14       "Trade secret" shall have the same meaning as defined in  
15 section 482B-2."

16       2. By amending the definition of "pharmacy benefit  
17 manager" to read:

18       "Pharmacy benefit manager" means any person, business, or  
19 other entity, including a wholly or partially owned or  
20 controlled subsidiary of a pharmacy benefit manager, that is  
21 licensed pursuant to this chapter, and that performs pharmacy



1 benefit management, including but not limited to a person or  
2 entity in a contractual or employment relationship with a  
3 pharmacy benefit manager to perform pharmacy benefit management  
4 for a covered entity. "Pharmacy benefit manager" shall not  
5 include any health care facility licensed in this State, a  
6 health care provider licensed in this State, or a consultant who  
7 only provides advice as to the selection or performance of a  
8 pharmacy benefit manager."

9 SECTION 5. Section 431S-3, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "~~[§] 431S-3~~ [~~] Registration~~] License required. (a)  
12 Notwithstanding any law to the contrary, no person shall act or  
13 operate as a pharmacy benefit manager without first obtaining a  
14 valid [~~registration~~] license issued by the commissioner pursuant  
15 to this chapter. The license shall not be transferable.

16 (b) The commissioner may grant a license under this  
17 chapter if the commissioner is satisfied that the applicant  
18 possessed the necessary organization, background expertise, and  
19 financial integrity to supply the services sought to be offered  
20 pursuant to this chapter.



1        (c) The commissioner may issue a license subject to  
2 restrictions or limitations upon the authorization, including  
3 the types of services that may be supplied or the activities in  
4 which the applicant may be engaged.

5        [~~(b)~~] (d) Each person seeking [~~to register~~] a license as a  
6 pharmacy benefit manager shall file with the commissioner an  
7 application on a form prescribed by the commissioner. The  
8 application shall include:

9            (1) The name, address, official position, and professional  
10            qualifications of each individual who is responsible  
11            for the conduct of the affairs of the pharmacy benefit  
12            manager, including all members of the board of  
13            directors; board of trustees; executive commission;  
14            other governing board or committee; principal  
15            officers, as applicable; partners or members, as  
16            applicable; and any other person who exercises control  
17            or influence over the affairs of the pharmacy benefit  
18            manager;

19            (2) The name and address of the applicant's agent for  
20            service of process in the State; and

21            (3) A nonrefundable application fee of \$140.





- 1        (e) The commissioner may suspend, revoke, or place on  
2 probation a pharmacy benefit manager licensee if:
- 3        (1) The pharmacy benefit manager has engaged in fraudulent  
4 activity in violation of federal or state law;
- 5        (2) The commissioner receives consumer complaints that  
6 justify an action under this subsection to protect the  
7 safety and interest of consumers;
- 8        (3) The pharmacy benefit manager fails to pay required  
9 fees under this chapter; or
- 10       (4) The pharmacy benefit manager fails to comply with any  
11 other requirement under this chapter."

12       SECTION 6. Section 431S-4, Hawaii Revised Statutes, is  
13 amended to read as follows:

14       "[+] §431S-4 [+] **Annual renewal requirement.** (a) Each  
15 pharmacy benefit manager shall renew its [~~registration~~] license  
16 by March 31 each year.

17       (b) When renewing its [~~registration,~~] license, a pharmacy  
18 benefit manager shall submit to the commissioner the following:

- 19       (1) An application for renewal on a form prescribed by the  
20 commissioner; and
- 21       (2) A renewal fee of \$140.



1 (c) Failure on the part of a pharmacy benefit manager to  
2 renew its [~~registration~~] license as provided in this section  
3 shall result in a penalty of \$140 and may cause the  
4 [~~registration~~] license to be revoked or suspended by the  
5 commissioner until the requirements for renewal have been met."

6 SECTION 7. Section 431S-5, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "~~[+]§431S-5[+]~~ **Penalty.** Any person who acts as a pharmacy  
9 benefit manager in this State without first being [~~registered~~]  
10 licensed pursuant to this chapter shall be subject to a fine of  
11 [~~\$500~~] \$5,000 for each day of continued violation."

12 SECTION 8. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 9. If any provision of this Act, or the  
15 application thereof to any person or circumstance, is held  
16 invalid, the invalidity does not affect other provisions or  
17 applications of the Act that can be given effect without the  
18 invalid provision or application, and to this end the provisions  
19 of this Act are severable.

20



# S.B. NO. 1401

1 SECTION 10. This Act shall take effect upon its approval.

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INTRODUCED BY: Resaly H. Bala

[Signature]

Clarence K. Keshikar

Anna Mercedes La

~~DC~~ [Signature]

Michelle Ledani



# S.B. NO. 1401

**Report Title:**

Pharmacy Benefit Managers; Insurance Commissioner; Licensure; Reporting

**Description:**

Prohibits pharmacy benefit managers from engaging in self-serving business practices. Replaces registration requirement with license requirement for pharmacy benefit managers. Increases pharmacy benefit manager reporting requirements to the insurance commissioner.

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

