
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 insurance
6 plans require some level of cost sharing, either via a fixed
7 copayment or some percentage of the cost of care. However, in
8 certain situations, a pharmacy benefit manager may set an
9 insurance copayment at a higher amount than the actual cost of
10 the 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 moves enforcement within the purview
12 of 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 may 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 all claims for an appealed drug
19 if the pharmacy benefit manager establishes a maximum
20 allowable cost that is denied on appeal and pay the



1 maximum allowable cost approved after resolution of
2 the appeal by the contracting pharmacies; and
3 (3) Clarify the available penalties for violations of
4 maximum allowable cost requirements.

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

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

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

- 15 (1) Information identifying any national drug pricing
16 compendia; or
- 17 (2) Other data sources for the maximum allowable cost
18 list.

19 (c) The pharmacy benefit manager shall make available to a
20 contracting pharmacy, upon request, a comprehensive report for
21 the requested plan for all drugs on the maximum allowable cost



1 list, which contains the most up-to-date maximum allowable cost
2 price or prices used by the pharmacy benefit manager for
3 patients served by the pharmacy, in a readily accessible,
4 secure, electronic and searchable format, or usable web-based or
5 other comparable format that can be downloaded. The
6 comprehensive report shall also include the following:

- 7 (1) The name of the drug;
- 8 (2) Pharmacy benefit manager's maximum allowable cost
9 price;
- 10 (3) National drug code;
- 11 (4) Generic code number; and
- 12 (5) Generic product identifier.
- 13 (d) A drug shall not be included on a maximum allowable
14 cost list or reimbursed on a maximum allowable cost basis unless
15 all of the following apply:

- 16 (1) The drug is listed as "A" or "B" rated in the most
17 recent version of the Orange Book or has a rating of
18 "NR", "NA", or similar rating by a nationally
19 recognized reference;
- 20 (2) The drug is generally available for purchase in this
21 State from a national or regional wholesaler; and



1 (3) The drug is not obsolete.

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

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



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

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

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

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

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

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



- 1 (4) If the maximum allowable cost is upheld on appeal, the
2 pharmacy benefit manager shall provide to the
3 contracting pharmacy the reason therefor and the
4 national drug code of an equivalent drug from a source
5 where it may be purchased from a licensed wholesaler
6 by a retail pharmacy at a price that is equal to or
7 less than the maximum allowable cost of the drug that
8 is the subject of the appeal, with the name of the
9 source, including but not limited to the wholesaler or
10 distributor, where the drug may be purchased; and
- 11 (5) If the maximum allowable cost is not upheld on appeal,
12 the pharmacy benefit manager shall adjust, for the
13 appealing contracting pharmacy, the maximum allowable
14 cost of the drug that is the subject of the appeal,
15 within one calendar day of the date of the decision on
16 the appeal and allow the contracting pharmacy to
17 reverse and rebill claims for the appealed drug, until
18 the maximum allowable cost list is updated pursuant to
19 subsection (e), to be reimbursed at the maximum
20 allowable cost established by the appeal.



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

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

18 (j) The insurance commissioner may adopt rules pursuant to
19 chapter 91 to establish a process to subject complaints of
20 violations of this section to an external review process, which
21 may be binding on a complaining contracting pharmacy and a



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

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

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

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

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



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

3 "(a) The insurance commissioner may assess a fine of up to
4 \$10,000 for each violation by a pharmacy benefit manager or
5 prescription drug benefit plan provider who is in violation of
6 section 431R-2 [~~or~~], 431R-3 [~~or~~], or 431R- . In addition, the
7 insurance commissioner may order the pharmacy benefit manager to
8 take specific affirmative corrective action or make
9 restitution."

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

13 [~~"Maximum allowable cost" means the maximum amount that a
14 pharmacy benefit manager shall reimburse a pharmacy for the cost
15 of a drug.~~

16 [~~"Maximum allowable cost list" means a list of drugs for
17 which a maximum allowable cost has been established by a
18 pharmacy benefit manager."~~]

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



1 ~~["§328-106] Pharmacy benefit manager; maximum allowable~~
2 ~~cost. (a) A pharmacy benefit manager that reimburses a~~
3 ~~contracting pharmacy for a drug on a maximum allowable cost~~
4 ~~basis shall comply with the requirements of this section.~~

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

8 ~~(1) Information identifying any national drug pricing~~
9 ~~compendia, or~~

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

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

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



- 1 ~~(1) The drug is listed as "A" or "B" rated in the most~~
2 ~~recent version of the Orange Book or has a rating of~~
3 ~~"NR", "NA", or similar rating by a nationally~~
4 ~~recognized reference;~~
- 5 ~~(2) The drug is generally available for purchase in this~~
6 ~~State from a national or regional wholesaler; and~~
- 7 ~~(3) The drug is not obsolete.~~
- 8 ~~(e) The pharmacy benefit manager shall review and make~~
9 ~~necessary adjustments to the maximum allowable cost of each drug~~
10 ~~on a maximum allowable cost list at least once every seven days~~
11 ~~using the most recent data sources available, and shall apply~~
12 ~~the updated maximum allowable cost list beginning that same day~~
13 ~~to reimburse the contracted pharmacy until the pharmacy benefit~~
14 ~~manager next updates the maximum allowable cost list in~~
15 ~~accordance with this section.~~
- 16 ~~(f) The pharmacy benefit manager shall have a clearly~~
17 ~~defined process for a contracting pharmacy to appeal the maximum~~
18 ~~allowable cost for a drug on a maximum allowable cost list that~~
19 ~~complies with all of the following:~~
- 20 ~~(1) A contracting pharmacy may base its appeal on one or~~
21 ~~more of the following:~~



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



1 ~~cost of the drug that is the subject of the appeal,~~
2 ~~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 appealed claim.~~

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

16 SECTION 7. If any provision of this Act, or the
17 application thereof to any person or circumstance, is held
18 invalid, the invalidity does not affect other provisions or
19 applications of the Act that can be given effect without the
20 invalid provision or application, and to this end the provisions
21 of this Act are severable.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2050.



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. Effective 7/1/2050. (SD1)

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