
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 including for maximum allowable cost reimbursements,
 10 provision of maximum allowable cost reports, and
 11 complaints process, within the purview of the
 12 department of commerce and consumer affairs, rather
 13 than the department of health; and
- 14 (2) Require pharmacy benefit managers to disclose lower-
 15 priced equivalent drugs when a maximum allowable cost
 16 is upheld on appeal and allow contracting pharmacies
 17 to reverse and rebill claims if a maximum allowable
 18 cost is denied on appeal and recoup any overpayment.

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



1 "§431R- 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, a comprehensive report for
14 all drugs on the maximum allowable cost list for a plan, which
15 contains the most up-to-date maximum allowable cost price or
16 prices used by the pharmacy benefit manager for patients served
17 by the pharmacy, in a readily accessible and secure electronic
18 or usable web-based format.

19 (d) A drug shall not be included on a maximum allowable
20 cost list or reimbursed on a maximum allowable cost basis unless
21 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 contracting 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) for reimbursement on a maximum
7 allowable cost basis;
- 8 (2) A contracting pharmacy shall be provided no less than
9 fourteen business days following receipt of payment
10 for a claim to file the appeal with the pharmacy
11 benefit manager;
- 12 (3) The pharmacy benefit manager shall make a final
13 determination on the contracting pharmacy's appeal no
14 later than fourteen business days after the pharmacy
15 benefit manager's receipt of the appeal;
- 16 (4) If the maximum allowable cost is upheld on appeal, the
17 pharmacy benefit manager shall provide to the
18 contracting pharmacy the reason therefor and the
19 national drug code of an equivalent drug that may be
20 purchased by a similarly situated pharmacy at a price
21 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 claim that is the subject of
10 the appeal, and all claims for the same drug at the
11 plan level, until the maximum allowable cost list is
12 updated pursuant to subsection (e), to be reimbursed
13 at the maximum allowable cost established by the
14 appeal.
15 (g) A contracting pharmacy shall not disclose to any third
16 party the maximum allowable cost list and any related
17 information it receives, either directly from a pharmacy benefit
18 manager or through a pharmacy services administrative
19 organization or similar entity with which the pharmacy has a
20 contract to provide administrative services for that pharmacy.



1 (h) The insurance commissioner may adopt rules pursuant to
2 chapter 91 to establish a process to subject complaints of
3 violations of this section to an external review process, which
4 may be binding on a complaining contracting pharmacy and a
5 pharmacy benefit manager against whom a complaint is made,
6 except to the extent that the parties have other remedies
7 available under applicable federal or state law, and which may
8 assign the costs associated with the external review process to
9 a complaining contracting pharmacy and a pharmacy benefit
10 manager against whom a complaint is made."

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

14 "Contracting pharmacy" means an independent pharmacy that
15 is not part of a regional or national chain, or part of a
16 pharmacy services administration organization, and there is no
17 other pharmacy within a ten mile radius.

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



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

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

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

11 "(a) The insurance commissioner may assess a fine of up to
12 \$10,000 for each violation by a pharmacy benefit manager or
13 prescription drug benefit plan provider who is in violation of
14 section 431R-2 [~~o~~], 431R-3 [~~r~~], or 431R- . In addition, the
15 insurance commissioner may order the pharmacy benefit manager to
16 take specific affirmative corrective action or make
17 restitution."

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



1 ~~["Maximum allowable cost" means the maximum amount that a~~
2 ~~pharmacy benefit manager shall reimburse a pharmacy for the cost~~
3 ~~of a drug.~~

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

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

9 ~~["~~§328-106~~ Pharmacy benefit manager, maximum allowable~~
10 ~~cost.~~ (a) ~~A pharmacy benefit manager that reimburses a~~
11 ~~contracting pharmacy for a drug on a maximum allowable cost~~
12 ~~basis shall comply with the requirements of this section.~~

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

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

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

20 ~~(c) The pharmacy benefit manager shall make available to a~~
21 ~~contracting pharmacy, upon request, the most up to date maximum~~



1 ~~allowable cost price or prices used by the pharmacy benefit~~
2 ~~manager for patients served by the pharmacy in a readily~~
3 ~~accessible, secure, and usable web based or other comparable~~
4 ~~format.~~

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

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

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

14 ~~(3) The drug is not obsolete.~~

15 ~~(e) The pharmacy benefit manager shall review and make~~
16 ~~necessary adjustments to the maximum allowable cost of each drug~~
17 ~~on a maximum allowable cost list at least once every seven days~~
18 ~~using the most recent data sources available, and shall apply~~
19 ~~the updated maximum allowable cost list beginning that same day~~
20 ~~to reimburse the contracted pharmacy until the pharmacy benefit~~



1 ~~manager next updates the maximum allowable cost list in~~
2 ~~accordance with this section.~~

3 ~~(f) 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);~~

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

19 ~~(3) The pharmacy benefit manager shall make a final~~
20 ~~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 ~~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 the appealed claim.~~

18 ~~(g) A contracting pharmacy shall not disclose to any third~~
19 ~~party the maximum allowable cost list and any related~~
20 ~~information it receives, either directly from a pharmacy benefit~~
21 ~~manager or through a pharmacy services administrative~~



1 ~~organization or similar entity with which the pharmacy has a~~
2 ~~contract to provide administrative services for that pharmacy."]~~

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

5 SECTION 8. This Act shall take effect on July 1, 2050.



Report Title:

Pharmacy Benefit Managers; Maximum Allowable Cost; Contracting Pharmacies

Description:

Transfers regulatory jurisdiction for pharmacy benefit managers from the Department of Health to Department of Commerce and Consumer Affairs, including provisions for reimbursement amounts, disclosure of information, complaints process, and enforcement. (HB1442 HD1)

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