

JAN 22 2021

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 companies that manage prescription drug benefits on
3 behalf of health insurers and other payors. By negotiating with
4 drug manufactures and pharmacies to control drug spending,
5 pharmacy benefit managers have a significant behind-the-scenes
6 impact in determining total drug costs for insurers, shaping
7 patients' access to medications, and determining how much
8 pharmacies are paid.

9 Because pharmacy benefit managers have the ability to
10 negotiate larger rebates from manufacturers, pharmacy benefit
11 managers may have an incentive to favor high-priced drugs over
12 drugs that are more cost-effective. Furthermore, because
13 pharmacy benefit managers often receive rebates that are
14 calculated as a percentage of the manufacturer's list price,
15 pharmacy benefit managers may receive a larger rebate for more
16 expensive drugs than they do for ones that may provide better
17 value at lower cost.



1 Drug manufacturers have argued that the growing rebates
2 they pay pharmacy benefit managers are forcing them to raise
3 list prices for their products. Additionally, a separate
4 controversy involves a practice known as spread pricing, whereby
5 pharmacy benefit managers are reimbursed by health plans and
6 employers at a higher price for generic drugs than what the
7 pharmacy benefit managers actually pay pharmacies for these
8 drugs, and the pharmacy benefit managers then keep the
9 difference. Much like the information concerning rebates, a
10 lack of transparency allows spread pricing to occur because the
11 payment schedules pharmacy benefit managers generate for
12 pharmacies are withheld from health plans.

13 The legislature further finds that independent and rural
14 pharmacies are struggling due to decreased reimbursement rates
15 for prescription drugs, as determined by pharmacy benefit
16 managers. A 2019 analysis by the Pharmacists Society of the
17 State of New York found that pharmacy benefit manager markups
18 for medicaid prescriptions at independent pharmacies in the
19 state doubled from 2016 to 2017. Additionally, according to
20 research by the RUPRI Center for Rural Health Policy Analysis at
21 the University of Iowa, more than sixteen per cent of rural



1 independently owned pharmacies closed between 2003 and 2018,
2 including over six hundred locations that served as their
3 community's sole pharmacy. Reimbursement rates below the
4 pharmacy's purchase cost for a drug is an unsustainable model
5 that could force independent pharmacies out of business,
6 especially pharmacies that do not have a supplemental retail
7 market like many large pharmacy chains. Not only would these
8 closures take a toll on local economies, they could also leave
9 residents in less populated areas without a pharmacist to fill
10 prescriptions and provide other vital services. Rural residents
11 already have fewer options for health care services, and
12 pharmacies in these communities are one of the few increasing
13 reliable sources for clinical advice.

14 Accordingly, the purpose of this Act is to increase
15 transparency and fairness; and promote, preserve, and protect
16 the public health, safety, and welfare by:

17 (1) Prohibiting certain contracts for managed care entered
18 into after June 30, 2021, from containing a provision
19 that authorizes a pharmacy benefit manager to
20 reimburse a contracting pharmacy on a maximum



- 1 allowable cost basis and voiding any such provisions
2 in existing managed care contracts;
- 3 (2) Prohibiting pharmacy benefit managers from engaging in
4 self-serving business practices;
- 5 (3) Prohibiting pharmacy benefit managers from engaging in
6 unfair methods of competition or unfair practices;
- 7 (4) Prohibiting pharmacy benefit managers from retaining
8 any portion of spread pricing;
- 9 (5) Prohibiting a pharmacy benefit manager from
10 reimbursing a 340B pharmacy differently than any other
11 network pharmacy;
- 12 (6) Prohibiting a pharmacy benefit manager from
13 reimbursing an independent or rural pharmacy an amount
14 less than the rural rate for each prescription drug,
15 under certain circumstances;
- 16 (7) Prohibiting a pharmacy benefit manager from
17 prohibiting a pharmacist or pharmacy to provide
18 certain information to insureds regarding cost sharing
19 or more affordable alternative drugs;
- 20 (8) Inserting language that provides, in responding to the
21 State's request, any information provided in response



- 1 to a data call from the Insurance Commissioner or
2 designee shall be treated confidential and privileged;
- 3 (9) Increasing the pharmacy benefit managers' annual
4 reporting requirements;
- 5 (10) Requiring the insurance commissioner to make annual
6 reports to the legislature;
- 7 (11) Increasing pharmacy benefit manager registration and
8 renewal fees; and
- 9 (12) Making certain violations of pharmacy benefit managers
10 subject to the penalties provided in chapter 480 and
11 chapter 481, Hawaii Revised Statutes.

12 SECTION 2. Chapter 346, Hawaii Revised Statutes, is
13 amended by adding a new section to part II to be appropriately
14 designated and to read as follows:

15 "§346- Pharmacy benefit managers; contracting
16 pharmacies; reimbursements; maximum allowable cost basis;
17 prohibition. (a) No contract for managed care entered into
18 pursuant to this part, after June 30, 2021, shall contain a
19 provision that authorizes a pharmacy benefit manager to
20 reimburse a contracting pharmacy on a maximum allowable cost
21 basis in accordance with section 328-106 or chapter 431S.



1 (b) Any provision of a contract for managed care
2 authorized pursuant to this part to reimburse a contracting
3 pharmacy for a drug on a maximum allowable cost basis in
4 accordance with section 328-106 or chapter 431S that was in
5 effect on or before June 30, 2021, shall be void."

6 SECTION 3. Chapter 431S, Hawaii Revised Statutes, is
7 amended by adding four new sections to be appropriately
8 designated and to read as follows:

9 "§431S- Pharmacy benefit manager business practices;
10 prohibitions; independent or rural pharmacy reimbursement rate.

11 (a) A pharmacy benefit manager shall be prohibited from
12 penalizing, requiring, or providing financial incentives,
13 including variations in premiums, deductibles, copayments, or
14 coinsurance, to covered persons as incentives to use a specific
15 retail pharmacy, mail service pharmacy, or other network
16 pharmacy provider in which a pharmacy benefit manager has an
17 ownership interest or that has an ownership interest in a
18 pharmacy benefit manager.

19 (b) A pharmacy benefit manager shall not engage in unfair
20 methods of competition pursuant to chapter 480, or unfair
21 practices pursuant to chapter 481, in the conduct of pharmacy



1 benefit management, as defined in section 431S-1. A violation
2 of this section by a pharmacy benefit manager shall constitute a
3 separate violation under chapter 480 and chapter 481.

4 (c) No pharmacy benefit manager shall retain any portion
5 of spread pricing.

6 (d) A pharmacy benefit manager shall not reimburse a 340B
7 pharmacy differently than any other network pharmacy based on
8 its status as a 340B pharmacy. For purposes of this subsection,
9 a "340B pharmacy" means a pharmacy that is authorized to
10 purchase drugs at a discount under Title 42 United States Code
11 section 256b.

12 (e) A pharmacy benefit manager shall not reimburse an
13 independent or rural pharmacy an amount less than the rural rate
14 for each prescription drug; provided that:

15 (1) Pharmacy benefit managers shall file with the
16 commissioner a list of the rural rates for each
17 prescription drug; and

18 (2) A pharmacy benefit manager shall be prohibited from
19 changing the rural rate without providing thirty days'
20 notice to all contracting independent or rural
21 pharmacies of any change in the rural rate and filing



1 a report with the commissioner identifying the rural
2 rate changes.

3 §431S- Gag clause prohibited. A pharmacy benefit
4 manager shall not prohibit a pharmacist or pharmacy from
5 providing an insured individual with information on the amount
6 of the insured's cost share for the insured's prescription drug
7 and the clinical efficacy of a more affordable alternative drug
8 if one is available. Neither a pharmacy nor a pharmacist shall
9 be penalized by a pharmacy benefit manager for disclosing such
10 information to an insured or for selling to an insured a more
11 affordable alternative if one is available.

12 §431S- Data calls. In response to the State's request,
13 any information provided in response to a data call from the
14 commissioner or the commissioner's designee, shall be treated as
15 confidential and privileged. The information provided shall not
16 be subject to subpoena and shall not be subject to discovery or
17 admissible in evidence in any private civil action, unless so
18 ordered by the court. No waiver of privilege or confidentially
19 shall occur as a result of responding to a data call.

20 §431S- Annual transparency report; commissioner report
21 to the legislature. (a) No later than September 1, 2021, and



1 annually thereafter, each pharmacy benefit manager registered
2 under this chapter shall submit a transparency report containing
3 data from the preceding calendar year to the commissioner that
4 shall include:

- 5 (1) The names of each party with which the pharmacy
6 benefit manager contracts to provide pharmacy benefit
7 management, as defined in section 431S-1, and each
8 party's number of locations;
- 9 (2) The aggregate amount of all rebates that the pharmacy
10 benefit manager received from all pharmaceutical
11 manufacturers for all covered entity clients and for
12 each covered entity client;
- 13 (3) The aggregate administrative fees that the pharmacy
14 benefit manager received from all pharmaceutical
15 manufacturers for all covered entity clients and for
16 each covered entity client;
- 17 (4) The aggregate retained rebates that the pharmacy
18 benefit manager received from all pharmaceutical
19 manufacturers and did not pass through to covered
20 entities;
- 21 (5) The aggregate retained rebate percentage;



- 1 (6) The highest, lowest, and mean aggregate retained
2 rebate percentage for all covered entity clients and
3 for each covered entity client; and
- 4 (7) Utilization information, in a form prescribed by the
5 commissioner, which shall be reported for each
6 prescription drug and each type of payor prescribed by
7 the commissioner, and shall include:
- 8 (A) The number of prescriptions paid;
9 (B) The total amount paid per prescription prior to
10 rebates;
- 11 (C) The total rebates received prior to paying any
12 rebates to a covered entity; and
- 13 (D) Number of covered lives.
- 14 (b) The insurance commissioner shall perform an annual
15 examination of:
- 16 (1) The negative impacts on independent or rural
17 pharmacies caused by pharmacy benefit managers; and
- 18 (2) The effects of transactions between health plan
19 insurers and pharmacy benefit managers on health plan
20 premiums.



1 (c) The commissioner shall submit a report to the
2 legislature no later than twenty days prior to the convening of
3 each regular session, which shall include:

4 (1) A summary of the information collected from the
5 pharmacy benefit managers' annual transparency
6 reports, including a list of all pharmacy benefit
7 managers registered under this chapter; provided that
8 the commissioner shall aggregate information from all
9 pharmacy benefit managers so that it is not
10 identifiable to any particular pharmacy benefit
11 manager;

12 (2) Findings from the annual examination pursuant to
13 subsection (b); and

14 (3) Recommendations and any proposed legislation."

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

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

19 "Aggregate retained rebate percentage" means the
20 percentage of all rebates received from a manufacturer or other
21 entity to a pharmacy benefit manager for prescription drug



1 utilization that is not passed on to pharmacy benefit managers'
2 covered entity clients. The percentage shall be calculated for
3 each covered entity for rebates in the prior calendar year as
4 follows:

- 5 (1) The sum total dollar amount of rebates received from
6 all pharmaceutical manufacturers for all utilization
7 of covered persons of a covered entity that was not
8 passed through to the covered entity; and
- 9 (2) Divided by the sum total dollar amount of all rebates
10 received from all pharmaceutical manufacturers for
11 covered persons of a covered entity.

12 "Independent or rural pharmacy" means a retail pharmacy
13 contracted by a pharmacy benefit manager to sell prescription
14 drugs to beneficiaries of a prescription drug benefit plan
15 administered by the pharmacy benefit manager that:

- 16 (1) Is not owned or operated by a publicly traded company;
17 (2) Is not directly affiliated with any chain pharmacy
18 having more than fifty stores;
19 (3) Is located and licensed in this State; and
20 (4) Serves rural, uninsured, or underinsured patients.



1 "Mail service pharmacy" means a pharmacy, the primary
2 business of which is to receive prescriptions by mail, telefax,
3 or electronic submissions, and dispense medications to covered
4 persons through the use of the United State Postal Service or
5 other contract carrier services and that provides electronic,
6 rather than face-to-face consultations, with patients.

7 "Network pharmacy" means a retail pharmacy located and
8 licensed in the State and contracted by the pharmacy benefit
9 manager to sell prescription drugs to beneficiaries of a
10 prescription drug benefit plan administered by the pharmacy
11 benefit manager.

12 "Rebates" means all price concessions paid by a
13 manufacturer to a pharmacy benefit manager or covered entity,
14 including rebates, discounts, and other price concessions that
15 are based on actual or estimated utilization of a prescription
16 drug. "Rebates" also includes price concessions based on the
17 effectiveness of a drug as in a value-based or performance-based
18 contract.

19 "Retail pharmacy" means a pharmacy, permitted by the board
20 of pharmacy pursuant to section 461-14, that is open to the
21 general public, dispenses prescription drugs to the general



1 public, and makes available face-to-face consultations between
2 licensed pharmacists and the general public to whom prescription
3 drugs are dispensed."

4 2. By amending the definition of "covered entity" to read:

5 "Covered entity" means:

- 6 (1) A health benefits plan regulated under chapter 87A;
7 health insurer regulated under article 10A of chapter
8 431; mutual benefit society regulated under article 1
9 of chapter 432; [~~or health maintenance organization~~
10 ~~regulated under chapter 432D; provided that a "covered~~
11 ~~entity" under this paragraph shall not include a~~
12 ~~health maintenance organization regulated under~~
13 ~~chapter 432D that owns or manages its own pharmacies,]~~
- 14 (2) A health program administered by the State in the
15 capacity of a provider of health coverage; or
- 16 (3) An employer, labor union, or other group of persons
17 organized in the State that provides health coverage
18 to covered persons employed or residing in the State.
- 19 "Covered entity" [~~shall~~] does not include any plans issued for
20 coverage for federal employees or specified disease or limited
21 benefit health insurance as provided by section 431:10A-607."



1 3. By amending the definition of "pharmacy benefit
2 manager" to read:

3 "Pharmacy benefit manager" means any person, business, or
4 entity that performs pharmacy benefit management, including but
5 not limited to a person or entity [~~in a contractual or~~
6 ~~employment relationship with~~] under contract with a pharmacy
7 benefit manager to perform pharmacy benefit management [~~for a~~
8 ~~covered entity.~~] as defined in this section, on behalf of a
9 managed care company, nonprofit hospital or medical service
10 organization, insurance company, third-party payor, or health
11 program administered by the State that is duly licensed pursuant
12 to this chapter. "Pharmacy benefit manager" does not include
13 any health care facility licensed in this State, a health care
14 provider licensed in this State, or a consultant who only
15 provides advice as to the selection or performance of a pharmacy
16 benefit manager."

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

19 "~~[H]~~ §431S-3 ~~[H]~~ **Registration required.** (a)
20 Notwithstanding any law to the contrary, no person shall act or
21 operate as a pharmacy benefit manager without first obtaining a



1 valid registration issued by the commissioner pursuant to this
2 chapter. The registration shall not be transferable.

3 (b) The commissioner may issue a registration under this
4 chapter if the commissioner is satisfied that the applicant
5 possesses the necessary organization, background expertise, and
6 financial integrity to supply the services sought to be offered
7 pursuant to this chapter.

8 (c) The commissioner may issue a registration subject to
9 restrictions or limitations upon the authorization, including
10 the types of services that may be supplied or the activities in
11 which the applicant may be engaged.

12 [~~b~~] (d) Each person seeking to register as a pharmacy
13 benefit manager shall file with the commissioner an application
14 on a form prescribed by the commissioner. The application shall
15 include:

16 (1) The name, address, official position, and professional
17 qualifications of each individual who is responsible
18 for the conduct of the affairs of the pharmacy benefit
19 manager, including all members of the board of
20 directors; board of trustees; executive commission;
21 other governing board or committee; principal



1 officers, as applicable; partners or members, as
2 applicable; and any other person who exercises control
3 or influence over the affairs of the pharmacy benefit
4 manager;

5 (2) The name and address of the applicant's agent for
6 service of process in the State; ~~and~~

7 (3) A nonrefundable application fee of [~~\$140.~~] \$500; and

8 (4) Any other information the commissioner deems necessary
9 or helpful to determine whether the applicant has the
10 necessary organization, background, expertise, and
11 financial integrity to supply the services sought to
12 be offered pursuant to this chapter.

13 (e) The commissioner may suspend, revoke, or place on
14 probation a pharmacy benefit manager registered under this
15 chapter if:

16 (1) The pharmacy benefit manager has engaged in fraudulent
17 activity in violation of federal or state law;

18 (2) The commissioner receives consumer complaints that
19 justify an action under this subsection to protect the
20 safety and interest of consumers;



- 1 (3) The pharmacy benefit manager fails to pay required
- 2 fees under this chapter;
- 3 (4) The pharmacy benefit manager fails to comply with any
- 4 other requirement under this chapter; or
- 5 (5) The pharmacy benefit manager commits a violation of
- 6 section 480-2 or section 481-1."

7 SECTION 6. Section 431S-4, Hawaii Revised Statutes, is
8 amended by amending subsections (b) and (c) to read as follows:

9 "(b) When renewing its registration, a pharmacy benefit
10 manager shall submit to the commissioner the following:

- 11 (1) An application for renewal on a form prescribed by the
- 12 commissioner; and
- 13 (2) A renewal fee of [~~\$140~~] \$500.

14 (c) Failure on the part of a pharmacy benefit manager to
15 renew its registration as provided in this section shall result
16 in a penalty of [~~\$140~~] \$500 and may cause the registration to be
17 revoked or suspended by the commissioner until the requirements
18 for renewal have been met."

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



1 "~~§431S-5~~ Penalty. Any person who acts as a pharmacy
2 benefit manager in this State without first being registered
3 pursuant to this chapter shall be subject to a fine of ~~[\$500]~~
4 \$5,000 for each violation. The penalty prescribed in this
5 section shall be cumulative and in addition to any other
6 penalties prescribed by this chapter."

7 SECTION 8. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

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

16 SECTION 10. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 11. This Act shall take effect on July 1, 2021;

19



S.B. NO. 602

1 provided that section 2 of this Act shall be repealed on
2 June 30, 2026.
3

INTRODUCED BY: Rosaly H. Beh



S.B. NO. 602

Report Title:

Pharmacy Benefit Managers; Independent or Rural Pharmacies;
Rural Rate of Reimbursement; Insurance Commissioner; Licensure;
Reporting

Description:

Prohibits certain contracts for managed care entered into after June 30, 2021, from containing a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis, and voids any such provisions in existing managed care contracts. Prohibits pharmacy benefit managers from engaging in self-serving or deceptive business practices. Prohibits pharmacy benefit managers from engaging in unfair methods of competition or unfair practices. Prohibits pharmacy benefit managers from retaining any portion of spread pricing. Prohibits a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy. Prohibits a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances. Prohibits a pharmacy benefit manager from prohibiting a pharmacist to provide certain information to insureds. Increases pharmacy benefit managers' annual reporting requirements. Requires the insurance commissioner to file annual reports with the legislature. Increases pharmacy benefit manager registration and renewal fees. Makes certain violations of pharmacy benefit managers subject to the penalties provided in chapter 480 and chapter 481, Hawaii Revised Statutes.

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