

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO PHARMACY BENEFIT MANAGEMENT COMPANIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that numerous states are  
2 proposing or considering legislation to regulate pharmacy  
3 benefit management companies. Pharmacy benefit management  
4 companies are the intermediaries that negotiate services and  
5 costs between pharmaceutical companies and third party payors,  
6 such as insurance companies, businesses, and cash-paying  
7 customers. Proposals seek to ensure financial reliability,  
8 regulate the licensing of pharmacy benefit management companies,  
9 mandate full disclosure of drug costs and financial contracts  
10 while eliminating the term "mandatory" from any pharmacy benefit  
11 contract. In addition, pharmacy providers, such as chain drug  
12 stores and independent pharmacies, are currently subjected to  
13 unregulated auditing practices, and additional legislation would  
14 establish a more regimented and reliable audit procedure.

15       The purpose of this Act is to require pharmacy benefit  
16 management companies to register with the insurance commissioner  
17 before administering pharmacy benefits of health insurers and



1 implement regulations on pharmacy benefit management companies  
2 in the State.

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

6 "CHAPTER

7 PHARMACY BENEFIT MANAGEMENT COMPANIES

8 § -A Registration. (a) No later than June 1, 2011, a  
9 pharmacy benefit management company shall register with the  
10 insurance commissioner before providing services to residents of  
11 the State. Registrations shall be effective for two years and  
12 may be renewed for an additional two years.

13 (b) The insurance commissioner may deny, suspend, revoke,  
14 or refuse to renew a registration in circumstances specified in  
15 rules adopted pursuant to this part.

16 § -B Disclosure and reporting. (a) Before and after  
17 entering into a contract for pharmacy benefits management  
18 services a pharmacy benefit management company shall disclose to  
19 a purchaser that the pharmacy benefit management company may:

- 20 (1) Solicit and receive manufacturer payments;  
21 (2) Pass through or retain the manufacturer payments;  
22 (3) Sell aggregate utilization information; or



1 (4) Share aggregate utilization information.

2 (b) A pharmacy benefit management company shall provide a  
3 purchaser a report containing information about new revenues and  
4 manufacturer payments. If a purchaser has a rebate sharing  
5 contract, a pharmacy benefit management company shall provide a  
6 report to the insurance commissioner each fiscal quarter and  
7 each fiscal year that contains information regarding net  
8 revenues, prescription drug expenditures, manufacturer payments,  
9 manufacturer rebates, and prescription reimbursements to  
10 pharmacies providing service.

11 § -C Prohibited activities. (a) A pharmacy benefit  
12 management company shall not exclude any willing provider from  
13 any contract offered within the State, including the Hawaii  
14 employer-union health benefits trust fund, public assistance  
15 programs, and commercial entities.

16 (b) A pharmacy benefit management program shall take no  
17 action that would restrict a patient's choice of pharmacy from  
18 which to receive prescription medications, including requiring  
19 patients to receive prescription medications from mail-order  
20 pharmacies located outside the State.

21 (c) A pharmacy benefit management company shall not  
22 manipulate the amounts of drug co-payments that it charges in a



1 manner that would encourage patients to receive prescription  
2 medications from a mail-order pharmacy located outside the  
3 State.

4 (d) A pharmacy benefit management company shall not offer  
5 different dispensing reimbursement amounts among willing  
6 providers for the same prescription medications.

7 (e) A pharmacy benefit management company shall not  
8 establish reimbursement amounts for providers that are less than  
9 a provider's acquisition cost plus a professional dispensing  
10 fee.

11 (f) A pharmacy benefit management company shall not charge  
12 or receive reimbursement for rebranded pharmaceutical products  
13 or pharmaceutical products with an altered National Drug Code.

14 (g) A pharmacy benefit management company shall not ship,  
15 mail, or deliver drugs or devices to a person in the State  
16 through a non-resident pharmacy unless that non-resident  
17 pharmacy is registered with or has a permit issued by the board  
18 of pharmacy.

19 § -D Violations; penalties. (a) The insurance  
20 commissioner may assess a pharmacy benefit management company in  
21 violation of this part a fine of up to \$10,000 for each  
22 violation. In addition, the insurance commissioner may direct



1 the pharmacy benefit management company to cease and desist  
2 prohibited activity, take specific affirmative corrective  
3 action, or make restitution of money, property, or other assets.

4 (b) A pharmacy benefit management company may appeal any  
5 decision made by the insurance commissioner under this part,  
6 whereupon the opportunity for an administrative hearing under  
7 chapter 91 shall be afforded. Any pharmacy benefit management  
8 company aggrieved by the final decision and order shall be  
9 entitled to judicial review in accordance with chapter 91 or may  
10 submit the matter to binding arbitration.

11 § -E Audits. (a) A pharmacy benefit management company  
12 may conduct periodic audits of each pharmacy that submits claims  
13 for payment and through which it dispenses prescription  
14 medications in the State.

15 (b) Any audit conducted by a pharmacy benefit management  
16 company pursuant to this section shall be performed by a person  
17 or firm licensed as a public accountant or certified public  
18 accountant under chapter 466.

19 (c) A pharmacy benefit management company shall provide  
20 each pharmacy with notice of an upcoming audit no less than  
21 fourteen working days prior to the audit. Audits shall commence  
22 on the date and time specified in the notice and shall not



1 exceed eight hours. Any prescription not reviewed during that  
2 time period shall not be included in the report. Should an  
3 audit of a pharmacy be cancelled less than twenty-four hours  
4 prior to the commencement date and time specified in the notice,  
5 that pharmacy shall not be audited for one calendar year from  
6 the commencement date specified in the notice.

7 (d) In conducting the audit the pharmacy benefit  
8 management company shall not:

9 (1) Disallow any claim for a prescription if the pharmacy  
10 has dispensed the prescription in compliance with  
11 rules adopted by the board of pharmacy and in  
12 accordance with any adjudication system maintained by  
13 the pharmacy benefit management company conducting the  
14 audit; or

15 (2) Recommend that professional fees and ingredient fees  
16 be refunded if all parties have agreed that a  
17 prescription medication has been properly dispensed.

18 (e) A clerical or record-keeping error shall not be  
19 considered fraud, and claims paid in reliance on a document  
20 containing such an error shall not be subject to recoupment or  
21 penalty without proof of intent to commit fraud.



1 (f) A pharmacy may use records of a hospital, physician,  
2 or other licensed or registered professional of the healing arts  
3 relating to orders for prescription medications or medical  
4 supplies written or transmitted by any means of communication  
5 for the purposes of validating the pharmacy's record with  
6 respect to orders for refills of prescriptions for legend or  
7 narcotic drugs.

8 (g) A pharmacy benefit management company shall conduct  
9 all of its audits of pharmacies in the same manner and according  
10 to the same standards. A pharmacy benefit management company  
11 shall audit an equal number of independent pharmacies and  
12 pharmacies affiliated with a parent corporate entity.

13 (h) Audits shall include an equal number of generic and  
14 non-generic prescription medications.

15 (i) An audit may not use the accounting method of  
16 extrapolation in calculating recoupment or penalties.

17 (j) An auditor hired by a pharmacy benefit management  
18 company to conduct audits pursuant to this section shall not  
19 receive payment or compensation based on a percentage  
20 discrepancies identified in the audit or amounts recovered  
21 pursuant to the audit.



1           (k) A pharmacy benefit management company shall provide a  
2 preliminary audit report to the pharmacy or its parent corporate  
3 entity within ninety days after conclusion of the audit. Within  
4 sixty days of the delivery of the preliminary audit report, a  
5 pharmacy may provide documentation to the pharmacy benefit  
6 management company to address any discrepancy identified in the  
7 audit. A pharmacy benefit management company shall provide a  
8 final audit report to the pharmacy or its parent corporate  
9 entity within one hundred twenty days of the preliminary report  
10 or the receipt of additional documentation from the pharmacy,  
11 whichever occurs last. The final audit report shall be signed  
12 by an authorized representative of both the pharmacy benefit  
13 management company and the pharmacy that is the subject of the  
14 audit.

15           (1) No interest shall accrue during the time period of the  
16 audit or the preparation of the final report pursuant to  
17 subsection (k).

18           § -F Rules. The insurance commissioner shall adopt  
19 rules pursuant to chapter 91 for the purposes of implementing  
20 this part, including a schedule of allowable acquisition costs  
21 and professional dispensing fees."





1 SECTION 3. In codifying the new sections added by section  
2 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5 SECTION 4. This Act shall take effect upon its approval.  
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**Report Title:**

Pharmacy Benefit Management Companies

**Description:**

Requires registration of and regulates practices of pharmacy benefit management companies. Requires periodic audits of pharmacies that submit claims to pharmacy benefit management companies.

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

