
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 provide prescription drug services on behalf of plan
5 sponsors, including self-insured employers, insurers, unions,
6 mutual benefit societies, and health maintenance organizations.
7 As part of these services, pharmacy benefit management companies
8 are the intermediaries that negotiate services and costs with
9 pharmacies and rebate earnings with pharmaceutical companies.
10 Through this Act, the legislature seeks to ensure financial
11 reliability, regulate the licensing of pharmacy benefit
12 management companies, prevent predatory pricing, and mandate
13 disclosure of drug costs and financial contracts.

14 The purpose of this Act is to require pharmacy benefit
15 management companies to register with the insurance commissioner
16 before administering pharmacy benefits of health insurers and
17 implement regulations on pharmacy benefit management companies
18 in the State.



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

4 "CHAPTER

5 PHARMACY BENEFIT MANAGEMENT COMPANIES

6 § -1 Definitions. As used in this chapter:

7 "Auditing entity" means a managed care company, insurance
8 company, third-party payor or the representative of the managed
9 care company, insurance company or third-party payor.

10 "Commissioner" means the insurance commissioner.

11 "Enrollee" means an individual who is enrolled in a
12 pharmacy benefit management plan.

13 "National drug code number" means the unique, three-segment
14 number used as a universal product identifier for human drugs in
15 the Drug Registration and Licensing System maintained by the
16 federal Food and Drug Administration pursuant to the Food, Drug,
17 and Cosmetic Act, Title 21 United States Code Section 360.

18 "Pharmacist" has the same meaning as "registered
19 pharmacist" as set forth in section 461-1.

20 "Pharmacist services" includes drug therapy and other
21 patient care services provided by a pharmacist or pharmacy
22 registered under chapter 461 intended to achieve outcomes that



1 relate to the cure or prevention of a disease, elimination or
2 reduction of a patient's symptoms, or arresting or slowing of a
3 disease process as defined in the regulations of the board of
4 pharmacy.

5 "Pharmacy" has the same meaning as set forth in section
6 461-1.

7 "Pharmacy benefit management company" means a business that
8 administers the prescription drug or device portion of health
9 insurance plans on behalf of plan sponsors, including self-
10 insured employers, insurers, unions, mutual benefit societies,
11 and health maintenance organizations.

12 "Pharmacy benefit management plan" means an arrangement for
13 the delivery of pharmacist services in which a pharmacy benefit
14 management company undertakes to provide, arrange for, pay for,
15 or reimburse any of the costs of pharmacist services for an
16 enrollee on a prepaid or insured basis.

17 "Pharmacy benefit manager" means a person or entity that
18 performs pharmacy benefit management services for a pharmacy
19 benefit management company and includes a person or entity in a
20 contractual or employment relationship with a person or entity
21 performing pharmacy benefit management services for a health
22 plan.



1 **§ -2 Registration.** (a) Beginning on January 1, 2012, a
2 person shall not establish or operate a pharmacy benefit
3 management company to provide pharmacy benefit management plans
4 in the State without first obtaining from the commissioner a
5 license to do business in the State. Pharmacy benefit
6 management companies operating in the State as of the effective
7 date of this Act shall register with the commissioner by
8 January 1, 2012.

9 (b) Each pharmacy benefit management company that provides
10 pharmacy benefit management plans in the State shall file an
11 annual statement with the commissioner on the form required by
12 the commissioner on or before March 1 of each year in accordance
13 with this section.

14 The annual statement shall:

- 15 (1) Be verified by at least two principal officers of the
16 pharmacy benefit management company;
- 17 (2) Cover the preceding calendar year;
- 18 (3) Include a financial statement of the organization,
19 including its balance sheet and income statement for
20 the preceding year; and
- 21 (4) Include the number of Hawaii residents enrolled in
22 each pharmacy benefit management plan during the year,



1 the number of enrollees as of the end of the
2 applicable calendar year, and the number of
3 enrollments terminated during the applicable calendar
4 year.

5 If the pharmacy benefit management company is audited
6 annually by an independent certified public accountant, a copy
7 of the certified audit report shall be filed with the
8 commissioner on or before June 30 of each year.

9 (c) The commissioner may grant a pharmacy benefit
10 management company an extension for filing an annual statement
11 or other reports or exhibits for good cause shown; provided that
12 the extension shall not exceed sixty days beyond the initial
13 March 1 due date.

14 (d) A pharmacy benefit management company that fails to
15 file its annual statement within the time required by this
16 section shall pay a fine of \$50 for each day after the due date
17 that the annual report has not been filed with the commissioner.

18 **§ -3 Reporting.** (a) Notwithstanding any other
19 provision of law to the contrary, a pharmacy benefit management
20 company contracting with an auditing entity to provide
21 prescription drug coverage in the State of Hawaii shall provide
22 at least annually a report to each group health plan, including



1 an accident and health or sickness insurance company under
2 chapter 431, article 10A; a health maintenance organization
3 under chapter 432D; a mutual benefit society or a nonprofit
4 hospital and health service corporation under chapter 432; or
5 any other entity providing a plan of health insurance, health
6 benefits, or health services with which the pharmacy benefit
7 management company has a contract.

8 (b) With respect to the contract described under
9 subsection (a), the report under subsection (a) shall include:

- 10 (1) Information on the number of and total amount paid to
11 pharmacies for prescriptions filled under the
12 contract, reported by the following types of
13 pharmacies: mail order pharmacies, specialty
14 pharmacies, and retail pharmacies;
- 15 (2) The total amount that the pharmacy benefit manager was
16 paid by the plan or issuer for prescriptions filled
17 under the contract, reported by the following types of
18 pharmacies: mail order pharmacies, specialty
19 pharmacies, and retail pharmacies;
- 20 (3) The total payment under the contract received from
21 pharmaceutical manufacturers, including all rebates,
22 market share rebates, disease management fees, data



1 selling fees, sales target fees, discounts, including
2 prompt payment discounts, price concessions, or
3 administrative and other payments from pharmaceutical
4 manufacturers;

5 (4) The total amount that the plan or issuer was paid by
6 the pharmacy benefit manager for rebates received from
7 pharmaceutical manufacturers under the contract; and

8 (5) Information on the overall percentage of generic drugs
9 dispensed under the contract, separately at retail and
10 mail order pharmacies, and the percentage of cases in
11 which a generic drug was dispensed when available.

12 **§ -4 Information for pharmacies.** A pharmacy benefit
13 management company shall provide to pharmacies that contract
14 with the pharmacy benefit management company:

15 (1) The methodology that the pharmacy benefit management
16 company uses to determine reimbursement;

17 (2) The frequency with which the pharmacy benefit
18 management company provides updates to pharmacy
19 product reimbursement benchmarks used to calculate
20 prescription reimbursement to pharmacies; and

21 (3) Prompt payment to pharmacies for clean claims as
22 required by state law.



1 **§ -5 Information for pharmacy benefit management**

2 **enrollees.** (a) Each pharmacy benefit management company shall
3 make available to its enrollees the information contained in
4 subsection (b). This information shall be made available to
5 enrollees upon request or at least updated annually on the
6 pharmacy benefit management company's website.

7 (b) The information required to be provided to enrollees
8 includes:

- 9 (1) A list of the names and locations of all affiliated
10 providers;
- 11 (2) A description of the method of resolving complaints of
12 covered persons; and
- 13 (3) Notice that the pharmacy benefit management company is
14 required to be registered in the State by the
15 commissioner.

16 **§ -6 Prohibited activities.** (a) A pharmacy benefit
17 management company shall not exclude the Hawaii employer-union
18 health benefits trust fund, public assistance programs, and
19 commercial entities from any contract offered within the State.

20 (b) A pharmacy benefit management plan shall take no
21 action that would restrict a patient's choice of pharmacy from
22 which to receive prescription medications, nor shall a pharmacy



1 benefit management plan require patients to receive prescription
2 medications from mail-order pharmacies located outside the
3 State.

4 (c) A pharmacy benefit management company shall not
5 manipulate the amounts of drug co-payments that it charges in a
6 manner that would encourage patients to receive prescription
7 medications from a mail-order pharmacy located outside the
8 State.

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

13 (e) A pharmacy benefit management company shall not charge
14 or receive reimbursement for rebranded pharmaceutical products
15 or pharmaceutical products with an altered national drug code
16 number.

17 **§ -7 Violations; penalties.** (a) The commissioner may
18 assess a pharmacy benefit management company in violation of
19 this chapter a fine of up to \$10,000 for each violation. In
20 addition, the commissioner may direct the pharmacy benefit
21 management company to cease and desist prohibited activity, take



1 specific affirmative corrective action, or make restitution of
2 money, property, or other assets.

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

10 **§ -8 Rules.** (a) The commissioner shall adopt rules
11 pursuant to chapter 91 for the purposes of implementing this
12 chapter.

13 (b) No later than twenty days prior to the convening of
14 each legislative session, the commissioner shall provide an
15 annual aggregated report on pharmacy benefit management
16 companies operating in the State. The commissioner shall
17 establish rules to ensure that confidential and proprietary
18 information is protected."

19 SECTION 3. The revisor of statutes shall insert the
20 effective date of this Act in the appropriate places in section
21 2 of this Act.

22 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Pharmacy Benefit Management Companies

Description:

Requires registration of and regulates practices of pharmacy benefit management companies. Effective July 1, 2050. (SB591 HD1)

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

