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# A BILL FOR AN ACT

RELATING TO PHARMACY BENEFITS MANAGERS.

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

1           SECTION 1. The legislature finds that pharmacy benefits  
2 managers often use a patient's prescription drug claims  
3 information to directly market to that patient the services of a  
4 preferred pharmacy provider that is owned by the pharmacy  
5 benefits manager.

6           The legislature further finds that the practice of pharmacy  
7 benefits managers sharing a patient's prescription claims  
8 information with their partially or wholly owned subsidiaries,  
9 for the purpose of marketing, without the patient's express  
10 consent is a breach of the patient's right to privacy. Article  
11 I, section 6, of the Hawaii State Constitution states, "[t]he  
12 right of the people to privacy is recognized and shall not be  
13 infringed without the showing of a compelling state interest."  
14 This right, as it relates to a person's medical health  
15 information, was affirmed by the Hawaii Supreme Court in *Brende*  
16 *v. Hara*, 153 P.3d 1109 (2007).

17           The purpose of this Act is to prohibit pharmacy benefits  
18 managers, or their partially or wholly owned subsidiaries, from



1 using a patient's medical health information to market or  
2 advertise to that patient the services of a preferred pharmacy  
3 network that is owned by the pharmacy benefits manager, without  
4 the express consent of the patient.

5 SECTION 2. Chapter 487J, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8 "§487J- Pharmacy benefits managers; health information;  
9 prohibited marketing practices. (a) A pharmacy benefits  
10 manager shall not:

11 (1) Use an individual's health information, or share an  
12 individual's health information with any pharmacy  
13 affiliated with or owned, wholly or in part, by the  
14 pharmacy benefits manager, for the purpose of  
15 marketing, unless:

16 (A) Use of the individual's health information is  
17 medically necessary to the health and safety of  
18 the individual;

19 (B) Use of the individual's health information is  
20 consistent with regulations of the federal



1                   Centers for Medicare and Medicaid, if the plan is  
2                   governed by those rules; or  
3           (C) The individual has affirmatively opted in, in  
4                   writing, to use of the information;  
5           (2) Sell or disseminate such information unless the sale  
6                   or dissemination complies with all federal and state  
7                   laws and the pharmacy benefits manager has received  
8                   written approval for such sale or dissemination from  
9                   the employee benefit plan, health benefits plan, or  
10                  managed care plan sponsor, and the individual; or  
11           (3) Directly contact an individual by any means, including  
12                   via electronic delivery, telephonic, SMS text, or  
13                   direct mail, for the purposes of marketing pharmacy  
14                   benefits manager-owned pharmacies without the express  
15                   written permission of the employee benefit plan,  
16                   health benefits plan, or managed care plan sponsor,  
17                   and the individual, unless the employee benefit plan,  
18                   health benefits plan, or managed care plan sponsor  
19                   first determines that the contact is medically  
20                   necessary to the health and safety of the individual.

1        (b) Nothing in this section shall prohibit the use of a  
2 patient's health information that is used in conjunction with an  
3 insurer-authorized program to more effectively use prescription  
4 drugs to improve the health and safety of the individual.

5        (c) A pharmacy benefits manager shall provide each  
6 individual with an opportunity to affirmatively opt in to the  
7 sale or dissemination of their health information prior to  
8 entering into any arrangement for the lease, rental,  
9 dissemination, or sale of such information to any other entity,  
10 or to any subsidiary owned, wholly or in part, by the pharmacy  
11 benefits manager; provided that an individual may freely revoke  
12 the affirmative opt in at any time."

13        SECTION 3. Section 487J-1, Hawaii Revised Statutes, is  
14 amended by adding seven new definitions to be appropriately  
15 inserted and to read as follows:

16        "Affiliated" means businesses or persons who have  
17 contractual arrangements with, or are subject to the control of,  
18 the pharmacy benefits manager.

19        "Employee benefit plan" means any plan as defined in title  
20 29 United States Code section 1002(3), as amended.



1       "Health benefits plan" has the same meaning as in section  
2       87A-1.

3       "Health information" has the same meaning as in 45 Code of  
4       Federal Regulations section 160.103, as may be amended.

5       "Managed care plan" has the same meaning as in section  
6       432E-1.

7       "Marketing" means making a communication about a product or  
8       service that encourages a recipient of the communication to  
9       purchase or use the product or service.

10       "Pharmacy benefits manager" means any person, business, or  
11       entity that performs pharmacy benefits management, including but  
12       not limited to a person or entity under contract with a pharmacy  
13       benefits manager to perform pharmacy benefits management on  
14       behalf of a managed care company, nonprofit hospital or medical  
15       service organization, insurance company, third-party payor, or  
16       health program administered by the State."

17       SECTION 4. New statutory material is underscored.

18       SECTION 5. This Act shall take effect upon its approval,  
19       and shall apply to all plans and contracts issued, renewed,  
20       modified, altered, or amended on or after such effective date.



**Report Title:**

Pharmacy Benefits Managers; Health Information; Right to Privacy; Prohibited Practices

**Description:**

Prohibits pharmacy benefits managers, or their partially or wholly owned subsidiaries, from using a patient's medical health information to market or advertise to that patient the services of a preferred pharmacy network that is owned by the pharmacy benefits manager, without the express consent of the patient. Permits specific exceptions. (HB62 CD1)

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

