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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  
21 Centers for Medicare and Medicaid, if the plan is  
22 governed by those rules; or



- 1           (C) The individual has affirmatively opted in, in  
2           writing, to use of the information;
- 3           (2) Sell or disseminate such information unless the sale  
4           or dissemination complies with all federal and state  
5           laws and the pharmacy benefits manager has received  
6           written approval for such sale or dissemination from  
7           the employee benefit plan, health benefits plan, or  
8           managed care plan sponsor, and the individual; or
- 9           (3) Directly contact an individual by any means, including  
10           via electronic delivery, telephonic, SMS text, or  
11           direct mail, for the purposes of marketing the  
12           pharmacy benefits manager-owned mail order pharmacy  
13           without the express written permission of the employee  
14           benefit plan, health benefits plan, or managed care  
15           plan sponsor, and the individual, unless the employee  
16           benefit plan, health benefits plan, or managed care  
17           plan sponsor first determines that the contact is  
18           specifically for health or safety reasons.
- 19           (b) Nothing in this section shall prohibit the use of a  
20           patient's health information that is used in conjunction with an  
21           insurer-authorized program to more effectively use prescription  
22           drugs to improve the health and safety of the individual.



1       (c) A pharmacy benefits manager shall provide each  
2 individual with an opportunity to affirmatively opt in to the  
3 sale or dissemination of their health information prior to  
4 entering into any arrangement for the lease, rental,  
5 dissemination, or sale of such information to any other entity,  
6 or to any subsidiary owned, wholly or in part, by the pharmacy  
7 benefits manager."

8       SECTION 3. Section 487J-1, Hawaii Revised Statutes, is  
9 amended by adding five new definitions to be appropriately  
10 inserted and to read as follows:

11       "Employee benefit plan" means any plan as defined in title  
12 29 United States Code section 1002(3), as amended.

13       "Health benefits plan" has the same meaning as in section  
14 87A-1.

15       "Managed care plan" has the same meaning as in section  
16 432E-1.

17       "Marketing" means making a communication about a product or  
18 service that encourages a recipient of the communication to  
19 purchase or use the product or service.

20       "Pharmacy benefits manager" means any person, business, or  
21 entity that performs pharmacy benefits management, including but  
22 not limited to a person or entity under contract with a pharmacy



1 benefits manager to perform pharmacy benefits management on  
2 behalf of a managed care company, nonprofit hospital or medical  
3 service organization, insurance company, third-party payor, or  
4 health program administered by the State."

5 SECTION 4. New statutory material is underscored.

6 SECTION 5. This Act shall take effect on July 1, 2020.



**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. Effective July 1, 2020. (SD2)

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