
A BILL FOR AN ACT

RELATING TO HEALTH.

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 "Extrapolation" means the accounting technique of using
14 analysis of a validly-constructed limited sample to reach a
15 conclusion about a larger system or universe.

16 "Legend drug" means any drug falling within section
17 503(b)(1) of the federal Food, Drug and Cosmetic Act and which
18 is required to be labeled with the statement "Rx only".

19 "Narcotic drug" has the same meaning as set forth in
20 section 329-1.

21 "National drug code number" means the unique, three-segment
22 number used as a universal product identifier for human drugs in



1 the Drug Registration and Licensing System maintained by the
2 federal Food and Drug Administration pursuant to the Food, Drug,
3 and Cosmetic Act, title 21 United States Code section 360.

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

6 "Pharmacist services" includes drug therapy and other
7 patient care services provided by a pharmacist or pharmacy
8 registered under chapter 461 intended to achieve outcomes that
9 relate to the cure or prevention of a disease, elimination or
10 reduction of a patient's symptoms, or arresting or slowing of a
11 disease process as defined in the regulations of the board of
12 pharmacy.

13 "Pharmacy" has the same meaning as set forth in section
14 461-1.

15 "Pharmacy benefit management company" means a business that
16 administers the prescription drug or device portion of health
17 insurance plans on behalf of plan sponsors, including self-
18 insured employers, insurers, unions, mutual benefit societies,
19 and health maintenance organizations.

20 "Pharmacy benefit management plan" means an arrangement for
21 the delivery of pharmacist services in which a pharmacy benefit
22 management company undertakes to provide, arrange for, pay for,



1 or reimburse any of the costs of pharmacist services for an
2 enrollee on a prepaid or insured basis.

3 "Pharmacy benefit manager" means a person or entity that
4 performs pharmacy benefit management services for a pharmacy
5 benefit management company and includes a person or entity in a
6 contractual or employment relationship with a person or entity
7 performing pharmacy benefit management services for a health
8 plan.

9 § -2 **Registration.** (a) Beginning on January 1, 2014, a
10 person shall not establish or operate a pharmacy benefit
11 management company to provide pharmacy benefit management plans
12 in the State without first obtaining from the commissioner a
13 license to do business in the State. Pharmacy benefit
14 management companies operating in the State as of the effective
15 date of this Act shall register with the commissioner by
16 January 1, 2014.

17 (b) Each pharmacy benefit management company that provides
18 pharmacy benefit management plans in the State shall file an
19 annual statement with the commissioner on the form required by
20 the commissioner on or before March 1 of each year in accordance
21 with this section.

22 The annual statement shall:



- 1 (1) Be verified by at least two principal officers of the
- 2 pharmacy benefit management company;
- 3 (2) Cover the preceding calendar year;
- 4 (3) Include a financial statement of the organization,
- 5 including its balance sheet and income statement for
- 6 the preceding year; and
- 7 (4) Include the number of Hawaii residents enrolled in
- 8 each pharmacy benefit management plan during the year,
- 9 the number of enrollees as of the end of the
- 10 applicable calendar year, and the number of
- 11 enrollments terminated during the applicable calendar
- 12 year.

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

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

1 (d) A pharmacy benefit management company that fails to
2 file its annual statement within the time required by this
3 section shall pay a fine of \$50 for each day after the due date
4 that the annual report has not been filed with the commissioner.
5 A pharmacy benefit management company may have its license
6 revoked by the commissioner for failure to file its annual
7 statement.

8 § -3 **Audit of pharmacy records.** (a) An auditing entity
9 shall conduct an audit of the records of a pharmacy for claims
10 submitted for payment after July 1, 2013, in accordance with the
11 following criteria:

12 (1) The auditing entity conducting the initial on-site
13 audit shall give the pharmacy notice at least two
14 weeks prior to conducting the initial on-site audit
15 for each audit cycle;

16 (2) An audit that involves clinical or professional
17 judgment shall be conducted by or in consultation with
18 a pharmacist;

19 (3) A clerical or record-keeping error regarding a
20 required document or record that is discovered during
21 an audit shall not necessarily constitute fraud, but
22 such a claim:



- 1 (A) May be subject to recoupment; and
- 2 (B) Shall not be subject to criminal penalties
- 3 without proof of intent to commit fraud;
- 4 (4) A pharmacy may use the records of a hospital,
- 5 physician, or other authorized practitioner of the
- 6 healing arts for drugs or medicinal supplies written
- 7 or transmitted by any means of communication for
- 8 purposes of validating the pharmacy record with
- 9 respect to orders or refills of legend or narcotic
- 10 drugs;
- 11 (5) A finding of an overpayment or underpayment shall not
- 12 be based on a projection of the number of patients
- 13 served having a similar diagnosis or on the number of
- 14 similar orders or refills for similar drugs; rather,
- 15 recoupment of claims shall be based on the actual
- 16 overpayment or underpayment, unless the auditing
- 17 entity demonstrates a statistically justifiable method
- 18 of projection or the projection for overpayment or
- 19 underpayment is part of a settlement as agreed to by
- 20 the pharmacy;

- 1 (6) Each pharmacy shall be audited under the same
2 standards and parameters as other similarly situated
3 pharmacies audited by the auditing entity;
- 4 (7) Each pharmacy shall be allowed at least twenty-one
5 business days, with reasonable extensions allowed,
6 following receipt of the preliminary audit report in
7 which to produce documentation to address any
8 discrepancy found during an audit;
- 9 (8) The period covered by an audit shall not exceed two
10 years, unless otherwise provided by contractual
11 agreement, from the date the claim was submitted to or
12 adjudicated by an auditing entity or unless the period
13 conflicts with state or federal law;
- 14 (9) An audit shall not be initiated or scheduled during
15 the first five calendar days of a month, due to the
16 high volume of prescriptions filled during that time,
17 unless otherwise consented to by the pharmacy;
- 18 (10) The preliminary audit report shall be delivered to the
19 pharmacy within one hundred twenty days, with
20 reasonable extensions allowed, after conclusion of the
21 audit, and the final report shall be delivered to the
22 pharmacy within six months after the pharmacy's



1 receipt of the preliminary audit report or final
2 appeal, as provided for in subsection (c), whichever
3 is later; and

4 (11) Notwithstanding any other provision in this
5 subsection, the auditing entity conducting the audit
6 shall not use the accounting practice of extrapolation
7 in calculating recoupments or penalties for audits.

8 (b) Recoupment of any disputed funds shall occur after
9 final internal disposition of the audit, including the appeals
10 process set forth in subsection (c). If the identified
11 discrepancy for an individual audit exceeds \$25,000, future
12 payments to the pharmacy may be withheld pending finalization of
13 the audit.

14 (c) Each auditing entity conducting an audit shall
15 establish an appeals process under which a pharmacy may appeal
16 an unfavorable preliminary audit report to the auditing entity.
17 If, following the appeal, the auditing entity finds that an
18 unfavorable audit report or any portion of the audit is
19 unsubstantiated, the auditing entity shall dismiss the audit
20 report or the unsubstantiated portion of the report of the audit
21 without the necessity of any further proceedings.



1 (d) This section shall not apply to any investigative
2 audit that involves probable or potential fraud or wilful
3 misrepresentation.

4 § -4 Reporting. (a) Notwithstanding any other
5 provision of law to the contrary, a pharmacy benefit management
6 company contracting with an auditing entity to provide
7 prescription drug coverage in the State of Hawaii shall provide
8 at least annually a report to each group health plan, including
9 an accident and health or sickness insurance company under
10 chapter 431, article 10A; a health maintenance organization
11 under chapter 432D; a mutual benefit society or a nonprofit
12 hospital and health service corporation under chapter 432; or
13 any other entity providing a plan of health insurance, health
14 benefits, or health services with which the pharmacy benefit
15 management company has a contract.

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

18 (1) Information on the number and total amount paid to
19 pharmacies for prescriptions filled under the
20 contract, reported by the following types of
21 pharmacies: mail order pharmacies, specialty
22 pharmacies, and retail pharmacies;



1 (2) The total amount that the pharmacy benefit manager was
2 paid by the plan or issuer for prescriptions filled
3 under the contract, reported by the following types of
4 pharmacies: mail order pharmacies, specialty
5 pharmacies, and retail pharmacies;

6 (3) The total payment under the contract received from
7 pharmaceutical manufacturers, including all rebates;
8 market share rebates; disease management fees; data
9 selling fees; sales target fees; discounts, including
10 prompt payment discounts; price concessions; or
11 administrative and other payments from pharmaceutical
12 manufacturers;

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

16 (5) Information on the overall percentage of generic drugs
17 dispensed under the contract, separately at retail and
18 mail order pharmacies, and the percentage of cases in
19 which a generic drug was dispensed when available.

20 § -5 **Information for pharmacies.** A pharmacy benefit
21 management company shall provide to pharmacies that contract
22 with the pharmacy benefit management company:

- 1 (1) The methodology that the pharmacy benefit management
- 2 company uses to determine reimbursement;
- 3 (2) The frequency with which the pharmacy benefit
- 4 management company provides updates to pharmacy
- 5 product reimbursement benchmarks used to calculate
- 6 prescription reimbursement to pharmacies; and
- 7 (3) Prompt payment to pharmacies for clean claims as
- 8 required by state law.

9 § -6 Information for pharmacy benefit management

10 **enrollees.** (a) Each pharmacy benefit management company shall

11 make available to its enrollees the information contained in

12 subsection (b). This information shall be made available to

13 enrollees upon request or at least updated annually on the

14 pharmacy benefit management company's website.

15 (b) The information required to be provided to enrollees

16 includes:

- 17 (1) A list of the names and locations of all affiliated
- 18 providers;
- 19 (2) A description of the method of resolving complaints of
- 20 covered persons; and

1 (3) Notice that the pharmacy benefit management company is
2 required to be registered in the State by the
3 commissioner.

4 § -7 **Prohibited activities.** (a) A pharmacy benefit
5 management company shall not exclude any willing provider from
6 any contract offered within the State, including the Hawaii
7 employer-union health benefits trust fund, public assistance
8 programs, and commercial entities.

9 (b) A pharmacy benefit management plan shall take no
10 action that would restrict a patient's choice of pharmacy from
11 which to receive prescription medications, nor shall a pharmacy
12 benefit management plan require patients to receive prescription
13 medications from mail-order pharmacies located outside the
14 State.

15 (c) A pharmacy benefit management company shall not
16 manipulate the amounts of drug co-payments that it charges in a
17 manner that would encourage patients to receive prescription
18 medications from a mail-order pharmacy located outside the
19 State.

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



1 (e) A pharmacy benefit management company shall not
2 establish reimbursement amounts for providers that are less than
3 a provider's acquisition cost plus a professional dispensing
4 fee.

5 (f) A pharmacy benefit management company shall not charge
6 or receive reimbursement for rebranded pharmaceutical products
7 or pharmaceutical products with an altered national drug code
8 number.

9 (g) A pharmacy benefit management company shall not ship,
10 mail, or deliver drugs or devices to a person in the State
11 through a non-resident pharmacy unless that non-resident
12 pharmacy is registered with or has a permit issued by the board
13 of pharmacy.

14 § -8 **Violations; penalties.** (a) The commissioner may
15 assess a pharmacy benefit management company in violation of
16 this chapter a fine of up to \$10,000 for each violation. In
17 addition, the commissioner may direct the pharmacy benefit
18 management company to cease and desist prohibited activity, take
19 specific affirmative corrective action, or make restitution of
20 money, property, or other assets.

21 (b) A pharmacy benefit management company may appeal any
22 decision made by the commissioner under this section, whereupon

1 the opportunity for an administrative hearing under chapter 91
2 shall be afforded. Any pharmacy benefit management company
3 aggrieved by the final decision and order shall be entitled to
4 judicial review in accordance with chapter 91 or may submit the
5 matter to binding arbitration.

6 § -9 Rules. (a) The commissioner shall adopt rules
7 pursuant to chapter 91 for the purposes of implementing this
8 chapter.

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

15 SECTION 3. This Act shall take effect upon its approval.

16

INTRODUCED BY:

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[Signature]

JAN 22 2013



Report Title:

Pharmacy Benefit Management Companies

Description:

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

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