

JAN 18 2013

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# 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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# S.B. NO. 667

**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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