

JAN 24 2018

A BILL FOR AN ACT

RELATING TO PHARMACY BENEFIT MANAGERS.

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

1 SECTION 1. The legislature finds that there needs to be
2 more transparency and regulation for the cost of prescription
3 drugs. Prices for prescription drugs have continued to
4 increase, making it difficult for individuals to purchase
5 medicine. The legislature further finds that the State needs to
6 strengthen its laws to promote better transparency of
7 prescription drug prices.

8 The purpose of this Act is to:

- 9 (1) Require pharmacy benefit managers to notify
10 contracting pharmacies of changes to maximum allowable
11 costs by the national drug code fifteen days prior to
12 the change;
- 13 (2) Require pharmacy benefit managers to disclose where an
14 equivalent drug can be obtained at or below the
15 maximum allowable cost, when a maximum allowable cost
16 is upheld on appeal;



- 1 (3) Require pharmacy benefit managers to allow contracting
- 2 pharmacies to reverse and rebill claims if the
- 3 pharmacy benefit manager establishes a maximum
- 4 allowable cost that is denied on appeal and pay the
- 5 difference to the contracting pharmacies;
- 6 (4) Permit contracting pharmacies to decline to dispense a
- 7 drug if the reimbursement is less than the acquisition
- 8 cost;
- 9 (5) Permit the insurance commissioner to suspend a
- 10 pharmacy benefit manager's certification if the
- 11 manager does not comply with state law; and
- 12 (6) Require the department of health to annually report to
- 13 the legislature and any other state agency on appeals
- 14 and disposition.

15 SECTION 2. Section 328-106, Hawaii Revised Statutes, is
 16 amended to read as follows:

17 " [†]§328-106[†] **Pharmacy benefit manager; maximum**
 18 **allowable cost.** (a) A pharmacy benefit manager that reimburses
 19 a contracting pharmacy for a drug on a maximum allowable cost
 20 basis shall comply with the requirements of this section.



1 (b) The pharmacy benefit manager shall include the
2 following in the contract information with a contracting
3 pharmacy:

4 (1) Information identifying any national drug pricing
5 compendia; or

6 (2) Other data sources for the maximum allowable cost
7 list.

8 (c) The pharmacy benefit manager shall make available to a
9 contracting pharmacy, upon request, the most up-to-date maximum
10 allowable cost price or prices used by the pharmacy benefit
11 manager for patients served by the pharmacy in a readily
12 accessible, secure, and usable web-based or other comparable
13 format.

14 (d) A drug shall not be included on a maximum allowable
15 cost list or reimbursed on a maximum allowable cost basis unless
16 all of the following apply:

17 (1) The drug is listed as "A" or "B" rated in the most
18 recent version of the Orange Book or has a rating of
19 "NR", "NA", or similar rating by a nationally
20 recognized reference;



1 (2) The drug is generally available for purchase in this
2 State from a national or regional wholesaler; and

3 (3) The drug is not obsolete.

4 (e) The pharmacy benefit manager shall review and make
5 necessary adjustments to the maximum allowable cost of each drug
6 on a maximum allowable cost list at least once every seven days
7 using the most recent data sources available, and shall apply
8 the updated maximum allowable cost list beginning that same day
9 to reimburse the contracted pharmacy until the pharmacy benefit
10 manager next updates the maximum allowable cost list in
11 accordance with this section.

12 (f) The pharmacy benefit manager shall notify all
13 contracting pharmacies of changes to maximum allowable costs by
14 the national drug code fifteen days prior to initiating the
15 change.

16 [~~f~~] (g) The pharmacy benefit manager shall have a
17 clearly defined process for a contracting pharmacy to appeal the
18 maximum allowable cost for a drug on a maximum allowable cost
19 list that complies with all of the following:

20 (1) A contracting pharmacy may base its appeal on one or
21 more of the following:



- 1 (A) The maximum allowable cost for a drug is below
- 2 the cost at which the drug is available for
- 3 purchase by similarly situated pharmacies in this
- 4 State from a national or regional wholesaler; or
- 5 (B) The drug does not meet the requirements of
- 6 subsection (d);
- 7 (2) A contracting pharmacy shall be provided no less than
- 8 fourteen business days following receipt of payment
- 9 for a claim to file the appeal with the pharmacy
- 10 benefit manager;
- 11 (3) The pharmacy benefit manager shall make a final
- 12 determination on the contracting pharmacy's appeal no
- 13 later than fourteen business days after the pharmacy
- 14 benefit manager's receipt of the appeal;
- 15 (4) If the maximum allowable cost is upheld on appeal, the
- 16 pharmacy benefit manager shall provide to the
- 17 contracting pharmacy the reason therefor and the
- 18 national drug code of an equivalent drug that may be
- 19 purchased by a similarly situated pharmacy at a price
- 20 that is equal to or less than the maximum allowable
- 21 cost of the drug that is the subject of the appeal[+]



1 with the name of the source, including but not limited
2 to the wholesaler or distributor, where the drug may
3 be purchased; and

4 (5) If the maximum allowable cost is not upheld on appeal,
5 the pharmacy benefit manager shall adjust, for the
6 appealing contracting pharmacy, the maximum allowable
7 cost of the drug that is the subject of the appeal,
8 within one calendar day of the date of the decision on
9 the appeal and allow the contracting pharmacy to
10 reverse and rebill [~~the appealed claim.~~] claims
11 submitted from the date of the original submission;
12 provided that the pharmacy benefit manager shall pay
13 the appealing contracting pharmacy the difference
14 between the maximum allowable cost set by the national
15 drug code on the day of the claim and the maximum
16 allowable cost being appealed.

17 [~~(g)~~] (h) A contracting pharmacy shall not disclose to any
18 third party the maximum allowable cost list and any related
19 information it receives, either directly from a pharmacy benefit
20 manager or through a pharmacy services administrative



1 organization or similar entity with which the pharmacy has a
2 contract to provide administrative services for that pharmacy.

3 (i) A contracting pharmacy or pharmacist may decline to
4 provide a brand name drug, equivalent generic drug product, or
5 service, if the contracting pharmacy or pharmacist is paid less
6 than the acquisition cost for the drug or service. If the
7 contracting pharmacy or pharmacist declines to provide such drug
8 or service, the pharmacy or pharmacist shall inform the
9 individual requesting the drug or service to contact the
10 individual's prescription drug benefit plan provider, as defined
11 in section 431R-1, for adequate information as to where the
12 prescription for the drug or service may be filled, and the
13 prescription drug benefit plan provider, upon request, shall
14 provide that adequate information to the individual.

15 (j) The insurance commissioner may immediately revoke a
16 pharmacy benefit manager's registration if the pharmacy benefit
17 manager violates this section.

18 The department shall adopt rules, pursuant to chapter 91,
19 necessary to enforce this subsection.

20 (k) The department of health shall submit an annual report
21 to the legislature and to any other state agency, as deemed



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1 necessary by the department, no later than twenty days prior to
 2 the convening of each regular session providing a list of
 3 appeals made and whether the appeals were upheld or not."

4 SECTION 3. This Act does not affect rights and duties that
 5 matured, penalties that were incurred, and proceedings that were
 6 begun before its effective date.

7 SECTION 4. Statutory material to be repealed is bracketed
 8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect on July 1, 2018.

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S.B. NO. 3072

Report Title:

Prescription Drugs; Pharmacy Benefit Managers; Maximum Allowable Costs; Department of Health; Insurance Commissioner

Description:

Requires pharmacy benefit managers to notify contracting pharmacies of changes to maximum allowable costs by the National Drug Code fifteen days prior to the change. Requires pharmacy benefit managers to disclose where an equivalent drug can be obtained at or below the maximum allowable cost, when a maximum allowable cost appeal is upheld on appeal. Requires pharmacy benefit managers to: allow contracting pharmacies to reverse and rebill claims if the pharmacy benefit manager establishes a maximum allowable cost that is denied on appeal; and pay the difference to the contracting pharmacies. Permits contracting pharmacies to decline to dispense a drug if the reimbursement is less than the acquisition cost. Permits the insurance commissioner to suspend a pharmacy benefit manager's certification if the manager does not comply with state law. Requires the Department of Health to annually report to the legislature and any other state agency on appeals and disposition.

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