
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 existing law
2 requires pharmacy benefit managers to register with the
3 insurance commissioner. The National Council of Insurance
4 Legislators and the National Academy for State Health Policy
5 have adopted model acts that establish the standard criteria for
6 the regulation and licensure of pharmacy benefit managers
7 providing claims processing services or other prescription drug
8 or device services for health benefit plans.

9 The purpose of this Act is to increase transparency and
10 promote, preserve, and protect the public health, safety, and
11 welfare by adopting certain provisions of these models acts to:

- 12 (1) Prohibit pharmacy benefit managers from engaging in
13 self-serving business practices;
- 14 (2) Increase the pharmacy benefit managers' annual
15 reporting requirements; and
- 16 (3) Replace the registration requirement for pharmacy
17 benefit managers with a licensure requirement.



1 SECTION 2. Chapter 431S, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§431S- Pharmacy benefit manager business practices. A
5 pharmacy benefit manager shall be prohibited from penalizing,
6 requiring, or providing financial incentives, including
7 variations in premiums, deductibles, copayments, or coinsurance,
8 to covered persons as incentives to use specific retail, mail
9 service pharmacy, or other network pharmacy provider in which a
10 pharmacy benefit manager has an ownership interest or that has
11 an ownership interest in a pharmacy benefit manager.

12 §431S- Transparency report. (a) No later than
13 January 1, 2020, and annually thereafter, each pharmacy benefit
14 manager shall submit a transparency report containing data from
15 the preceding calendar year to the insurance commissioner that
16 shall include:

17 (1) The aggregate amount of all rebates that the pharmacy
18 benefit manager received from all pharmaceutical
19 manufacturers for all covered entity clients and for
20 each covered entity client;



1 (2) The aggregate administrative fees that the pharmacy
2 benefit manager received from all manufacturers for
3 all covered entity clients and for each covered entity
4 client;

5 (3) The aggregate retained rebates that the pharmacy
6 benefit manager received from all pharmaceutical
7 manufacturers and did not pass through to covered
8 entities;

9 (4) The aggregate retained rebate percentage; and

10 (5) The highest, lowest, and mean aggregate retained
11 rebate percentage for all covered entity clients and
12 for each covered entity client.

13 (b) A pharmacy benefit manager providing information under
14 this section may designate that material as a trade secret;
15 provided that disclosure may be ordered by a court of this State
16 for good cause shown or made in a court filing.

17 (c) The insurance commissioner shall review the
18 transparency report required under subsection (a) and, no later
19 than sixty days after the receipt of the report, shall publish
20 the transparency report on the insurance division's website in a



1 manner that would not be considered an unauthorized disclosure
2 of a pharmacy benefit manager's trade secrets."

3 SECTION 3. Section 431R-1, Hawaii Revised Statutes, is
4 amended by amending the definition of "pharmacy benefit manager"
5 to read as follows:

6 "Pharmacy benefit manager" means any person, business, or
7 entity that performs pharmacy benefit management, including but
8 not limited to a person or entity under contract with a pharmacy
9 benefit manager to perform pharmacy benefit management on behalf
10 of a managed care company, nonprofit hospital or medical service
11 organization, insurance company, third-party payor, or health
12 program administered by the State[-] and that is duly licensed
13 pursuant to chapter 431S."

14 SECTION 4. Section 431S-1, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By adding six new definitions to be appropriately
17 inserted and to read:

18 "Aggregate retained rebate percentage" means the
19 percentage of all rebates received from a manufacturer or other
20 entity to a pharmacy benefit manager for prescription drug
21 utilization which is not passed on to pharmacy benefit managers'



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1 covered entity clients. The percentage shall be calculated for
2 each covered entity for rebates in the prior calendar year as
3 follows:

4 (1) The sum total dollar amount of rebates received from
5 all pharmaceutical manufacturers for all utilization
6 of covered persons of a covered entity that was not
7 passed through to the covered entity; and

8 (2) Divided by the sum total dollar amount of all rebates
9 received from all pharmaceutical manufacturers for
10 covered persons of a covered entity.

11 "Mail service pharmacy" means a pharmacy whose primary
12 business is to receive prescriptions by mail, telefax, or
13 electronic submissions, and dispense medications to covered
14 persons through the use of the United State postal service or
15 other contract carrier services and that provides electronic,
16 rather than face-to-face consultations, with patients.

17 "Network pharmacy" means a retail pharmacy located and
18 licensed in the State and contracted by the pharmacy benefit
19 manager to sell prescription drugs to beneficiaries of a
20 prescription drug benefit plan administered by the pharmacy
21 benefit manager.



1 "Rebates" means all price concessions paid by a
2 manufacturer to a pharmacy benefit manager or covered entity,
3 including rebates, discounts, and other price concessions that
4 are based on actual or estimated utilization of a prescription
5 drug. "Rebates" also includes price concessions based on the
6 effectiveness of a drug as in a value-based or performance-based
7 contract.

8 "Retail pharmacy" means a pharmacy, permitted by the board
9 of pharmacy pursuant to section 461-14, that is open to the
10 public, dispenses prescription drugs to the general public, and
11 makes available face-to-face consultations between licensed
12 pharmacists and the general public to whom prescription drugs
13 are dispensed.

14 "Trade secret" shall have the same meaning as defined in
15 section 482B-2."

16 2. By amending the definition of "pharmacy benefit
17 manager" to read:

18 "Pharmacy benefit manager" means any person, business, or
19 other entity, including a wholly or partially owned or
20 controlled subsidiary of a pharmacy benefit manager, that is
21 licensed pursuant to this chapter, and that performs pharmacy



1 benefit management, including but not limited to a person or
 2 entity in a contractual or employment relationship with a
 3 pharmacy benefit manager to perform pharmacy benefit management
 4 for a covered entity. "Pharmacy benefit manager" shall not
 5 include any health care facility licensed in this State, a
 6 health care provider licensed in this State, or a consultant who
 7 only provides advice as to the selection or performance of a
 8 pharmacy benefit manager."

9 SECTION 5. Section 431S-3, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 "~~{}~~§431S-3~~{}~~ **Registration** License required. (a)
 12 Notwithstanding any law to the contrary, no person shall act or
 13 operate as a pharmacy benefit manager without first obtaining a
 14 valid ~~[registration]~~ license issued by the commissioner pursuant
 15 to this chapter. The license shall not be transferable.

16 (b) The commissioner may grant a license under this
 17 chapter if the commissioner is satisfied that the applicant
 18 possessed the necessary organization, background expertise, and
 19 financial integrity to supply the services sought to be offered
 20 pursuant to this chapter.



1 (c) The commissioner may issue a license subject to
2 restrictions or limitations upon the authorization, including
3 the types of services that may be supplied or the activities in
4 which the applicant may be engaged.

5 [~~(b)~~] (d) Each person seeking [~~to register~~] a license as a
6 pharmacy benefit manager shall file with the commissioner an
7 application on a form prescribed by the commissioner. The
8 application shall include:

9 (1) The name, address, official position, and professional
10 qualifications of each individual who is responsible
11 for the conduct of the affairs of the pharmacy benefit
12 manager, including all members of the board of
13 directors; board of trustees; executive commission;
14 other governing board or committee; principal
15 officers, as applicable; partners or members, as
16 applicable; and any other person who exercises control
17 or influence over the affairs of the pharmacy benefit
18 manager;

19 (2) The name and address of the applicant's agent for
20 service of process in the State; and

21 (3) A nonrefundable application fee of \$140.



1 (e) The commissioner may suspend, revoke, or place on
2 probation a pharmacy benefit manager licensee if:

3 (1) The pharmacy benefit manager has engaged in fraudulent
4 activity in violation of federal or state law;

5 (2) The commissioner receives consumer complaints that
6 justify an action under this subsection to protect the
7 safety and interest of consumers;

8 (3) The pharmacy benefit manager fails to pay required
9 fees under this chapter; or

10 (4) The pharmacy benefit manager fails to comply with any
11 other requirement under this chapter."

12 SECTION 6. Section 431S-4, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[+]§431S-4[+] **Annual renewal requirement.** (a) Each
15 pharmacy benefit manager shall renew its [~~registration~~] license
16 by March 31 each year.

17 (b) When renewing its [~~registration,~~] license, a pharmacy
18 benefit manager shall submit to the commissioner the following:

19 (1) An application for renewal on a form prescribed by the
20 commissioner; and

21 (2) A renewal fee of \$140.



1 (c) Failure on the part of a pharmacy benefit manager to
2 renew its [~~registration~~] license as provided in this section
3 shall result in a penalty of \$140 and may cause the
4 [~~registration~~] license to be revoked or suspended by the
5 commissioner until the requirements for renewal have been met."

6 SECTION 7. Section 431S-5, Hawaii Revised Statutes, is
7 amended to read as follows:

8 " ~~[+] §431S-5 []~~ **Penalty.** Any person who acts as a pharmacy
9 benefit manager in this State without first being [~~registered~~]
10 licensed pursuant to this chapter shall be subject to a fine of
11 ~~[\$500]~~ \$5,000 for each day of continued violation."

12 SECTION 8. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 9. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

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1 SECTION 10. This Act shall take effect upon its approval.

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INTRODUCED BY: B. Baker
 L. Dedichine

JAN 24 2019



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Report Title:

Pharmacy Benefit Managers; Insurance Commissioner; Licensure; Reporting

Description:

Prohibits pharmacy benefit managers from engaging in self-serving business practices. Replaces registration requirement with license requirement for pharmacy benefit managers. Increases pharmacy benefit manager reporting requirements to the insurance commissioner.

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