
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 pharmacy benefit
2 managers are third party administrators that contract with
3 health plans, employers, unions, and government entities to
4 manage prescription drug programs on behalf of health plan
5 beneficiaries. Over the past decade, the role of pharmacy
6 benefit managers in the delivery of health care has
7 significantly increased. However, a recent report has found
8 that pharmacy benefit managers have had an adverse impact on the
9 overall costs and prices of prescription drugs.

10 The legislature further finds that a maximum allowable cost
11 list is a list of the maximum amounts that a pharmacy benefit
12 manager will reimburse a pharmacy for various drugs. In
13 general, no two maximum allowable cost lists are alike and will
14 vary according to drug, pharmacy benefit manager, and plan
15 sponsor. However, the lack of transparency surrounding maximum
16 allowable cost pricing has enabled pharmacy benefit managers to
17 pay aggressively low reimbursements to pharmacies, while



1 charging significantly higher amounts for the same drug to plan
2 sponsors. This large discrepancy between the list price of
3 prescription drugs and the transaction price often results in
4 much higher patient copayments.

5 The legislature also finds that nearly all health insurance
6 plans require some level of cost sharing, either via a fixed
7 copayment or some percentage of the cost of care. However, in
8 certain situations, a pharmacy benefit manager may set an
9 insurance copayment at a higher amount than the actual cost of
10 the medication and later take back the excess amount from a
11 pharmacy, in a practice known as copay clawbacks.

12 The legislature additionally finds that although Hawaii has
13 an existing pharmacy benefit manager transparency law, the law
14 lacks an appropriate enforcement mechanism or incentive for
15 pharmacy benefit managers to comply with disclosure of maximum
16 allowable cost lists. Furthermore, while this law is currently
17 under the responsibility of the department of health, the
18 legislature notes that it would be more appropriate for these
19 requirements to be within the purview of the department of
20 commerce and consumer affairs, as that is the department with
21 existing regulatory control over pharmacy benefit managers.



1 Accordingly, the purpose of this Act is to:

2 (1) Establish requirements for pharmacy benefit managers
3 and maximum allowable cost, including the ability of
4 pharmacies to receive comprehensive maximum allowable
5 cost lists, and move enforcement to the department of
6 commerce and consumer affairs, rather than the
7 department of health;

8 (2) Allow contracting pharmacies to reverse and rebill all
9 claims for an appealed drug if the pharmacy benefit
10 manager establishes a maximum allowable cost that is
11 denied on appeal and pay the maximum allowable cost
12 approved after resolution of the appeal by the
13 contracting pharmacies; and

14 (3) Clarify the available penalties for violations of
15 maximum allowable cost requirements.

16 SECTION 2. Chapter 431R, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§431R- Pharmacy benefit manager; maximum allowable
20 cost. (a) A pharmacy benefit manager that reimburses a



1 contracting pharmacy for a drug on a maximum allowable cost
2 basis shall comply with the requirements of this section.

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

6 (1) Information identifying any national drug pricing
7 compendia; or

8 (2) Other data sources for the maximum allowable cost
9 list.

10 (c) The pharmacy benefit manager shall make available to a
11 contracting pharmacy, upon request, a comprehensive report for
12 the requested plan for all drugs on the maximum allowable cost
13 list, which contains the most up-to-date maximum allowable cost
14 price or prices used by the pharmacy benefit manager for
15 patients served by the pharmacy, in a readily accessible and
16 secure electronic or usable web-based format. The comprehensive
17 report shall also include the following:

18 (1) The name of the drug;

19 (2) The pharmacy benefit manager's maximum allowable cost
20 price; and

21 (3) The national drug code.



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

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

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

10 (3) The drug is not obsolete.

11 (e) The pharmacy benefit manager shall review and make
12 necessary adjustments to the maximum allowable cost of each drug
13 on a maximum allowable cost list at least once every seven days
14 using the most recent data sources available, and shall apply
15 the updated maximum allowable cost list beginning that same day
16 to reimburse the contracting pharmacy until the pharmacy benefit
17 manager next updates the maximum allowable cost list in
18 accordance with this section.

19 (f) The pharmacy benefit manager shall have a clearly
20 defined process for a contracting pharmacy to appeal the maximum



1 allowable cost for a drug on a maximum allowable cost list that
2 complies with all of the following:

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

5 (A) The maximum allowable cost for a drug is below
6 the cost at which the drug is available for
7 purchase by similarly situated pharmacies in this
8 State from a national or regional wholesaler; or

9 (B) The drug does not meet the requirements of
10 subsection (d) for reimbursement on a maximum
11 allowable cost basis;

12 (2) A contracting pharmacy shall be provided no less than
13 fourteen business days following receipt of payment
14 for a claim to file the appeal with the pharmacy
15 benefit manager;

16 (3) The pharmacy benefit manager shall make a final
17 determination on the contracting pharmacy's appeal no
18 later than fourteen business days after the pharmacy
19 benefit manager's receipt of the appeal;

20 (4) If the maximum allowable cost is upheld on appeal, the
21 pharmacy benefit manager shall provide to the



1 contracting pharmacy the reason therefor and the
2 national drug code of an equivalent drug that may be
3 purchased by a similarly situated pharmacy at a price
4 that is equal to or less than the maximum allowable
5 cost of the drug that is the subject of the appeal;
6 and

7 (5) If the maximum allowable cost is not upheld on appeal,
8 the pharmacy benefit manager shall adjust, for the
9 appealing contracting pharmacy, the maximum allowable
10 cost of the drug that is the subject of the appeal,
11 within one calendar day of the date of the decision on
12 the appeal and allow the contracting pharmacy to
13 reverse and rebill the claim that is the subject of
14 the appeal, and for all claims for the appealed drug
15 at the plan level, until the maximum allowable cost
16 list is updated pursuant to subsection (e), to be
17 reimbursed at the maximum allowable cost established
18 by the appeal.

19 (g) A contracting pharmacy shall not disclose to any third
20 party the maximum allowable cost list and any related
21 information it receives, either directly from a pharmacy benefit



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

4 (h) The insurance commissioner may adopt rules pursuant to
5 chapter 91 to enforce the provisions of this section."

6 SECTION 3. Section 431R-1, Hawaii Revised Statutes, is
7 amended by adding four new definitions to be appropriately
8 inserted and to read as follows:

9 "Contracting pharmacy" means an independent pharmacy that
10 is not part of a regional or national chain, or part of a
11 pharmacy services administration organization, and is separated
12 from any other pharmacy by at least a ten mile radius.

13 "Maximum allowable cost" means the maximum amount that a
14 pharmacy benefit manager shall reimburse a pharmacy for the cost
15 of a drug.

16 "Maximum allowable cost list" means a list of drugs for
17 which a maximum allowable cost has been established by a
18 pharmacy benefit manager.

19 "Orange Book" means the United States Food and Drug
20 Administration's "Approved Drug Products with Therapeutic
21 Equivalence Evaluations" publication and its cumulative



1 supplements, which include a list of approved prescription drug
2 products with therapeutic equivalence evaluations."

3 SECTION 4. Section 431R-5, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The insurance commissioner may assess a fine of up to
6 \$10,000 for each violation by a pharmacy benefit manager or
7 prescription drug benefit plan provider who is in violation of
8 section 431R-2 [~~or~~], 431R-3 [~~-~~], or 431R- . In addition, the
9 insurance commissioner may order the pharmacy benefit manager to
10 take specific affirmative corrective action or make
11 restitution."

12 SECTION 5. Section 328-91, Hawaii Revised Statutes, is
13 amended by deleting the definitions of "maximum allowable cost"
14 and "maximum allowable cost list".

15 [~~"Maximum allowable cost" means the maximum amount that a~~
16 ~~pharmacy benefit manager shall reimburse a pharmacy for the cost~~
17 ~~of a drug.~~

18 [~~"Maximum allowable cost list" means a list of drugs for~~
19 ~~which a maximum allowable cost has been established by a~~
20 ~~pharmacy benefit manager."~~]



1 SECTION 6. Section 328-106, Hawaii Revised Statutes, is
2 repealed.

3 ~~["~~§328-106~~ Pharmacy benefit manager, maximum allowable~~
4 ~~cost.~~ (a) ~~A pharmacy benefit manager that reimburses a~~
5 ~~contracting pharmacy for a drug on a maximum allowable cost~~
6 ~~basis shall comply with the requirements of this section.~~

7 ~~(b) The pharmacy benefit manager shall include the~~
8 ~~following in the contract information with a contracting~~
9 ~~pharmacy:~~

10 ~~(1) Information identifying any national drug pricing~~
11 ~~compendia; or~~

12 ~~(2) Other data sources for the maximum allowable cost~~
13 ~~list.~~

14 ~~(c) The pharmacy benefit manager shall make available to a~~
15 ~~contracting pharmacy, upon request, the most up to date maximum~~
16 ~~allowable cost price or prices used by the pharmacy benefit~~
17 ~~manager for patients served by the pharmacy in a readily~~
18 ~~accessible, secure, and usable web based or other comparable~~
19 ~~format.~~



1 ~~(d) A drug shall not be included on a maximum allowable~~
2 ~~cost list or reimbursed on a maximum allowable cost basis unless~~
3 ~~all of the following apply:~~

4 ~~(1) The drug is listed as "A" or "B" rated in the most~~
5 ~~recent version of the Orange Book or has a rating of~~
6 ~~"NR", "NA", or similar rating by a nationally~~
7 ~~recognized reference;~~

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

10 ~~(3) The drug is not obsolete.~~

11 ~~(e) The pharmacy benefit manager shall review and make~~
12 ~~necessary adjustments to the maximum allowable cost of each drug~~
13 ~~on a maximum allowable cost list at least once every seven days~~
14 ~~using the most recent data sources available, and shall apply~~
15 ~~the updated maximum allowable cost list beginning that same day~~
16 ~~to reimburse the contracted pharmacy until the pharmacy benefit~~
17 ~~manager next updates the maximum allowable cost list in~~
18 ~~accordance with this section.~~

19 ~~(f) The pharmacy benefit manager shall have a clearly~~
20 ~~defined process for a contracting pharmacy to appeal the maximum~~



1 ~~allowable cost for a drug on a maximum allowable cost list that~~
2 ~~complies with all of the following:~~

3 ~~(1) A contracting pharmacy may base its appeal on one or~~
4 ~~more of the following:~~

5 ~~(A) The maximum allowable cost for a drug is below~~
6 ~~the cost at which the drug is available for~~
7 ~~purchase by similarly situated pharmacies in this~~
8 ~~State from a national or regional wholesaler; or~~

9 ~~(B) The drug does not meet the requirements of~~
10 ~~subsection (d);~~

11 ~~(2) A contracting pharmacy shall be provided no less than~~
12 ~~fourteen business days following receipt of payment~~
13 ~~for a claim to file the appeal with the pharmacy~~
14 ~~benefit manager;~~

15 ~~(3) The pharmacy benefit manager shall make a final~~
16 ~~determination on the contracting pharmacy's appeal no~~
17 ~~later than fourteen business days after the pharmacy~~
18 ~~benefit manager's receipt of the appeal;~~

19 ~~(4) If the maximum allowable cost is upheld on appeal, the~~
20 ~~pharmacy benefit manager shall provide to the~~
21 ~~contracting pharmacy the reason therefor and the~~



1 ~~national drug code of an equivalent drug that may be~~
2 ~~purchased by a similarly situated pharmacy at a price~~
3 ~~that is equal to or less than the maximum allowable~~
4 ~~cost of the drug that is the subject of the appeal,~~
5 ~~and~~

6 ~~(5) If the maximum allowable cost is not upheld on appeal,~~
7 ~~the pharmacy benefit manager shall adjust, for the~~
8 ~~appealing contracting pharmacy, the maximum allowable~~
9 ~~cost of the drug that is the subject of the appeal,~~
10 ~~within one calendar day of the date of the decision on~~
11 ~~the appeal and allow the contracting pharmacy to~~
12 ~~reverse and rebill the appealed claim.~~

13 ~~(g) A contracting pharmacy shall not disclose to any third~~
14 ~~party the maximum allowable cost list and any related~~
15 ~~information it receives, either directly from a pharmacy benefit~~
16 ~~manager or through a pharmacy services administrative~~
17 ~~organization or similar entity with which the pharmacy has a~~
18 ~~contract to provide administrative services for that pharmacy."]~~

19 SECTION 7. If any provision of this Act, or the
20 application thereof to any person or circumstance, is held
21 invalid, the invalidity does not affect other provisions or



1 applications of the Act that can be given effect without the
2 invalid provision or application, and to this end the provisions
3 of this Act are severable.

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

6 SECTION 9. This Act shall take effect on July 1, 2050.



Report Title:

Pharmacy Benefit Managers; Maximum Allowable Cost; Contracting Pharmacies

Description:

Establishes contract, cost disclosure, reimbursement, appeals, and information protection requirements for pharmacy benefit managers that contract with small, independent, and isolated pharmacies. Establishes enforcement jurisdiction in the Department of Commerce and Consumer Affairs. (SB1521 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

