

JAN 17 2020

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 entities that contract with health plans,
3 employers, unions, and government entities to manage
4 prescription drug coverage on behalf of health plan
5 beneficiaries. The role of pharmacy benefit managers in the
6 delivery of health care has significantly increased over time;
7 however, there is growing concern that pharmacy benefit managers
8 may be contributing to rising prescription drug costs throughout
9 the country.

10 The legislature further finds that nearly all health
11 insurance plans require some level of cost sharing, either via a
12 fixed copayment or some percentage of the cost share. However,
13 in certain situations, a pharmacy benefit manager may require
14 patient drug cost sharing in an amount that exceeds a pharmacy's
15 actual cost for a prescription drug, which can increase a
16 patient's out-of-pocket costs.



1 The legislature additionally finds that pharmacy benefit
2 manager operations are not transparent. Some pharmacy benefit
3 manager business practices also appear to benefit the entity at
4 the expense of patients, health insurance plans, and pharmacies.
5 The legislature recognizes that transparency is a key factor in
6 understanding the drivers and impacts of prescription drug costs
7 for consumers in Hawaii.

8 Accordingly, the purpose of this Act is to increase
9 transparency and improve the business practices of pharmacy
10 benefit managers and protect the public health, safety, and
11 welfare by:

- 12 (1) Establishing business practice and transparency
13 reporting requirements for pharmacy benefit managers;
- 14 (2) Replacing the registration requirement for pharmacy
15 benefit managers with a licensing requirement; and
- 16 (3) Increasing penalties for violations of the pharmacy
17 benefit managers law.

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



1 "§431S- Business practices. (a) A pharmacy benefit
2 manager shall perform its duties with care, skill, prudence,
3 diligence, and professionalism. A pharmacy benefit manager
4 shall have a fiduciary duty to a covered entity client and shall
5 discharge that duty in accordance with federal and state law.

6 (b) A pharmacy benefit manager shall notify a covered
7 entity client in writing of any activity, policy, or practice of
8 the pharmacy benefit manager that directly or indirectly
9 presents any conflict of interest with the duties imposed in
10 this section.

11 (c) A pharmacy benefit manager shall not require pharmacy
12 or other provider accreditation standards or certification
13 requirements that are inconsistent with, more stringent than, or
14 in addition to requirements of the board of pharmacy or other
15 federal or state entity.

16 (d) A covered entity or pharmacy benefit manager shall not
17 require a covered person to make a payment at the point of sale
18 for a covered prescription drug in an amount greater than the
19 lesser of:

20 (1) The applicable copayment for the prescription drug;

21 (2) The allowable claim amount for the prescription drug;



1 (3) The amount a covered person would pay for the
2 prescription drug if the covered person purchased the
3 prescription drug without using a prescription drug
4 benefit plan or any other source of prescription drug
5 benefits or discounts; or

6 (4) The amount the pharmacy will be reimbursed for the
7 drug from the pharmacy benefit manager or covered
8 entity.

9 (e) A covered entity or pharmacy benefit manager shall be
10 prohibited from penalizing, requiring, or providing financial
11 incentives, including variations in premiums, deductibles,
12 copayments, or coinsurance, to covered persons as incentives to
13 use a specific retail pharmacy, mail order pharmacy, or other
14 network pharmacy provider in which a pharmacy benefit manager
15 has an ownership interest or that has an ownership interest in a
16 pharmacy benefit manager.

17 (f) No pharmacy benefit manager shall retain any portion
18 of spread pricing.

19 §431S- Transparency report. (a) Beginning June 1,
20 , and annually thereafter, each licensed pharmacy benefit



1 manager shall submit a transparency report containing data from
2 the prior calendar year to the commissioner.

3 (b) The transparency report shall include:

4 (1) The aggregate amount of all rebates that the pharmacy
5 benefit manager received from all pharmaceutical
6 manufacturers for all covered entity clients and for
7 each covered entity client;

8 (2) The aggregate administrative fees that the pharmacy
9 benefit manager received from all pharmaceutical
10 manufacturers for all covered entity clients and for
11 each covered entity client;

12 (3) The aggregate retained rebates that the pharmacy
13 benefit manager received from all pharmaceutical
14 manufacturers and did not pass through to covered
15 entities;

16 (4) The aggregate retained rebate percentage; and

17 (5) The highest, lowest, and mean aggregate retained
18 rebate percentage for all covered entity clients and
19 for each covered entity client.

20 (c) A pharmacy benefit manager that provides information
21 under this section may designate that material as a trade



1 secret; provided that disclosure may be ordered by a court of
2 this State for good cause shown or made in a court filing.

3 (d) Within sixty calendar days of receipt, the
4 commissioner shall publish the transparency report of each
5 pharmacy benefit manager on the official website of the
6 insurance division in a way that does not violate chapter 482B."

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

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

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

20 1. By adding eight new definitions to be appropriately
21 inserted and to read:



1 "Aggregate retained rebate percentage" means the
2 percentage of all rebates received from a pharmaceutical
3 manufacturer or other entity to a pharmacy benefit manager for
4 prescription drug utilization that is not passed on to the
5 pharmacy benefit manager's covered entity clients. The
6 percentage shall be calculated for each covered entity for
7 rebates in the prior calendar year as follows:

8 (1) The sum total dollar amount of rebates received from
9 all pharmaceutical manufacturers for all utilization
10 of covered persons of a covered entity that was not
11 passed through to the covered entity; and

12 (2) Divided by the sum total dollar amount of all rebates
13 received from all pharmaceutical manufacturers for
14 covered persons of a covered entity.

15 "Mail order pharmacy" means a pharmacy whose primary
16 business is to receive prescriptions by mail or facsimile, or
17 through other electronic means, and dispense medication to
18 covered persons through the use of the United States Postal
19 Service or other contract carrier services and that provide
20 electronic, rather than face-to-face, consultations with
21 patients.



1 "Network pharmacy" means a retail pharmacy or other
2 permitted pharmacy provider that contracts with a pharmacy
3 benefit manager.

4 "Pharmacy" means an established location, either physical
5 or electronic, that has been issued a permit to operate in the
6 State by the board of pharmacy and has entered into a network
7 contract with a pharmacy benefit manager or a covered entity.

8 "Rebates" means all price concessions paid by a
9 pharmaceutical manufacturer to a pharmacy benefit manager or
10 covered entity, including rebates, discounts, and other price
11 concessions that are based on actual or estimated utilization of
12 a prescription drug. "Rebates" also includes price concessions
13 based on the effectiveness of a drug as in a value-based or
14 performance-based contract.

15 "Retail pharmacy" means a chain pharmacy, a supermarket
16 pharmacy, a mass merchandiser pharmacy, an independent pharmacy,
17 or a network of independent pharmacies that is permitted by the
18 board of pharmacy pursuant to section 461-14 and that dispenses
19 prescription drugs to the general public.

20 "Spread pricing" means any amount charged or claimed by a
21 pharmacy benefit manager to a covered entity that is in excess



1 of the amount the pharmacy benefit manager paid to the pharmacy
2 that filled the prescription.

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

5 2. By amending the definition of "pharmacy benefit
6 manager" to read:

7 "Pharmacy benefit manager" means any person [that performs
8 pharmacy benefit management, including but not limited to a
9 person or entity in a contractual or employment relationship
10 with a pharmacy benefit manager to perform pharmacy benefit
11 management for a covered entity.], business, or other entity
12 that, pursuant to a contract or under an employment relationship
13 with a covered entity, a self-insured plan, or other third-party
14 payer, either directly or through an intermediary, manages the
15 prescription drug benefit plan provided by the covered entity,
16 self-insured plan, or other third payer, including the
17 processing and payment of claims for prescription drugs,
18 performance of drug utilization review, processing of drug prior
19 authorization requests, adjudication of appeals or grievances
20 related to prescription drug benefit plan coverage contracting



1 with network pharmacies, and controlling the cost of covered
2 prescription drugs."

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

5 " ~~[+] §431S-3 [—Registration]~~ License required. (a)

6 Notwithstanding any law to the contrary, no person shall act or
7 operate as a pharmacy benefit manager without first obtaining a
8 valid ~~[registration]~~ license issued by the commissioner pursuant
9 to this chapter. Any license issued under this chapter shall be
10 valid for a period of three calendar years from the date of
11 issuance or renewal.

12 (b) Each person seeking ~~[to register]~~ a license as a
13 pharmacy benefit manager shall file with the commissioner an
14 application on a form prescribed by the commissioner. The
15 application shall include:

- 16 (1) The name, address, official position, and professional
17 qualifications of each individual who is responsible
18 for the conduct of the affairs of the pharmacy benefit
19 manager, including all members of the board of
20 directors; board of trustees; executive commission;
21 other governing board or committee; principal



1 officers, as applicable; partners or members, as
2 applicable; and any other person who exercises control
3 or influence over the affairs of the pharmacy benefit
4 manager;

5 (2) The name and address of the applicant's agent for
6 service of process in the State; [and]

7 (3) The name of the pharmacy benefit manager;

8 (4) The address and contact telephone number for the
9 pharmacy benefit manager; and

10 (5) The name and address of the pharmacy benefit manager
11 agent for service of process in the State; and

12 ~~(3)~~ (6) A nonrefundable application fee of \$140.

13 (c) The commissioner may issue a license subject to
14 restrictions or limitations upon the authorization, including
15 the types of services that may be supplied or the activities in
16 which the applicant may be engaged. The license shall be
17 granted only when the commissioner is satisfied that the
18 applicant possesses the necessary organization, background
19 expertise, and financial integrity to supply the services sought
20 to be offered.



1 (d) No license issued under this chapter shall be
2 transferable."

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

5 "[+] §431S-4 [+] **Annual renewal requirement.** (a) Each
6 pharmacy benefit manager shall renew its [~~registration~~] license
7 by March 31 each year.

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

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

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

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

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



1 " ~~[f] §431S-5 [f]—Penalty.~~ Penalties. (a) The commissioner
2 may suspend, revoke, or place on probation a pharmacy benefit
3 manager's license if:

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

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

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

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

13 (b) Any person who acts as a pharmacy benefit manager in
14 this State without first being ~~[registered]~~ licensed pursuant to
15 this chapter shall be subject to a fine of ~~[\$500]~~ not more than
16 \$5,000 per day for each violation."

17 SECTION 8. If any provision of this Act, or the
18 application thereof to any person or circumstance, is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 9. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect on January 1, 2021.

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S.B. NO. 2226

Report Title:

Pharmacy Benefit Managers; Insurance Commissioner, Licensure; Reporting

Description:

Establishes business practice and transparency reporting requirements for pharmacy benefit managers. Replaces the registration requirement for pharmacy benefit managers with a licensing requirement. Increases penalties for violations of the pharmacy benefit managers law. Effective 1/1/2021.

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

