

JAN 17 2020

S.B. NO. 2280

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 a specific retail
9 pharmacy, specific mail service pharmacy, or other network
10 pharmacy provider in which a pharmacy benefit manager has an
11 ownership interest or that has an ownership interest in a
12 pharmacy benefit manager.

13 §431S- Transparency report. (a) No later than
14 January 1, 2021, and annually thereafter, each pharmacy benefit
15 manager shall submit a transparency report containing data from
16 the preceding calendar year to the insurance commissioner that
17 shall include:

18 (1) The aggregate amount of all rebates that the pharmacy
19 benefit manager received from all pharmaceutical
20 manufacturers for all covered entity clients and for
21 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) Information provided under this section and
14 identifiable to an individual pharmacy benefit manager shall not
15 be disclosable under chapter 92F; provided that the insurance
16 commissioner may publicly report aggregated information of
17 multiple pharmacy benefit managers that is not identifiable to
18 any particular pharmacy benefit manager.

19 (c) The insurance commissioner shall review the
20 transparency report required under subsection (a) and, no later
21 than sixty days after the receipt of the report, shall publish



1 the transparency report on the insurance division's website in a
2 manner that would not be considered an unauthorized disclosure
3 of a pharmacy benefit manager's trade secrets.

4 (d) Based upon the commissioner's review of individual
5 transparency reports required under subsection (a), the
6 commissioner shall publish an annual report setting forth
7 aggregated information about pharmacy benefit managers on the
8 insurance division's website; provided that the annual report
9 shall comply with the requirements of subsections (b) and (c)."

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

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



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

3 1. By adding six new definitions to be appropriately
4 inserted and to read:

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

12 (1) The sum total dollar amount of rebates received from
13 all pharmaceutical manufacturers for all utilization
14 of covered persons of a covered entity that was not
15 passed through to the covered entity; and

16 (2) Divided by the sum total dollar amount of all rebates
17 received from all pharmaceutical manufacturers for
18 covered persons of a covered entity.

19 "Mail service pharmacy" means a pharmacy, the primary
20 business of which is to receive prescriptions by mail, telefax,
21 or electronic submissions, and dispense medications to covered



1 persons through the use of the United State postal service or
2 other contract carrier services and that provides electronic,
3 rather than face-to-face consultations, with patients.

4 "Network pharmacy" means a retail pharmacy located and
5 licensed in the State and contracted by the pharmacy benefit
6 manager to sell prescription drugs to beneficiaries of a
7 prescription drug benefit plan administered by the pharmacy
8 benefit manager.

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

16 "Retail pharmacy" means a pharmacy, permitted by the board
17 of pharmacy pursuant to section 461-14, that is open to the
18 general public, dispenses prescription drugs to the general
19 public, and makes available face-to-face consultations between
20 licensed pharmacists and the general public to whom prescription
21 drugs are dispensed.



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

3 2. By amending the definition of "pharmacy benefit
4 manager" to read:

5 "Pharmacy benefit manager" means any person, business, or
6 other entity, including a wholly or partially owned or
7 controlled subsidiary of a pharmacy benefit manager, that is
8 licensed pursuant to this chapter, and that performs pharmacy
9 benefit management, including but not limited to a person or
10 entity in a contractual or employment relationship with a
11 pharmacy benefit manager to perform pharmacy benefit management
12 for a covered entity. "Pharmacy benefit manager" shall not
13 include any health care facility licensed in this State, a
14 health care provider licensed in this State, or a consultant who
15 only provides advice as to the selection or performance of a
16 pharmacy benefit manager."

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

19 "[+] §431S-3 [—Registration] License required. (a)
20 Notwithstanding any law to the contrary, no person shall act or
21 operate as a pharmacy benefit manager without first obtaining a



1 valid [~~registration~~] license issued by the commissioner pursuant
2 to this chapter. The license shall not be transferable.

3 (b) The commissioner may grant a license under this
4 chapter if the commissioner is satisfied that the applicant
5 possessed the necessary organization, background expertise, and
6 financial integrity to supply the services sought to be offered
7 pursuant to this chapter.

8 (c) The commissioner may issue a license subject to
9 restrictions or limitations upon the authorization, including
10 the types of services that may be supplied or the activities in
11 which the applicant may be engaged.

12 [~~(b)~~] (d) 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) A nonrefundable application fee of [~~\$140.~~] \$500.

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

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

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

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

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

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



1 "~~[§431S-4]~~ **Annual renewal requirement.** (a) Each
2 pharmacy benefit manager shall renew its ~~[registration]~~ license
3 by March 31 each year.

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

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

8 (2) A renewal fee of ~~[\$140.]~~ \$500.

9 (c) Failure on the part of a pharmacy benefit manager to
10 renew its ~~[registration]~~ license as provided in this section
11 shall result in a penalty of ~~[\$140]~~ \$500 and may cause the
12 ~~[registration]~~ license to be revoked or suspended by the
13 commissioner until the requirements for renewal have been met."

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

16 "~~[§431S-5]~~ **Penalty.** Any person who acts as a pharmacy
17 benefit manager in this State without first being ~~[registered]~~
18 licensed pursuant to this chapter shall be subject to a fine of
19 ~~[\$500]~~ \$5,000 for each violation."



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1 SECTION 8. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

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

6 SECTION 10. This Act shall take effect on July 1, 2020.
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INTRODUCED BY: Rosalyn H Bok

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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. Increases application and renewal fees and penalties for failure to renew a license.

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