
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.



H.B. NO. 24

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 to the commissioner a transparency report
2 containing data from the prior calendar year.

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 confidential



1 business information whose disclosure would frustrate a
2 legitimate government function as provided in section 92F-13;
3 provided that any person may appeal a denial of access to
4 information so designated in the manner set forth in part II of
5 chapter 92F.

6 (d) Within sixty calendar days of receipt, the
7 commissioner shall publish the transparency report of each
8 pharmacy benefit manager on the official website of the
9 insurance division in a way that does not disclose information
10 designated by a pharmacy benefit manager as confidential
11 business information; provided that if a court or the office of
12 information practices has determined that the information is
13 required to be publicly disclosed, the commissioner shall
14 include that information in the published transparency report."

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

18 ""Pharmacy benefit manager" means any person, business, or
19 entity that performs pharmacy benefit management, including but
20 not limited to a person or entity under contract with a pharmacy
21 benefit manager to perform pharmacy benefit management on behalf



1 of a managed care company, nonprofit hospital or medical service
2 organization, insurance company, third-party payor, or health
3 program administered by the State[-] and that is duly licensed
4 pursuant to chapter 431S."

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

7 1. By adding seven new definitions to be appropriately
8 inserted and to read:

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

16 (1) The sum of the total dollar amount of rebates received
17 from all pharmaceutical manufacturers for all
18 utilization of covered persons of a covered entity
19 that was not passed through to the covered entity; and



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

4 "Mail order pharmacy" means a pharmacy whose primary
5 business is to receive prescriptions by mail or facsimile, or
6 through other electronic means, and dispense medication to
7 covered persons through the use of the United States Postal
8 Service or other contract carrier services and that provides
9 electronic, rather than face-to-face, consultations with
10 patients.

11 "Network pharmacy" means a retail pharmacy or other
12 permitted pharmacy provider that contracts with a pharmacy
13 benefit manager.

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

18 "Rebates" means all price concessions paid by a
19 pharmaceutical manufacturer to a pharmacy benefit manager or
20 covered entity, including rebates, discounts, and other price
21 concessions that are based on actual or estimated utilization of



1 a prescription drug. "Rebates" also includes price concessions
2 based on the effectiveness of a drug as in a value-based or
3 performance-based contract.

4 "Retail pharmacy" means a chain pharmacy, a supermarket
5 pharmacy, a mass merchandiser pharmacy, an independent pharmacy,
6 or a network of independent pharmacies that is permitted by the
7 board of pharmacy pursuant to section 461-14 and that dispenses
8 prescription drugs to the general public.

9 "Spread pricing" means any amount charged or claimed by a
10 pharmacy benefit manager to a covered entity that is in excess
11 of the amount the pharmacy benefit manager paid to the pharmacy
12 that filled the prescription."

13 2. By amending the definition of "pharmacy benefit
14 manager" to read:

15 "Pharmacy benefit manager" means any person, business, or
16 entity that performs pharmacy benefit management, including but
17 not limited to a person or entity [in a contractual or
18 employment relationship] under contract with a pharmacy benefit
19 manager to perform pharmacy benefit management [for a covered
20 entity.] on behalf of a managed care company, nonprofit hospital
21 or medical service organization, insurance company, third-party



1 payor, or health program administered by the State and that is
2 duly licensed pursuant to this chapter."

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 one calendar year 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;

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

12 (6) Any other documentation the commissioner determines is
13 necessary to ascertain the organization, background
14 expertise, and financial integrity of the applicant;
15 and

16 ~~[(3)]~~ (7) A nonrefundable application fee of \$140.

17 (c) The commissioner may issue a license subject to
18 restrictions or limitations upon authorization, including the
19 types of services that may be supplied or the activities in
20 which the applicant may be engaged. The license shall be
21 granted only when the commissioner is satisfied that the



1 applicant possesses the necessary organization, background
2 expertise, and financial integrity to supply the services sought
3 to be offered.

4 (d) No license issued under this chapter shall be
5 transferable."

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

8 "[~~f~~]**\$431S-4**[~~f~~] **Annual renewal requirement.** (a) Each
9 pharmacy benefit manager shall renew its [~~registration~~] license
10 by March 31 each year.

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

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

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

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



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

"~~[§]431S-5[§]—Penalty.~~ License suspension, revocation, probation, refusal, fines; penalties. (a) The commissioner may suspend, revoke, or place on probation a pharmacy benefit manager's license; refuse to issue a pharmacy benefit manager's license; or impose fines, if:

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

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

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

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

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



1 SECTION 8. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 9. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

10

INTRODUCED BY:



JAN 20 2021



H.B. NO. 24

Report Title:

Pharmacy Benefit Managers; Insurance Commissioner; Licensure;
Reporting Requirements; Penalties

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.

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

