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# 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 companies that manage prescription drug benefits on  
3 behalf of health insurers and other payors. By negotiating with  
4 drug manufacturers and pharmacies to control drug spending,  
5 pharmacy benefit managers have a significant behind-the-scenes  
6 impact in determining total drug costs for insurers, shaping  
7 patients' access to medications, and determining how much  
8 pharmacies are paid.

9       Because pharmacy benefit managers have the ability to  
10 negotiate larger rebates from manufacturers, pharmacy benefit  
11 managers may have an incentive to favor high-priced drugs over  
12 drugs that are more cost-effective. Furthermore, because  
13 pharmacy benefit managers often receive rebates that are  
14 calculated as a percentage of the manufacturer's list price,  
15 pharmacy benefit managers may receive a larger rebate for more  
16 expensive drugs than they do for ones that may provide better  
17 value at a lower cost. Drug manufacturers have argued that the



1 growing rebates they pay pharmacy benefit managers are forcing  
2 them to raise list prices for their products.

3       The legislature further finds that independent and rural  
4 pharmacies are struggling due to decreased reimbursement rates  
5 for prescription drugs, as determined by pharmacy benefit  
6 managers. A 2019 analysis by the Pharmacists Society of the  
7 State of New York found that pharmacy benefit manager markups  
8 for medicaid prescriptions at independent pharmacies in the  
9 state doubled from 2016 to 2017. Additionally, according to  
10 research by the RUPRI Center for Rural Health Policy Analysis at  
11 the University of Iowa, more than sixteen per cent of rural,  
12 independently-owned pharmacies closed between 2003 and 2018,  
13 including over six hundred locations that served as their  
14 community's sole pharmacy. Reimbursement rates below the  
15 pharmacy's purchase cost for a drug is an unsustainable model  
16 that could force independent pharmacies out of business,  
17 especially pharmacies that do not have a supplemental retail  
18 market like many large pharmacy chains. Not only would these  
19 closures take a toll on local economies, they could also leave  
20 residents in less populated areas without a pharmacist to fill  
21 prescriptions and provide other vital services. Rural residents



1 already have fewer options for health care services, and  
2 pharmacies in these communities are one of the few increasing  
3 reliable sources for clinical advice.

4 Accordingly, the purpose of this Act is to increase  
5 transparency and fairness and promote, preserve, and protect  
6 public health, safety, and welfare by:

7 (1) Prohibiting certain contracts for managed care entered  
8 into after June 30, 2021, from containing a provision  
9 that authorizes a pharmacy benefit manager to  
10 reimburse a contracting pharmacy on a maximum  
11 allowable cost basis and voiding any such provisions  
12 in existing managed care contracts;

13 (2) Prohibiting pharmacy benefit managers from engaging in  
14 unfair methods of competition or unfair practices;

15 (3) Prohibiting a pharmacy benefit manager from  
16 reimbursing a 340B pharmacy differently than any other  
17 network or mail service pharmacy;

18 (4) Prohibiting a pharmacy benefit manager from  
19 reimbursing an independent or rural pharmacy an amount  
20 less than the rural rate for each prescription drug,  
21 under certain circumstances;



1 (5) Prohibiting a pharmacy benefit manager from preventing  
2 a pharmacist or pharmacy from providing certain  
3 information to insureds regarding cost sharing or more  
4 affordable alternative drugs;

5 (6) Inserting language that provides, in responding to the  
6 State's request, any information provided in response  
7 to a data call from the insurance commissioner or  
8 designee shall be treated confidential and privileged;

9 (7) Increasing the pharmacy benefit managers' annual  
10 reporting requirements;

11 (8) Requiring the insurance commissioner to make annual  
12 reports to the legislature;

13 (9) Increasing pharmacy benefit manager registration and  
14 renewal fees; and

15 (10) Making certain violations of pharmacy benefit managers  
16 subject to the penalties provided in chapters 480 and  
17 481, Hawaii Revised Statutes.

18 SECTION 2. Chapter 346, Hawaii Revised Statutes, is  
19 amended by adding a new section to part II to be appropriately  
20 designated and to read as follows:



1       "§346-     Pharmacy benefit managers; contracting  
2 pharmacies; reimbursements; maximum allowable cost basis;  
3 prohibition.   (a) No contract for managed care entered into  
4 pursuant to this part, after June 30, 2021, shall contain a  
5 provision that authorizes a pharmacy benefit manager to  
6 reimburse a contracting pharmacy on a maximum allowable cost  
7 basis in accordance with section 328-106 or chapter 431S.

8       (b) Any provision of a contract for managed care  
9 authorized pursuant to this part to reimburse a contracting  
10 pharmacy for a drug on a maximum allowable cost basis in  
11 accordance with section 328-106 or chapter 431S that was in  
12 effect on or before June 30, 2021, shall be void."

13       SECTION 3. Chapter 431S, Hawaii Revised Statutes, is  
14 amended by adding four new sections to be appropriately  
15 designated and to read as follows:

16       "§431S-     Pharmacy benefit manager business practices;  
17 prohibitions; independent or rural pharmacy reimbursement rate;  
18 disclosure of information to commissioner or governmental  
19 officials.   (a) A pharmacy benefit manager shall not engage in  
20 unfair methods of competition pursuant to chapter 480, or unfair  
21 practices pursuant to chapter 481, in the conduct of pharmacy



1 benefit management, as defined in section 431S-1. A violation  
2 of this section by a pharmacy benefit manager shall constitute a  
3 separate violation under chapter 480 and chapter 481.

4 (b) A pharmacy benefit manager shall not reimburse a 340B  
5 pharmacy differently than any other network pharmacy or mail  
6 service pharmacy based on its status as a 340B pharmacy. For  
7 purposes of this subsection, a "340B pharmacy" means a pharmacy  
8 that is authorized to purchase drugs at a discount under Title  
9 42 United States Code section 256b.

10 (c) A pharmacy benefit manager shall not reimburse an  
11 independent or rural pharmacy an amount less than the rural rate  
12 for each prescription drug; provided that:

13 (1) Pharmacy benefit managers shall file with the  
14 commissioner a list of the rural rates for each  
15 prescription drug in a form and manner prescribed by  
16 the commissioner; and

17 (2) A pharmacy benefit manager shall be prohibited from  
18 changing the rural rate without providing thirty days'  
19 notice to all contracting independent or rural  
20 pharmacies of any change in the rural rate and filing



1           a report with the commissioner identifying the rural  
2           rate changes.

3           (d) A contract between a pharmacy benefit manager and a  
4           participating pharmacist or pharmacy shall not prohibit,  
5           restrict, or limit disclosure of information to the  
6           commissioner, law enforcement, or federal or state governmental  
7           officials; provided that:

8           (1) The recipient of the information represents it has the  
9           authority, to the extent provided by federal or state  
10           law, to maintain proprietary information as  
11           confidential; and

12           (2) Prior to disclosure of information designated as  
13           confidential, the pharmacist or pharmacy shall:

14           (A) Mark as confidential any document in which the  
15           information appears; or

16           (B) Request any oral communication of the information  
17           be treated as confidential.

18           (e) A pharmacy benefit manager shall not terminate a  
19           contract or penalize a pharmacist or pharmacy due to the  
20           pharmacist or the pharmacy:



(1) Disclosing information about pharmacy benefit manager practices, except for information determined to be a trade secret, as determined by state law or the commissioner; or

(2) Sharing any portion of the pharmacy benefit manager contract with the commissioner pursuant to a complaint or a query regarding whether the contract is in compliance with this section.

**§431S- Gag clause prohibited.** (a) In any participation contracts between a pharmacy benefit manager and pharmacists or pharmacies providing prescription drug coverage for health benefit plans, no pharmacist or pharmacy shall be prohibited, restricted, or penalized in any way from disclosing to any covered person any health care information that the pharmacist or pharmacy deems appropriate regarding:

(1) The nature of treatment, risks, or alternatives thereto;

(2) The availability of alternate therapies, consultations, or tests;

(3) The decision of utilization reviewers or similar persons to authorize or deny services;





1       (4) The process that is used to authorize or deny health  
2       care services or benefits; or

3       (5) Information on financial incentives and structures  
4       used by the insurer.

5       (b) A pharmacy benefit manager shall not prohibit a  
6       pharmacist or pharmacy from discussing information regarding the  
7       total cost of pharmacist services for a prescription drug or  
8       from selling a more affordable alternative to the covered person  
9       if a more affordable alternative is available.

10       §431S- Data calls. In response to the State's request,  
11       any information provided in response to a data call from the  
12       commissioner or the commissioner's designee, shall be treated as  
13       confidential and privileged. The information provided shall not  
14       be subject to subpoena and shall not be subject to discovery or  
15       admissible as evidence in any private civil action, unless so  
16       ordered by the court. No waiver of privilege or confidentiality  
17       shall occur as a result of responding to a data call.

18       §431S- Annual transparency report; commissioner report  
19       to the legislature. (a) No later than September 1, 2021, and  
20       annually thereafter, each pharmacy benefit manager registered  
21       under this chapter shall submit a transparency report containing



1 data from the preceding calendar year to the commissioner that  
2 shall include:

3       (1) The names of each party with which the pharmacy  
4       benefit manager contracts to provide pharmacy benefit  
5       management, as defined in section 431S-1, and each  
6       party's number of locations;

7       (2) The aggregate amount of all rebates that the pharmacy  
8       benefit manager received from all pharmaceutical  
9       manufacturers for all covered entity clients and for  
10       each covered entity client;

11       (3) The aggregate administrative fees that the pharmacy  
12       benefit manager received from all pharmaceutical  
13       manufacturers for all covered entity clients and for  
14       each covered entity client;

15       (4) The aggregate retained rebates that the pharmacy  
16       benefit manager received from all pharmaceutical  
17       manufacturers that were not passed through to covered  
18       entities;

19       (5) The aggregate retained rebate percentage;



1       (6) The highest, lowest, and mean aggregate retained  
2       rebate percentage for all covered entity clients and  
3       for each covered entity client; and

4       (7) Utilization information, in a form prescribed by the  
5       commissioner, which shall be reported for each  
6       prescription drug and each type of payor prescribed by  
7       the commissioner, and shall include:

8       (A) The number of prescriptions paid;

9       (B) The total amount paid per prescription prior to  
10       rebates;

11       (C) The total rebates received prior to paying any  
12       rebates to a covered entity; and

13       (D) Number of covered persons.

14       (b) The commissioner shall submit a report to the  
15       legislature no later than twenty days prior to the convening of  
16       each regular session, which shall include:

17       (1) A summary of the information collected from the  
18       pharmacy benefit managers' annual transparency  
19       reports, including a list of all pharmacy benefit  
20       managers registered under this chapter; provided that  
21       the commissioner shall aggregate information from all



1           pharmacy benefit managers so that it is not  
2           identifiable to any particular pharmacy benefit  
3           manager; and

4           (2) Recommendations and any proposed legislation."

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 manufacturer or other  
11 entity to a pharmacy benefit manager for prescription drug  
12 utilization that is not passed on to pharmacy benefit managers'  
13 covered entity clients. The percentage shall be calculated for  
14 each covered entity for rebates in the prior calendar year as  
15 follows:

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



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

4        "Independent or rural pharmacy" means a retail pharmacy  
5        contracted by a pharmacy benefit manager to sell prescription  
6        drugs to beneficiaries of a prescription drug benefit plan  
7        administered by the pharmacy benefit manager that:

8        (1) Is not owned or operated by a publicly traded company;

9        (2) Is not directly affiliated with any chain pharmacy  
10       having more than fifty stores;

11       (3) Is located and licensed in this State; and

12       (4) Serves rural, uninsured, or underinsured patients.

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

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



1 prescription drug benefit plan administered by the pharmacy  
2 benefit manager.

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

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

16 "Rural" has the same meaning as defined in section  
17 1B-1(c)."

18 2. By amending the definition of "covered entity" to read:

19 "'Covered entity" means:

20 (1) A health benefits plan regulated under chapter 87A;

21 health insurer regulated under article 10A of chapter



431; mutual benefit society regulated under article 1  
of chapter 432; or health maintenance organization  
regulated under chapter 432D; provided that a "covered  
entity" under this paragraph shall not include a  
health maintenance organization regulated under  
chapter 432D that owns or manages its own pharmacies;

(2) A health program administered by the State in the  
capacity of a provider of health coverage; or

(3) An employer, labor union, or other group of persons  
organized in the State that provides health coverage  
to covered persons employed or residing in the State.

"Covered entity" [~~shall~~] does not include any plans issued for  
coverage for federal employees or specified disease or limited  
benefit health insurance as provided by section 431:10A-607."

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

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



1        (b) The commissioner may issue a registration under this  
2 chapter if the commissioner is satisfied that the applicant  
3 possesses the necessary organization, background expertise, and  
4 financial integrity to supply the services sought to be offered  
5 pursuant to this chapter.

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

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

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





1 or influence over the affairs of the pharmacy benefit  
2 manager;

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

5 (3) A nonrefundable application fee of [~~\$140.~~]  
6 \$ \_\_\_\_\_; and

7 (4) Any other information the commissioner deems necessary  
8 or helpful to determine whether the applicant has the  
9 necessary organization, background, expertise, and  
10 financial integrity to supply the services sought to  
11 be offered pursuant to this chapter.

12 (e) The commissioner may suspend, revoke, or place on  
13 probation a pharmacy benefit manager registered under this  
14 chapter if:

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

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

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



- 1        (4) The pharmacy benefit manager fails to comply with any  
2        other requirement under this chapter; or  
3        (5) The pharmacy benefit manager commits a violation of  
4        section 480-2 or section 481-1."

5        SECTION 6. Section 431S-4, Hawaii Revised Statutes, is  
6        amended by amending subsections (b) and (c) to read as follows:

7        "(b) When renewing its registration, a pharmacy benefit  
8        manager shall submit to the commissioner the following:

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

11       (2) A renewal fee of [~~\$140.~~] \$\_\_\_\_\_.

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

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

19       "[~~§~~431S-5[~~§~~] **Penalty.** Any person who acts as a pharmacy  
20       benefit manager in this State without first being registered  
21       pursuant to this chapter shall be subject to a fine of [~~\$500~~]



1   \$\_\_\_\_\_ for each violation. The penalty prescribed in this  
2   section shall be in addition to any other penalties prescribed  
3   by this chapter."

4       SECTION 8. This Act does not affect rights and duties that  
5   matured, penalties that were incurred, and proceedings that were  
6   begun before its effective date.

7       SECTION 9. If any provision of this Act, or the  
8   application thereof to any person or circumstance, is held  
9   invalid, the invalidity does not affect other provisions or  
10   applications of the Act that can be given effect without the  
11   invalid provision or application, and to this end the provisions  
12   of this Act are severable.

13       SECTION 10. Statutory material to be repealed is bracketed  
14   and stricken. New statutory material is underscored.

15       SECTION 11. This Act shall take effect on July 1, 2050;  
16   provided that section 2 of this Act shall be repealed on  
17   June 30, 2026.



**Report Title:**

Pharmacy Benefit Managers; Independent or Rural Pharmacies;  
Rural Rate of Reimbursement; Insurance Commissioner; Licensure;  
Reporting

**Description:**

Prohibits certain contracts for managed care entered into after June 30, 2021, from containing a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis, and voids any such provisions in existing managed care contracts. Prohibits pharmacy benefit managers from engaging in unfair methods of competition or unfair practices. Prohibits a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy. Prohibits a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances. Prohibits a pharmacy benefit manager from restricting a pharmacist's ability to provide certain information to insureds. Increases pharmacy benefit managers' annual reporting requirements. Requires the insurance commissioner to file annual reports with the legislature. Increases pharmacy benefit manager registration and renewal fees by an unspecified amount. Makes certain violations of pharmacy benefit managers subject to the penalties provided in chapters 480 and 481, Hawaii Revised Statutes. Effective 7/1/2050. Repeals certain provisions on 6/30/2026. (SD2)

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

