

JAN 21 2022

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 it is in the
2 interest of consumers to prohibit pharmacy benefit managers from
3 engaging in certain practices, including contractually limiting
4 the ability of pharmacies and pharmacists from disclosing
5 certain information and requiring consumers to pay more than the
6 cash price for prescriptions. The legislature further finds
7 that it is desirable to increase fees and penalties assessed
8 under chapter 431S, Hawaii Revised Statutes.

9 The purpose of this Act is to:

- 10 (1) Create a new section in chapter 431S addressing
11 pharmacy benefit manager practices;
- 12 (2) Create a new section in chapter 431S to provide
13 additional enforcement authority to the insurance
14 commissioner;
- 15 (3) Amend the definition of "pharmacy benefit manager" in
16 chapter 431R, Hawaii Revised Statutes, to reference



1 registration under chapter 431S to more closely align
2 both chapters;

3 (4) Add new definitions to chapter 431S to facilitate this
4 Act;

5 (5) Amend the definition of "covered entity" in chapter
6 431S to align with entities over which the insurance
7 commissioner exercises significant jurisdiction; and

8 (6) Provide the insurance commissioner with authority to
9 suspend or revoke a pharmacy benefit manager's
10 registration under certain conditions.

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

14 "§431S- Business practices. (a) In any participation
15 contracts between a pharmacy benefit manager and pharmacists or
16 pharmacies providing prescription drug coverage for a
17 prescription drug benefit plan, no pharmacy or pharmacist shall
18 be prohibited, restricted, or penalized in any way from
19 disclosing to any covered person any health care information
20 that the pharmacy or pharmacist deems appropriate regarding:

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



1 (2) The availability of alternate therapies,

2 consultations, or tests;

3 (3) The decision of utilization reviewers or similar

4 persons to authorize or deny services;

5 (4) The process that is used to authorize or deny health

6 care services or benefits; or

7 (5) Information on financial incentives and structures

8 used by the insurer.

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

14 (c) A pharmacy benefit manager contract with a
15 participating pharmacist or pharmacy shall not prohibit,
16 restrict, or limit disclosure of information to the
17 commissioner, law enforcement, or state and federal government
18 officials; provided that:

19 (1) The recipient of the information has the obligation,
20 to the extent provided by state or federal law, to
21 maintain proprietary information as confidential; and



1 (2) Prior to disclosure of information designated as
2 confidential the pharmacist or pharmacy marks as
3 confidential any document in which the information
4 appears or requests confidential treatment for any
5 oral communication of that information.

6 (d) A pharmacy benefit manager shall not require a covered
7 person purchasing a covered prescription drug to pay an amount
8 greater than the lesser of the covered person's cost-sharing
9 amount under the terms of the prescription drug benefit plan or
10 the amount the covered person would pay for the drug if the
11 covered person were paying the cash price.

12 Any amount paid by a covered person under this section
13 shall be attributable toward any deductible or, to the extent
14 consistent with section 2707, Public Health Service Act, the
15 annual out-of-pocket maximums under the covered person's health
16 benefit plan.

17 §431S- Enforcement. (a) The commissioner is authorized
18 to enforce compliance with the requirements of this chapter.

19 (b) The commissioner may examine or audit the books and
20 records of a pharmacy benefit manager providing claims
21 processing services or other prescription drug or device



1 services for a prescription drug benefit plan to determine
2 compliance with this chapter.

3 (c) The information or data acquired during an examination
4 under paragraph (b) shall:

5 (1) Be considered proprietary and confidential;

6 (2) Not be disclosable under chapter 92F;

7 (3) Not be subject to subpoena; and

8 (4) Not be subject to discovery or admissible as evidence
9 in any private civil action.

10 (d) The commissioner may use any document or information
11 provided pursuant to this section in the performance of the
12 commissioner's duties to determine compliance.

13 (e) The commissioner may impose a penalty on a pharmacy
14 benefit manager or the covered entity with which it is
15 contracted, or both, for a violation of this chapter. The
16 penalty may not exceed \$ per entity for each violation of
17 this chapter, except as provided under chapter 431S-5."

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



1 ""Pharmacy benefit manager" means any person, business, or
2 entity that performs pharmacy benefit management[, ~~including but~~
3 ~~not limited to a person or entity under contract with a pharmacy~~
4 ~~benefit manager to perform pharmacy benefit management on behalf~~
5 ~~of a managed care company, nonprofit hospital or medical service~~
6 ~~organization, insurance company, third party payor, or health~~
7 ~~program administered by the State.] and is registered pursuant~~
8 to chapter 431S."

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

11 1. By adding six new definitions to be appropriately
12 inserted and to read:

13 "Claims processing services" means the administrative
14 services performed in connection with the processing and
15 adjudicating of claims relating to pharmacist services that
16 include:

17 (1) Receiving payments for pharmacist services;

18 (2) Making payments to pharmacists or pharmacies for
19 pharmacist services; or

20 (3) Both.



1 "Covered person" means a member, policy holder, subscriber,
2 enrollee, beneficiary, dependent, or other individual
3 participating in a prescription drug benefits plan.

4 "Other prescription drug or device services" means services
5 other than claims processing services, provided directly or
6 indirectly, whether in connection with or separate from claims
7 processing services, including but not limited to:

8 (1) Negotiating rebates, discounts, or other financial
9 incentives and arrangements with drug companies;

10 (2) Disbursing or distributing rebates;

11 (3) Managing or participating in incentive programs or
12 arrangements for pharmacist services;

13 (4) Negotiating or entering into contractual arrangements
14 with pharmacists or pharmacies, or both;

15 (5) Developing and maintaining formularies;

16 (6) Designing prescription benefit programs; or

17 (7) Advertising or promoting services.

18 "Pharmacist" means a registered pharmacist licensed by the
19 board of pharmacy of the State pursuant to chapter 461.



1 "Pharmacist services" means products, goods, and services
2 or any combination of products, goods, and services, provided as
3 a part of the practice of pharmacy.

4 "Pharmacy" means a store, shop, or place permitted as a
5 pharmacy by the board of pharmacy of the State pursuant to
6 chapter 461.

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

8 "Covered entity" means:

- 9 (1) A [~~health benefits plan regulated under chapter 87A;~~]
10 health insurer regulated under article 10A of chapter
11 431; mutual benefit society regulated under article 1
12 of chapter 432; or health maintenance organization
13 regulated under chapter 432D; [~~provided that a~~
14 ~~"covered entity" under this paragraph shall not~~
15 ~~include a health maintenance organization regulated~~
16 ~~under chapter 432D that owns or manages its own~~
17 ~~pharmacies;~~] or
18 (2) A health program administered by the State in the
19 capacity of a provider of health coverage [~~or~~].



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

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

7 3. By amending the definition of "pharmacy benefit
8 manager" to read:

9 "Pharmacy benefit manager" means any person that performs
10 pharmacy benefit management, including but not limited to a
11 person or entity in a contractual or employment relationship
12 with a pharmacy benefit manager to perform pharmacy benefit
13 management for a covered entity~~[-]~~; provided that the term shall
14 not include a consultant who only provides advice as to the
15 selection or performance of a pharmacy benefit manager, or a
16 covered entity to the extent that it performs any claims
17 processing and other prescription drug or device services
18 exclusively for its enrollees."

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



1 "§431S-3 Registration required. (a) Notwithstanding any
2 law to the contrary, no person shall act or operate as a
3 pharmacy benefit manager without first obtaining a valid
4 registration issued by the commissioner pursuant to this
5 chapter.

6 (b) Each person seeking to register as a pharmacy benefit
7 manager shall file with the commissioner an application on a
8 form prescribed by the commissioner. The application shall
9 include:

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

20 (2) The name and address of the applicant's agent for
21 service of process in the State; and



1 (3) A nonrefundable issuance fee of [~~\$140.~~] \$ _____.
2 The commissioner may, upon showing of good cause, waive or
3 modify, in whole or part, the fee in this subsection by order.

4 (c) The commissioner may suspend or revoke the
5 registration of a pharmacy benefit manager if the commissioner
6 determines that the applicant or any individual responsible for
7 the conduct of affairs of the applicant is not competent,
8 trustworthy, financially responsible, of good personal and
9 business reputation, or has been found to have violated the
10 insurance laws of the State or any other jurisdiction, or has
11 had an insurance or other certificate of authority or license
12 denied or revoked for cause by any jurisdiction."

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

15 "**§431S-4 Annual renewal requirement.** (a) Each pharmacy
16 benefit manager shall renew its registration by March 31 each
17 year.

18 (b) When renewing its registration, a pharmacy benefit
19 manager shall submit to the commissioner the following:

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



1 (2) A service fee of [~~\$140.~~] \$_____.

2 The commissioner may, upon showing of good cause, waive or
3 modify, in whole or part, the fee in this subsection by order."

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

6 "~~[§] §431S-5 [§]~~ **Penalty.** Any person who acts as a pharmacy
7 benefit manager in this State without first being registered
8 pursuant to this chapter shall be subject to a fine of [~~\$500~~]
9 \$_____ for each violation."

10 SECTION 8. This Act does not affect rights and duties that
11 matured, penalties that were incurred, and proceedings that were
12 begun before its effective date.

13 SECTION 9. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 10. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

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1 SECTION 11. This Act shall take effect upon its approval.

2

INTRODUCED BY: *Randy H. Bate*



S.B. NO. 2443

Report Title:

Pharmacy Benefit Managers; Enforcement; Registration

Description:

Addresses and defines pharmacy benefit manager practices.

Creates enforcement authority by the insurance commissioner to suspend or revoke a pharmacy benefit manager's registration and impose fines.

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