
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) Prohibit a pharmacy benefit manager from limiting a
11 pharmacist's ability to disclose certain information
12 to consumers;

13 (2) Prohibit a pharmacy benefit manager from reimbursing a
14 340B pharmacy differently than any other network
15 pharmacy based on its status as a 340B pharmacy;



- 1 (3) Provide additional enforcement authority to the
2 insurance commissioner, including increasing certain
3 fees;
- 4 (4) Amend sections of the Hawaii Revised Statutes, that
5 reference pharmacy benefit managers for consistency
6 and clarity;
- 7 (5) Amend the definition of "covered entity" in chapter
8 431S to align with entities over which the insurance
9 commissioner exercises significant jurisdiction;
- 10 (6) Provide the insurance commissioner with authority to
11 suspend or revoke a pharmacy benefit manager's
12 registration under certain conditions;
- 13 (7) Repeal section 328-106, Hawaii Revised Statutes, which
14 requires the department of health to enforce the terms
15 of contracts pertaining to pharmacy benefit managers;
16 and
- 17 (8) After December 31, 2022, prohibiting any contract for
18 managed care to contain a provision that authorizes a
19 pharmacy benefit manager to reimburse a contracting
20 pharmacy on a maximum allowable cost basis.



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

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

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

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

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

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

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

(b) A pharmacy benefit manager shall not prohibit a pharmacy or pharmacist from discussing information regarding the



1 total cost-share for pharmacist services for a prescription drug
2 or from selling a more affordable alternative to the covered
3 person if a more affordable alternative is available.

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

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

12 (2) Prior to disclosure of information designated as
13 confidential under the pharmacy benefit manager
14 contract, the pharmacist or pharmacy marks as
15 confidential any document in which the information
16 appears or requests confidential treatment for any
17 oral communication of that information.

18 (d) A pharmacy benefit manager shall not require a covered
19 person purchasing a covered prescription drug to pay an amount
20 greater than the lesser of the covered person's cost-sharing
21 amount under the terms of the prescription drug benefit plan or



1 the amount the covered person would pay for the drug if the
2 covered person were paying the cash price.

3 A pharmacy benefit manager shall not reimburse a 340B
4 pharmacy differently than any other network pharmacy based on
5 its status as a 340B pharmacy; provided that, for purposes of
6 this subsection, "340B pharmacy" means a pharmacy that is
7 authorized to purchase drugs at a discount under title 42 United
8 States Code section 256b.

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

14 **§431S- Enforcement.** (a) The commissioner is authorized
15 to enforce compliance with the requirements of this chapter.

16 (b) The commissioner may examine or audit the books and
17 records of a pharmacy benefit manager providing claims
18 processing services or other prescription drug or device
19 services for a prescription drug benefit plan to determine
20 compliance with this chapter.



1 (c) The information or data acquired during an examination
2 under subsection (b) shall:

3 (1) Be considered proprietary and confidential;

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

5 (3) Not be subject to subpoena; and

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

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

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

17 (f) Notwithstanding section 480-11, or any other law to
18 the contrary, in addition to any penalty authorized pursuant to
19 this section, each violation of this chapter shall also be a
20 violation of chapter 480 and subject to any penalty authorized
21 thereunder."



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

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

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

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

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

(1) Receiving payments for pharmacist services;



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

3 (3) Both.

4 "Covered person" means a member, policy holder, subscriber,
5 enrollee, beneficiary, dependent, or other individual
6 participating in a prescription drug benefits plan.

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

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

13 (2) Disbursing or distributing rebates;

14 (3) Managing or participating in incentive programs or
15 arrangements for pharmacist services;

16 (4) Negotiating or entering into contractual arrangements
17 with pharmacists or pharmacies, or both;

18 (5) Developing and maintaining formularies;

19 (6) Designing prescription benefit programs; or

20 (7) Advertising or promoting services.



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

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

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

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

10 "Covered entity" means:

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

20 (2) A health program administered by the State in the
21 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.~~] as required
2 under section 431:7-101.

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

5 (c) The commissioner may suspend or revoke the
6 registration of a pharmacy benefit manager if the commissioner
7 determines that the pharmacy benefit manager, or any individual
8 responsible for the conduct of affairs of the pharmacy benefit
9 manager, has been found to have violated the insurance laws of
10 the State or any other jurisdiction, or has had an insurance or
11 other certificate of authority or license denied or revoked for
12 cause by any jurisdiction.

13 (d) Before the commissioner may suspend or revoke the
14 registration of a pharmacy benefit manager, the commissioner
15 shall conduct a hearing in accordance with chapter 91."

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

18 "**§431S-4 Annual renewal requirement.** (a) Each pharmacy
19 benefit manager shall renew its registration by March 31 each
20 year.



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

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

(2) A service fee [~~of \$140.~~] as required under section 431:7-101.

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

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

"~~[§] 431S-5~~ **Penalty.** Any person who acts as a pharmacy benefit manager in this State without first being registered pursuant to this chapter shall be subject to a fine of [~~\$500~~] \$1,000 for each violation."

SECTION 8. Section 328-106, Hawaii Revised Statutes, is repealed.

~~["~~§328-106~~ Pharmacy benefit manager; maximum allowable cost. (a) A pharmacy benefit manager that reimburses a contracting pharmacy for a drug on a maximum allowable cost basis shall comply with the requirements of this section.~~"]



1 ~~(b) The pharmacy benefit manager shall include the~~
2 ~~following in the contract information with a contracting~~
3 ~~pharmacy:~~

4 ~~(1) Information identifying any national drug pricing~~
5 ~~compendia; or~~

6 ~~(2) Other data sources for the maximum allowable cost~~
7 ~~list.~~

8 ~~(c) The pharmacy benefit manager shall make available to a~~
9 ~~contracting pharmacy, upon request, the most up-to-date maximum~~
10 ~~allowable cost price or prices used by the pharmacy benefit~~
11 ~~manager for patients served by the pharmacy in a readily~~
12 ~~accessible, secure, and usable web-based or other comparable~~
13 ~~format.~~

14 ~~(d) A drug shall not be included on a maximum allowable~~
15 ~~cost list or reimbursed on a maximum allowable cost basis unless~~
16 ~~all of the following apply:~~

17 ~~(1) The drug is listed as "A" or "B" rated in the most~~
18 ~~recent version of the Orange Book or has a rating of~~
19 ~~"NR", "NA", or similar rating by a nationally~~
20 ~~recognized reference;~~



~~(2) The drug is generally available for purchase in this State from a national or regional wholesaler; and~~

~~(3) The drug is not obsolete.~~

~~(e) The pharmacy benefit manager shall review and make necessary adjustments to the maximum allowable cost of each drug on a maximum allowable cost list at least once every seven days using the most recent data sources available, and shall apply the updated maximum allowable cost list beginning that same day to reimburse the contracted pharmacy until the pharmacy benefit manager next updates the maximum allowable cost list in accordance with this section.~~

~~(f) The pharmacy benefit manager shall have a clearly defined process for a contracting pharmacy to appeal the maximum allowable cost for a drug on a maximum allowable cost list that complies with all of the following:~~

~~(1) A contracting pharmacy may base its appeal on one or more of the following:~~

~~(A) The maximum allowable cost for a drug is below the cost at which the drug is available for purchase by similarly situated pharmacies in this State from a national or regional wholesaler; or~~



~~(B) The drug does not meet the requirements of
subsection (d);~~

~~(2) A contracting pharmacy shall be provided no less than
fourteen business days following receipt of payment
for a claim to file the appeal with the pharmacy
benefit manager;~~

~~(3) The pharmacy benefit manager shall make a final
determination on the contracting pharmacy's appeal no
later than fourteen business days after the pharmacy
benefit manager's receipt of the appeal;~~

~~(4) If the maximum allowable cost is upheld on appeal, the
pharmacy benefit manager shall provide to the
contracting pharmacy the reason therefor and the
national drug code of an equivalent drug that may be
purchased by a similarly situated pharmacy at a price
that is equal to or less than the maximum allowable
cost of the drug that is the subject of the appeal;
and~~

~~(5) If the maximum allowable cost is not upheld on appeal,
the pharmacy benefit manager shall adjust, for the
appealing contracting pharmacy, the maximum allowable~~



~~cost of the drug that is the subject of the appeal,
within one calendar day of the date of the decision on
the appeal and allow the contracting pharmacy to
reverse and rebill the appealed claim.~~

~~(g) A contracting pharmacy shall not disclose to any third
party the maximum allowable cost list and any related
information it receives, either directly from a pharmacy benefit
manager or through a pharmacy services administrative
organization or similar entity with which the pharmacy has a
contract to provide administrative services for that pharmacy."]~~

SECTION 9. (a) No contract for managed care entered into
pursuant to part II of chapter 346, Hawaii Revised Statutes,
after December 31, 2022, shall contain a provision that
authorizes a pharmacy benefit manager to reimburse a contracting
pharmacy on a maximum allowable cost basis.

(b) Any provision of a contract for managed care
authorized pursuant to part II of chapter 346, Hawaii Revised
Statutes, to reimburse a contracting pharmacy for a drug on a
maximum allowable cost basis in accordance with section 328-106,
Hawaii Revised Statutes, or chapter 431S, Hawaii Revised



1 Statutes, that was in effect on or before December 31, 2022,
2 shall be null and void.

3 SECTION 10. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun before its effective date.

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

12 SECTION 12. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 13. This Act shall take effect on January 1, 2050.



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. Repeals the requirement for the Department of Health to enforce the terms of private contracts pertaining to pharmacy benefit managers. Effective 1/1/2050. (SD2)

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