

GOV. MSG. NO. 1310

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

July 3, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 3, 2023, the following bill was signed into law:

SB1381 SD1 HD1 CD1

RELATING TO THE REPEAL OF SECTION
328-106, HAWAII REVISED STATUTES.
ACT 207

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

on JUL 3 2023

THE SENATE
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

S.B. NO. 1381
S.D. 1
H.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO THE REPEAL OF SECTION 328-106, HAWAII REVISED STATUTES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the department of
2 health has historically regulated the safety and integrity of
3 food, drugs, and cosmetics to protect the health of Hawaii's
4 residents and visitors pursuant to the authority provided in
5 chapter 328, Hawaii Revised Statutes (chapter 328). The
6 department's regulatory purview with respect to pharmaceuticals
7 under chapter 328 is analogous to that of the federal Food and
8 Drug Administration under the Federal Food, Drug, and Cosmetic
9 Act. The federal Food and Drug Administration exercises its
10 regulatory authority to ensure the efficacy and overall safety
11 of prescription drugs, but not to control their cost or the
12 business practices of the insurance companies and independent
13 pharmacies that supply them.

14 Section 328-106, Hawaii Revised Statutes, requires the
15 department of health to police the insurance industry, a task
16 for which it is not well-suited. Section 328-106, Hawaii
17 Revised Statutes, requires pharmacy benefit managers to maintain



1 certain information related to the cost of prescription drugs
2 and provide a process for a contracting pharmacy to appeal the
3 maximum allowable cost for reimbursement. Regulatory oversight
4 of what was intended as a price control function, however, is
5 not within the department of health's area of expertise.
6 Additionally, section 328-106, Hawaii Revised Statutes, does not
7 provide an adequate remedy for violations; rather, it prescribes
8 certain aspects of an appeal process to be utilized by the
9 pharmacy benefit managers who nonetheless retain exclusive
10 control over both the administration of the appeal process
11 itself and of any decision ultimately rendered.

12 Therefore, the legislature finds that section 328-106,
13 Hawaii Revised Statutes, is inconsistent with the purpose of
14 chapter 328 generally and does not achieve a meaningful balance
15 in the contractual relationship between pharmacy benefit
16 managers and pharmacies. The regulatory burden this section
17 places on the department of health is outside the scope of the
18 department of health's mission to protect public health.
19 Regulation of the insurance industry's process for reimbursement
20 to pharmacies of prescription drug costs, and of the contractual
21 relationship between them, is likely more effectively achieved



1 by other means. As a result, the legislature finds that
2 repealing section 328-106, Hawaii Revised Statutes, is
3 appropriate.

4 Accordingly, the purpose of this Act is to repeal section
5 328-106, Hawaii Revised Statutes, which requires the department
6 of health to regulate business practices between private
7 entities engaged in the selling, billing, and reimbursement of
8 pharmaceuticals.

9 SECTION 2. Section 328-106, Hawaii Revised Statutes, is
10 repealed.

11 ~~["§328-106] Pharmacy benefit manager; maximum allowable~~
12 ~~cost. (a) A pharmacy benefit manager that reimburses a~~
13 ~~contracting pharmacy for a drug on a maximum allowable cost~~
14 ~~basis shall comply with the requirements of this section.~~

15 ~~(b) The pharmacy benefit manager shall include the~~
16 ~~following in the contract information with a contracting~~
17 ~~pharmacy:~~

18 ~~(1) Information identifying any national drug pricing~~
19 ~~compendia; or~~

20 ~~(2) Other data sources for the maximum allowable cost~~
21 ~~list.~~



1 ~~(c) The pharmacy benefit manager shall make available to a~~
2 ~~contracting pharmacy, upon request, the most up to date maximum~~
3 ~~allowable cost price or prices used by the pharmacy benefit~~
4 ~~manager for patients served by the pharmacy in a readily~~
5 ~~accessible, secure, and usable web based or other comparable~~
6 ~~format.~~

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

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

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

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

17 ~~(e) The pharmacy benefit manager shall review and make~~
18 ~~necessary adjustments to the maximum allowable cost of each drug~~
19 ~~on a maximum allowable cost list at least once every seven days~~
20 ~~using the most recent data sources available, and shall apply~~
21 ~~the updated maximum allowable cost list beginning that same day~~



1 ~~to reimburse the contracted pharmacy until the pharmacy benefit~~
2 ~~manager next updates the maximum allowable cost list in~~
3 ~~accordance with this section.~~

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

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

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

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

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

20 ~~(3) The pharmacy benefit manager shall make a final~~
21 ~~determination on the contracting pharmacy's appeal no~~



1 ~~later than fourteen business days after the pharmacy~~
2 ~~benefit manager's receipt of the appeal;~~

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

11 ~~(5) If the maximum allowable cost is not upheld on appeal,~~
12 ~~the pharmacy benefit manager shall adjust, for the~~
13 ~~appealing contracting pharmacy, the maximum allowable~~
14 ~~cost of the drug that is the subject of the appeal,~~
15 ~~within one calendar day of the date of the decision on~~
16 ~~the appeal and allow the contracting pharmacy to~~
17 ~~reverse and rebill the appealed claim.~~

18 ~~(g) A contracting pharmacy shall not disclose to any third~~
19 ~~party the maximum allowable cost list and any related~~
20 ~~information it receives, either directly from a pharmacy benefit~~
21 ~~manager or through a pharmacy services administrative~~

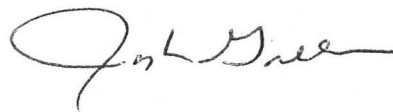


1 ~~organization or similar entity with which the pharmacy has a~~
2 ~~contract to provide administrative services for that pharmacy."]~~

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken.

5 SECTION 4. This Act shall take effect upon its approval.

APPROVED this **3rd** day of **July**, 2023



GOVERNOR OF THE STATE OF HAWAII



THE SENATE OF THE STATE OF HAWAI'I

Date: May 2, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.



President of the Senate



Clerk of the Senate

SB No. 1381, SD 1, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives