S.B. NO. <sup>1381</sup> 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 residents and visitors pursuant to the authority provided in 4 chapter 328, Hawaii Revised Statutes (chapter 328). 5 The 6 department's regulatory purview with respect to pharmaceuticals 7 under chapter 328 is analogous to that of the federal Food and Drug Administration under the Federal Food, Drug, and Cosmetic 8 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.

Section 328-106, Hawaii Revised Statutes, requires the department of health to police the insurance industry, a task for which it is not well-suited. Section 328-106, Hawaii 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 of what was intended as a price control function, however, is 4 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



Page 3



1	by other means. As a result, the legislature finds that			
2	repealing section 328-106, Hawaii Revised Statues, is			
3	appropriate.			
4	Accordingly, the purpose of this Act is to repeal section			
5	328-106, Hawaii Revised Statues, 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	[" <del>[§328-106] Pharmacy benefit manager; maximum allowable</del>			
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	<del>compendia; or</del>			
20	(2) Other data-sources for the maximum allowable cost			
21	<del>list.</del>			

2023-2880 SB1381 CD1 SMA.docx



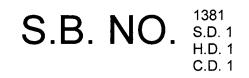
1	(c) The pharmacy benefit manager shall make available to a
2	contracting pharmacy, upon request, the most up to date maximum
3	allowable cost price or prices used by the pharmacy benefit
4	manager for patients served by the pharmacy in a readily
5	accessible, secure, and usable web based or other comparable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

## 2023-2880 SB1381 CD1 SMA.docx



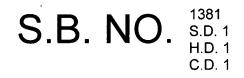
1	<del>to reimbu</del>	<del>rse t</del>	he contracted pharmacy until the pharmacy benefit				
2	manager-n	<del>ext u</del>	pdates the maximum allowable cost list in				
3	accordanc	accordance with this section.					
4	<del>(f)</del>	The	pharmacy benefit manager shall have a clearly				
5	defined process for a contracting pharmacy to appeal the maximum						
6	allowable cost for a drug on a maximum allowable cost list that						
7	<del>complies</del>	with	all of the following:				
8	<del>(1)</del>	<del>A co</del>	ntracting pharmacy may base its appeal on one or				
9		more	of the following:				
10		<del>(A)</del>	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		- <del>(B)</del> -	The drug does not meet the requirements of				
15			subsection (d);				
16	<del>(2)</del>	<del>A co</del>	ntracting pharmacy shall be provided no less than				
17		four	teen business days following receipt of payment				
18		<del>for</del>	a claim to file the appeal with the pharmacy				
19		<del>bene</del>	fit-manager;				
20	<del>(3)</del>	<del>The</del> -	pharmacy benefit manager shall make a final				
21		dete	rmination 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	<del>(4)</del>	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	<del>(5)</del>	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	<del>-(g)</del>	A contracting pharmacy shall not disclose to any third
19	<del>party the</del>	maximum allowable cost list and any related
20	informati	on it receives, either directly from a pharmacy benefit
21	manager o	r through a pharmacy services administrative

## 2023-2880 SB1381 CD1 SMA.docx



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.





Report Title:

DOH; Pharmacy Benefit Managers; Maximum Allowable Cost; Repeal

Description:

Repeals section 328-106, Hawaii Revised Statutes, which requires the Department of Health to regulate business practices between private entities engaged in the selling, billing, and reimbursement of pharmaceuticals. (CD1)

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

