

**ACT 225**

H.B. NO. 62

A Bill for an Act Relating to Pharmacy Benefits Managers.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that pharmacy benefits managers often use a patient's prescription drug claims information to directly market to that patient the services of a preferred pharmacy provider that is owned by the pharmacy benefits manager.

The legislature further finds that the practice of pharmacy benefits managers sharing a patient's prescription claims information with their partially or wholly owned subsidiaries, for the purpose of marketing, without the patient's

express consent is a breach of the patient's right to privacy. Article I, section 6, of the Hawaii State Constitution states, "[t]he right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest." This right, as it relates to a person's medical health information, was affirmed by the Hawaii Supreme Court in *Brende v. Hara*, 153 P.3d 1109 (2007).

The purpose of this Act is to prohibit pharmacy benefits managers, or their partially or wholly owned subsidiaries, from using a patient's medical health information to market or advertise to that patient the services of a preferred pharmacy network that is owned by the pharmacy benefits manager, without the express consent of the patient.

SECTION 2. Chapter 487J, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§487J- Pharmacy benefits managers; health information; prohibited marketing practices.** (a) A pharmacy benefits manager shall not:

- (1) Use an individual's health information, or share an individual's health information with any pharmacy affiliated with or owned, wholly or in part, by the pharmacy benefits manager, for the purpose of marketing, unless:
  - (A) Use of the individual's health information is medically necessary to the health and safety of the individual;
  - (B) Use of the individual's health information is consistent with regulations of the federal Centers for Medicare and Medicaid, if the plan is governed by those rules; or
  - (C) The individual has affirmatively opted in, in writing, to use of the information;
- (2) Sell or disseminate such information unless the sale or dissemination complies with all federal and state laws and the pharmacy benefits manager has received written approval for such sale or dissemination from the employee benefit plan, health benefits plan, or managed care plan sponsor, and the individual; or
- (3) Directly contact an individual by any means, including via electronic delivery, telephonic, SMS text, or direct mail, for the purposes of marketing pharmacy benefits manager-owned pharmacies without the express written permission of the employee benefit plan, health benefits plan, or managed care plan sponsor, and the individual, unless the employee benefit plan, health benefits plan, or managed care plan sponsor first determines that the contact is medically necessary to the health and safety of the individual.

(b) Nothing in this section shall prohibit the use of a patient's health information that is used in conjunction with an insurer-authorized program to more effectively use prescription drugs to improve the health and safety of the individual.

(c) A pharmacy benefits manager shall provide each individual with an opportunity to affirmatively opt in to the sale or dissemination of their health information prior to entering into any arrangement for the lease, rental, dissemination, or sale of such information to any other entity, or to any subsidiary owned, wholly or in part, by the pharmacy benefits manager; provided that an individual may freely revoke the affirmative opt in at any time."

SECTION 3. Section 487J-1, Hawaii Revised Statutes, is amended by adding seven new definitions to be appropriately inserted and to read as follows:

““Affiliated” means businesses or persons who have contractual arrangements with, or are subject to the control of, the pharmacy benefits manager.

“Employee benefit plan” means any plan as defined in title 29 United States Code section 1002(3), as amended.

“Health benefits plan” has the same meaning as in section 87A-1.

“Health information” has the same meaning as in 45 Code of Federal Regulations section 160.103, as may be amended.

“Managed care plan” has the same meaning as in section 432E-1.

“Marketing” means making a communication about a product or service that encourages a recipient of the communication to purchase or use the product or service.

“Pharmacy benefits manager” means any person, business, or entity that performs pharmacy benefits management, including but not limited to a person or entity under contract with a pharmacy benefits manager to perform pharmacy benefits 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.”

SECTION 4. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect upon its approval, and shall apply to all plans and contracts issued, renewed, modified, altered, or amended on or after such effective date.

(Approved June 27, 2013.)

**Note**

1. Edited pursuant to HRS §23G-16.5.