
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:

2 (1) The program under section 340B of the Public Health
3 Service Act (42 U.S.C. 256b) (340B Program) enables
4 health care settings that serve a disproportionate
5 share of underserved patient populations (covered
6 entities) to stretch scarce resources as far as
7 possible, reaching more patients and providing more
8 comprehensive services than without such program;

9 (2) The 340B Program provides covered entities with a
10 discount from drug manufacturers on covered outpatient
11 drugs they purchase to meet the health care needs of
12 the community;

13 (3) Covered entities that qualify for participation under
14 the 340B Program must meet rigorous eligibility
15 criteria that prove these entities are safety net
16 health care providers for many underserved patients;



- 1 (4) Drug manufacturer discounts are provided to covered
2 entities rather than directly to individual patients;
- 3 (5) The discounts described in paragraph (2) provided
4 through the 340B Program enable covered entities to
5 deliver comprehensive services to the communities they
6 serve, which may include providing free or discounted
7 drugs to vulnerable populations, although providing
8 free or discounted drugs to patients is not the sole
9 purpose of the program;
- 10 (6) The 340B Program is also designed to help covered
11 entities promote health for underserved communities
12 and patients, regardless of a particular patient's
13 insurance status or inability to pay;
- 14 (7) Savings from the 340B Program are used by covered
15 entities to reach more patients and provide more
16 comprehensive services, as covered entities are in the
17 best position to assess the use of their savings for
18 community needs;
- 19 (8) Drugs purchased under the 340B Program account for a
20 small proportion of overall drug spending and the



- 1 discounts described in paragraph (2) provided through
2 the 340B Program are not funded by taxpayers;
- 3 (9) Manufacturer rebate money may cause pharmacy benefit
4 managers to favor more costly brand-name drugs over
5 generic or lower-cost, therapeutically equivalent
6 brand-name drugs and the business practices of
7 pharmacy benefit managers generally lack transparency;
- 8 (10) Mergers between pharmacy benefit managers and
9 pharmaceutical manufacturers and large pharmacy chains
10 have also occurred, which have raised numerous
11 concerns; and
- 12 (11) Some of the biggest concerns are potential conflicts
13 of interest, inhibiting competition in the dispensing
14 of prescription drugs, actual increased out-of-pocket
15 costs for consumers, denying consumer choice, and
16 determining whether patients and covered entities have
17 received the discounts and other price concessions
18 negotiated by the program on their behalf.

19 Currently, pharmacy benefit managers in Hawaii are required
20 to register with the insurance commissioner pursuant to chapter
21 431S, Hawaii Revised Statutes, and are subject to certain



1 transparency laws set forth in section 328-106, Hawaii Revised
2 Statutes. However, the existing laws lack an appropriate
3 enforcement mechanism or incentive for pharmacy benefit managers
4 to comply with the disclosure of maximum allowable cost lists,
5 as required by section 328-106, Hawaii Revised Statutes. This
6 lack of oversight and transparency regarding the business
7 operations of pharmacy benefit managers has generated numerous
8 questions. The legislature finds that there is a need for the
9 industry to fully disclose how much it is actually saving
10 consumers and what portion of those savings are actually passed
11 along to consumers by more strictly regulating pharmacy benefit
12 managers.

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

16 "§431S-A Pharmacy benefit managers; duties; prohibitions.

17 A pharmacy benefit manager registered under section 431S-3

18 shall:

19 (1) Comply with the requirements of section 328-106;

20 (2) Not reimburse a covered entity differently than any

21 other pharmacy that contracts with a pharmacy benefit



- 1 manager based on the covered entity's participation in
2 the 340B program or otherwise discriminate against
3 such covered entity with respect to the terms of any
4 reimbursement, including terms related to the level
5 and amount of reimbursement;
- 6 (3) Not reimburse a covered entity or contract pharmacy
7 for a drug on a maximum allowable cost basis, unless
8 the pharmacy benefit manager strictly complies with
9 the requirements of section 328-106;
- 10 (4) Not penalize a covered entity or contract pharmacy
11 for, or otherwise directly or indirectly prevent, a
12 covered entity or contract pharmacy from informing an
13 enrollee of the difference between the out-of-pocket
14 cost to the enrollee to purchase a prescription drug
15 using the enrollee's pharmacy benefit and the
16 pharmacy's usual and customary charge for the
17 prescription drug;
- 18 (5) Not conduct spread pricing; and
- 19 (6) Not retroactively deny or reduce a claim for
20 reimbursement of the cost of services after the claim



1 has been adjudicated by the pharmacy benefit manager
2 unless the:

3 (A) Adjudicated claim was submitted fraudulently;

4 (B) Pharmacy benefit manager's payment on the
5 adjudicated claim was incorrect because the
6 covered entity or contract pharmacy had already
7 been paid for the services;

8 (C) Services were improperly rendered by the covered
9 entity or contract pharmacy; or

10 (D) Covered entity or contract pharmacy agrees to the
11 denial or reduction prior to the pharmacy benefit
12 manager notifying the covered entity or contract
13 pharmacy that the claim had been denied or
14 reduced.

15 Paragraph (6) shall not be construed to limit audits under
16 section 431S-C. This section shall not apply to retail drugs
17 that are reimbursed by the State on a fee-for-service basis
18 pursuant to a state plan approved under Title XIX of the Social
19 Security Act.

20 **§431S-B Pharmacy benefit managers; quarterly reports**

21 **required.** (a) A pharmacy benefit manager shall report to the



1 insurance commissioner on a quarterly basis for each insurer or
2 third party the following information:

3 (1) The aggregate amount of rebates received by the
4 pharmacy benefit manager;

5 (2) The aggregate amount of rebates distributed to the
6 appropriate insurer or third party;

7 (3) The aggregate amount of rebates passed on to the
8 enrollees of each insurer or third party at the point
9 of sale that reduced the enrollees' applicable
10 deductible, copayment, coinsurance, or other cost-
11 sharing amount;

12 (4) The individual and aggregate amount paid by the
13 insurer or third party to the pharmacy benefit manager
14 for pharmacist services itemized by pharmacy, product,
15 and goods and services; and

16 (5) The individual and aggregate amount a pharmacy benefit
17 manager paid for pharmacist services itemized by
18 pharmacy, product, and goods and services.

19 (b) The report required under subsection (a) shall be:

20 (1) Proprietary and confidential under chapter
21 431:2-209(e) (3); and



1 (2) Not subject to disclosure under chapter 92F; provided
2 that the insurance commissioner may publicly release
3 aggregated or deidentified information from such
4 reports that does not allow identification of an
5 individual pharmacy benefit manager and would not
6 cause competitive harm to the pharmacy benefit manager
7 who submitted it.

8 §431S-C Pharmacy benefit manager; program integrity. The
9 insurance commissioner may commence audits of an insurer or
10 pharmacy benefit manager that reimburses a covered entity or its
11 contract pharmacy for drugs that are subject to an agreement
12 under section 431S-A to ensure the integrity of the program
13 including the level and amount of reimbursement, on the basis
14 that the covered entity participates in the program under
15 section 431S-A.

16 §431S-D Report to insurance commissioner. (a) No later
17 than March 31 of each calendar year, each prescription drug
18 benefit plan, health benefits plan under chapter 87A, and
19 pharmacy benefit manager shall file with the insurance
20 commissioner, in such form and detail as the insurance
21 commissioner shall prescribe, a report for the preceding



1 calendar year stating that the pharmacy benefit manager or
2 prescription drug benefit plan is in compliance with this
3 chapter. The report shall fully disclose the amounts, terms,
4 and conditions relating to copayments, reimbursement options,
5 and other payments associated with a prescription drug benefit
6 plan.

7 (b) The insurance commissioner shall review and examine
8 records supporting the accuracy and completeness of the report
9 and, no later than ninety days after the receipt of the report,
10 shall make available to a purchaser of a prescription drug
11 benefit plan a summary of the amounts, terms, and conditions
12 relating to copayments, reimbursement options, and other
13 payments associated with a prescription drug benefit plan.

14 **§431S-E Violations; penalties.** The insurance commissioner
15 may assess a fine of up to \$10,000 for each violation by a
16 pharmacy benefit manager or prescription drug benefit plan
17 provider who is in violation of section 431S-A or 431S-B. In
18 addition, the insurance commissioner may order the pharmacy
19 benefit manager to take specific affirmative corrective action
20 or make restitution."



1 SECTION 3. Section 431S-1, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding ten new definitions to be appropriately
4 inserted and to read:

5 "340B covered entity" shall have the meaning as in title
6 42 United States Code section 256(a)(4).

7 "Claim" means a request from a covered entity or contract
8 pharmacy to be reimbursed for the cost of filling or refilling a
9 prescription for a drug or for providing a medical supply or
10 service.

11 "Contract pharmacy" means a pharmacy operating under
12 contract with a 340B covered entity to provide dispensing
13 services to the 340B covered entity as described in 75 Federal
14 Register 10272 published on March 5, 2010.

15 "Enrollee" means an individual who participates in a
16 prescription drug benefit plan for which a pharmacy benefit
17 manager has contracted with the insurer to reimburse claims
18 submitted to covered entities or contract pharmacies for the
19 costs for drugs prescribed for the individual.

20 "Insurer" means an insurance company, a health maintenance
21 organization, or a hospital and medical service corporation.



1 "Out-of-pocket cost" means the amount paid by an enrollee
2 under the enrollee's coverage, including deductibles,
3 copayments, coinsurance, or other expenses as prescribed by the
4 insurance commissioner by rule.

5 "Pharmacist services" means products, goods, and services,
6 or any combination or products, goods, and services, provided as
7 part of the practice of pharmacy as defined in section 461-1.

8 "Rebate" means a discount or other price concession, or a
9 payment that is:

10 (1) Based on a utilization of a prescription drug; and

11 (2) Paid by a manufacturer or third-party, directly or
12 indirectly to a pharmacy benefit manager after a claim
13 has been processed and paid to the covered entity or
14 contract pharmacy.

15 "Spread pricing" means the model of prescription drug
16 pricing in which the pharmacy benefit manager charges a
17 prescription drug benefit plan a contracted price for
18 prescription drugs, and the contracted price for prescription
19 drugs differs from the amount the pharmacy benefit manager
20 directly or indirectly pays the covered entity or contract
21 pharmacy for pharmacy services.



1 "Third party" means a person, business, or entity other
2 than a pharmacy benefit manager that is not an enrollee or
3 insured in a prescription drug benefit plan."

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

5 "Covered entity" means:

- 6 (1) A health benefits plan regulated under chapter 87A;
7 health insurer regulated under article 10A of
8 chapter 431; mutual benefit society regulated under
9 article 1 of chapter 432; or health maintenance
10 organization regulated under chapter 432D; provided
11 that a "covered entity" under this paragraph shall not
12 include a health maintenance organization regulated
13 under chapter 432D that owns or manages its own
14 pharmacies;
- 15 (2) A health program administered by the State in the
16 capacity of a provider of health coverage; or
- 17 (3) An employer, labor union, or other group of persons
18 organized in the State that provides health coverage
19 to covered persons employed or residing in the
20 State [-]; and



1 (4) The same as it means in title 42 United States Code
2 section 256(a)(4).

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

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

8 "Pharmacy benefit manager" means [~~any~~]:

9 (1) Any person that performs pharmacy benefit management,
10 including but not limited to a person or entity in a
11 contractual or employment relationship with a pharmacy
12 benefit manager to perform pharmacy benefit management
13 for a covered entity[-]; and

14 (2) A person, business, or other entity that contracts
15 with pharmacies on behalf of an insurer to perform
16 pharmacy benefit management, including but not limited
17 to:

18 (A) Contracting directly or indirectly with
19 pharmacies to provide prescription drugs to
20 enrollees or other covered individuals;

21 (B) Administering a prescription drug benefit;



- 1 (C) Processing or paying pharmacy claims;
- 2 (D) Creating or updating prescription drug
- 3 formularies;
- 4 (E) Making or assisting in making prior
- 5 authorizations on prescription drugs;
- 6 (F) Administering rebates on prescription drugs; or
- 7 (G) Establishing a network to provide pharmacist
- 8 services for health benefit plans."

9 "Pharmacy benefit manager" shall not include the department of
 10 human services."

11 SECTION 4. Section 431S-3, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "~~§~~431S-3~~+~~ **Registration required.** (a) Notwithstanding
 14 any law to the contrary, no person shall act or operate as a
 15 pharmacy benefit manager without first obtaining a valid
 16 registration issued by the commissioner pursuant to this
 17 chapter.

18 (b) Each person seeking to register as a pharmacy benefit
 19 manager shall file with the commissioner an application on a
 20 form prescribed by the commissioner. The application shall
 21 include:



- 1 (1) The name, address, official position, and professional
2 qualifications of each individual who is responsible
3 for the conduct of the affairs of the pharmacy benefit
4 manager, including all members of the board of
5 directors; board of trustees; executive commission;
6 other governing board or committee; principal
7 officers, as applicable; partners or members, as
8 applicable; and any other person who exercises control
9 or influence over the affairs of the pharmacy benefit
10 manager;
- 11 (2) The name and address of the applicant's agent for
12 service of process in the State; and
- 13 (3) A nonrefundable application fee [~~of \$140.~~] not to
14 exceed \$200."

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

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

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



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

3 (2) A renewal fee [~~of \$140.~~] not to exceed \$200.

4 (c) Failure on the part of a pharmacy benefit manager to
5 renew its registration as provided in this section shall result
6 in a penalty of \$140 and may cause the registration to be
7 revoked or suspended by the commissioner until the requirements
8 for renewal have been met."

9 SECTION 6. Section 431S-5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[~~§~~]**§431S-5**[~~]~~ **Penalty.** Any person who acts as a pharmacy
12 benefit manager in this State without first being registered
13 pursuant to this chapter shall be subject to a fine of [~~\$500 for~~
14 ~~each violation.~~] not less than \$1,000 per day for the period the
15 pharmacy benefit manager is found to be in violation of this
16 chapter."

17 SECTION 7. In codifying the new sections added by
18 section 2 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 the new sections in this Act.



1 SECTION 8. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 9. This Act shall take effect on July 1, 2050.



Report Title:

Consumer Protection; Pharmacy Benefit Managers; Reports; Audits; Duties

Description:

Clarifies the duties and responsibilities of a pharmacy benefit manager. Establishes quarterly reporting requirements to the Insurance Commissioner by pharmacy benefit managers. Authorizes audits of pharmacy benefit managers by the Insurance Commissioner. Expands the definition of pharmacy benefit manager. Effective 7/1/2050. (HD1)

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