

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1           SECTION 1. The legislature finds that the costs of  
2 specialty drugs are increasing. Health plans have created a  
3 cost-sharing mechanism known as specialty tiers, which greatly  
4 increase the potential financial burden on patients.

5           The legislature further finds that high out-of-pocket costs  
6 for specialty drugs could preclude patients from complying with  
7 the treatment protocols prescribed by their doctors. The  
8 increased cost-sharing associated with specialty tier drugs  
9 presents a significant financial strain on very ill individuals  
10 and their families. The financial burden of specialty drugs  
11 affects patients facing serious health conditions, including  
12 hemophilia, human immunodeficiency virus (HIV), hepatitis,  
13 multiple sclerosis, lupus, some cancers, and rheumatoid  
14 arthritis, among others.

15           The purpose of this Act is to:



- 1           (1) Impose dollar limits on specialty tiers in order to
- 2           protect patients from unaffordable coinsurance or
- 3           copayment amounts;
- 4           (2) Limit patients' coinsurance or copayment fees for
- 5           specialty tier drugs to \$150 per month for up to a
- 6           thirty day period supply of any single specialty tier
- 7           drug; and
- 8           (3) Allow patients to request an exception to obtain a
- 9           specialty drug that would not otherwise be available
- 10          on a health plan formulary.

11           SECTION 2. Chapter 431:10A, Hawaii Revised Statutes, is

12 amended by adding a new section to part I to be appropriately

13 designated and to read as follows:

14           "§431:10A-A Specialty tier prescription coverage. (a)

15 All individual and group accident and health or sickness

16 insurance policies that provide coverage for prescription drugs

17 and use a specialty drug tier shall ensure that any required

18 copayment or coinsurance applicable to specialty drugs on a

19 specialty drug tier does not exceed \$150 per month for each

20 specialty drug, up to a thirty day supply of any single drug.



1       (b) All individual and group accident and health or  
2 sickness insurance policies that provide coverage for  
3 prescription drugs and use a specialty drug formulary shall  
4 implement an exceptions process that allows insureds to request  
5 an exception to the formulary. Under this type of exception, a  
6 non-formulary specialty drug may be deemed covered under the  
7 formulary if the prescribing physician determines that the  
8 formulary drug for treatment of the same condition would not be  
9 as effective for the insured, would have adverse effects for the  
10 insured, or both. If an insured is denied an exception, the  
11 insured may pursue an internal appeal pursuant to section 432E-5  
12 and an external review pursuant to section 432E-34.

13       (c) All individual and group accident and health or  
14 sickness insurance policies that provide coverage for  
15 prescription drugs shall be prohibited from placing all drugs in  
16 a given class of drugs on a specialty drug tier.

17       (d) Nothing in this section shall be construed to require  
18 an insurance policy to:

19       (1) Provide coverage for any additional drugs not  
20 otherwise required by law;



1       (2) Implement specific utilization management techniques,  
2       such as prior authorization or step therapy; or

3       (3) Cease use of tiered cost-sharing structures, including  
4       those strategies used to incentivize use of preventive  
5       services, disease management, and low-cost treatment  
6       options.

7       (e) Nothing in this section shall be construed to require  
8       a pharmacist to substitute a drug without the consent of the  
9       prescribing physician.

10       (f) Nothing contained in any other provision of law or  
11       rule shall preclude an insurance policy subject to this chapter  
12       from requiring specialty drugs to be obtained through a  
13       designated pharmacy or other source of those drugs.

14       (g) The commissioner may adopt rules regarding the  
15       enforcement processes for this section.

16       (h) As used in this section, unless the context otherwise  
17       requires:

18       "Class of drugs" means a group of medications having  
19       similar actions designed to treat a particular disease process.

20       "Coinsurance" means a cost-sharing amount set as a  
21       percentage of the total cost of a drug.



1 "Commissioner" means the insurance commissioner.

2 "Copayment" means a cost-sharing amount set as a dollar  
3 value.

4 "Non-preferred drug" means a specialty drug formulary  
5 classification for certain specialty drugs deemed non-preferred  
6 and therefore subject to limits on eligibility for coverage or  
7 to higher cost-sharing amounts than preferred specialty drugs.

8 "Preferred drug" means a specialty drug formulary  
9 classification for certain specialty drugs deemed preferred and  
10 therefore not subject to limits on eligibility for coverage or  
11 not subject to higher cost-sharing amounts than non-preferred  
12 specialty drugs.

13 "Specialty drug" means a prescription drug:

14 (1) That is prescribed for a person with:

15 (A) A complex or chronic medical condition that is a  
16 physical, behavioral, or developmental condition  
17 that may have no known cure, is progressive, or  
18 can be debilitating or fatal if left untreated or  
19 undertreated, such as multiple sclerosis,  
20 hepatitis C, or rheumatoid arthritis; or



1           (B) A rare medical disease or condition that affects  
 2           fewer than two hundred thousand persons in the  
 3           United States, or fewer than one in one thousand  
 4           five hundred people, such as cystic fibrosis,  
 5           hemophilia, or multiple myeloma;

6           (2) That has a total monthly prescription cost of no less  
 7           than \$600;

8           (3) That is not stocked at a majority of retail  
 9           pharmacies; and

10          (4) For which at least one of the following applies:

11           (A) The drug is an oral, injectable, or infusible  
 12           drug product;

13           (B) The drug has unique storage or shipment  
 14           requirements, such as refrigeration; or

15           (C) Patients receiving the drug require education and  
 16           support beyond traditional dispensing activities.

17          "Specialty drug formulary" means a specialty drug benefit  
 18          design that distinguishes, for purposes of eligibility for  
 19          coverage or for cost-sharing, between preferred drugs and non-  
 20          preferred drugs.



1       "Specialty drug tier" means a tier of cost-sharing designed  
2 for specialty drugs that exceeds the amount for non-specialty  
3 drugs and that the cost-sharing amount is based on coinsurance."

4       SECTION 3. Chapter 431:10A, Hawaii Revised Statutes, is  
5 amended by adding a new section to part II to be appropriately  
6 designated and to read as follows:

7       "§431:10A-B Specialty tier prescription coverage. (a)  
8 All group or blanket disability insurance policies that provide  
9 coverage for prescription drugs and use a specialty drug tier  
10 shall ensure that any required copayment or coinsurance  
11 applicable to specialty drugs on a specialty drug tier does not  
12 exceed \$150 per month for each specialty drug, up to a thirty  
13 day supply of any single drug.

14       (b) All group or blanket disability insurance policies  
15 that provide coverage for prescription drugs and use a specialty  
16 drug formulary shall implement an exceptions process that allows  
17 insureds to request an exception to the formulary. Under this  
18 type of exception, a non-formulary specialty drug may be deemed  
19 covered under the formulary if the prescribing physician  
20 determines that the formulary drug for treatment of the same  
21 condition would not be as effective for the insured, would have



1 adverse effects for the insured, or both. If an insured is  
2 denied an exception, the insured may pursue an internal appeal  
3 pursuant to section 432E-5 and an external review pursuant to  
4 section 432E-34.

5 (c) All group or blanket disability insurance policies  
6 that provide coverage for prescription drugs shall be prohibited  
7 from placing all drugs in a given class of drugs on a specialty  
8 drug tier.

9 (d) Nothing in this section shall be construed to require  
10 an insurance policy to:

- 11 (1) Provide coverage for any additional drugs not  
12 otherwise required by law;  
13 (2) Implement specific utilization management techniques,  
14 such as prior authorization or step therapy; or  
15 (3) Cease use of tiered cost-sharing structures, including  
16 those strategies used to incentivize use of preventive  
17 services, disease management, and low-cost treatment  
18 options.

19 (e) Nothing in this section shall be construed to require  
20 a pharmacist to substitute a drug without the consent of the  
21 prescribing physician.



1        (f) Nothing contained in any other provision of law or  
 2 rule shall preclude an insurance policy subject to this chapter  
 3 from requiring specialty drugs to be obtained through a  
 4 designated pharmacy or other source of those drugs.

5        (g) The commissioner may adopt rules regarding the  
 6 enforcement processes for this section.

7        (h) The terms "class of drugs", "coinsurance",  
 8 "commissioner", "copayment", "non-preferred drug", "preferred  
 9 drug", "specialty drug", "specialty drug formulary", and  
 10 "specialty drug tier" shall have the same respective meanings as  
 11 in section 431:10A-A."

12        SECTION 4. Chapter 432, Hawaii Revised Statutes, is  
 13 amended by adding a new section to article 1 to be appropriately  
 14 designated and to read as follows:

15        "§432:1- Specialty tier prescription coverage. (a) All  
 16 individual and group hospital and medical service corporation  
 17 contracts that provide coverage for prescription drugs and use a  
 18 specialty drug tier shall ensure that any required copayment or  
 19 coinsurance applicable to specialty drugs on a specialty tier  
 20 does not exceed \$150 per month for each specialty drug, up to a  
 21 thirty day supply of any single drug.



1        (b) All individual and group hospital and medical service  
2 corporation contracts that provide coverage for prescription  
3 drugs and use a specialty drug formulary shall implement an  
4 exceptions process that allows members to request an exception  
5 to the formulary. Under this type of exception, a non-formulary  
6 specialty drug may be deemed covered under the formulary if the  
7 prescribing physician determines that the formulary drug for  
8 treatment of the same condition would not be as effective for  
9 the member, would have adverse effects for the member, or both.  
10 If an insured is denied an exception, the insured may pursue an  
11 internal appeal pursuant to section 432E-5 and an external  
12 review pursuant to section 432E-34.

13        (c) All individual and group hospital and medical service  
14 corporation contracts that provide coverage for prescription  
15 drugs shall be prohibited from placing all drugs in a given  
16 class of drugs on a specialty tier.

17        (d) Nothing in this section shall be construed to require  
18 a contract to:

19            (1) Provide coverage for any additional drugs not  
20            otherwise required by law;



1       (2) Implement specific utilization management techniques,  
2       such as prior authorization or step therapy; or

3       (3) Cease use of tiered cost-sharing structures, including  
4       those strategies used to incentivize use of preventive  
5       services, disease management, and low-cost treatment  
6       options.

7       (e) Nothing in this section shall be construed to require  
8       a pharmacist to substitute a drug without the consent of the  
9       prescribing physician.

10       (f) Nothing contained in any other provision of law or  
11       rule shall preclude a contract subject to this chapter from  
12       requiring specialty drugs to be obtained through a designated  
13       pharmacy or other source of those drugs.

14       (g) The commissioner may adopt rules regarding the  
15       enforcement processes for this section.

16       (h) The terms "class of drugs", "coinsurance",  
17       "commissioner", "copayment", "non-preferred drug", "preferred  
18       drug", "specialty drug", "specialty drug formulary", and  
19       "specialty drug tier" shall have the same respective meanings as  
20       in section 431:10A-A."



1 SECTION 5. Chapter 432D, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§432D- Specialty tier prescription coverage. (a) All  
5 policies, contracts, plans, or agreements issued in the State by  
6 health maintenance organizations pursuant to this chapter that  
7 provide coverage for prescription drugs and use a specialty drug  
8 tier shall ensure that any required copayment or coinsurance  
9 applicable to specialty drugs on a specialty drug tier does not  
10 exceed \$150 per month for each specialty drug, up to a thirty  
11 day supply of any single drug.

12 (b) All policies, contracts, plans, or agreements issued  
13 in the State by health maintenance organizations pursuant to  
14 this chapter that provide coverage for prescription drugs and  
15 use a specialty drug formulary shall implement an exceptions  
16 process that allows insureds to request an exception to the  
17 formulary. Under this type of exception, a non-formulary  
18 specialty drug may be deemed covered under the formulary if the  
19 prescribing physician determines that the formulary drug for  
20 treatment of the same condition would not be as effective for  
21 the insured, would have adverse effects for the insured, or



1 both. If an insured is denied an exception, the insured may  
2 pursue an internal appeal pursuant to section 432E-5 and an  
3 external review pursuant to section 432E-34.

4 (c) All policies, contracts, plans, or agreements issued  
5 in the State by health maintenance organizations pursuant to  
6 this chapter that provide coverage for prescription drugs shall  
7 be prohibited from placing all drugs in a given class of drugs  
8 on a specialty drug tier.

9 (d) Nothing in this section shall be construed to require  
10 a policy, contract, plan, or agreement to:

11 (1) Provide coverage for any additional drugs not  
12 otherwise required by law;

13 (2) Implement specific utilization management techniques,  
14 such as prior authorization or step therapy; or

15 (3) Cease use of tiered cost-sharing structures, including  
16 those strategies used to incentivize use of preventive  
17 services, disease management, and low-cost treatment  
18 options.

19 (e) Nothing in this section shall be construed to require  
20 a pharmacist to substitute a drug without the consent of the  
21 prescribing physician.



1        (f) Nothing contained in any other provision of law or  
2 rule shall preclude a policy, contract, plan, or agreement  
3 subject to this chapter from requiring specialty drugs to be  
4 obtained through a designated pharmacy or other source of those  
5 drugs.

6        (g) The commissioner may adopt rules regarding the  
7 enforcement processes for this section.

8        (h) The terms "class of drugs", "coinsurance",  
9 "commissioner", "copayment", "non-preferred drug", "preferred  
10 drug", "specialty drug", "specialty drug formulary", and  
11 "specialty drug tier" shall have the same respective meanings as  
12 in section 431:10A-A."

13        SECTION 6. In codifying the new sections added by sections  
14 2 and 3 and referenced in sections 3, 4, and 5 of this Act, the  
15 revisor of statutes shall substitute appropriate section numbers  
16 for the letters used in designating the new sections in this  
17 Act.

18        SECTION 7. New statutory material is underscored.



1 SECTION 8. This Act shall take effect on July 1, 2021;  
2 provided that this Act shall apply to all health plan contracts  
3 issued or renewed in this State on or after January 1, 2022.

4

INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, appearing to be 'J. Bl...', is written over a horizontal line.

# S.B. NO. 326

**Report Title:**

Specialty Tier Prescription Coverage; Specialty Drugs; Health Plan

**Description:**

Imposes dollar limits on specialty tiers in order to protect patients from unaffordable coinsurance or copayment amounts. Limits patients' coinsurance or copayment fees for specialty tier drugs to \$150 per month for up to a thirty-day period supply. Allow patients to request an exception to obtain a specialty drug that would not otherwise be available on a health plan formulary.

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