

---

---

# 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 pharmacy benefit  
2 managers are companies that manage prescription drug benefits on  
3 behalf of health insurers and other payors. By negotiating with  
4 drug manufactures and pharmacies to control drug spending,  
5 pharmacy benefit managers have a significant behind-the-scenes  
6 impact in determining total drug costs for insurers, shaping  
7 patients' access to medications, and determining how much  
8 pharmacies are paid.

9           Because pharmacy benefit managers have the ability to  
10 negotiate larger rebates from manufacturers, pharmacy benefit  
11 managers may have an incentive to favor high-priced drugs over  
12 drugs that are more cost-effective. Furthermore, because  
13 pharmacy benefit managers often receive rebates that are  
14 calculated as a percentage of the manufacturer's list price,  
15 pharmacy benefit managers may receive a larger rebate for more  
16 expensive drugs than they do for ones that may provide better  
17 value at lower cost. Drug manufacturers have argued that the



1 growing rebates they pay pharmacy benefit managers are forcing  
2 them to raise list prices for their products.

3       The legislature further finds that independent and rural  
4 pharmacies are struggling due to decreased reimbursement rates  
5 for prescription drugs, as determined by pharmacy benefit  
6 managers. A 2019 analysis by the Pharmacists Society of the  
7 State of New York found that pharmacy benefit manager markups  
8 for medicaid prescriptions at independent pharmacies in the  
9 state doubled from 2016 to 2017. Additionally, according to  
10 research by the RUPRI Center for Rural Health Policy Analysis at  
11 the University of Iowa, more than sixteen per cent of rural  
12 independently owned pharmacies closed between 2003 and 2018,  
13 including over six hundred locations that served as their  
14 community's sole pharmacy. Reimbursement rates below the  
15 pharmacy's purchase cost for a drug is an unsustainable model  
16 that could force independent pharmacies out of business,  
17 especially pharmacies that do not have a supplemental retail  
18 market like many large pharmacy chains. Not only would these  
19 closures take a toll on local economies, they could also leave  
20 residents in less populated areas without a pharmacist to fill  
21 prescriptions and provide other vital services. Rural residents



1 already have fewer options for health care services, and  
2 pharmacies in these communities are one of the few increasing  
3 reliable sources for clinical advice.

4 Accordingly, the purpose of this Act is to increase  
5 transparency and fairness; and promote, preserve, and protect  
6 the public health, safety, and welfare by:

- 7 (1) Prohibiting certain contracts for managed care entered  
8 into after June 30, 2021, from containing a provision  
9 that authorizes a pharmacy benefit manager to  
10 reimburse a contracting pharmacy on a maximum  
11 allowable cost basis and voiding any such provisions  
12 in existing managed care contracts;
- 13 (2) Prohibiting pharmacy benefit managers from engaging in  
14 unfair methods of competition or unfair practices;
- 15 (3) Prohibiting a pharmacy benefit manager from  
16 reimbursing a 340B pharmacy differently than any other  
17 network pharmacy;
- 18 (4) Prohibiting a pharmacy benefit manager from  
19 reimbursing an independent or rural pharmacy an amount  
20 less than the rural rate for each prescription drug,  
21 under certain circumstances;



- 1           (5) Prohibiting a pharmacy benefit manager from
- 2                   prohibiting a pharmacist or pharmacy to provide
- 3                   certain information to insureds regarding cost sharing
- 4                   or more affordable alternative drugs;
- 5           (6) Inserting language that provides, in responding to the
- 6                   State's request, any information provided in response
- 7                   to a data call from the Insurance Commissioner or
- 8                   designee shall be treated confidential and privileged;
- 9           (7) Increasing the pharmacy benefit managers' annual
- 10                   reporting requirements;
- 11           (8) Requiring the insurance commissioner to make annual
- 12                   reports to the legislature;
- 13           (9) Increasing pharmacy benefit manager registration and
- 14                   renewal fees; and
- 15           (10) Making certain violations of pharmacy benefit managers
- 16                   subject to the penalties provided in chapters 480 and
- 17                   481, Hawaii Revised Statutes.

18           SECTION 2. Chapter 346, Hawaii Revised Statutes, is  
19 amended by adding a new section to part II to be appropriately  
20 designated and to read as follows:



1           "§346- Pharmacy benefit managers; contracting  
2 pharmacies; reimbursements; maximum allowable cost basis;  
3 prohibition. (a) No contract for managed care entered into  
4 pursuant to this part, after June 30, 2021, shall contain a  
5 provision that authorizes a pharmacy benefit manager to  
6 reimburse a contracting pharmacy on a maximum allowable cost  
7 basis in accordance with section 328-106 or chapter 431S.

8           (b) Any provision of a contract for managed care  
9 authorized pursuant to this part to reimburse a contracting  
10 pharmacy for a drug on a maximum allowable cost basis in  
11 accordance with section 328-106 or chapter 431S that was in  
12 effect on or before June 30, 2021, shall be void."

13           SECTION 3. Chapter 431S, Hawaii Revised Statutes, is  
14 amended by adding four new sections to be appropriately  
15 designated and to read as follows:

16           "§431S- Pharmacy benefit manager business practices;  
17 prohibitions; independent or rural pharmacy reimbursement rate.

18           (a) A pharmacy benefit manager shall not engage in unfair  
19 methods of competition pursuant to chapter 480, or unfair  
20 practices pursuant to chapter 481, in the conduct of pharmacy  
21 benefit management, as defined in section 431S-1. A violation



1 of this section by a pharmacy benefit manager shall constitute a  
2 separate violation under chapter 480 and chapter 481.

3 (b) A pharmacy benefit manager shall not reimburse a 340B  
4 pharmacy differently than any other network pharmacy based on  
5 its status as a 340B pharmacy. For purposes of this subsection,  
6 a "340B pharmacy" means a pharmacy that is authorized to  
7 purchase drugs at a discount under Title 42 United States Code  
8 section 256b.

9 (c) A pharmacy benefit manager shall not reimburse an  
10 independent or rural pharmacy an amount less than the rural rate  
11 for each prescription drug; provided that:

12 (1) Pharmacy benefit managers shall file with the  
13 commissioner a list of the rural rates for each  
14 prescription drug; and

15 (2) A pharmacy benefit manager shall be prohibited from  
16 changing the rural rate without providing thirty days'  
17 notice to all contracting independent or rural  
18 pharmacies of any change in the rural rate and filing  
19 a report with the commissioner identifying the rural  
20 rate changes.



1        §431S-    Gag clause prohibited.    A pharmacy benefit  
2 manager shall not prohibit a pharmacist or pharmacy from  
3 providing an insured individual with information on the amount  
4 of the insured's cost share for the insured's prescription drug  
5 and the clinical efficacy of a more affordable alternative drug  
6 if one is available.    Neither a pharmacy nor a pharmacist shall  
7 be penalized by a pharmacy benefit manager for disclosing such  
8 information to an insured or for selling to an insured a more  
9 affordable alternative if one is available.

10       §431S-    Data calls.    In response to the State's request,  
11 any information provided in response to a data call from the  
12 commissioner or the commissioner's designee, shall be treated as  
13 confidential and privileged.    The information provided shall not  
14 be subject to subpoena and shall not be subject to discovery or  
15 admissible in evidence in any private civil action, unless so  
16 ordered by the court.    No waiver of privilege or confidentially  
17 shall occur as a result of responding to a data call.

18       §431S-    Annual transparency report; commissioner report  
19 to the legislature.    (a)    No later than September 1, 2021, and  
20 annually thereafter, each pharmacy benefit manager registered  
21 under this chapter shall submit a transparency report containing



1 data from the preceding calendar year to the commissioner that  
2 shall include:

3 (1) The names of each party with which the pharmacy  
4 benefit manager contracts to provide pharmacy benefit  
5 management, as defined in section 431S-1, and each  
6 party's number of locations;

7 (2) The aggregate amount of all rebates that the pharmacy  
8 benefit manager received from all pharmaceutical  
9 manufacturers for all covered entity clients and for  
10 each covered entity client;

11 (3) The aggregate administrative fees that the pharmacy  
12 benefit manager received from all pharmaceutical  
13 manufacturers for all covered entity clients and for  
14 each covered entity client;

15 (4) The aggregate retained rebates that the pharmacy  
16 benefit manager received from all pharmaceutical  
17 manufacturers and did not pass through to covered  
18 entities;

19 (5) The aggregate retained rebate percentage;



- 1       (6) The highest, lowest, and mean aggregate retained  
2       rebate percentage for all covered entity clients and  
3       for each covered entity client; and
- 4       (7) Utilization information, in a form prescribed by the  
5       commissioner, which shall be reported for each  
6       prescription drug and each type of payor prescribed by  
7       the commissioner, and shall include:
- 8           (A) The number of prescriptions paid;  
9           (B) The total amount paid per prescription prior to  
10          rebates;  
11          (C) The total rebates received prior to paying any  
12          rebates to a covered entity; and  
13          (D) Number of covered lives.
- 14       (b) The commissioner shall submit a report to the  
15       legislature no later than twenty days prior to the convening of  
16       each regular session, which shall include:
- 17           (1) A summary of the information collected from the  
18           pharmacy benefit managers' annual transparency  
19           reports, including a list of all pharmacy benefit  
20           managers registered under this chapter; provided that  
21           the commissioner shall aggregate information from all



1           pharmacy benefit managers so that it is not  
2           identifiable to any particular pharmacy benefit  
3           manager;

4           (2) Recommendations and any proposed legislation."

5           SECTION 4. Section 431S-1, Hawaii Revised Statutes, is  
6 amended as follows:

7           1. By adding seven new definitions to be appropriately  
8 inserted and to read:

9           "Aggregate retained rebate percentage" means the  
10 percentage of all rebates received from a manufacturer or other  
11 entity to a pharmacy benefit manager for prescription drug  
12 utilization that is not passed on to pharmacy benefit managers'  
13 covered entity clients. The percentage shall be calculated for  
14 each covered entity for rebates in the prior calendar year as  
15 follows:

16           (1) The sum total dollar amount of rebates received from  
17 all pharmaceutical manufacturers for all utilization  
18 of covered persons of a covered entity that was not  
19 passed through to the covered entity; and



1       (2) Divided by the sum total dollar amount of all rebates  
2       received from all pharmaceutical manufacturers for  
3       covered persons of a covered entity.

4       "Independent or rural pharmacy" means a retail pharmacy  
5       contracted by a pharmacy benefit manager to sell prescription  
6       drugs to beneficiaries of a prescription drug benefit plan  
7       administered by the pharmacy benefit manager that:

8       (1) Is not owned or operated by a publicly traded company;

9       (2) Is not directly affiliated with any chain pharmacy  
10       having more than fifty stores;

11       (3) Is located and licensed in this State; and

12       (4) Serves rural, uninsured, or underinsured patients.

13       "Mail service pharmacy" means a pharmacy, the primary  
14       business of which is to receive prescriptions by mail, telefax,  
15       or electronic submissions, and dispense medications to covered  
16       persons through the use of the United State Postal Service or  
17       other contract carrier services and that provides electronic,  
18       rather than face-to-face consultations, with patients.

19       "Network pharmacy" means a retail pharmacy located and  
20       licensed in the State and contracted by the pharmacy benefit  
21       manager to sell prescription drugs to beneficiaries of a



1 prescription drug benefit plan administered by the pharmacy  
2 benefit manager.

3 "Rebates" means all price concessions paid by a  
4 manufacturer to a pharmacy benefit manager or covered entity,  
5 including rebates, discounts, and other price concessions that  
6 are based on actual or estimated utilization of a prescription  
7 drug. "Rebates" also includes price concessions based on the  
8 effectiveness of a drug as in a value-based or performance-based  
9 contract.

10 "Retail pharmacy" means a pharmacy, permitted by the board  
11 of pharmacy pursuant to section 461-14, that is open to the  
12 general public, dispenses prescription drugs to the general  
13 public, and makes available face-to-face consultations between  
14 licensed pharmacists and the general public to whom prescription  
15 drugs are dispensed.

16 "Rural" has the same meaning as defined in section  
17 1B-1(c)."

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

19 "Covered entity" means:

20 (1) A health benefits plan regulated under chapter 87A;

21 health insurer regulated under article 10A of chapter



1 431; mutual benefit society regulated under article 1  
2 of chapter 432; or health maintenance organization  
3 regulated under chapter 432D; [~~provided that a~~  
4 ~~"covered entity" under this paragraph shall not~~  
5 ~~include a health maintenance organization regulated~~  
6 ~~under chapter 432D that owns or manages its own~~  
7 ~~pharmacies;~~]

8 (2) A health program administered by the State in the  
9 capacity of a provider of health coverage; or

10 (3) An employer, labor union, or other group of persons  
11 organized in the State that provides health coverage  
12 to covered persons employed or residing in the State.

13 "Covered entity" [~~shall~~] does not include any plans issued for  
14 coverage for federal employees or specified disease or limited  
15 benefit health insurance as provided by section 431:10A-607."

16 SECTION 5. Section 431S-3, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[~~+~~]§431S-3[~~+~~] **Registration required.** (a)

19 Notwithstanding any law to the contrary, no person shall act or  
20 operate as a pharmacy benefit manager without first obtaining a



1 valid registration issued by the commissioner pursuant to this  
2 chapter. The registration shall not be transferable.

3 (b) The commissioner may issue a registration under this  
4 chapter if the commissioner is satisfied that the applicant  
5 possesses the necessary organization, background expertise, and  
6 financial integrity to supply the services sought to be offered  
7 pursuant to this chapter.

8 (c) The commissioner may issue a registration subject to  
9 restrictions or limitations upon the authorization, including  
10 the types of services that may be supplied or the activities in  
11 which the applicant may be engaged.

12 [~~(b)~~] (d) Each person seeking to register as a pharmacy  
13 benefit manager shall file with the commissioner an application  
14 on a form prescribed by the commissioner. The application shall  
15 include:

16 (1) The name, address, official position, and professional  
17 qualifications of each individual who is responsible  
18 for the conduct of the affairs of the pharmacy benefit  
19 manager, including all members of the board of  
20 directors; board of trustees; executive commission;  
21 other governing board or committee; principal



1 officers, as applicable; partners or members, as  
2 applicable; and any other person who exercises control  
3 or influence over the affairs of the pharmacy benefit  
4 manager;

5 (2) The name and address of the applicant's agent for  
6 service of process in the State; [and]

7 (3) A nonrefundable application fee of [~~\$140.~~]  
8 \$ \_\_\_\_\_ ; and

9 (4) Any other information the commissioner deems necessary  
10 or helpful to determine whether the applicant has the  
11 necessary organization, background, expertise, and  
12 financial integrity to supply the services sought to  
13 be offered pursuant to this chapter.

14 (e) The commissioner may suspend, revoke, or place on  
15 probation a pharmacy benefit manager registered under this  
16 chapter if:

17 (1) The pharmacy benefit manager has engaged in fraudulent  
18 activity in violation of federal or state law;

19 (2) The commissioner receives consumer complaints that  
20 justify an action under this subsection to protect the  
21 safety and interest of consumers;



1       (3) The pharmacy benefit manager fails to pay required  
2       fees under this chapter;

3       (4) The pharmacy benefit manager fails to comply with any  
4       other requirement under this chapter; or

5       (5) The pharmacy benefit manager commits a violation of  
6       section 480-2 or section 481-1."

7       SECTION 6. Section 431S-4, Hawaii Revised Statutes, is  
8 amended by amending subsections (b) and (c) to read as follows:

9       "(b) When renewing its registration, a pharmacy benefit  
10 manager shall submit to the commissioner the following:

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

13       (2) A renewal fee of [~~\$140.~~] \$\_\_\_\_\_.

14       (c) Failure on the part of a pharmacy benefit manager to  
15 renew its registration as provided in this section shall result  
16 in a penalty of [~~\$140~~] \$\_\_\_\_\_ and may cause the  
17 registration to be revoked or suspended by the commissioner  
18 until the requirements for renewal have been met."

19       SECTION 7. Section 431S-5, Hawaii Revised Statutes, is  
20 amended to read as follows:



1           " ~~§431S-5~~ Penalty. Any person who acts as a pharmacy  
2 benefit manager in this State without first being registered  
3 pursuant to this chapter shall be subject to a fine of ~~[\$500]~~  
4 \$\_\_\_\_\_ for each violation. The penalty prescribed in this  
5 section shall be in addition to any other penalties prescribed  
6 by this chapter."

7           SECTION 8. This Act does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun before its effective date.

10          SECTION 9. If any provision of this Act, or the  
11 application thereof to any person or circumstance, is held  
12 invalid, the invalidity does not affect other provisions or  
13 applications of the Act that can be given effect without the  
14 invalid provision or application, and to this end the provisions  
15 of this Act are severable.

16          SECTION 10. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18          SECTION 11. This Act shall take effect on July 1, 2050;  
19 provided that section 2 of this Act shall be repealed on  
20 June 30, 2026.



**Report Title:**

Pharmacy Benefit Managers; Independent or Rural Pharmacies;  
Rural Rate of Reimbursement; Insurance Commissioner; Licensure;  
Reporting

**Description:**

Prohibits certain contracts for managed care entered into after June 30, 2021, from containing a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis, and voids any such provisions in existing managed care contracts. Prohibits pharmacy benefit managers from engaging in unfair methods of competition or unfair practices. Prohibits a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy. Prohibits a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances. Prohibits a pharmacy benefit manager from prohibiting a pharmacist to provide certain information to insureds. Increases pharmacy benefit managers' annual reporting requirements. Requires the insurance commissioner to file annual reports with the legislature. Increases pharmacy benefit manager registration and renewal fees by an unspecified amount. Makes certain violations of pharmacy benefit managers subject to the penalties provided in chapters 480 and 481, Hawaii Revised Statutes. Effective 7/1/2050. (SD1)

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

