
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 it is in the
2 interest of consumers to prohibit pharmacy benefit managers from
3 engaging in certain practices, including contractually limiting
4 the ability of pharmacies and pharmacists from disclosing
5 certain information and requiring consumers to pay more than the
6 cash price for prescriptions. The legislature further finds
7 that it is desirable to increase fees and penalties assessed
8 under chapter 431S, Hawaii Revised Statutes.

9 The purpose of this Act is to:

- 10 (1) Prohibit a pharmacy benefit manager from limiting a
11 pharmacist's ability to disclose certain information
12 to consumers;
- 13 (2) Provide additional enforcement authority to the
14 insurance commissioner;
- 15 (3) Amend sections of the Hawaii Revised Statutes, that
16 reference pharmacy benefit managers for consistency
17 and clarity;



- 1 (4) Amend the definition of "covered entity" in chapter
2 431S to align with entities over which the insurance
3 commissioner exercises significant jurisdiction;
- 4 (5) Provide the insurance commissioner with authority to
5 suspend or revoke a pharmacy benefit manager's
6 registration under certain conditions; and
- 7 (6) Repeal section 328-106, Hawaii Revised Statutes, which
8 requires the department of health to enforce the terms
9 of contracts pertaining to pharmacy benefit managers.

10 SECTION 2. Chapter 431S, Hawaii Revised Statutes, is
11 amended by adding two new sections to be appropriately
12 designated and to read as follows:

13 "§431S- Business practices. (a) In any participation
14 contracts between a pharmacy benefit manager and pharmacists or
15 pharmacies providing prescription drug coverage for a
16 prescription drug benefit plan, no pharmacy or pharmacist shall
17 be prohibited or restricted from, or penalized for disclosing to
18 any covered person, health care information that the pharmacy or
19 pharmacist deems appropriate regarding:

- 20 (1) The nature of treatment, risks, or alternatives;



1 (2) The availability of alternate therapies,
2 consultations, or tests;

3 (3) The decision of utilization reviewers or similar
4 persons to authorize or deny services;

5 (4) The process that is used to authorize or deny health
6 care services or benefits; or

7 (5) Information on financial incentives and structures
8 used by the insurer.

9 (b) A pharmacy benefit manager shall not prohibit a
10 pharmacy or pharmacist from discussing information regarding the
11 total cost-share for pharmacist services for a prescription drug
12 or from selling a more affordable alternative to the covered
13 person if a more affordable alternative is available.

14 (c) A pharmacy benefit manager contract with a
15 participating pharmacist or pharmacy shall not prohibit,
16 restrict, or limit disclosure of information to the
17 commissioner, law enforcement, or state and federal government
18 officials for the purposes of filing a complaint; provided that:

19 (1) The recipient of the information has the obligation,
20 to the extent provided by state or federal law, to
21 maintain proprietary information as confidential;



1 (2) Prior to disclosure of information designated as
2 confidential under the pharmacy benefit manager
3 contract, the pharmacist or pharmacy marks as
4 confidential any document in which the information
5 appears or requests confidential treatment for any
6 oral communication of that information; and

7 (3) The information is relevant to the subject of the
8 complaint.

9 (d) A pharmacy benefit manager shall not require a covered
10 person purchasing a covered prescription drug to pay an amount
11 greater than the lesser of the covered person's cost-sharing
12 amount under the terms of the prescription drug benefit plan or
13 the amount the covered person would pay for the drug if the
14 covered person were paying the cash price.

15 Any amount paid by a covered person under this section
16 shall be attributable toward any deductible or, to the extent
17 consistent with section 2707, Public Health Service Act, the
18 annual out-of-pocket maximums under the covered person's health
19 benefit plan.

20 §431S- Enforcement. (a) The commissioner is authorized
21 to enforce compliance with the requirements of this chapter.



1 (b) The commissioner may examine or audit the books and
2 records of a pharmacy benefit manager providing claims
3 processing services or other prescription drug or device
4 services for a prescription drug benefit plan to determine
5 compliance with this chapter.

6 (c) The information or data acquired during an examination
7 under subsection (b) shall:

8 (1) Be considered proprietary and confidential;

9 (2) Not be disclosable under chapter 92F;

10 (3) Not be subject to subpoena; and

11 (4) Not be subject to discovery or admissible as evidence
12 in any private civil action.

13 (d) The commissioner may use any document or information
14 provided pursuant to this section in the performance of the
15 commissioner's duties to determine compliance.

16 (e) The commissioner may impose a penalty on a pharmacy
17 benefit manager or the covered entity with which it is
18 contracted, or both, for a violation of this chapter. The
19 penalty may not exceed \$ per entity for each violation
20 of this chapter, except as provided under chapter 431S-5."



1 SECTION 3. Section 431R-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "pharmacy benefit manager"
3 to read as follows:

4 "Pharmacy benefit manager" ~~[means any person, business, or~~
5 ~~entity that performs pharmacy benefit management, including but~~
6 ~~not limited to a person or entity under contract with a pharmacy~~
7 ~~benefit manager to perform pharmacy benefit management on behalf~~
8 ~~of a managed care company, nonprofit hospital or medical service~~
9 ~~organization, insurance company, third party payor, or health~~
10 ~~program administered by the State.]~~ has the same meaning as in
11 chapter 431S and is registered pursuant to chapter 431S."

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

14 1. By adding six new definitions to be appropriately
15 inserted and to read:

16 "Claims processing services" means the administrative
17 services performed in connection with the processing and
18 adjudicating of claims relating to pharmacist services that
19 include:

20 (1) Receiving payments for pharmacist services;



1 (2) Making payments to pharmacists or pharmacies for
2 pharmacist services; or

3 (3) Both.

4 "Covered person" means a member, policy holder, subscriber,
5 enrollee, beneficiary, dependent, or other individual
6 participating in a prescription drug benefits plan.

7 "Other prescription drug or device services" means services
8 other than claims processing services, provided directly or
9 indirectly, whether in connection with or separate from claims
10 processing services, including but not limited to:

11 (1) Negotiating rebates, discounts, or other financial
12 incentives and arrangements with drug companies;

13 (2) Disbursing or distributing rebates;

14 (3) Managing or participating in incentive programs or
15 arrangements for pharmacist services;

16 (4) Negotiating or entering into contractual arrangements
17 with pharmacists or pharmacies, or both;

18 (5) Developing and maintaining formularies;

19 (6) Designing prescription benefit programs; or

20 (7) Advertising or promoting services.



1 "Pharmacist" means a registered pharmacist licensed by the
2 board of pharmacy of the State pursuant to chapter 461.

3 "Pharmacist services" means products, goods, and services
4 or any combination of products, goods, and services, provided as
5 a part of the practice of pharmacy.

6 "Pharmacy" means a store, shop, or place permitted as a
7 pharmacy by the board of pharmacy of the State pursuant to
8 chapter 461."

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

10 "Covered entity" means:

11 (1) A ~~[health benefits plan regulated under chapter 87A;]~~
12 health insurer regulated under article 10A of chapter
13 431; mutual benefit society regulated under article 1
14 of chapter 432; or health maintenance organization
15 regulated under chapter 432D; ~~[provided that a~~
16 ~~"covered entity" under this paragraph shall not~~
17 ~~include a health maintenance organization regulated~~
18 ~~under chapter 432D that owns or manages its own~~
19 ~~pharmacies;]~~ or

20 (2) A health program administered by the State in the
21 capacity of a provider of health coverage ~~[, or]~~ .



1 ~~[(3) An employer, labor union, or other group of persons~~
2 ~~organized in the State that provides health coverage~~
3 ~~to covered persons employed or residing in the State.]~~

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

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

9 "Pharmacy benefit manager" means any person that performs
10 pharmacy benefit management, including but not limited to a
11 person or entity in a contractual or employment relationship
12 with a pharmacy benefit manager to perform pharmacy benefit
13 management for a covered entity~~[-]~~; provided that the term shall
14 not include a consultant who only provides advice as to the
15 selection or performance of a pharmacy benefit manager, or a
16 covered entity to the extent that it performs any claims
17 processing and other prescription drug or device services
18 exclusively for its enrollees."

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



1 "§431S-3 Registration required. (a) Notwithstanding any
2 law to the contrary, no person shall act or operate as a
3 pharmacy benefit manager without first obtaining a valid
4 registration issued by the commissioner pursuant to this
5 chapter.

6 (b) Each person seeking to register as a pharmacy benefit
7 manager shall file with the commissioner an application on a
8 form prescribed by the commissioner. The application shall
9 include:

10 (1) The name, address, official position, and professional
11 qualifications of each individual who is responsible
12 for the conduct of the affairs of the pharmacy benefit
13 manager, including all members of the board of
14 directors; board of trustees; executive commission;
15 other governing board or committee; principal
16 officers, as applicable; partners or members, as
17 applicable; and any other person who exercises control
18 or influence over the affairs of the pharmacy benefit
19 manager;

20 (2) The name and address of the applicant's agent for
21 service of process in the State; and



(3) A nonrefundable issuance fee [~~of \$140.~~] as required
under section 431:7-101.

The commissioner may, upon showing of good cause, waive or
modify, in whole or part, the fee in this subsection by order.

(c) The commissioner may suspend or revoke the
registration of a pharmacy benefit manager if the commissioner
determines that the applicant or any individual responsible for
the conduct of affairs of the applicant is not competent,
trustworthy, financially responsible, of good personal and
business reputation, or has been found to have violated the
insurance laws of the State or any other jurisdiction, or has
had an insurance or other certificate of authority or license
denied or revoked for cause by any jurisdiction."

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

"§431S-4 Annual renewal requirement. (a) Each pharmacy
benefit manager shall renew its registration by March 31 each
year.

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



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

(2) A service fee [~~of \$140.~~] as required under section 431:7-101.

The commissioner may, upon showing of good cause, waive or modify, in whole or part, the fee in this subsection by order."

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

"[~~4~~]~~§431S-5~~[~~5~~] **Penalty.** Any person who acts as a pharmacy benefit manager in this State without first being registered pursuant to this chapter shall be subject to a fine of [~~\$500~~] \$_____ for each violation."

SECTION 8. Section 328-106, Hawaii Revised Statutes, is repealed.

~~["~~§328-106~~] **Pharmacy benefit manager; maximum allowable cost.** (a) A pharmacy benefit manager that reimburses a contracting pharmacy for a drug on a maximum allowable cost basis shall comply with the requirements of this section.~~

~~(b) The pharmacy benefit manager shall include the following in the contract information with a contracting pharmacy:~~



- 1 ~~(1) Information identifying any national drug pricing~~
2 ~~compendia; or~~
3 ~~(2) Other data sources for the maximum allowable cost~~
4 ~~list.~~

5 ~~(c) The pharmacy benefit manager shall make available to a~~
6 ~~contracting pharmacy, upon request, the most up-to-date maximum~~
7 ~~allowable cost price or prices used by the pharmacy benefit~~
8 ~~manager for patients served by the pharmacy in a readily~~
9 ~~accessible, secure, and usable web based or other comparable~~
10 ~~format.~~

11 ~~(d) A drug shall not be included on a maximum allowable~~
12 ~~cost list or reimbursed on a maximum allowable cost basis unless~~
13 ~~all of the following apply:~~

14 ~~(1) The drug is listed as "A" or "B" rated in the most~~
15 ~~recent version of the Orange Book or has a rating of~~
16 ~~"NR", "NA", or similar rating by a nationally~~
17 ~~recognized reference;~~

18 ~~(2) The drug is generally available for purchase in this~~
19 ~~State from a national or regional wholesaler; and~~

20 ~~(3) The drug is not obsolete.~~



1 ~~(e) The pharmacy benefit manager shall review and make~~
2 ~~necessary adjustments to the maximum allowable cost of each drug~~
3 ~~on a maximum allowable cost list at least once every seven days~~
4 ~~using the most recent data sources available, and shall apply~~
5 ~~the updated maximum allowable cost list beginning that same day~~
6 ~~to reimburse the contracted pharmacy until the pharmacy benefit~~
7 ~~manager next updates the maximum allowable cost list in~~
8 ~~accordance with this section.~~

9 ~~(f) The pharmacy benefit manager shall have a clearly~~
10 ~~defined process for a contracting pharmacy to appeal the maximum~~
11 ~~allowable cost for a drug on a maximum allowable cost list that~~
12 ~~complies with all of the following:~~

13 ~~(1) A contracting pharmacy may base its appeal on one or~~
14 ~~more of the following:~~

15 ~~(A) The maximum allowable cost for a drug is below~~
16 ~~the cost at which the drug is available for~~
17 ~~purchase by similarly situated pharmacies in this~~
18 ~~State from a national or regional wholesaler; or~~

19 ~~(B) The drug does not meet the requirements of~~
20 ~~subsection (d);~~



1 ~~(2) A contracting pharmacy shall be provided no less than~~
2 ~~fourteen business days following receipt of payment~~
3 ~~for a claim to file the appeal with the pharmacy~~
4 ~~benefit manager;~~

5 ~~(3) The pharmacy benefit manager shall make a final~~
6 ~~determination on the contracting pharmacy's appeal no~~
7 ~~later than fourteen business days after the pharmacy~~
8 ~~benefit manager's receipt of the appeal;~~

9 ~~(4) If the maximum allowable cost is upheld on appeal, the~~
10 ~~pharmacy benefit manager shall provide to the~~
11 ~~contracting pharmacy the reason therefor and the~~
12 ~~national drug code of an equivalent drug that may be~~
13 ~~purchased by a similarly situated pharmacy at a price~~
14 ~~that is equal to or less than the maximum allowable~~
15 ~~cost of the drug that is the subject of the appeal;~~
16 ~~and~~

17 ~~(5) If the maximum allowable cost is not upheld on appeal,~~
18 ~~the pharmacy benefit manager shall adjust, for the~~
19 ~~appealing contracting pharmacy, the maximum allowable~~
20 ~~cost of the drug that is the subject of the appeal,~~
21 ~~within one calendar day of the date of the decision on~~



1 ~~the appeal and allow the contracting pharmacy to~~
2 ~~reverse and rebill the appealed claim.~~

3 ~~(g) A contracting pharmacy shall not disclose to any third~~
4 ~~party the maximum allowable cost list and any related~~
5 ~~information it receives, either directly from a pharmacy benefit~~
6 ~~manager or through a pharmacy services administrative~~
7 ~~organization or similar entity with which the pharmacy has a~~
8 ~~contract to provide administrative services for that pharmacy."]~~

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

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

18 SECTION 11. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 12. This Act shall take effect on January 1, 2050.



Report Title:

Pharmacy Benefit Managers; Enforcement; Registration

Description:

Addresses and defines pharmacy benefit manager practices.
Creates enforcement authority by the Insurance Commissioner to
suspend or revoke a pharmacy benefit manager's registration and
impose fines. Repeals section 328-106, Hawaii Revised Statutes.
Effective 1/1/2050. (SD1)

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