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# 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) Prohibit a pharmacy benefit manager from reimbursing a  
14           340B pharmacy differently than any other network  
15           pharmacy based on its status as a 340B pharmacy;



- 1           (3) Provide additional enforcement authority to the  
2           insurance commissioner, including increasing certain  
3           fees;
- 4           (4) Amend sections of the Hawaii Revised Statutes, that  
5           reference pharmacy benefit managers for consistency  
6           and clarity;
- 7           (5) Amend the definition of "covered entity" in chapter  
8           431S to align with entities over which the insurance  
9           commissioner exercises significant jurisdiction;
- 10          (6) Provide the insurance commissioner with authority to  
11          suspend or revoke a pharmacy benefit manager's  
12          registration under certain conditions;
- 13          (7) Repeal section 328-106, Hawaii Revised Statutes, which  
14          requires the department of health to enforce the terms  
15          of contracts pertaining to pharmacy benefit managers;  
16          and
- 17          (8) After December 31, 2022, prohibiting any contract for  
18          managed care to contain a provision that authorizes a  
19          pharmacy benefit manager to reimburse a contracting  
20          pharmacy on a maximum allowable cost basis.



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

4 "§431S- Business practices. (a) In any participation  
5 contracts between a pharmacy benefit manager and pharmacists or  
6 pharmacies providing prescription drug coverage for a  
7 prescription drug benefit plan, no pharmacy or pharmacist shall  
8 be prohibited or restricted from, or penalized for disclosing to  
9 any covered person, health care information that the pharmacy or  
10 pharmacist deems appropriate regarding:

- 11 (1) The nature of treatment, risks, or alternatives;
- 12 (2) The availability of alternate therapies,
- 13 consultations, or tests;
- 14 (3) The decision of utilization reviewers or similar
- 15 persons to authorize or deny services;
- 16 (4) The process that is used to authorize or deny health
- 17 care services or benefits; or
- 18 (5) Information on financial incentives and structures
- 19 used by the insurer.

20 (b) A pharmacy benefit manager shall not prohibit a  
21 pharmacy or pharmacist from discussing information regarding the



1 total cost-share for pharmacist services for a prescription drug  
2 or from selling a more affordable alternative to the covered  
3 person if a more affordable alternative is available.

4 (c) A pharmacy benefit manager contract with a  
5 participating pharmacist or pharmacy shall not prohibit,  
6 restrict, or limit disclosure of information to the  
7 commissioner, law enforcement, or state and federal government  
8 officials; provided that:

9 (1) The recipient of the information has the obligation,  
10 to the extent provided by state or federal law, to  
11 maintain proprietary information as confidential; and

12 (2) Prior to disclosure of information designated as  
13 confidential under the pharmacy benefit manager  
14 contract, the pharmacist or pharmacy marks as  
15 confidential any document in which the information  
16 appears or requests confidential treatment for any  
17 oral communication of that information.

18 (d) A pharmacy benefit manager shall not require a covered  
19 person purchasing a covered prescription drug to pay an amount  
20 greater than the lesser of the covered person's cost-sharing  
21 amount under the terms of the prescription drug benefit plan or



1 the amount the covered person would pay for the drug if the  
2 covered person were paying the cash price.

3 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; provided that, for purposes of  
6 this subsection, "340B pharmacy" means a pharmacy that is  
7 authorized to purchase drugs at a discount under title 42 United  
8 States Code section 256b.

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

14 §431S- Enforcement. (a) The commissioner is authorized  
15 to enforce compliance with the requirements of this chapter.

16 (b) The commissioner may examine or audit the books and  
17 records of a pharmacy benefit manager providing claims  
18 processing services or other prescription drug or device  
19 services for a prescription drug benefit plan to determine  
20 compliance with this chapter.



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

3        (1) Be considered proprietary and confidential;

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

5        (3) Not be subject to subpoena; and

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

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

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

17       (f) Notwithstanding section 480-11, or any other law to  
18 the contrary, in addition to any penalty authorized pursuant to  
19 this section, each violation of this chapter shall also be a  
20 violation of chapter 480 and subject to any penalty authorized  
21 thereunder."



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 [~~7-0#~~].



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



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

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

5 (c) The commissioner may suspend or revoke the  
6 registration of a pharmacy benefit manager if the commissioner  
7 determines that the pharmacy benefit manager, or any individual  
8 responsible for the conduct of affairs of the pharmacy benefit  
9 manager, has been found to have violated the insurance laws of  
10 the State or any other jurisdiction, or has had an insurance or  
11 other certificate of authority or license denied or revoked for  
12 cause by any jurisdiction.

13 (d) Before the commissioner may suspend or revoke the  
14 registration of a pharmacy benefit manager, the commissioner  
15 shall conduct a hearing in accordance with chapter 91."

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

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



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

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

5 (2) A service fee [~~of \$140.~~] as required under section  
6 431:7-101.

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

9 SECTION 7. 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~~  
14 \$1,000 for each violation."

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

17 [~~"§328-106] Pharmacy benefit manager; maximum allowable~~  
18 ~~cost.~~ (a) ~~A pharmacy benefit manager that reimburses a~~  
19 ~~contracting pharmacy for a drug on a maximum allowable cost~~  
20 ~~basis shall comply with the requirements of this section.~~



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

4       ~~(1) Information identifying any national drug pricing~~  
5       ~~compendia; or~~

6       ~~(2) Other data sources for the maximum allowable cost~~  
7       ~~list.~~

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

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

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



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

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

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

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

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

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



- 1           ~~(B) The drug does not meet the requirements of~~  
2                           ~~subsection (d);~~
- 3           ~~(2) A contracting pharmacy shall be provided no less than~~  
4                           ~~fourteen business days following receipt of payment~~  
5                           ~~for a claim to file the appeal with the pharmacy~~  
6                           ~~benefit manager;~~
- 7           ~~(3) The pharmacy benefit manager shall make a final~~  
8                           ~~determination on the contracting pharmacy's appeal no~~  
9                           ~~later than fourteen business days after the pharmacy~~  
10                           ~~benefit manager's receipt of the appeal;~~
- 11           ~~(4) If the maximum allowable cost is upheld on appeal, the~~  
12                           ~~pharmacy benefit manager shall provide to the~~  
13                           ~~contracting pharmacy the reason therefor and the~~  
14                           ~~national drug code of an equivalent drug that may be~~  
15                           ~~purchased by a similarly situated pharmacy at a price~~  
16                           ~~that is equal to or less than the maximum allowable~~  
17                           ~~cost of the drug that is the subject of the appeal;~~  
18                           ~~and~~
- 19           ~~(5) If the maximum allowable cost is not upheld on appeal,~~  
20                           ~~the pharmacy benefit manager shall adjust, for the~~  
21                           ~~appealing contracting pharmacy, the maximum allowable~~



1 ~~cost of the drug that is the subject of the appeal,~~  
2 ~~within one calendar day of the date of the decision on~~  
3 ~~the appeal and allow the contracting pharmacy to~~  
4 ~~reverse and rebill the appealed claim.~~

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

11 SECTION 9. (a) No contract for managed care entered into  
12 pursuant to part II of chapter 346, Hawaii Revised Statutes,  
13 after December 31, 2022, shall contain a provision that  
14 authorizes a pharmacy benefit manager to reimburse a contracting  
15 pharmacy on a maximum allowable cost basis.

16 (b) Any provision of a contract for managed care  
17 authorized pursuant to part II of chapter 346, Hawaii Revised  
18 Statutes, to reimburse a contracting pharmacy for a drug on a  
19 maximum allowable cost basis in accordance with section 328-106,  
20 Hawaii Revised Statutes, or chapter 431S, Hawaii Revised



1 Statutes, that was in effect on or before December 31, 2022,  
2 shall be null and void.

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

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

12 SECTION 12. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 13. 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 the requirement for the Department of Health to enforce the terms of private contracts pertaining to pharmacy benefit managers. Effective 1/1/2050. (SD2)

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

