
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 third party administrators that contract with
3 health plans, employers, unions, and government entities to
4 manage prescription drug programs on behalf of health plan
5 beneficiaries. Over the past decade, the role of pharmacy
6 benefit managers in the delivery of health care has
7 significantly increased. However, a recent report has found
8 that pharmacy benefit managers have had an adverse impact on the
9 overall costs and prices of prescription drugs.

10 The legislature further finds that a maximum allowable cost
11 list is a list of the maximum amounts that a pharmacy benefit
12 manager will reimburse a pharmacy for various drugs. In
13 general, no two maximum allowable cost lists are alike and will
14 vary according to the drug, pharmacy benefit manager, and plan
15 sponsor. However, the lack of transparency surrounding maximum
16 allowable cost pricing has enabled pharmacy benefit managers to
17 pay aggressively low reimbursements to pharmacies, while



1 charging significantly higher amounts for the same drug to plan
2 sponsors. This large discrepancy between the list price of
3 prescription drugs and the transaction price often results in
4 much higher patient copayments.

5 The legislature also finds that nearly all health plans
6 require some level of cost sharing, either via a fixed copayment
7 or some percentage of the cost of care. However, in certain
8 situations, a pharmacy benefit manager may set an insurance
9 copayment at a higher amount than the actual cost of the
10 medication and later take back the excess amount from a
11 pharmacy, in a practice known as copay clawbacks.

12 The legislature additionally finds that the State had
13 previously regulated pharmacy benefit manager maximum allowable
14 cost lists under section 328-106, Hawaii Revised Statutes, but
15 later repealed these requirements under Act 207, Session Laws of
16 Hawaii 2023, because the law placed the regulatory
17 responsibility on the department of health, which lacked the
18 expertise to oversee what was intended as a price control
19 function. The law also did not provide an adequate remedy for
20 violations or an appropriate enforcement mechanism or incentives
21 for pharmacy benefit managers to comply with disclosure of



1 maximum allowable cost lists. However, after repealing section
2 328-106, Hawaii Revised Statutes, no laws were enacted to
3 regulate maximum allowable cost lists for pharmacy benefit
4 managers.

5 Finally, the legislature further finds that it is
6 appropriate to restore statutory protections relating to
7 pharmacy benefit managers maximum allowable cost lists within
8 chapter 431R, Hawaii Revised Statutes, that governs prescription
9 drug benefits, under the purview of the department of commerce
10 and consumer affairs, to strengthen the ability of pharmacies to
11 receive timely maximum allowable cost lists, establish a
12 complaints process for violations, and clarify penalties to
13 encourage transparency amongst pharmacy benefit managers while
14 protecting the State's independent pharmacies and consumers.

15 Accordingly, the purpose of this Act is to:

16 (1) Establish requirements for pharmacy benefit managers
17 that reimburse contracting pharmacies for drugs on a
18 maximum allowable cost basis, including contents of
19 contracts, maximum allowable cost lists, and maximum
20 allowable cost reports, and a complaint process; and



1 (2) Require pharmacy benefit managers to disclose
 2 lower-priced equivalent drugs when a maximum allowable
 3 cost is upheld on appeal and allow contracting
 4 pharmacies to reverse and rebill claims if a maximum
 5 allowable cost is denied on appeal and recoup any
 6 overpayment.

7 SECTION 2. Chapter 431R, Hawaii Revised Statutes, is
 8 amended by adding a new section to be appropriately designated
 9 and to read as follows:

10 "§431R- Pharmacy benefit managers; maximum allowable
 11 cost. (a) A pharmacy benefit manager that reimburses a
 12 contracting pharmacy for a drug on a maximum allowable cost
 13 basis shall comply with the requirements of this section.

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

17 (1) Information identifying any national drug pricing
 18 compendia; or

19 (2) Other data sources for the maximum allowable cost
 20 list.



1 (c) Upon request, the pharmacy benefit manager shall make
2 available to a contracting pharmacy a comprehensive report for
3 all drugs on the maximum allowable cost list for a plan, which
4 shall contain the most up-to-date maximum allowable cost price
5 or prices used by the pharmacy benefit manager for patients
6 served by the pharmacy, in a readily accessible and secure
7 electronic or usable web-based format.

8 (d) A drug shall not be included on a maximum allowable
9 cost list or reimbursed on a maximum allowable cost basis unless
10 all of the following apply:

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

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

17 (3) The drug is not obsolete.

18 (e) The pharmacy benefit manager shall review and make
19 necessary adjustments to the maximum allowable cost of each drug
20 on a maximum allowable cost list at least once every seven days
21 using the most recent data sources available, and shall apply



1 the updated maximum allowable cost list beginning that same day
2 to reimburse the contracting pharmacy until the pharmacy benefit
3 manager next updates the maximum allowable cost list in
4 accordance with this section.

5 (f) The pharmacy benefit manager shall have a clearly
6 defined process for a contracting pharmacy to appeal the maximum
7 allowable cost for a drug on a maximum allowable cost list that
8 complies with all of the following:

9 (1) A contracting pharmacy may base its appeal on one or
10 more of the following:

11 (A) The maximum allowable cost for a drug is below
12 the cost at which the drug is available for
13 purchase by similarly situated pharmacies in this
14 State from a national or regional wholesaler; or

15 (B) The drug does not meet the requirements of
16 subsection (d) for reimbursement on a maximum
17 allowable cost basis;

18 (2) A contracting pharmacy shall be provided not less than
19 fourteen business days following receipt of payment
20 for a claim to file the appeal with the pharmacy
21 benefit manager;



- 1 (3) The pharmacy benefit manager shall make a final
2 determination on the contracting pharmacy's appeal no
3 later than fourteen business days after the pharmacy
4 benefit manager's receipt of the appeal;
- 5 (4) If the maximum allowable cost is upheld on appeal, the
6 pharmacy benefit manager shall provide to the
7 contracting pharmacy the reason therefor and the
8 national drug code of an equivalent drug that may be
9 purchased by a similarly situated pharmacy at a price
10 that is equal to or less than the maximum allowable
11 cost of the drug that is the subject of the appeal;
12 and
- 13 (5) If the maximum allowable cost is not upheld on appeal,
14 the pharmacy benefit manager shall adjust, for the
15 appealing contracting pharmacy, the maximum allowable
16 cost of the drug that is the subject of the appeal,
17 within one calendar day of the date of the decision on
18 the appeal and allow the contracting pharmacy to
19 reverse and rebill the claim that is the subject of
20 the appeal, and all claims for the same drug at the
21 plan level, until the maximum allowable cost list is



1 updated pursuant to subsection (e), to be reimbursed
2 at the maximum allowable cost established by the
3 appeal.

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

10 (h) The insurance commissioner may adopt rules pursuant to
11 chapter 91 to establish a process to subject complaints of
12 violations of this section to an external review process, which
13 may be binding on a complaining contracting pharmacy and a
14 pharmacy benefit manager against whom a complaint is made,
15 except to the extent that the parties have other remedies
16 available under applicable federal or state law, and which may
17 assign the costs associated with the external review process to
18 a complaining contracting pharmacy and a pharmacy benefit
19 manager against whom a complaint is made."



1 SECTION 3. Section 431R-1, Hawaii Revised Statutes, is
2 amended by adding five new definitions to be appropriately
3 inserted and to read as follows:

4 "Contracting pharmacy" means a non-affiliated pharmacy
5 that is not part of a regional or national chain.

6 "Maximum allowable cost" means the maximum amount that a
7 pharmacy benefit manager shall reimburse a pharmacy for the cost
8 of a drug.

9 "Maximum allowable cost list" means a listing of drugs or
10 other methodology used by a pharmacy benefits manager, directly
11 or indirectly, setting the maximum allowable payment to a
12 pharmacy or pharmacist for a generic drug, brand-name drug,
13 biologic product, or other prescription drug. "Maximum
14 allowable cost list" includes, without limitation:

- 15 (1) Average acquisition cost, including national average
16 drug acquisition cost;
17 (2) Average manufacturer price;
18 (3) Average wholesale price;
19 (4) Brand effective rate or generic effective rate;
20 (5) Discount indexing;
21 (6) Federal upper limits;



- 1 (7) Wholesale acquisition cost; and
- 2 (8) Any other term that a pharmacy benefits manager or a
- 3 health care insurer may use to establish reimbursement
- 4 rates to a pharmacist or pharmacy for pharmacist
- 5 services.

6 "Obsolete" means a drug that may be listed in a national
7 drug pricing compendia but cannot be dispensed based on the
8 expiration date of the last lot manufactured.

9 "Orange Book" has the same meaning as defined in section
10 328-91."

11 SECTION 4. Section 431R-5, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) The insurance commissioner may assess a fine of up to
14 \$10,000 for each violation by a pharmacy benefit manager or
15 prescription drug benefit plan provider who is in violation of
16 section 431R-2 [~~o~~], 431R-3[~~r~~], or 431R- . In addition, the
17 insurance commissioner may order the pharmacy benefit manager to
18 take specific affirmative corrective action or make
19 restitution."



1 SECTION 5. Section 328-91, Hawaii Revised Statutes, is
2 amended by deleting the definitions of "maximum allowable cost",
3 "maximum allowable cost list", and "obsolete".

4 [~~"Maximum allowable cost" means the maximum amount that a
5 pharmacy benefit manager shall reimburse a pharmacy for the cost
6 of a drug.~~

7 ~~"Maximum allowable cost list" means a list of drugs for
8 which a maximum allowable cost has been established by a
9 pharmacy benefit manager.~~

10 ~~"Obsolete" means a drug that may be listed in a national
11 drug pricing compendia but cannot be dispensed based on the
12 expiration date of the last lot manufactured."]~~

13 SECTION 6. There is appropriated out of the general
14 revenues of the State of Hawaii the sum of \$ _____ or so
15 much thereof as may be necessary for fiscal year 2026-2027 for
16 the insurance division of the department of commerce and
17 consumer affairs to effectuate the purposes of this Act.

18 The sum appropriated shall be expended by the department of
19 commerce and consumer affairs for the purposes of this Act.

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect on January 30, 2050.



Report Title:

Insurance Commissioner; Pharmacy Benefit Managers; Prescription Drugs; Maximum Allowable Cost; Contracting Pharmacies; Appropriation

Description:

Establishes requirements for pharmacy benefit managers that reimburse contracting pharmacies for drugs on a maximum allowable cost basis, including maximum allowable cost lists, maximum allowable cost reports, and a complaint process. Requires pharmacy benefit managers to disclose lower-priced equivalent drugs when a maximum allowable cost is upheld on appeal. Allows contracting pharmacies to reverse and rebill claims if a maximum allowable cost is denied on appeal. Authorizes the Insurance Commissioner to adopt rules and assess fines for violations. Appropriates funds. Effective 1/30/2050. (SD2)

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