
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. This
15 section was later repealed because it placed the regulatory
16 responsibility on the department of health, which lacked the
17 expertise to oversee what was intended as a price control
18 function. The section also lacked an adequate remedy for
19 violations, an appropriate enforcement mechanism, and incentives
20 for pharmacy benefit managers to comply with disclosure of
21 maximum allowable cost lists. Since section 328-106, Hawaii



1 Revised Statutes, was repealed, no new laws have been enacted to
2 regulate maximum allowable cost lists for pharmacy benefit
3 managers.

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

15 Accordingly, the purpose of this Act is to:

16 (1) Establish certain requirements for pharmacy benefit
17 managers, other than health maintenance organizations
18 that own and operate their own pharmacies, that
19 reimburse contracting pharmacies for drugs on a
20 maximum allowable cost basis; 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) This section shall apply to all pharmacy benefit
12 managers that reimburse a contracting pharmacy for a drug on a
13 maximum allowable cost basis.

14 (b) Each pharmacy benefit manager shall include the
15 following information in the contract 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, a 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 contracting pharmacy, in a readily accessible and
7 secure electronic or usable web-based format.

8 (d) No drug shall be included on a maximum allowable cost
9 list or reimbursed on a maximum allowable cost basis unless:

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

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

16 (3) The drug is not obsolete.

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



1 benefit manager shall reimburse a contracting pharmacy based on
2 the most recently updated maximum allowable cost list.

3 (f) Each pharmacy benefit manager shall establish a
4 clearly defined process for a contracting pharmacy to appeal the
5 maximum allowable cost for a drug on a maximum allowable cost
6 list that includes the following provisions:

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

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

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

16 (2) Upon receipt of payment for a claim, a contracting
17 pharmacy shall have no less than fourteen business
18 days to file an appeal with the pharmacy benefit
19 manager; and

20 (3) The pharmacy benefit manager shall make a final
21 determination on the contracting pharmacy's appeal no



1 later than fourteen business days after the pharmacy
2 benefit manager's receipt of the appeal; provided
3 that:

4 (A) If the maximum allowable cost is upheld on
5 appeal, the pharmacy benefit manager shall
6 provide the contracting pharmacy with the reason
7 for the determination and the national drug code
8 of an equivalent drug that may be purchased by a
9 similarly situated pharmacy at a price that is
10 equal to or less than the maximum allowable cost
11 of the drug that is the subject of the appeal;
12 and

13 (B) If the maximum allowable cost is not upheld on
14 appeal, the pharmacy benefit manager shall adjust
15 the maximum allowable cost of the drug within one
16 calendar day of the date of the final
17 determination and allow the contracting pharmacy
18 to reverse and rebill the claim that is the
19 subject of the appeal, and all claims for the
20 same drug at the plan level, which shall be
21 reimbursed at the maximum allowable cost



1 established by the appeal, until the maximum
2 allowable cost list is updated pursuant to
3 subsection (e).

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 contracting
9 pharmacy has a contract to provide administrative services for
10 that contracting pharmacy.

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



1 (i) This section shall not apply to a health maintenance
2 organization that is part of a fully integrated delivery system
3 in which enrollees primarily use pharmacies that are owned and
4 operated by the health maintenance organization."

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

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

10 "Maximum allowable cost" means the maximum amount that a
11 pharmacy benefit manager reimburses a contracting pharmacy for
12 the cost of a drug.

13 "Maximum allowable cost list" means a list of drugs or
14 other methodology used by a pharmacy benefits manager to
15 directly or indirectly set the maximum allowable payment to a
16 contracting pharmacy or pharmacist for a generic drug, brand-
17 name drug, biologic product, or other prescription drug.

18 "Maximum allowable cost list" includes but is not limited to:

- 19 (1) Average acquisition cost, including national average
20 drug acquisition cost;
21 (2) Average manufacturer price;



- 1 (3) Average wholesale price;
- 2 (4) Brand effective rate or generic effective rate;
- 3 (5) Discount indexing;
- 4 (6) Federal upper limits;
- 5 (7) Wholesale acquisition cost; and
- 6 (8) Any other term that a pharmacy benefits manager or a
7 health insurer may use to establish reimbursement
8 rates to a pharmacist or pharmacy for pharmacist
9 services.

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 "Orange Book" has the same meaning as defined in section
14 328-91."

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

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



1 take specific affirmative corrective action or make
2 restitution."

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

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 list of drugs for
10 which a maximum allowable cost has been established by a
11 pharmacy benefit manager.~~

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

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

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



1 SECTION 7. This Act shall not be applied so as to impair
2 any contract existing as of the effective date of this Act in a
3 manner violative of either the Hawaii State Constitution or
4 article 1, section 10, of the United States Constitution.

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 9. 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 certain requirements for pharmacy benefit managers,
other than health maintenance organizations that own and operate
their own pharmacies, that reimburse contracting pharmacies for
drugs on a maximum allowable cost basis. Allows contracting
pharmacies to reverse and rebill claims if a maximum allowable
cost is denied on appeal. Authorizes the Insurance Commissioner
to assess fines for violations. Appropriates funds. Effective
1/30/2050. (HD1)

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not legislation or evidence of legislative intent.*

