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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 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15 section was later repealed because it placed the regulatory  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 latest maximum allowable cost prices used by  
5 the pharmacy benefit manager for patients served by the  
6 contracting pharmacy, in a readily accessible and secure  
7 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 prescription drug benefit plan  
21           level, which shall be reimbursed at the maximum



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

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

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

20          (i) For purposes of this subsection, "pharmacy benefit  
21 manager" has the same meaning as in section 431S-1; provided



1 that 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 328-91, Hawaii Revised Statutes, is  
6 amended by deleting the definitions of "maximum allowable cost",  
7 "maximum allowable cost list", and "obsolete".

8 [~~"Maximum allowable cost" means the maximum amount that a~~  
9 ~~pharmacy benefit manager shall reimburse a pharmacy for the cost~~  
10 ~~of a drug.~~

11 [~~"Maximum allowable cost list" means a list of drugs for~~  
12 ~~which a maximum allowable cost has been established by a~~  
13 ~~pharmacy benefit manager.~~

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

17 SECTION 4. Section 431R-1, Hawaii Revised Statutes, is  
18 amended by adding five new definitions to be appropriately  
19 inserted and to read as follows:

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



1 "Maximum allowable cost" means the maximum amount that a  
2 pharmacy benefit manager reimburses a contracting pharmacy for  
3 the cost of a drug.

4 "Maximum allowable cost list" means a list of drugs or  
5 other methodology used by a pharmacy benefit manager to directly  
6 or indirectly set the maximum allowable cost to a contracting  
7 pharmacy or pharmacist for a generic drug, brand-name drug,  
8 biologic product, or other prescription drug. "Maximum  
9 allowable cost list" includes but is not limited to:

10 (1) The average acquisition cost, including national  
11 average drug acquisition cost;

12 (2) The average manufacturer price;

13 (3) The average wholesale price;

14 (4) The brand effective rate or generic effective rate;

15 (5) Discount indexing;

16 (6) Federal upper limits;

17 (7) The wholesale acquisition cost; and

18 (8) Any other term that a pharmacy benefit manager or a  
19 prescription drug benefit plan provider may use to  
20 establish reimbursement rates to a pharmacist or  
21 pharmacy for pharmacist services.



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

4       "Orange Book" has the same meaning as defined in section  
5 328-91."

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

8       "(a) The insurance commissioner may assess a fine of up to  
9 \$10,000 for each violation by a pharmacy benefit manager or  
10 prescription drug benefit plan provider who is in violation of  
11 section 431R-2 [~~or~~], 431R-3[~~-~~], or 431R- . In addition, the  
12 insurance commissioner may order the pharmacy benefit manager to  
13 take specific affirmative corrective action or make  
14 restitution."

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 July 1, 3000.



**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 7/1/3000. (HD2)

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

