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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 326-106, 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15 later repealed these requirements under Act 207, Session Laws of  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  
2 326-106, 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 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 manager; 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) The pharmacy benefit manager shall make available to a  
2 contracting pharmacy upon request, a comprehensive report for  
3 all drugs on the maximum allowable cost list for a plan, which  
4 contains the most up-to-date maximum allowable cost price or  
5 prices used by the pharmacy benefit manager for patients served  
6 by the pharmacy, in a readily accessible and secure electronic  
7 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 four new definitions to be appropriately  
3 inserted and to read as follows:

4 "Contracting pharmacy" means an independent pharmacy that  
5 is not part of a regional or national chain, or part of a  
6 pharmacy services administration organization, and there is no  
7 other pharmacy within a ten-mile radius.

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 "Orange Book" has the same meaning as defined in section  
18 328-91."

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



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

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

11           [~~"Maximum allowable cost" means the maximum amount that a  
12 pharmacy benefit manager shall reimburse a pharmacy for the cost  
13 of a drug.~~

14           ~~"Maximum allowable cost list" means a list of drugs for  
15 which a maximum allowable cost has been established by a  
16 pharmacy benefit manager.~~

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

20           SECTION 6. There is appropriated out of the general  
21 revenues of the State of Hawaii the sum of \$                   or so



1 much thereof as may be necessary for fiscal year 2026-2027 for  
2 the Insurance Division of the Department of Commerce and  
3 Consumer Affairs to effectuate the purposes of this Act.

4 The sum appropriated shall be expended by the Department of  
5 Commerce and Consumer Affairs for the purposes of this Act.

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

8 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. (SD1)

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

