

A Bill for an Act Relating to Pharmacy Benefit Managers.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that pharmacy benefit managers are administrators of prescription drug programs and are responsible for developing and maintaining formularies and other clinical management programs, processing prescription drug claims for insurance companies or corporations, and negotiating contracts with pharmaceutical manufacturers. Pharmacy benefit managers also perform utilization reviews, manage clinical programs targeted to specific disease states, and operate pharmacies, including mail order and specialty pharmacies. Over the past decade, the role of pharmacy benefit managers in the delivery of health care has increased due to a variety of factors, including coverage expansions under the medicare Part D prescription drug benefit and the federal Affordable Care Act and an increase in prescription drug spending that has motivated commercial health plans and self-insured employers to outsource the management of their spending on outpatient prescription drugs.

The legislature further finds that the actions of pharmacy benefit managers can have wide-ranging impacts on pharmacies and consumers in Hawaii, particularly on consumers in rural areas who may have limited access to pharmacies within a pharmacy benefit manager's network and local independent pharmacies. Despite these potential impacts, pharmacy benefit managers are not currently required to be registered. The legislature additionally finds that increased transparency is needed regarding many aspects of pharmacy benefit management, including pharmacy benefit managers' relationships with pharmaceutical companies, formulary creation, and evidence of rebates provided to health plans in the State.

Finally, the legislature notes that prescription drugs are a major factor of the spiraling increase in health care costs, of which pharmacy benefit managers are a contributing factor. Giving clear authority to the insurance commissioner to regulate pharmacy benefit managers is therefore an important first step toward regulating this industry and is necessary to provide transparency and ensure adequate consumer protection.

Accordingly, the purpose of this Act is to require pharmacy benefit managers in Hawaii to register with the insurance commissioner.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 24 to be appropriately designated and to read as follows:

**“CHAPTER
PHARMACY BENEFIT MANAGERS**

§ -A **Definitions.** As used in this chapter:

“Commissioner” means the insurance commissioner.

“Covered entity” means:

- (1) A health benefits plan regulated under chapter 87A; health insurer regulated under article 10A of chapter 431; mutual benefit society regulated under article 1 of chapter 432; or health maintenance organization regulated under chapter 432D; provided that a “covered entity” under this paragraph shall not include a health maintenance organization regulated under chapter 432D that owns or manages its own pharmacies;

- (2) A health program administered by the State in the capacity of a provider of health coverage; or
- (3) An employer, labor union, or other group of persons organized in the State that provides health coverage to covered persons employed or residing in the State.

“Covered entity” shall not include any plans issued for coverage for federal employees or specified disease or limited benefit health insurance as provided by section 431:10A-102.5.

“Covered person” means a member, policyholder, subscriber, enrollee, beneficiary, dependent, or other individual participating in a prescription drug benefit plan.

“Person” means an individual, partnership, corporation, organization, or other business entity.

“Pharmacy benefit management” means:

- (1) Any of the following services provided with regard to the administration of pharmacy benefits:
 - (A) Mail service pharmacy;
 - (B) Claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to covered persons;
 - (C) Clinical formulary development and management services;
 - (D) Rebate contracting and administration;
 - (E) Certain patient compliance, therapeutic intervention, and generic substitution programs; or
 - (F) Disease management programs involving prescription drug utilization;
- (2) The procurement of prescription drugs by a pharmacy benefit manager at a negotiated rate for dispensation to covered persons in the State; or
- (3) The administration or management of prescription drug benefits provided by a covered entity for the benefit of covered persons.

“Pharmacy benefit manager” means any person that performs pharmacy benefit management, including but not limited to a person or entity in a contractual or employment relationship with a pharmacy benefit manager to perform pharmacy benefit management for a covered entity.

“Prescription drug benefit plan” means a health insurance plan offered by a covered entity that includes coverage for prescription drugs.

§ -B Applicability. This chapter shall apply to any pharmacy benefit manager that provides pharmacy benefit management services to covered persons who are residents of the State.

§ -C Registration required. (a) Notwithstanding any law to the contrary, no person shall act or operate as a pharmacy benefit manager without first obtaining a valid registration issued by the commissioner pursuant to this chapter.

(b) Each person seeking to register as a pharmacy benefit manager shall file with the commissioner an application on a form prescribed by the commissioner. The application shall include:

- (1) The name, address, official position, and professional qualifications of each individual who is responsible for the conduct of the affairs of the pharmacy benefit manager, including all members of the board of directors; board of trustees; executive commission; other governing board or committee; principal officers, as applicable;

partners or members, as applicable; and any other person who exercises control or influence over the affairs of the pharmacy benefit manager;

- (2) The name and address of the applicant's agent for service of process in the State; and
- (3) A nonrefundable application fee of \$140.

§ -D Annual renewal requirement. (a) Each pharmacy benefit manager shall renew its registration by March 31 each year.

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

- (1) An application for renewal on a form prescribed by the commissioner; and
- (2) A renewal fee of \$140.

(c) Failure on the part of a pharmacy benefit manager to renew its registration as provided in this section shall result in a penalty of \$140 and may cause the registration to be revoked or suspended by the commissioner until the requirements for renewal have been met.

§ -E Penalty. Any person who acts as a pharmacy benefit manager in this State without first being registered pursuant to this chapter shall be subject to a fine of \$500 for each violation.

§ -F Rules. The commissioner shall adopt, amend, or repeal rules pursuant to chapter 91 to carry out the purposes of this chapter."

SECTION 3. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect on July 1, 2017.

(Approved June 20, 2017.)