

**Representative Bradley G. Last** proposes the following substitute bill:

**PHARMACY BENEFIT MANAGER AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill regulates certain reimbursement practices of pharmacy benefit managers.

**Highlighted Provisions:**

This bill:

- ▶ defines maximum allowable costs;
- ▶ requires a pharmacy benefit manager to register with the insurance commissioner;
- ▶ requires certain contract provisions between a pharmacy benefit manager and a pharmacy related to the use of maximum allowable cost and appeal rights; and
- ▶ establishes a private right of action if the contract provisions are violated.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-22-640**, as enacted by Laws of Utah 2012, Chapter 265

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*Be it enacted by the Legislature of the state of Utah:*



26 Section 1. Section 31A-22-640 is amended to read:

27 **31A-22-640. Insurer and pharmacy benefit management services -- Registration**  
28 **-- Maximum allowable cost -- Audit restrictions -- Private right of action.**

29 (1) For purposes of this section:

30 (a) "Maximum allowable cost" means:

31 (i) a maximum reimbursement amount for a group of pharmaceutically and  
32 therapeutically equivalent drugs that are listed in the most recent edition of the approved drug  
33 products with therapeutic equivalence evaluations published by the Food and Drug  
34 Administration; or

35 (ii) any similar reimbursement amount that is used by a pharmacy benefit manager to  
36 reimburse pharmacies for multiple source drugs.

37 (b) "Nationally available" means a product that is available for purchase in package  
38 sizes commonly purchased by retail pharmacies or chain-operated warehouses in sufficient  
39 supply from national pharmaceutical wholesalers and is not obsolete or temporarily  
40 unavailable.

41 (c) "Obsolete" means a product that may be listed in national drug pricing compendia  
42 but is no longer actively marketed by the product manufacturer or labeler.

43 (d) "[~~pharmacy benefits~~] Pharmacy benefit manager or coordinator" means a person or  
44 entity that provides pharmacy benefit management services as defined in Section 49-20-502 on  
45 behalf of an insurer as defined in Subsection 31A-22-636(1).

46 (2) (a) An insurer and an insurer's pharmacy [~~benefits~~] benefit manager or coordinator  
47 is subject to the pharmacy audit provisions of Section 58-17b-622.

48 (b) A pharmacy benefit manager or coordinator shall:

49 (i) provide the commissioner:

50 (A) the name of the pharmacy benefit manager or coordinator;

51 (B) the name of the insurers or employers for whom the pharmacy benefit manager or  
52 coordinator is providing pharmacy benefit management services; and

53 (C) the registered agent for service of process for the pharmacy benefit manager or  
54 coordinator; and

55 (ii) except as provided in Subsection (8), include the provisions of this section in each  
56 contract with a pharmacy.

57 (3) A pharmacy benefit manager shall not use maximum allowable cost as a basis for  
58 reimbursement to a pharmacy unless:

59 (a) the drug is listed as "A" or "B" rated in the most recent version of the United States  
60 Food and Drug Administration's approved drug products with therapeutic equivalent  
61 evaluations, also know as the "Orange Book," and has an "NR" or "NA" rating or similar rating  
62 by a nationally recognized reference; and

63 (b) the drug is:

64 (i) generally available for purchase in this state from a national or regional wholesaler;

65 and

66 (ii) not obsolete.

67 (4) The maximum allowable cost shall be determined using comparable and current  
68 data on drug prices obtained from multiple nationally recognized, comprehensive data sources,  
69 including wholesalers, drug file vendors, and pharmaceutical manufacturers for drugs that are  
70 nationally available and readily available for purchase by all pharmacies in the state.

71 (5) For every drug for which the pharmacy benefit manager uses maximum allowable  
72 cost to reimburse a contracted pharmacy, the pharmacy benefit manager shall:

73 (a) include in the contract with the pharmacy:

74 (i) information identifying the national drug pricing compendia and other data sources  
75 used to obtain the drug price data; and

76 (ii) the methodology used to calculate the maximum allowable cost;

77 (b) notify the contracted pharmacy at least 30 days prior to the initial implementation  
78 of a maximum allowable cost for a specific drug;

79 (c) notify the contracted pharmacy at least 30 days prior to the discontinuation of a  
80 maximum allowable cost for a specific drug;

81 (d) review and make necessary adjustments to the maximum allowable cost, using the  
82 most recent data sources identified in Subsection (5)(a)(i), at least once per week, and notify  
83 the contracted pharmacy of all adjustments within three business days of the adjustment;

84 (e) provide a process for the contracted pharmacy to appeal the maximum allowable  
85 cost in accordance with Subsection (6); and

86 (f) include in each contract with a contracted pharmacy a process to provide a weekly  
87 update to the pharmacy product pricing files used to reimburse the pharmacy.

88 (6) (a) The right to appeal in Subsection (5)(e) shall be:

89 (i) limited to 14 days following the initial claim adjudication; and

90 (ii) investigated and resolved by the pharmacy benefit manager within 14 business  
91 days.

92 (b) If the appeal is denied, the pharmacy benefit manager shall provide the contracted  
93 pharmacy the reason for the denial and notify the contracted pharmacy where the drug product  
94 may be purchased at a price at or below the maximum allowable cost.

95 (c) If the appeal is not denied, the pharmacy benefit manager shall make a payment  
96 adjustment to a pharmacy retroactively to the date of the claim adjudication, if it is determined  
97 that the maximum allowable cost has been applied incorrectly.

98 (7) (a) A pharmacy has a private right of action for actual damages and reasonable  
99 attorney fees against a pharmacy benefit manager or coordinator if:

100 (i) the pharmacy benefit manager does not include the provisions of this section in each  
101 contract with the pharmacy; or

102 (ii) the pharmacy benefit manager violates this section.

103 (b) The contract with each pharmacy shall permit the pharmacy to litigate or arbitrate  
104 any claims under this section in Utah and applying Utah law.

105 (8) Subsections (3) through (7) do not apply to a pharmacy benefit manager when the  
106 pharmacy benefit manager is providing pharmacy benefit management services on behalf of the  
107 state Medicaid program.

108 (9) The commissioner may charge a fee to a pharmacy benefit manager in accordance  
109 with Title 63J, Chapter 1, Budgetary Procedures Act, as necessary to create the list of pharmacy  
110 benefit managers registered in the state under Subsection (2).