

# HB0113S01 compared with HB0113

~~{deleted text}~~ shows text that was in HB0113 but was deleted in HB0113S01.

inserted text shows text that was not in HB0113 but was inserted into HB0113S01.

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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 ~~{amends the Insurance Code to create a license for}~~ regulates certain reimbursement practices of pharmacy benefit managers.

#### Highlighted Provisions:

This bill:

▶ ~~{establishes the Pharmacy Benefit Manager Act;~~

→ ~~defines terms;~~

→ ~~requires a license to operate as}~~ defines maximum allowable costs:

▶ requires a pharmacy benefit manager~~;~~

→ ~~establishes:~~

→ ~~• a license application process; and~~

→ ~~• general requirements for a license;~~

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- ~~—> provides for license probation, termination, or surrender under certain conditions;~~
- ~~—> establishes general duties regarding:~~
- ~~—• } 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 ~~{reimbursement to a~~ contracted pharmacy; and~~
- ~~—• average reimbursement rates for multisource drugs;~~
- ~~—> permits the Insurance Department to establish fees to pay the cost of administering the licensing chapter and designates the fee as a dedicated credit to the department;~~
- ~~—> authorizes the commissioner of insurance to impose penalties for a violation of the chapter and designates the penalties as a dedicated credit to the department; and~~
- ~~—> authorizes administrative rules} 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:

~~{ This bill takes effect on July 1, 2014. }~~ None

### Utah Code Sections Affected:

~~{ENACTS}~~ AMENDS:

- ~~{31A-44-101, Utah Code Annotated 1953~~
- ~~— 31A-44-102, Utah Code Annotated 1953~~
- ~~— 31A-44-201, Utah Code Annotated 1953~~
- ~~— 31A-44-202, Utah Code Annotated 1953~~
- ~~— 31A-44-203, Utah Code Annotated 1953~~
- ~~— 31A-44-204, Utah Code Annotated 1953~~
- ~~— 31A-44-205, Utah Code Annotated 1953~~
- ~~— 31A-44-206, Utah Code Annotated 1953~~
- ~~— 31A-44-301, Utah Code Annotated 1953~~
- ~~— 31A-44-302, Utah Code Annotated 1953~~
- ~~— 31A-44-303, Utah Code Annotated 1953~~
- ~~— 31A-44-401, Utah Code Annotated 1953~~

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~~31A-44-402, Utah Code Annotated 1953~~

~~31A-44-403, Utah Code Annotated 1953~~

~~31A-44-404, Utah Code Annotated 1953~~

~~31A-44-405, Utah Code Annotated 1953~~; 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:*

~~{ 31A-22-640. Insurer and pharmacy benefit management services -- Audit restrictions:~~

~~(1) For purposes of this section "pharmacy benefits manager or coordinator" means a person or entity that provides pharmacy benefit management services as defined in Section 49-20-502 on behalf of an insurer as defined in Subsection 31A-22-636(1).~~

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

~~‡ Section 1. Section {31A-44-101} 31A-22-640 is {enacted to read:~~

### ~~CHAPTER 44. PHARMACY BENEFIT MANAGER ACT~~

#### ~~Part 1. General Provisions~~

~~31A-44-101. Title:~~

~~This chapter is known as the "Pharmacy Benefit Manager Act."~~

~~Section 2. Section 31A-44-102 is enacted to read:~~

~~31A-44-102. Definitions:~~

~~For purposes of this chapter:~~

~~(1) "Contracted pharmacy" or "pharmacy" means a pharmacy, as defined in Section 58-17b-102, participating in the network of a amended to read:~~

~~31A-22-640. Insurer and pharmacy benefit {manager through a direct contract or through a contract with a pharmacy services administration organization or group purchasing organization:~~

~~(2) "Dispense" or "dispensed" is as defined in Section 58-17b-102.~~

~~(3) "Drug" is as defined in Section 58-37-2.~~

~~(4) "Generic exclusivity period" means the period designated by the Food and Drug Administration following a successful challenge of an existing patent for an~~

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~~innovator drug during which a subsequent manufacturer of a pharmaceutically and therapeutically equivalent version of the innovator drug may market the pharmaceutically and therapeutically equivalent version without competition from other multiple source drug manufacturers.~~

~~(5) management services -- Registration -- Maximum allowable cost -- Audit restrictions -- Private right of action.~~

~~(1) For purposes of this section:~~

~~(a) "Maximum allowable cost" means:~~

~~(~~f~~a)~~i~~) a maximum reimbursement amount for a group of pharmaceutically and therapeutically equivalent ~~f~~multiple source ~~f~~drugs that are listed in the most recent edition of the ~~f~~Approved Drug Products~~f~~ approved drug products with ~~f~~Therapeutic Equivalence Evaluations~~f~~ therapeutic equivalence evaluations published by the Food and Drug Administration ~~f~~and for which there are no less than three nationally available equivalent drug products; or~~

~~(b); or~~

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

~~(6) "Multiple source drug" means a drug for which there are three or more drug products that are:~~

~~(a) rated by the Food and Drug Administration as therapeutically equivalent or bioequivalent;~~

~~(b) determined by the Food and Drug Administration to be pharmaceutically equivalent or bioequivalent; and~~

~~(c) sold or marketed in the United States during the same calendar quarter.~~

~~(~~f~~7)~~b~~) "Nationally available" means a product that is available for purchase in package sizes commonly purchased by retail pharmacies or chain-operated warehouses in sufficient supply from national pharmaceutical wholesalers and is not obsolete or temporarily unavailable.~~

~~(~~f~~8)~~c~~) "Obsolete" means a product that may be listed in national drug pricing compendia but is no longer actively marketed by the product manufacturer or labeler.~~

~~(~~f~~9)~~d~~) "~~f~~pharmacy benefits~~f~~ Pharmacy benefit manager or coordinator" means a person~~

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or entity that provides pharmacy benefit management services ~~for~~ on behalf of a self-insured employer, insurance company, health maintenance organization, or other plan sponsor as defined by administrative rule adopted by the commissioner.

~~———— (10) "Pharmacy benefit manager service" means any of the following services provided to a health benefit plan, or to a participant of the health benefit plan:~~

~~———— (a) negotiating the amount to be paid by a health benefit plan for a prescription drug; or~~

~~———— (b) administering or managing prescription drug benefits provided by the health benefit plan for the benefit of a participant of the health benefit plan, including:~~

~~———— (i) mail service pharmacy;~~

~~———— (ii) specialty pharmacy;~~

~~———— (iii) claims processing;~~

~~———— (iv) payment of a claim;~~

~~———— (v) retail network management;~~

~~———— (vi) clinical formulary development;~~

~~———— (vii) clinical formulary management services;~~

~~———— (viii) rebate contracting;~~

~~———— (ix) rebate administration;~~

~~———— (x) a participant compliance program;~~

~~———— (xi) a therapeutic intervention program;~~

~~———— (xii) a disease management program; or~~

~~———— (xiii) a service that is similar to, or related to, a service described in Subsection (10)(a) or Subsections (10)(b)(i) through (xii):~~

~~———— (11) "Prescription" is } as defined in Section {58-37-2.~~

~~———— (12) "Prescription drug" means a drug that is provided by prescription.~~

~~———— (13) "Temporarily unavailable" means a product that is experiencing short-term supply interruptions, and only an inconsistent or intermittent supply is available in the current market.~~

~~———— Section 3. Section 31A-44-201 is enacted to read:~~

### ~~Part 2. Licensing~~

~~———— 31A-44-201. License required:~~

~~———— (1) A person may not perform, offer to perform, or advertise any service as a pharmacy benefit manager in Utah without a valid license as a pharmacy benefit manager.~~

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~~(2) A person may not utilize the services of another person as a pharmacy benefit manager if the person knows or has reason to know that the other person does not have a license as required under Subsection (1):~~

~~Section 4. Section 31A-44-202 is enacted to read:~~

~~**31A-44-202. Application for license:**~~

~~(1) To obtain a license as a pharmacy benefit manager, a person shall:~~

~~(a) make an application for a license to the commissioner on forms and in a manner established by the commissioner, by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and~~

~~(b) pay a nonrefundable application fee.~~

~~(2) The application described; 49-20-502 on behalf of an insurer as defined in Subsection 31A-22-636(1) ~~((a)) shall:~~~~

~~(a) state the applicant's:~~

~~(i) name;~~

~~(ii) address;~~

~~(iii) Social Security number or federal employer identification number; and~~

~~(iv) personal history, experience, education, and business record;~~

~~(b) if the applicant is a natural person, state whether the applicant is 18 years of age or older;~~

~~(c) state whether the applicant has committed an act that is a ground for denial, suspension, or revocation described in Section 31A-44-301; and~~

~~(d) include any other information required by rule.~~

~~(3) The commissioner may require the applicant to submit documentation that is reasonably necessary to verify the information contained in the application.~~

~~(4) An applicant's Social Security number contained in an application filed under this section is a private record under Section 63G-2-302.~~

~~Section 5. Section 31A-44-203 is enacted to read:~~

~~**31A-44-203. General requirements for issuing a license:**~~

~~(1) The commissioner shall issue a license to act as a pharmacy benefit manager to a person who:~~

~~(a) satisfies the character requirements described in Section 31A-44-204;~~

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~~(b) has not committed an act that is a ground for denial, suspension, or revocation under Section 31A-44-301;~~

~~(c) if a nonresident, complies with Section 31A-44-205; and~~

~~(d) pays the applicable fees under Sections 31A-3-103 and 31A-44-202.~~

~~(2) A person who is a licensed};~~

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

(b) A pharmacy benefit manager or {who is an applicant for a} coordinator shall:

(i) provide the commissioner:

(A) the name of the pharmacy benefit manager {license shall, in accordance with Subsection (3)}, provide a report to the commissioner of:

~~(a) any administrative action taken against the person:~~

~~(i) in another jurisdiction; or~~

~~(ii) by another regulatory agency in this state; and~~

~~(b) any criminal prosecution brought against the person in any jurisdiction;~~

~~(3) A person who is required to file a report described in Subsection (2) shall:~~

~~(a) file the report:~~

~~(i) at the time the person applies for a} or coordinator;~~

(B) the name of the insurers or employers for whom the pharmacy benefit manager {license; and

(ii) if an administrative action or prosecution described in Subsection (2) occurs after the person applies for a pharmacy benefit manager license:

(A) for an administrative action, within 30 days after the day on which the final disposition of the administrative action occurs; or

(B) for a criminal prosecution, within 30 days after the day on which the initial appearance before a court occurs; and

~~(b) include a copy of the complaint and other legal documents relating to the initiation or disposition of the action or prosecution described in Subsection (2);~~

~~(4) (a) The department may require a person who applies for a pharmacy benefit manager license to submit to a criminal background check as a condition of receiving a license.~~

~~(b) A person, if required to submit to a criminal background check under Subsection~~

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~~(4)(a), shall:~~

~~—— (i) submit a fingerprint card in a form acceptable to the department; and~~

~~—— (ii) consent to a fingerprint background check by:~~

~~—— (A) the Utah Bureau of Criminal Identification; and~~

~~—— (B) the Federal Bureau of Investigation;~~

~~—— (c) The department may request the following relating to a person who submits to a criminal background check under this Subsection (4):~~

~~—— (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and~~

~~—— (ii) complete Federal Bureau of Investigation criminal background checks through the national criminal history system;~~

~~—— (d) Information obtained by the department from the review of criminal history records received under this Subsection (4) shall be used by the department for the purposes of:~~

~~—— (i) determining if a person satisfies the character requirements described in Section 31A-44-204 for issuance or renewal of a license;~~

~~—— (ii) determining if a person has failed to maintain the character requirements described in Section 31A-44-204; and~~

~~—— (iii) preventing a person who violates the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033, from} or coordinator is providing pharmacy benefit management services{ ~~in the state;~~~~

~~—— (e) If the commissioner requests the criminal background information described in this Subsection (4), the commissioner shall:~~

~~—— (i) pay to the Department of Public Safety the costs incurred by the Department of Public Safety in providing the commissioner criminal background information described in Subsection (4)(c)(i);~~

~~—— (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of Investigation in providing the department criminal background information described in Subsection (4)(c)(ii); and~~

~~—— (iii) charge the person applying for a license, or for consent to provide pharmacy benefit management services in the state, a fee equal to the aggregate of Subsections (4)(c)(i) and (ii);~~

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~~\_\_\_\_\_ (5) The commissioner may deny a license application to act as a licensed pharmacy benefit manager to a person who:~~

~~\_\_\_\_\_ (a) fails to satisfy the requirements of this section; or~~

~~\_\_\_\_\_ (b) commits an act that is a ground for denial, suspension, or revocation described in Section 31A-44-301.~~

~~\_\_\_\_\_ Section 6. Section 31A-44-204 is enacted to read:~~

~~\_\_\_\_\_ 31A-44-204. Character requirements.~~

~~\_\_\_\_\_ An applicant for a license under this chapter shall demonstrate to the commissioner that:~~

~~\_\_\_\_\_ (1) the applicant has the good faith intent to engage in business as a pharmacy benefit manager; and~~

~~\_\_\_\_\_ (2) (a) if the applicant is a natural person, the applicant is:~~

~~\_\_\_\_\_ (i) competent and trustworthy; and~~

~~\_\_\_\_\_ (ii) at least 18 years old; or~~

~~\_\_\_\_\_ (b) if the applicant is an entity, the entity and all partners, directors, principal officers, or persons having comparable power over the entity are trustworthy.~~

~~\_\_\_\_\_ Section 7. Section 31A-44-205 is enacted to read:~~

~~\_\_\_\_\_ 31A-44-205. Nonresident jurisdictional agreement.~~

~~\_\_\_\_\_ (1) The commissioner shall waive any license requirement for a license under this chapter and issue a nonresident pharmacy benefit manager license to a person who is a nonresident pharmacy benefit manager, if:~~

~~\_\_\_\_\_ (a) the person has a valid license from the person's home state;~~

~~\_\_\_\_\_ (b) the person applies for a nonresident pharmacy benefit manager license;~~

~~\_\_\_\_\_ (c) the person submits to the commissioner a copy of the application for a pharmacy benefit manager license that the nonresident license applicant submitted to the applicant's home state;~~

~~\_\_\_\_\_ (d) the person pays the applicable fees under Sections 31A-3-103 and 31A-44-202;~~

~~\_\_\_\_\_ (e) the nonresident license applicant's license in the applicant's home state is in good standing; and~~

~~\_\_\_\_\_ (f) the nonresident license applicant's home state awards nonresident pharmacy benefit manager licenses to residents of this state on the same basis as this state awards licenses to~~

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~~residents of that home state:~~

~~—— (2) A nonresident applicant shall execute, in a form acceptable to the commissioner, an agreement to be subject to the jurisdiction of the Utah commissioner and courts on any matter related to the applicant's pharmacy benefit manager activities and insurance activities in Utah, on the basis of:~~

~~—— (a) };~~ and

(C) the registered agent for service of process ~~{under Sections 31A-2-309 and 31A-2-310; or~~

~~—— (b) other service authorized in the Utah Rules of Civil Procedure.~~

~~—— (3) The commissioner may verify} for the pharmacy benefit {manager's licensing status through any applicable database.~~

~~—— (4) The commissioner may not assess a greater fee for an insurance license or related service to a person not residing in this state based solely on the fact that the person does not reside in this state.~~

~~—— Section 8. Section **31A-44-206** is enacted to read:~~

~~—— **31A-44-206. Form and contents of license.**~~

~~—— (1) A license issued under this chapter shall be in a form prescribed by the commissioner and shall include:~~

~~—— (a) the name, address, and telephone number of the licensee;~~

~~—— (b) the date of license issuance; and~~

~~—— (c) any other information the commissioner considers advisable.~~

~~—— (2) A pharmacy benefit manager doing business under any name other than the pharmacy benefit manager's legal name shall notify the commissioner before using the assumed name in this state.~~

~~—— (3) (a) An organization shall be licensed as an agency if the organization acts as a pharmacy benefit manager.~~

~~—— (b) An agency license issued under Subsection (3)(a) shall include the names of each natural person licensed under this chapter who is authorized to act as a pharmacy benefit manager for, or on behalf of, the organization in this state.~~

~~—— Section 9. Section **31A-44-301** is enacted to read:~~

### Part 3. License Probation and Termination

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~~31A-44-301. Revocation, suspension, surrender, lapsing, limiting, or otherwise terminating a license -- Rulemaking for renewal and reinstatement.~~

~~(1) A license issued under this chapter remains in force until:~~

~~(a) revoked or suspended under Subsection (4) or Section 31A-4-302;~~

~~(b) surrendered to the commissioner and accepted by the commissioner in lieu of administrative action;~~

~~(c) the licensee dies or is adjudicated incompetent as defined under:~~

~~(i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or~~

~~(ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and Minors;~~

~~(d) lapsed under Section 31A-44-303; or~~

~~(e) voluntarily surrendered.~~

~~(2) The following may be reinstated within one year after the day on which the license is no longer in force:~~

~~(a) a lapsed license; or~~

~~(b) a voluntarily surrendered license, except that a voluntarily surrendered license may not be reinstated after the license period in which the license is voluntarily surrendered.~~

~~(3) Unless otherwise stated in the written agreement for the voluntary surrender of a license, submission and acceptance of a voluntary surrender of a license does not prevent the department from pursuing additional disciplinary or other action authorized under:~~

~~(a) this title; or~~

~~(b) rules made under this title in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~(4) (a) If the commissioner makes a finding under Subsection (4)(b), as part of an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the commissioner may, with respect to the license or license application to which the finding relates:~~

~~(i) revoke the license;~~

~~(ii) suspend the license for a specified period of 12 months or less;~~

~~(iii) limit the license in whole or in part; or~~

~~(iv) deny the license application.~~

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- ~~(b) The commissioner may take an action described by manager or coordinator; and~~  
~~(ii) except as provided in Subsection ~~(4)(a)~~ if the commissioner finds that the licensee or applicant:~~
- ~~(i) is unqualified for a license under Section 31A-44-202, 31A-44-203, or 31A-44-204;~~
  - ~~(ii) has violated:~~
    - ~~(A) an insurance statute, including a statute in this chapter;~~
    - ~~(B) a rule that is valid under Subsection 31A-2-201(3); or~~
    - ~~(C) an order that is valid under Subsection 31A-2-201(4);~~
  - ~~(iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other delinquency proceedings in any state;~~
  - ~~(iv) fails to pay a final judgment rendered against the person in this state within 60 days after the day on which the judgment becomes final;~~
  - ~~(v) is an affiliate of, or under the same general management or interlocking directorate or ownership as, another pharmacy benefit manager that transacts business in this state without a license;~~
  - ~~(vi) refuses:~~
    - ~~(A) to be examined; or~~
    - ~~(B) to produce its accounts, records, and files for examination;~~
  - ~~(vii) has an officer who refuses to:~~
    - ~~(A) give information with respect to the pharmacy benefit manager's affairs; or~~
    - ~~(B) perform any other legal obligation as to an examination;~~
  - ~~(viii) provides information in a license application that is:~~
    - ~~(A) incorrect;~~
    - ~~(B) misleading;~~
    - ~~(C) incomplete; or~~
    - ~~(D) materially untrue;~~
  - ~~(ix) has violated an insurance law, valid rule, or valid order of the insurance department of another state, district, or territory of the United States;~~
  - ~~(x) has violated a law, rule, or order of another state, province, district, or territory of the United States that relates to regulation of a pharmacy benefit manager;~~
  - ~~(xi) has obtained or attempted to obtain a license through misrepresentation or fraud;~~

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- ~~\_\_\_\_\_ (xii) has improperly withheld, misappropriated, or converted money or properties received in the course of doing business as a pharmacy benefit manager;~~
- ~~\_\_\_\_\_ (xiii) has intentionally misrepresented the terms of an actual or proposed contract;~~
- ~~\_\_\_\_\_ (xiv) has been convicted of a felony;~~
- ~~\_\_\_\_\_ (xv) has admitted, or been found to have committed, an insurance unfair trade practice or fraud;~~
- ~~\_\_\_\_\_ (xvi) in the conduct of business in this state or elsewhere has:~~
  - ~~\_\_\_\_\_ (A) used fraudulent, coercive, or dishonest practices; or~~
  - ~~\_\_\_\_\_ (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;~~
- ~~\_\_\_\_\_ (xvii) has had an insurance license, a pharmacy benefit manager license, or their equivalent, denied, suspended, or revoked in any other state, province, district, or territory of the United States;~~
- ~~\_\_\_\_\_ (xviii) has forged another's name to a document relating to the provision of a pharmacy benefit management service;~~
- ~~\_\_\_\_\_ (xix) has improperly used notes or any other reference material to complete an examination for a license;~~
- ~~\_\_\_\_\_ (xx) has knowingly accepted a pharmacy benefit management service from an individual who is not licensed;~~
- ~~\_\_\_\_\_ (xxi) has failed to comply with an administrative or court order imposing a child support obligation;~~
- ~~\_\_\_\_\_ (xxii) has failed to:~~
  - ~~\_\_\_\_\_ (A) pay state income tax; or~~
  - ~~\_\_\_\_\_ (B) comply with an administrative or court order directing payment of state income tax;~~
- ~~\_\_\_\_\_ (xxiii) has violated or permitted others to violate the federal Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Sec. 1033; or~~
- ~~\_\_\_\_\_ (xxiv) has engaged in methods and practices in the conduct of business that endanger the legitimate interests of customers and the public.~~
- ~~\_\_\_\_\_ (c) For purposes }8), **include the provisions** of this section {, if a license is held by an agency, both the agency itself and any individual designated under the license are considered to be the holders of the agency license.~~

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~~(d) If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the individual's license, the commissioner may suspend, revoke, or limit the license of:~~

~~(i) the individual;~~

~~(ii) the agency, if the agency:~~

~~(A) is reckless or negligent in the agency's supervision of the individual; or~~

~~(B) knowingly participated in the act or failure to act that is the grounds for suspending, revoking, or limiting the license; or~~

~~(iii) (A) the individual; and~~

~~(B) the agency, if the agency meets the requirements of Subsection (4)(d)(ii);~~

~~(5) A licensee under this chapter is subject to the penalties for acting as a licensee without a license if:~~

~~(a) the licensee's license is:~~

~~(i) revoked;~~

~~(ii) suspended;~~

~~(iii) limited;~~

~~(iv) surrendered in lieu of administrative action;~~

~~(v) lapsed; or~~

~~(vi) voluntarily surrendered; and~~

~~(b) the licensee:~~

~~(i) continues to act as a licensee; or~~

~~(ii) violates the terms of the license limitation.~~

~~(6) A licensee under this chapter shall immediately report to the commissioner:~~

~~(a) any revocation, suspension, or limitation of the person's license in any other state, province, district, or territory of the United States;~~

~~(b) the imposition of a disciplinary sanction imposed on that person by any other state, province, district, or territory of the United States; or~~

~~(c) a judgment or injunction entered against the person on the basis of conduct involving:~~

~~(i) fraud;~~

~~(ii) deceit;~~

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- ~~—— (iii) misrepresentation; or~~
- ~~—— (iv) a violation of an insurance or pharmacy benefit manager law or rule.~~
- ~~—— (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.~~
- ~~—— (b) If no time is specified in the order or agreement described in Subsection (7)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express written approval of the commissioner.~~
- ~~—— (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of a license issued under this part if so ordered by the court.~~
- ~~—— (9) The commissioner shall, by rule, prescribe the license renewal and reinstatement procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~
- ~~—— Section 10. Section **31A-44-302** is enacted to read:~~
- ~~—— **31A-44-302. Probation -- Grounds for revocation.**~~
- ~~—— (1) The commissioner may place a licensee on probation for a period not to exceed 24 months as follows:~~
  - ~~—— (a) after an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, for any circumstances that would justify a suspension under Section 31A-44-301; or~~
  - ~~—— (b) at the issuance of a new license:~~
    - ~~—— (i) with an admitted violation under 18 U.S.C. Sec. 1033; or~~
    - ~~—— (ii) with a response to a background information question on a new license application indicating that:~~
      - ~~—— (A) the person has been convicted of a crime that is listed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for probation;~~
      - ~~—— (B) the person is currently charged with a crime that is listed by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for probation, regardless of whether adjudication is withheld;~~
      - ~~—— (C) the person has been involved in an administrative proceeding regarding any professional or occupational license; or~~

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~~— (D) any business in which the person is or was an owner, partner, officer, or director has been involved in an administrative proceeding regarding any professional or occupational license.~~

~~— (2) The commissioner may place a licensee on probation for a specified period no longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. Sec. 1033.~~

~~— (3) A probation order under this section shall state the conditions for retention of the license, which shall be reasonable.~~

~~— (4) A violation of the probation is grounds for revocation pursuant to any proceeding authorized under Title 63G, Chapter 4, Administrative Procedures Act.~~

~~— Section 11. Section **31A-44-303** is enacted to read:~~

~~— **31A-44-303. License lapse and voluntary surrender.**~~

~~— (1) A license issued under this chapter shall lapse if the licensee fails to:~~

~~— (a) timely pay a fee under Sections 31A-3-103 and 31A-44-202;~~

~~— (b) submit a completed renewal application as required by Section 31A-44-202; and~~

~~— (c) maintain an active license in a resident state if the licensee is a nonresident licensee.~~

~~— (2) A licensee whose license lapses due to the following may request an action described in Subsection (3):~~

~~— (a) military service;~~

~~— (b) voluntary service for a period of time designated by the person for whom the licensee provides voluntary service; or~~

~~— (c) other extenuating circumstances, such as long-term medical disability.~~

~~— (3) A licensee described in Subsection (2) may request:~~

~~— (a) reinstatement of the license no later than one year after the day on which the license lapses; and~~

~~— (b) waiver of any of the following imposed for failure to comply with renewal procedures:~~

~~— (i) an examination requirement;~~

~~— (ii) reinstatement fees set under Section 31A-3-103; or~~

~~— (iii) other sanctions imposed for failure to comply with renewal procedures.~~

~~— (4) If a license issued under this chapter is voluntarily surrendered, the license may be reinstated:~~

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- ~~\_\_\_\_\_ (a) during the license period in which the license is voluntarily surrendered; and~~
- ~~\_\_\_\_\_ (b) no later than one year after the day on which the license is voluntarily surrendered;~~
- ~~\_\_\_\_\_ Section 12. Section 31A-44-401 is enacted to read:~~

### **Part 4. General Duties - Enforcement**

#### ~~\_\_\_\_\_ 31A-44-401. Maximum allowable cost reimbursement -- Appeal process:~~

~~\_\_\_\_\_ (1) Prior to the expiration of any generic exclusivity period, a pharmacy benefit manager shall not use maximum allowable cost as a basis for reimbursement to a pharmacy for a multiple source drug:~~

~~\_\_\_\_\_ (2) in each contract with a pharmacy.~~

~~\_\_\_\_\_ (3) A pharmacy benefit manager {may} shall not use maximum allowable cost as a basis for reimbursement to a pharmacy {for a drug if:~~

~~\_\_\_\_\_ (a) there are at least three or more therapeutically equivalent multiple source drugs that have been coded as A rated by the} unless:~~

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

~~\_\_\_\_\_ (b) the {drugs identified in Subsection (2)(a) are available at a significant cost difference:~~

~~\_\_\_\_\_ (3) drug is:~~

~~\_\_\_\_\_ (i) generally available for purchase in this state from a national or regional wholesaler; and~~

~~\_\_\_\_\_ (ii) not obsolete.~~

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

~~\_\_\_\_\_ (4)5) For every drug for which the pharmacy benefit manager uses maximum allowable cost to reimburse a contracted pharmacy, the pharmacy benefit manager shall:~~

~~\_\_\_\_\_ (a) include in the contract with the pharmacy:~~

~~\_\_\_\_\_ (i) information identifying the national drug pricing compendia and other data sources~~

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used to obtain the drug price data; and

(i) the methodology used to calculate the maximum allowable cost;

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

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

(d) review and make necessary adjustments to the maximum allowable cost, using the most recent data sources identified in Subsection ~~(4)5~~(a)(i), at least once per week, and notify the contracted pharmacy of all adjustments within three business days of the adjustment;

(e) provide a process for the contracted pharmacy to appeal the maximum allowable cost in accordance with Subsection ~~(5)6~~; and

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

~~(5)6~~ (a) The right to appeal in Subsection ~~(4)5~~(e) shall be:

(i) limited to ~~60~~14 days following the initial claim adjudication; and

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

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

(c) If the appeal is not denied~~:~~

~~(i)~~, the pharmacy benefit manager shall make a payment adjustment to a pharmacy retroactively to the date of the claim adjudication, if it is determined that the maximum allowable cost has been applied incorrectly~~, and~~

~~(ii) when the change in maximum allowable cost for an adjusted cost rate becomes effective, all pharmacies in the pharmacy network shall be informed that the adjudicated claim may be submitted for payment again at the adjusted cost rate.~~

~~Section 13. Section 31A-44-402 is enacted to read:~~

~~31A-44-402. General duties of:~~

~~(7) (a) A pharmacy has a private right of action for actual damages and reasonable attorney fees against~~ a pharmacy benefit manager~~:~~

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~~— A pharmacy benefit manager shall:~~

~~— (1) have a written agreement with each health benefit plan to which} or coordinator if:~~

~~— (i) the pharmacy benefit manager ~~{ provides a} does not include the provisions of this section in each contract with the pharmacy; or~~~~

~~— (ii) the pharmacy benefit manager violates this section.~~

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

~~— (8) Subsections (3) through (7) do not apply to a pharmacy benefit manager when the pharmacy benefit manager is providing pharmacy benefit management ~~{service; and~~~~

~~— (2) comply with the audit provisions of Section 58-17b-622.~~

~~— Section 14. Section ~~31A-44-403~~ is enacted to read:~~

~~— ~~31A-44-403. Fees -- Dedicated credit:~~~~

~~— ~~}services on behalf of the state Medicaid program.~~~~

~~— (9) The commissioner ~~{shall establish and impose} may charge~~ a fee ~~{on} to~~ a pharmacy benefit manager ~~{to pay the costs of administering this chapter. The fee imposed under this section shall be a dedicated credit, as defined in Section 51-5-3, to the department to pay for the cost of administering this chapter.~~~~

~~— Section 15. Section ~~31A-44-404~~ is enacted to read:~~

~~— ~~31A-44-404. Penalties imposed by commissioner -- Dedicated credit:~~~~

~~— (1) A pharmacy benefit manager that is found by the commissioner, after a hearing conducted }in accordance with Title ~~{63G}63J~~, Chapter ~~{4}1~~, ~~{Administrative} Budgetary~~ Procedures Act, ~~{to be in violation of any provisions of this title, shall:~~~~

~~— (a) for each separate violation, pay a civil penalty in an amount designated by the commissioner by rule; and~~

~~— (b) be subject to revocation or suspension of the} as necessary to create the list of pharmacy benefit ~~{manager's license.~~~~

~~— (2) The penalties imposed under this section shall be a dedicated credit, as defined in Section 51-5-3, to the department to pay for the cost of administering this chapter and the cost of market conduct reviews conducted by the department.~~

~~— (3) Nothing in this section affects the right of the commissioner to impose any other penalties provided in this title.~~

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~~Section 16. Section 31A-44-405 is enacted to read:~~

~~31A-44-405. Administrative Rules:~~

~~The commissioner may adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to enforce the provisions of this chapter.~~

~~Section 17. Effective date:~~

~~This bill takes effect on July 1, 2014.~~

### Legislative Review Note

~~as of 2-5-14 4:00 PM~~

~~Office of Legislative Research and General Counsel~~ managers registered in the state under Subsection (2).