

PHARMACY BENEFIT MANAGERS ACT

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Evan J. Vickers

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Insurance Code to provide for regulation of pharmacy benefit managers.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a pharmacy benefit manager to be licensed by the Insurance Department;
- ▶ establishes licensing requirements and penalties for violation of a licensing requirement;
- ▶ describes the duties of a pharmacy benefit manager;
- ▶ requires disclosure of information by a pharmacy benefit manager to a health benefit plan;
- ▶ establishes confidentiality requirements relating to information disclosed by a pharmacy benefit manager;
- ▶ grants rulemaking authority to the Insurance Department;
- ▶ establishes requirements relating to:
 - drug switching;
 - distribution of data; and
 - data access;
- ▶ requires the insurance commissioner to establish and impose a fee to pay the costs



28 of administering the requirements of this bill;

29 ▶ prohibits relation by a pharmacy benefit manager under certain circumstances; and

30 ▶ provides for civil and administrative enforcement of the provisions of this bill.

31 **Monies Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 ENACTS:

37 **31A-43-101**, Utah Code Annotated 1953

38 **31A-43-102**, Utah Code Annotated 1953

39 **31A-43-201**, Utah Code Annotated 1953

40 **31A-43-202**, Utah Code Annotated 1953

41 **31A-43-203**, Utah Code Annotated 1953

42 **31A-43-204**, Utah Code Annotated 1953

43 **31A-43-205**, Utah Code Annotated 1953

44 **31A-43-206**, Utah Code Annotated 1953

45 **31A-43-301**, Utah Code Annotated 1953

46 **31A-43-302**, Utah Code Annotated 1953

47 **31A-43-303**, Utah Code Annotated 1953

48 **31A-43-401**, Utah Code Annotated 1953

49 **31A-43-501**, Utah Code Annotated 1953

50 **31A-43-502**, Utah Code Annotated 1953

51 **31A-43-503**, Utah Code Annotated 1953

52 **31A-43-504**, Utah Code Annotated 1953

53 **31A-43-505**, Utah Code Annotated 1953

54 **31A-43-601**, Utah Code Annotated 1953

55 **31A-43-602**, Utah Code Annotated 1953

56 **31A-43-701**, Utah Code Annotated 1953

57 **31A-43-801**, Utah Code Annotated 1953

58 **31A-43-802**, Utah Code Annotated 1953

- 59 **31A-43-901**, Utah Code Annotated 1953
- 60 **31A-43-902**, Utah Code Annotated 1953
- 61 **31A-43-903**, Utah Code Annotated 1953
- 62 **31A-43-904**, Utah Code Annotated 1953
- 63 **31A-43-905**, Utah Code Annotated 1953
- 64 **31A-43-1001**, Utah Code Annotated 1953
- 65 **31A-43-1002**, Utah Code Annotated 1953
- 66 **31A-43-1003**, Utah Code Annotated 1953

67

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

69 Section 1. Section **31A-43-101** is enacted to read:

70 **CHAPTER 43. PHARMACY BENEFIT MANAGERS ACT**

71 **Part 1. General Provisions**

72 **31A-43-101. Title.**

73 This chapter is known as the "Pharmacy Benefit Managers Act."

74 Section 2. Section **31A-43-102** is enacted to read:

75 **31A-43-102. Definitions.**

76 (1) "Affiliate" means an entity, the majority of whose shares are owned or controlled

77 by:

78 (a) another entity; or

79 (b) the shareholders, directors, or officers who own or control the majority of shares of

80 another entity.

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

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

83 (4) "Drug product equivalent" is as defined in Section 58-17b-102.

84 (5) "Drug switch" or "drug switching" means an attempt by a pharmacy benefit
85 manager, a person on behalf of a pharmacy benefit manager, or a pharmacy to change a drug
86 prescribed for a participant if the change:

87 (a) (i) is part of an effort to effect the change for more than one participant; and

88 (ii) is based on:

89 (A) a clinical consideration that is not specific to each participant; or

90 (B) the economic value of the switch to the pharmacy benefit manager; and
91 (b) (i) will substitute a drug that is not a drug product equivalent; or
92 (ii) will substitute a drug product equivalent that will result in an increased co-payment
93 or co-insurance amount for the participant.

94 (6) "Drug switch requester" means:

95 (a) a pharmacy benefit manager who requests or seeks to make a drug switch for a
96 participant of a health benefit plan that the pharmacy benefit manager provides pharmacy
97 benefit management services to; or

98 (b) a pharmacy or other person who requests or seeks to make a drug switch at the
99 request of, or on behalf of, a pharmacy benefit manager described in Subsection (6)(a).

100 (7) (a) "Net price" or "net cost" means the price paid after deducting all:

101 (i) discounts;

102 (ii) rebates;

103 (iii) chargebacks;

104 (iv) price concessions; or

105 (v) payment that is contingent on a purchase.

106 (b) "Net price" or "net cost" does not include an amount paid to a pharmacy as a
107 dispensing fee.

108 (8) "Participant" means a policy holder or beneficiary of a health benefit plan.

109 (9) (a) "Payment," as it relates to a pharmacy benefit manager, means anything of value
110 that a pharmacy benefit manager receives from a person, including an affiliate.

111 (b) "Payment," as it relates to a pharmacy benefit manager, does not include anything
112 of value that a pharmacy benefit manager receives from a health benefit plan to which the
113 pharmacy benefit manager provides pharmacy benefit management services.

114 (10) "Pharmacy" is as defined in Section 58-17b-102.

115 (11) "Pharmacy benefit management service" means any of the following services
116 provided to a health benefit plan or to a participant of the health benefit plan:

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

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

120 (i) mail service pharmacy;

- 121 (ii) specialty pharmacy;
- 122 (iii) claims processing;
- 123 (iv) payment of a claim;
- 124 (v) retail network management;
- 125 (vi) clinical formulary development;
- 126 (vii) clinical formulary management services;
- 127 (viii) rebate contracting;
- 128 (ix) rebate administration;
- 129 (x) a participant compliance program;
- 130 (xi) a therapeutic intervention program; or
- 131 (xii) a disease management program.

132 (12) "Pharmacy benefit manager" means a person that provides a pharmacy benefit
 133 management service to a health benefit plan.

134 (13) "Practitioner" is as defined in Section 58-37-2.

135 (14) "Prescription" is as defined in Section 58-37-2.

136 (15) "Prescription drug" means a drug that is provided by prescription.

137 Section 3. Section **31A-43-201** is enacted to read:

Part 2. Licensing

31A-43-201. License required.

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

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

145 Section 4. Section **31A-43-202** is enacted to read:

31A-43-202. Application for license.

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

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

151 (b) pay a nonrefundable application fee.

152 (2) The application described in Subsection (1)(a) shall:
153 (a) state the applicant's:
154 (i) name;
155 (ii) address;
156 (iii) Social Security number or federal employer identification number; and
157 (iv) personal history, experience, education, and business record;
158 (b) if the applicant is a natural person, state whether the applicant is 18 years of age or
159 older;
160 (c) state whether the applicant has committed an act that is a ground for denial,
161 suspension, or revocation described in Section 31A-43-301; and
162 (d) include any other information required by rule.
163 (3) The commissioner may require the applicant to submit documentation that is
164 reasonably necessary to verify the information contained in the application.
165 (4) An applicant's Social Security number contained in an application filed under this
166 section is a private record under Section 63G-2-302.
167 Section 5. Section **31A-43-203** is enacted to read:
168 **31A-43-203. General requirements for issuing a license.**
169 (1) The commissioner shall issue a license to act as a pharmacy benefit manager to a
170 person who:
171 (a) satisfies the character requirements described in Section 31A-43-204;
172 (b) has not committed an act that is a ground for denial, suspension, or revocation
173 under Section 31A-43-301;
174 (c) if a nonresident, complies with Section 31A-43-205; and
175 (d) pays the applicable fees under Sections 31A-3-103 and 31A-43-202.
176 (2) A person who is a licensed pharmacy benefit manager or who is an applicant for a
177 pharmacy benefit manager license shall, in accordance with Subsection (3), provide a report to
178 the commissioner of:
179 (a) any administrative action taken against the person:
180 (i) in another jurisdiction; or
181 (ii) by another regulatory agency in this state; and
182 (b) any criminal prosecution brought against the person in any jurisdiction.

183 (3) A person who is required to file a report described in Subsection (2) shall:
184 (a) file the report:
185 (i) at the time the person applies for a pharmacy benefit manager license; and
186 (ii) if an administrative action or prosecution described in Subsection (2) occurs after
187 the person applies for a pharmacy benefit manager license:
188 (A) for an administrative action, within 30 days after the day on which the final
189 disposition of the administrative action occurs; or
190 (B) for a criminal prosecution, within 30 days after the day on which the initial
191 appearance before a court occurs; and
192 (b) include a copy of the complaint and other legal documents relating to the initiation
193 or disposition of the action or prosecution described in Subsection (2).
194 (4) (a) The department may require a person who applies for a pharmacy benefit
195 manager license to submit to a criminal background check as a condition of receiving a license.
196 (b) A person, if required to submit to a criminal background check under Subsection
197 (4)(a), shall:
198 (i) submit a fingerprint card in a form acceptable to the department; and
199 (ii) consent to a fingerprint background check by:
200 (A) the Utah Bureau of Criminal Identification; and
201 (B) the Federal Bureau of Investigation.
202 (c) The department may request the following relating to a person who submits to a
203 criminal background check under this Subsection (4):
204 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
205 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and
206 (ii) complete Federal Bureau of Investigation criminal background checks through the
207 national criminal history system.
208 (d) Information obtained by the department from the review of criminal history records
209 received under this Subsection (4) shall be used by the department for the purposes of:
210 (i) determining if a person satisfies the character requirements described in Section
211 31A-43-204 for issuance or renewal of a license;
212 (ii) determining if a person has failed to maintain the character requirements described
213 in Section 31A-43-204; and

214 (iii) preventing a person who violates the federal Violent Crime Control and Law
215 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from providing pharmacy benefit
216 management services in the state.

217 (e) If the department requests the criminal background information described in this
218 Subsection (4), the department shall:

219 (i) pay to the Department of Public Safety the costs incurred by the Department of
220 Public Safety in providing the department criminal background information described in
221 Subsection (4)(c)(i);

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

225 (iii) charge the person applying for a license, or for consent to provide pharmacy
226 benefit management services in the state, a fee equal to the aggregate of Subsections (4)(e)(i)
227 and (ii).

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

230 (a) fails to satisfy the requirements of this section; or

231 (b) commits an act that is a ground for denial, suspension, or revocation described in
232 Section 31A-43-301.

233 Section 6. Section **31A-43-204** is enacted to read:

234 **31A-43-204. Character requirements.**

235 An applicant for a license under this chapter shall demonstrate to the commissioner
236 that:

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

239 (2) (a) if the applicant is a natural person, the applicant is:

240 (i) competent and trustworthy; and

241 (ii) at least 18 years old; or

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

244 Section 7. Section **31A-43-205** is enacted to read:

245 **31A-43-205. Nonresident jurisdictional agreement.**

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

249 (a) the person has a valid license from the person's home state;

250 (b) the person applies for a nonresident pharmacy benefit manager license;

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

254 (d) the person pays the applicable fees under Sections 31A-3-103 and 31A-43-202;

255 (e) the nonresident license applicant's license in the applicant's home state is in good
256 standing; and

257 (f) the nonresident license applicant's home state awards nonresident pharmacy benefit
258 manager licenses to residents of this state on the same basis as this state awards licenses to
259 residents of that home state.

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

264 (a) service of process under Sections 31A-2-309 and 31A-2-310; or

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

266 (3) The commissioner may verify the pharmacy benefit manager's licensing status
267 through any applicable database.

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

271 Section 8. Section **31A-43-206** is enacted to read:

272 **31A-43-206. Form and contents of license.**

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

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

276 (b) the date of license issuance; and

277 (c) any other information the commissioner considers advisable.

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

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

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

286 Section 9. Section 31A-43-301 is enacted to read:

287 **Part 3. License Probation and Termination**

288 **31A-43-301. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
289 **terminating a license -- Rulemaking for renewal and reinstatement.**

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

291 (a) revoked or suspended under Subsection (4);

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

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

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

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

298 (d) lapsed under Section 31A-43-303; or

299 (e) voluntarily surrendered.

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

302 (a) a lapsed license; or

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

305 (3) Unless otherwise stated in the written agreement for the voluntary surrender of a
306 license, submission and acceptance of a voluntary surrender of a license does not prevent the

307 department from pursuing additional disciplinary or other action authorized under:

308 (a) this title; or

309 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah

310 Administrative Rulemaking Act.

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

315 (i) revoke the license;

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

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

318 (iv) deny the license application.

319 (b) The commissioner may take an action described in Subsection (4)(a) if the
320 commissioner finds that the licensee or applicant:

321 (i) is unqualified for a license under Section 31A-43-202, 31A-43-203, or 31A-43-204;

322 (ii) has violated:

323 (A) an insurance statute, including a statute in this chapter;

324 (B) a rule that is valid under Subsection 31A-2-201(3); or

325 (C) an order that is valid under Subsection 31A-2-201(4);

326 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
327 delinquency proceedings in any state;

328 (iv) fails to pay a final judgment rendered against the person in this state within 60
329 days after the day on which the judgment becomes final;

330 (v) is an affiliate of, or under the same general management or interlocking directorate
331 or ownership as, another pharmacy benefit manager that transacts business in this state without
332 a license;

333 (vi) refuses:

334 (A) to be examined; or

335 (B) to produce its accounts, records, and files for examination;

336 (vii) has an officer who refuses to:

337 (A) give information with respect to the pharmacy benefit manager's affairs; or

338 (B) perform any other legal obligation as to an examination;
339 (viii) provides information in a license application that is:
340 (A) incorrect;
341 (B) misleading;
342 (C) incomplete; or
343 (D) materially untrue;
344 (ix) has violated an insurance law, valid rule, or valid order of the insurance
345 department of another state, district, or territory of the United States;
346 (x) has violated a law, rule, or order of another state, district, or territory of the United
347 States that relates to regulation of a pharmacy benefit manager;
348 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
349 (xii) has improperly withheld, misappropriated, or converted monies or properties
350 received in the course of doing business as a pharmacy benefit manager;
351 (xiii) has intentionally misrepresented the terms of an actual or proposed contract;
352 (xiv) has been convicted of a felony;
353 (xv) has admitted, or been found to have committed, an insurance unfair trade practice
354 or fraud;
355 (xvi) in the conduct of business in this state or elsewhere has:
356 (A) used fraudulent, coercive, or dishonest practices; or
357 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
358 (xvii) has had an insurance license, a pharmacy benefit manager license, or their
359 equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
360 (xviii) has forged another's name to a document relating to the provision of a pharmacy
361 benefit management service;
362 (xix) has improperly used notes or any other reference material to complete an
363 examination for a license;
364 (xx) has knowingly accepted a pharmacy benefit management service from an
365 individual who is not licensed;
366 (xxi) has failed to comply with an administrative or court order imposing a child
367 support obligation;
368 (xxii) has failed to:

369 (A) pay state income tax; or
370 (B) comply with an administrative or court order directing payment of state income
371 tax;
372 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
373 Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or
374 (xxiv) has engaged in methods and practices in the conduct of business that endanger
375 the legitimate interests of customers and the public.
376 (c) For purposes of this section, if a license is held by an agency, both the agency itself
377 and any individual designated under the license are considered to be the holders of the agency
378 license.
379 (d) If an individual designated under the agency license commits an act or fails to
380 perform a duty that is a ground for suspending, revoking, or limiting the individual's license,
381 the commissioner may suspend, revoke, or limit the license of:
382 (i) the individual;
383 (ii) the agency, if the agency:
384 (A) is reckless or negligent in the agency's supervision of the individual; or
385 (B) knowingly participated in the act or failure to act that is the ground for suspending,
386 revoking, or limiting the license; or
387 (iii) (A) the individual; and
388 (B) the agency, if the agency meets the requirements of Subsection (4)(d)(ii).
389 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
390 without a license if:
391 (a) the licensee's license is:
392 (i) revoked;
393 (ii) suspended;
394 (iii) limited;
395 (iv) surrendered in lieu of administrative action;
396 (v) lapsed; or
397 (vi) voluntarily surrendered; and
398 (b) the licensee:
399 (i) continues to act as a licensee; or

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

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

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

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

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

408 (i) fraud;

409 (ii) deceit;

410 (iii) misrepresentation; or

411 (iv) a violation of an insurance or pharmacy benefit manager law or rule.

412 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
413 license in lieu of administrative action may specify a time, not to exceed five years, within
414 which the former licensee may not apply for a new license.

415 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the
416 former licensee may not apply for a new license for five years from the day on which the order
417 or agreement is made without the express written approval of the commissioner.

418 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
419 a license issued under this part if so ordered by the court.

420 (9) The commissioner shall, by rule, prescribe the license renewal and reinstatement
421 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

422 Section 10. Section **31A-43-302** is enacted to read:

423 **31A-43-302. Probation -- Grounds for revocation.**

424 (1) The commissioner may place a licensee on probation for a period not to exceed 24
425 months as follows:

426 (a) after an adjudicative proceeding under Title 63G, Chapter 4, Administrative
427 Procedures Act, for any circumstances that would justify a suspension under Section
428 31A-43-301; or

429 (b) at the issuance of a new license:

430 (i) with an admitted violation under 18 U.S.C. Secs. 1033 and 1034; or

431 (ii) with a response to a background information question on a new license application
432 indicating that:

433 (A) the person has been convicted of a crime that is listed by rule made in accordance
434 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is grounds for
435 probation;

436 (B) the person is currently charged with a crime that is listed by rule made in
437 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a crime that is
438 grounds for probation, regardless of whether adjudication is withheld;

439 (C) the person has been involved in an administrative proceeding regarding any
440 professional or occupational license; or

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

444 (2) The commissioner may place a licensee on probation for a specified period no
445 longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. Secs. 1033
446 and 1034.

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

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

451 Section 11. Section **31A-43-303** is enacted to read:

452 **31A-43-303. License lapse and voluntary surrender.**

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

454 (a) timely pay a fee under Sections 31A-3-103 and 31A-43-202;

455 (b) submit a completed renewal application as required by Section 31A-43-202; and

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

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

459 (a) military service;

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

- 462 (c) other extenuating circumstances, such as long-term medical disability.
 - 463 (3) A licensee described in Subsection (2) may request:
 - 464 (a) reinstatement of the license no later than one year after the day on which the license
 - 465 lapses; and
 - 466 (b) waiver of any of the following imposed for failure to comply with renewal
 - 467 procedures:
 - 468 (i) an examination requirement;
 - 469 (ii) reinstatement fees set under Section 31A-3-103; or
 - 470 (iii) other sanctions imposed for failure to comply with renewal procedures.
 - 471 (4) If a license issued under this chapter is voluntarily surrendered, the license may be
 - 472 reinstated:
 - 473 (a) during the license period in which the license is voluntarily surrendered; and
 - 474 (b) no later than one year after the day on which the license is voluntarily surrendered.
- 475 Section 12. Section **31A-43-401** is enacted to read:

Part 4. General Duties

31A-43-401. General duties of a pharmacy benefit manager.

- 478 (1) A pharmacy benefit manager shall:
- 479 (a) hold and handle all money received by a pharmacy benefit manager from or for a
- 480 health benefit plan in a fiduciary capacity;
- 481 (b) pay, in a timely manner, the money described in Subsection (1)(a) to each person
- 482 entitled to it;
- 483 (c) promptly deposit the money described in Subsection (1)(a) that is held by the
- 484 pharmacy benefit manager in one or more fiduciary bank accounts maintained by the pharmacy
- 485 benefit manager, pursuant to any rules the commissioner adopts to protect the integrity of the
- 486 funds;
- 487 (d) perform all duties relating to a pharmacy benefit management service with care,
- 488 skill, prudence, and diligence; and
- 489 (e) ensure that every written or electronic document containing information about a
- 490 disease, a condition, or treatment for a disease or condition that the pharmacy benefit manager
- 491 provides, directly or indirectly, to a participant:
- 492 (i) is not false or misleading; and

493 (ii) discloses any support or involvement in the development, writing, or distribution of
494 the document by a manufacturer or developer of a drug or device.

495 (2) A pharmacy benefit manager may not:

496 (a) initiate a drug switch for a participant of a health benefit plan for which the
497 pharmacy benefit manager provides a pharmacy benefit management service, unless the
498 pharmacy benefit manager first obtains written approval from the health benefit plan to switch
499 specified prescription drugs;

500 (b) pay an affiliate of the pharmacy benefit manager more for any prescription drug,
501 dispensed prescription, good, or service that is provided to a health benefit plan for which the
502 pharmacy benefit manager provides a pharmacy benefit management service, or to a participant
503 of that plan, than the prescription benefit manager pays or would pay to a similar entity that is
504 not an affiliate of the pharmacy benefit manager; or

505 (c) take any action that would make it less likely that a pharmacy will, when it is
506 medically appropriate to do so, substitute a generic drug for a non-generic drug.

507 (3) An approval described in Subsection (2)(a) does not relieve a pharmacy benefit
508 manager of any responsibilities described in this chapter that relate to a drug switch.

509 (4) For purposes of Subsection (2)(b), a pharmacy that is not an affiliate entity of a
510 pharmacy benefit manager is a similar entity to a pharmacy that is an affiliate of the pharmacy
511 benefit manager, if the pharmacies have the same license classification under Title 58, Chapter
512 17b, Pharmacy Practice Act.

513 Section 13. Section **31A-43-501** is enacted to read:

514 **Part 5. Disclosure to Health Plan**

515 **31A-43-501. Required initial and annual disclosure -- Required disclosure before**
516 **amendment or renewal.**

517 (1) Before a pharmacy benefit manager enters into a contract, renews a contract, or
518 amends a contract with a health benefit plan, the pharmacy benefit manager shall provide a
519 document to the health benefit plan that includes:

520 (a) a description of all pharmacy benefit management services and all goods that the
521 pharmacy benefit manager proposes to provide to the health benefit plan;

522 (b) the net cost for each service or good described in Subsection (1)(a);

523 (c) a description of the methodology, with clearly defined terminology, that the

524 pharmacy benefit manager will use to:

525 (i) distinguish among drugs;

526 (ii) categorize drugs;

527 (iii) determine the cost of a dispensed prescription to the health benefit plan; or

528 (iv) determine the amount of a participant's co-payment or co-insurance for a dispensed
529 prescription; and

530 (d) a complete description of the design and operation of any formulary that the
531 pharmacy benefit manager recommends that the health benefit plan adopt.

532 (2) Before a pharmacy benefit manager enters into an initial contract with a health
533 benefit plan, and annually on, or within 14 days after, the anniversary of the day on which the
534 initial contract was executed, until the pharmacy benefit manager discontinues providing
535 pharmacy benefit management services to the health benefit plan, the pharmacy benefit
536 manager shall fully disclose to the health benefit plan:

537 (a) the content of all contracts and other agreements that the pharmacy benefit manager
538 directly or indirectly has with a drug manufacturer, labeler, or another person in relation to any
539 pharmacy benefit management service that the pharmacy benefit manager provides to the
540 health benefit plan, including the provision of a drug, a dispensed prescription, goods, services,
541 promoting or marketing a drug, and drug switches;

542 (b) all payments that the pharmacy benefit manager receives, directly or indirectly,
543 from a drug manufacturer, labeler, or another person in relation to any pharmacy benefit
544 management service that the pharmacy benefit manager provides to the health benefit plan,
545 including the provision of a drug, a dispensed prescription, goods, services, promoting or
546 marketing a drug, and drug switches;

547 (c) the percentage of all payments described in Subsection (2)(b) that are retained by
548 the pharmacy benefit manager; and

549 (d) the percentage of all payments described in Subsection (2)(b) that are distributed to,
550 or passed through to, the health benefit plan.

551 (3) In making the disclosures described in Subsection (2) before entering into an initial
552 contract with a health benefit plan, the pharmacy benefit manager shall provide to the health
553 benefit plan a written estimation of the value of each contract where the execution of the
554 contract is contingent, in whole or in part, on:

555 (a) the pharmacy benefit manager contracting with the health benefit plan to which the
556 information described in Subsection (2) is disclosed;

557 (b) an existing contract or existing contracts of the pharmacy benefit manager with
558 another health benefit plan or other health benefit plans; or

559 (c) the past or expected utilization of the health benefit plan to which the information
560 described in Subsection (2) is disclosed.

561 (4) In making the disclosures described in Subsection (2) after entering into an initial
562 contract with a health benefit plan, the pharmacy benefit manager shall provide to the health
563 benefit plan a written description of:

564 (a) the actual value of each payment category described in Subsection (2); and

565 (b) the percentage of each payment category described in Subsection (2) that:

566 (i) the pharmacy benefit manager retained; and

567 (ii) the pharmacy benefit manager paid to, or passed through to, a health benefit plan.

568 Section 14. Section **31A-43-502** is enacted to read:

569 **31A-43-502. Required quarterly disclosure -- Supporting documentation.**

570 (1) On a quarterly basis during the operation of a contract between a pharmacy benefit
571 manager and a health benefit plan, the pharmacy benefit manager shall disclose to the health
572 benefit plan, in writing:

573 (a) the actual utilization of drugs by participants of the health benefit plan for the
574 preceding quarter, listed by the National Drug Code directory number;

575 (b) every activity, policy, or practice of the pharmacy benefit manager that directly or
576 indirectly presents an actual or potential conflict of interest with the health benefit plan;

577 (c) every increase in the net price to the health benefit plan for any drug and the reason
578 for that increase;

579 (d) every increase in the dispensing fee paid to a pharmacy and the reason for that
580 increase;

581 (e) all contracts, contract renewals, or contract amendments entered into during the
582 preceding quarter between the pharmacy benefit manager and a pharmacy that is within the
583 network of pharmacies designated by the pharmacy benefit manager at which a participant of
584 the health benefit plan may fill a prescription, including each pharmacy that is an affiliate of the
585 pharmacy benefit manager;

586 (f) all contracts, contract renewals, or contract amendments relating to a drug or
587 dispensed prescription that is covered by the health benefit plan, entered into during the
588 preceding quarter between the pharmacy benefit manager and any manufacturer, labeler,
589 repackager, distributor, or other person, including any person acting on behalf of a
590 manufacturer, labeler, repackager, distributor, or other person; and

591 (g) information sufficient for the health benefit plan to clearly determine whether any
592 prescription filled for a participant of the health benefit plan with a repackaged drug, including
593 a drug repackaged by an affiliate of the pharmacy benefit manager, resulted in:

594 (i) a higher net cost to the health benefit plan than would have been incurred for a
595 therapeutically equivalent drug that was available to the participant on the day that the
596 prescription was filled; or

597 (ii) a higher co-payment or co-insurance amount to the participant than would have
598 been incurred for a therapeutically equivalent drug that was available to the participant on the
599 day that the prescription was filled.

600 (2) Upon the health benefit plan's request, the pharmacy benefit manager shall provide
601 documentation that supports the reason for an increase described in Subsection (1)(g).

602 Section 15. Section **31A-43-503** is enacted to read:

603 **31A-43-503. Required disclosure upon request.**

604 (1) During the operation of a contract between a pharmacy benefit manager and a
605 health benefit plan, the pharmacy benefit manager shall, upon request of the health benefit
606 plan, promptly:

607 (a) provide the health benefit plan with access to all financial, utilization, pricing, and
608 claims information and documentation that relates to any aspect of the pharmacy benefit
609 management services provided by the pharmacy benefit manager to the health benefit plan or a
610 participant of the health benefit plan, including electronic claims data for each separate claim;
611 and

612 (b) permit the health benefit plan to conduct annual audits of each aspect of the
613 pharmacy benefit management services provided by the pharmacy benefit manager to the
614 health benefit plan or a participant of the health benefit plan.

615 (2) An audit described in Subsection (1)(b) may be conducted by:

616 (a) the health benefit plan; or

617 (b) a certified public accounting firm, selected by the health benefit plan, that will
618 conduct the audit in conformance with accepted auditing procedures and standards.

619 Section 16. Section **31A-43-504** is enacted to read:

620 **31A-43-504. Confidentiality of disclosed records.**

621 (1) Except as provided under Subsection (3), a pharmacy benefit manager may
622 designate as confidential any information or document disclosed to a health benefit plan under
623 this part.

624 (2) Except as provided in Subsections (3) and (4), a health benefit plan, an agent of a
625 health benefit plan, and a person retained to perform an audit under Section 31A-43-503, shall
626 maintain the confidentiality of all information and all documents designated by a pharmacy
627 benefit manager as confidential under Subsection (1).

628 (3) Subsections (1) and (2) do not apply to information or a document that is:

629 (a) required to be disclosed under Title 63G, Chapter 2, Government Records Access
630 and Access Management Act; or

631 (b) expressly required to be disclosed by law.

632 (4) Subsection (2) does not apply to information or a document that is disclosed:

633 (a) to the commissioner in order to ensure or verify a pharmacy benefit manager's
634 compliance with the requirements of this chapter;

635 (b) in an administrative or court proceeding to enforce the provisions of this title or
636 chapter;

637 (c) to an agent of the health benefit plan;

638 (d) for the purpose of conducting an audit under Section 31A-43-503;

639 (e) in good faith, in a criminal proceeding; or

640 (f) pursuant to a court order.

641 Section 17. Section **31A-43-505** is enacted to read:

642 **31A-43-505. Rulemaking authority.**

643 The department may, by rule made pursuant under Title 63G, Chapter 3, Utah
644 Administrative Rulemaking Act, prescribe the nature, content, and format of the disclosures
645 described in this chapter.

646 Section 18. Section **31A-43-601** is enacted to read:

647 **Part 6. Drug Switching**

648 **31A-43-601. Notification to participant of proposed drug switch.**

649 (1) A drug switch requester may not request or make a drug switch for a participant of
650 a health benefit plan, unless, in accordance with Subsection (2), before requesting or making
651 the drug switch, the drug switch requester notifies the participant, or, if relevant, the
652 participant's parent or guardian, in writing, that the drug switch requester desires to make a
653 drug switch.

654 (2) The notice described in Subsection (1):

655 (a) shall describe the drug switch that the drug switch requester desires to make;

656 (b) shall be sent in a manner that is reasonably calculated to give the person notified at
657 least two business days' notice before the practitioner who wrote the prescription for the drug is
658 contacted regarding the proposed drug switch; and

659 (c) may not contain any false or misleading information regarding:

660 (i) the drug that was initially prescribed to the participant;

661 (ii) the drug to which the drug switch requester desires the participant to switch; or

662 (iii) the relative cost to the participant of the drugs described in this Subsection (2)(c).

663 Section 19. Section **31A-43-602** is enacted to read:

664 **31A-43-602. Notification to practitioner of proposed drug switch.**

665 (1) A drug switch requester may not request or make a drug switch for a participant of
666 a health benefit plan, unless, in accordance with Subsection (2), before requesting or making
667 the drug switch, the drug switch requester notifies the practitioner who wrote the prescription
668 for the drug, in writing, that the drug switch requester desires to make a drug switch.

669 (2) The notice described in Subsection (1) shall:

670 (a) describe the drug switch that the drug switch requester desires to make; and

671 (b) include all of the financial and clinical information necessary for the practitioner to
672 determine whether the drug switch is in the participant's best interest.

673 Section 20. Section **31A-43-701** is enacted to read:

674 **Part 7. Distribution of Data**

675 **31A-43-701. Distribution of health benefit plan data.**

676 (1) In accordance with Subsection (2), and except as provided in Subsection (3), a
677 pharmacy benefit manager may not, without the express written consent of the health benefit
678 plan to which the information relates, disclose any information relating to:

679 (a) prescriptions dispensed for the health benefit plan or a participant of the health
680 benefit plan; or

681 (b) drug utilization, prescriptions, or claims data for the health benefit plan or a
682 participant of the health benefit plan.

683 (2) A pharmacy benefit manager may not obtain the consent of a health benefit plan
684 under Subsection (1), unless the pharmacy benefit manager makes a written request for consent
685 to the health benefit plan that contains the following:

686 (a) an itemized description of the information to which the request relates;

687 (b) the identity of the person to which the information will be disclosed;

688 (c) the specific practices that are in operation to protect the privacy of the health benefit
689 plan's participants; and

690 (d) the amount and purpose of any payment that is made, or will be made, to the
691 pharmacy benefit manager or an affiliate of the pharmacy benefit manager by, or on behalf of,
692 the person to which the information will be provided.

693 (3) Subsection (1) does not apply if the person to whom the information is disclosed is:

694 (a) the health benefit plan to which the information relates;

695 (b) the participant to whom the information relates;

696 (c) a person who, in connection with the information, qualifies as a fiduciary of the
697 health benefit plan under the federal Employee Retirement Income Security Act of 1974;

698 (d) the health benefit plan's sponsor;

699 (e) a practitioner who prescribed a prescription drug to a participant, if the participant
700 provides written consent for the disclosure; or

701 (f) a government agency that is legally entitled to the information.

702 (4) Subsection (1) applies regardless of whether the information is:

703 (a) aggregated; or

704 (b) identifiable by individual or category.

705 Section 21. Section **31A-43-801** is enacted to read:

706 **Part 8. Records Retention and Access**

707 **31A-43-801. Records retention and access.**

708 (1) A drug switch requester who requests a drug switch under Part 6, Drug Switching,
709 shall retain a written or electronic copy of the request for three years after the day on which the

710 request is made.

711 (2) A drug switch requester shall provide the documentation described in Subsection
712 (1) to the department, or to the health benefit plan to which the document relates, upon request.

713 (3) A pharmacy benefit manager and the health benefit plan shall retain a copy of:

714 (a) each request for consent described in Section 31A-43-701 for five years after the
715 day on which the request is made; and

716 (b) each consent described in Section 31A-43-701 for five years after the day on which
717 the consent is given.

718 Section 22. Section **31A-43-802** is enacted to read:

719 **31A-43-802. Books and records required -- Access.**

720 (1) Every pharmacy benefit manager shall maintain at a location accessible to the
721 commissioner, for at least three years, the pharmacy benefit manager's written agreements, and
722 complete documents, books, and records of all transactions among the pharmacy benefit
723 manager, each health benefit plan that the pharmacy benefit manager provides pharmacy
724 management services to, and each participant of the health benefit plan.

725 (2) The commissioner shall have access to the documents, books, and records
726 maintained by the pharmacy benefit manager for the purpose of audit and inspection. Any
727 trade secrets contained in the documents, books, and records, including the identity and
728 addresses of health benefit plans and participants of health benefit plans, are confidential,
729 except the commissioner may use that information in any proceeding instituted against the
730 pharmacy benefit manager.

731 (3) A pharmacy benefit manager, and each officer, employee, and agent of the
732 pharmacy benefit manager and its affiliates shall facilitate and aid in the commissioner's access
733 to the documents, books, and records described in this section.

734 Section 23. Section **31A-43-901** is enacted to read:

735 **Part 9. Miscellaneous**

736 **31A-43-901. Contract not invalidated due to failure to obtain or maintain license.**

737 A contract is not invalid as a result of a violation of Section 31A-43-201.

738 Section 24. Section **31A-43-902** is enacted to read:

739 **31A-43-902. Fees.**

740 The commissioner shall establish and impose a fee on a pharmacy benefit manager to

741 pay the costs of administering this chapter.

742 Section 25. Section **31A-43-903** is enacted to read:

743 **31A-43-903. Written agreements required.**

744 (1) A pharmacy benefit manager shall have a written agreement with each health
745 benefit plan to which the pharmacy benefit manager provides a pharmacy benefit management
746 service.

747 (2) An agreement described in Subsection (1) shall require compliance with the
748 provisions described in this chapter that the pharmacy benefit manager is required to comply
749 with.

750 Section 26. Section **31A-43-904** is enacted to read:

751 **31A-43-904. Retaliation prohibited.**

752 A pharmacy benefit manager may not take adverse action against a pharmacy,
753 pharmacist, health benefit plan, or participant in retaliation for:

754 (1) reporting a violation of this title or chapter by the pharmacy benefit manager;

755 (2) expressing disagreement with, or requesting reconsideration of, a decision by the
756 pharmacy benefit manager;

757 (3) assisting a participant to seek reconsideration of a decision by the pharmacy benefit
758 manager relating to a participant; or

759 (4) discussing alternative medications with a participant.

760 Section 27. Section **31A-43-905** is enacted to read:

761 **31A-43-905. Effect of chapter.**

762 (1) Nothing in this chapter alters the relationship between:

763 (a) a health benefit plan and a participant of the health benefit plan; or

764 (b) a health benefit plan and a person who qualifies as a fiduciary of the health benefit
765 plan under the federal Employee Retirement Income Security Act of 1974.

766 (2) Except as expressly provided in this chapter, nothing in this chapter imposes an
767 obligation for a health benefit plan to disclose any information to a participant of the plan.

768 (3) Nothing in this chapter relieves a practitioner of an obligation that the practitioner
769 may have to:

770 (a) discuss with a patient the risks and benefits relating to a prescribed drug; or

771 (b) obtain consent for treatment with a particular drug.

772 (4) Nothing in this chapter relieves a pharmacist of an obligation that the pharmacist
773 may have to alert a patient or prescribing practitioner of any safety of efficacy concerns raised
774 by dispensing a particular drug to a patient.

775 Section 28. Section **31A-43-1001** is enacted to read:

776 **Part 10. Enforcement**

777 **31A-43-1001. Penalties imposed by commissioner.**

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

781 (a) for each separate violation, pay a civil penalty in an amount not exceeding \$50,000;

782 and

783 (b) be subject to revocation or suspension of the pharmacy benefit manager's license.

784 (2) Nothing in this section affects the right of the commissioner to impose any other
785 penalties provided in this title.

786 Section 29. Section **31A-43-1002** is enacted to read:

787 **31A-43-1002. Civil action against pharmacy benefit manager.**

788 A health benefit plan that is injured by a pharmacy benefit manager's failure to comply
789 with a provision of this chapter may bring an action:

790 (1) for equitable relief; or

791 (2) to recover:

792 (a) the health benefit plan's actual damages; and

793 (b) a civil penalty, to be paid to the health benefit plan, not to exceed three times the
794 actual damages described in Subsection (2)(a).

795 Section 30. Section **31A-43-1003** is enacted to read:

796 **31A-43-1003. Civil action against a health benefit plan, agent, or auditor.**

797 A pharmacy benefit manager that is injured by disclosure of information in violation of
798 Section 31A-43-504 by a health benefit plan, an agent of a health benefit plan, or a person
799 retained to perform an audit under Section 31A-43-503, may bring a cause of action:

800 (1) for equitable relief; or

801 (2) to recover:

802 (a) the pharmacy benefit manager's actual damages; and

803 (b) a civil penalty, to be paid to the pharmacy benefit manager, not to exceed three
804 times the actual damages described in Subsection (2)(a).

Legislative Review Note
as of 12-29-09 12:32 PM

Office of Legislative Research and General Counsel

H.B. 135 - Pharmacy Benefit Managers Act

Fiscal Note

2010 General Session
State of Utah

State Impact

Enacting this bill will require an appropriation of \$192,300 in FY 2011 and \$182,000 in FY 2012 from the General Fund. The bill will generate about \$192,300 in FY 2011 and thereafter, for a net General Fund revenue increase of \$10,300 per year beginning in FY 2012.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$192,300	\$182,000	\$0	\$192,300	\$192,300
Total	\$0	\$192,300	\$182,000	\$0	\$192,300	\$192,300

Individual, Business and/or Local Impact

Business and local government may be impacted due to new requirements for pharmacy benefit manager. Individual may be impacted due to proposed changes in statute.