

## HB0113S02 compared with HB0113S01

~~{deleted text}~~ shows text that was in HB0113S01 but was deleted in HB0113S02.

inserted text shows text that was not in HB0113S01 but was inserted into HB0113S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Bradley G. Last proposes the following substitute bill:

### PHARMACY BENEFIT MANAGER AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

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

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#### LONG TITLE

##### General Description:

This bill regulates certain reimbursement practices of pharmacy benefit managers.

##### Highlighted Provisions:

This bill:

- ▶ defines maximum allowable costs;
- ~~{~~ → requires a pharmacy benefit manager to register with the insurance commissioner;
- ‡ ▶ requires certain contract provisions between a pharmacy benefit manager and a pharmacy related to the use of maximum allowable cost and appeal rights; and
- ▶ ~~{establishes a private right of action if the contract provisions are violated}~~ requires a pharmacy benefit manager to register with the Division of Corporations and Commercial Code within the Department of Commerce.

##### Money Appropriated in this Bill:

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

(1) For purposes of this section:

(a) "Maximum allowable cost" means:

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

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

(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.

~~(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~~ available to be dispensed based on the expiration date of the last lot manufactured.

(d) "~~[pharmacy benefits] Pharmacy benefit 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) ~~(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.

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~~{ (b) A pharmacy benefit manager or coordinator shall:~~

~~(i) provide the commissioner;~~

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

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

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

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

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

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

~~(b) the 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}~~ may 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.~~

~~(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 used to obtain the drug price data; ~~‡~~ and~~

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

~~(b) notify the contracted pharmacy at least 30 days prior to the initial implementation~~

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~~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);~~

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

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

(~~f~~~~f~~~~d~~) include in each contract with a contracted pharmacy a process to ~~provide a weekly~~~~;~~~~obtain an~~ update to the pharmacy product pricing files used to reimburse the pharmacy in a format that is readily available and accessible.

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

(i) limited to ~~14~~21 days following the initial claim adjudication; and

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

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

~~—— (c) If the appeal is not denied, price determined by 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.~~

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

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

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

~~—— (b) };~~

(7) The contract with each pharmacy shall ~~permit the pharmacy to litigate or arbitrate any claims~~contain a dispute resolution mechanism in the event either party breaches the terms

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or conditions of the contract.

(8) (a) To conduct business in the state, a pharmacy benefit manager shall register with the Division of Corporations and Commercial Code within the Department of Commerce and annually renew the registration. To register under this section ~~in Utah and applying Utah law.~~

~~— (8) Subsections (3) through (7) do~~}, the pharmacy benefit manager shall submit an application which shall contain only the following information:

(i) the name of the pharmacy benefit manager;

(ii) the name and contact information for the registered agent for the pharmacy benefit manager; and

(iii) if applicable, the federal employer identification number for the pharmacy benefit manager.

(b) The Department of Commerce may establish a fee in accordance with Title 63J, Chapter 1, Budgetary Procedures Act, for the initial registration, and the annual renewal of the registration, which may not exceed \$100 per year.

(c) The following entities do not have to register as a pharmacy benefit manager under Subsection (8)(a) when the entity is providing formulary services to its own patients, employees, members, or beneficiaries:

(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;

(ii) a pharmacy licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

(iii) a health care professional licensed under Title 58, Occupations and Professions;

(iv) a health insurer; and

(v) a labor union.

(9) This section does not apply to a pharmacy benefit manager when the pharmacy benefit manager is providing pharmacy benefit management services on behalf of the state Medicaid program.

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

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