

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: Evan J. Vickers

LONG TITLE

General Description:

This bill regulates certain reimbursement practices of pharmacy benefit managers.

Highlighted Provisions:

This bill:

- ▶ defines maximum allowable costs;
- ▶ requires certain contract provisions between a pharmacy benefit manager and a pharmacy related to the use of maximum allowable cost and appeal rights; and
- ▶ 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:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



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

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

29 (1) For purposes of this section:

30 (a) "Maximum allowable cost" means:

31 (i) a maximum reimbursement amount for a group of pharmaceutically and
32 therapeutically equivalent drugs; or

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

35 (b) "Obsolete" means a product that may be listed in national drug pricing compendia
36 but is no longer available to be dispensed based on the expiration date of the last lot
37 manufactured.

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

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

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

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

49 (b) the drug is:

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

52 (ii) not obsolete.

53 (4) The maximum allowable cost may be determined using comparable and current
54 data on drug prices obtained from multiple nationally recognized, comprehensive data sources,
55 including wholesalers, drug file vendors, and pharmaceutical manufacturers for drugs that are
56 available for purchase by pharmacies in the state.

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

59 (a) include in the contract with the pharmacy information identifying the national drug
60 pricing compendia and other data sources used to obtain the drug price data;

61 (b) review and make necessary adjustments to the maximum allowable cost, using the
62 most recent data sources identified in Subsection (5)(a)(i), at least once per week;

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

65 (d) include in each contract with a contracted pharmacy a process to obtain an update
66 to the pharmacy product pricing files used to reimburse the pharmacy in a format that is readily
67 available and accessible.

68 (6) (a) The right to appeal in Subsection (5)(d) shall be:

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

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

72 (b) If an appeal is denied, the pharmacy benefit manager shall provide the contracted
73 pharmacy with the reason for the denial and the identification of the national drug code of the
74 drug that may be purchased by the pharmacy at a price at or below the price determined by the
75 pharmacy benefit manager.

76 (7) The contract with each pharmacy shall contain a dispute resolution mechanism in
77 the event either party breaches the terms or conditions of the contract.

78 (8) (a) To conduct business in the state, a pharmacy benefit manager shall register with
79 the Division of Corporations and Commercial Code within the Department of Commerce and
80 annually renew the registration. To register under this section, the pharmacy benefit manager
81 shall submit an application which shall contain only the following information:

82 (i) the name of the pharmacy benefit manager;

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

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

87 (b) The Department of Commerce may establish a fee in accordance with Title 63J,

88 Chapter 1, Budgetary Procedures Act, for the initial registration, and the annual renewal of the
89 registration, which may not exceed \$100 per year.

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

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

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

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

97 (iv) a health insurer; and

98 (v) a labor union.

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