

## HB0364S05 compared with HB0364S04

~~text~~ shows text that was in HB0364S04 but was deleted in HB0364S05.

text shows text that was not in HB0364S04 but was inserted into HB0364S05.

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Representative Bradley G. Last proposes the following substitute bill:

### PHARMACY BENEFIT MANAGER AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

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

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#### LONG TITLE

##### General Description:

This bill creates registration and practice requirements for pharmacy benefit managers.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes the Pharmacy Benefit Manager Act;
- ▶ requires a person providing pharmacy benefit management services to:
  - register with the Division of ~~Corporations~~Occupational and ~~Commercial Code~~Professional Licensing (DOPL) in accordance with a certain process; and
  - self-certify compliance with applicable laws and rules;
- ▶ establishes certain requirements for the practice of a pharmacy benefit manager;
- ▶ requires ~~the Division of Corporations and Commercial Code~~DOPL to:

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- establish a registration process and requirements;
  - investigate noncompliance and complaints;
  - provide certain notice to the Insurance Department and insurance carriers regarding registrations; and
  - impose fines in certain circumstances;
- ▶ authorizes administrative rules; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

31A-22-640, as last amended by Laws of Utah 2015, Chapter 258

ENACTS:

~~{16-18-101}~~ 58-86-101, Utah Code Annotated 1953

~~{16-18-102}~~ 58-86-102, Utah Code Annotated 1953

~~{16-18-103}~~ 58-86-103, Utah Code Annotated 1953

~~{16-18-104}~~ 58-86-104, Utah Code Annotated 1953

~~{16-18-105}~~ 58-86-105, Utah Code Annotated 1953

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

Section 1. ~~{ Section 16-18-101 is enacted to read:~~

### ~~CHAPTER 18. PHARMACY BENEFIT MANAGER ACT~~

~~—— 16-18-101. Title:~~

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

~~—— Section 2. Section 16-18-102 is enacted to read:~~

~~—— 16-18-102. Definitions:~~

~~—— As used in this chapter:~~

~~—— (1) "Division" means the Division of Corporations and Commercial Code, created in Section 13-1-2.~~

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~~(2) "Maximum allowable cost" means the same as that term is defined in Section 31A-22-640.~~

~~(3) "Obsolete" means the same as that term is defined in Section 31A-22-640.~~

~~(4) "Pharmacy benefit manager" means the same as that term is defined in Section 31A-22-640.~~

~~Section 3. Section 16-18-103 is enacted to read:~~

~~**16-18-103. Pharmacy benefit manager registration:**~~

~~(1) (a) To conduct business in the state, a pharmacy benefit manager shall register with the division and renew the registration annually.~~

~~(b) To register under this chapter, the pharmacy benefit manager shall submit to the division an application containing:~~

~~(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.~~

~~(2) The division 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.~~

~~(3) The division shall:~~

~~(a) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish an application process and an application form for registration under this chapter; and~~

~~(b) retain the registration fees imposed under Subsection (2) as a dedicated credit, as defined in Section 51-5-3, to the division to pay for the cost of administering this chapter.~~

~~(4) The following entities are not required to register as a pharmacy benefit manager under Subsection (7)(a) when the entity is providing formulary services to the entity's patients, employees, members, or beneficiaries:~~

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

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

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

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~~— (d) a labor union;~~

~~— (5) This section does not apply to a pharmacy benefit manager when the pharmacy benefit manager is providing pharmacy benefit management services on behalf of:~~

~~— (a) the state Medicaid program;~~

~~— (b) a motor vehicle insurer; or~~

~~— (c) a workers' compensation insurer.~~

~~— Section 4. Section **16-18-104** is enacted to read:~~

~~— **16-18-104. Self-certification to division -- Complaints.**~~

~~— (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:~~

~~— (a) for the purpose of ensuring compliance with the provisions of this section, require a self-certification of a person:~~

~~— (i) registered under this chapter; or~~

~~— (ii) who engages in activities that require registration under this chapter;~~

~~— (b) create a form on which a person described in Subsection (1)(a) certifies that the person is in full compliance with each requirement of this section and any other applicable laws, rules, regulations, or registration conditions; and~~

~~— (c) establish procedures to:~~

~~— (i) receive, evaluate, and investigate complaints regarding failures to comply with this section by a person described in Subsection (1)(a), including, if applicable, adjudicative procedures under Title 63G, Chapter 4, Administrative Procedures Act; and~~

~~— (ii) provide the notice described in Section 16-18-105.~~

~~— (2) A person described in Subsection (1)(a) shall honestly and in good faith complete the self-certification process described in Subsections (1)(a) and (b).~~

~~— Section 5. Section **16-18-105** is enacted to read:~~

~~— **16-18-105. Notification of Insurance Department and insurance carriers.**~~

~~— (1) (a) The division shall give the notice described in Subsection (1)(b) to the person who is the subject of the complaint described in Subsection (1)(a)(i) when, through procedures established under Subsection 16-18-104(1)(c), the division:~~

~~— (i) receives a complaint that a person who is not registered, as required in Subsection 16-18-103(1), is conducting business as a pharmacy benefit manager or providing pharmacy~~

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~~benefit management services, as defined in Section 49-20-502; and~~

~~—— (ii) determines that the complaint described in Subsection (1)(a)(i) is true.~~

~~—— (b) The division shall ensure that the notice required in Subsection (1)(a) contains a statement:~~

~~—— (i) that the person is not registered as a pharmacy benefit manager as required by this chapter; and~~

~~—— (ii) that the person is prohibited from providing services as a pharmacy benefit manager, unless the person registers, as required in this chapter, within 30 days of the date of the notice:~~

~~—— (2) (a) The division shall give the notice described in Subsection (2)(b) when the person who is the subject of the complaint described in Subsection (1)(a)(i) does not register, as required in Subsection 16-18-103(1), within 30 days of the date of the notice described in Subsection (1)(b):~~

~~—— (b) The division shall:~~

~~—— (i) ensure that the notice required in Subsection (2)(a) contains a statement that the person is:~~

~~—— (A) not registered as a pharmacy benefit manager, as required by Subsection 16-18-103(1); and~~

~~—— (B) subject to fines, in accordance with Subsection (3), if the person provides services as a pharmacy benefit manager; and~~

~~—— (ii) give the notice required in Subsection (2)(a) to:~~

~~—— (A) each insurance carrier with which the division has reason to believe the person engages as a pharmacy benefit manager; and~~

~~—— (B) the Insurance Department, to promote insurer compliance with Section 31A-22-640:~~

~~—— (3) (a) The division shall impose the escalating fines described in Subsection (3)(b) upon a person that is the subject of a notice described in Subsection (2) if:~~

~~—— (i) the person does not register as required in Subsection 16-18-103(1) within 30 days of the date of the notice; and~~

~~—— (ii) the person provides services as a pharmacy benefit manager after the 30-day period described in Subsection (3)(a)(i):~~

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~~———— (b) In accordance with Subsection (3)(a), until the person registers as required in Subsection 16-18-103(1) the division shall impose escalating fines as follows:~~

~~———— (i) beginning on the 31st day until the 60th day after the date of the original notice described in Subsection (1)(b), a fine of \$50 per day;~~

~~———— (ii) beginning on the 61st day until the 90th day after the date of the original notice described in Subsection (1)(b), a fine of \$250 per day; and~~

~~———— (iii) beginning on the 91st day until the 120th day after the date of the original notice described in Subsection (1)(b), a fine of \$1,000 per day.~~

~~———— (4) A person that is the subject of a notice described in Subsection (2) may not provide services as a pharmacy benefit manager beginning on the 121st day after the date of the original notice described in Subsection (1)(b) until the person registers as required in Subsection 16-18-103(1).~~

~~———— (5) The division shall retain the fines imposed under this section as a dedicated credit to the division to pay for the cost of administering this chapter.~~

~~———— (6) To promote insurer compliance with Section 31A-22-640, the division shall, at least once every three months, provide the Insurance Department with a list of all current and valid registrations under this chapter.~~

~~———— Section 6.} Section 31A-22-640 is amended to read:~~

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

(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; or

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

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

(c) (i) "Pharmacy benefit manager" 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

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in Subsection 31A-22-636(1).

(ii) "Pharmacy benefit manager" includes independent entities and entities wholly or partially owned or controlled, either directly or indirectly, by:

(A) a retail pharmacy;

(B) a mail order pharmacy; or

(C) an insurer.

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

(3) A pharmacy benefit manager [~~shall~~] may 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 known as the "Orange Book," or has an "NR" or "NA" rating or similar rating by a nationally recognized reference; and

(b) the drug is [~~is~~-(i)] generally available for purchase in [~~this state~~] Utah from a national or regional wholesaler[~~;~~ and -(ii)] and is not obsolete.

(4) [~~The~~] A pharmacy benefit manager ~~shall~~ may determine maximum allowable cost [~~may be determined~~] by 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 available for purchase by pharmacies in [~~the state~~] Utah.

(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~~] information identifying the national drug pricing compendia and other data sources used to obtain the drug price data in the contract with the pharmacy;

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

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

(d) include [~~in each contract with a contracted pharmacy~~] a process to obtain an update

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to the pharmacy product pricing files used to reimburse the pharmacy, in each contract with a contracted pharmacy, in a format that is readily available and accessible.

(6) (a) ~~[The right to appeal in]~~ (i) A contracted pharmacy may appeal the maximum allowable cost in accordance with Subsection (5)(c) ~~[shall be: (i) limited to]~~ within 21 days following the initial claim adjudication~~;~~and].

(ii) ~~[investigated and resolved by the]~~ The pharmacy benefit manager shall investigate and resolve the appeal within 14 business days.

(b) If an appeal is denied, the pharmacy benefit manager shall provide the contracted pharmacy with:

(i) the reason for the denial; and

(ii) the identification of the national drug code of the drug for which the pharmacy appealed that may be purchased by the pharmacy at a price at or below the price determined by the pharmacy benefit manager.

(7) The contract with each pharmacy shall contain a dispute resolution mechanism in the event either party breaches the terms 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, 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~~



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~~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.]~~

(8) (a) A person may not perform, offer to perform, or advertise any service as a pharmacy benefit manager in Utah without a valid registration under Title ~~58~~, Chapter ~~18~~86, Pharmacy Benefit Manager Act.

(b) A person may not use the pharmacy benefit management services of another if the person knows or should know that the other does not have the registration required in Subsection (8)(a).

Section 2. Section ~~58-86-101~~ is enacted to read:

### CHAPTER 86. PHARMACY BENEFIT MANAGER ACT

#### 58-86-101. Title.

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

Section 3. Section ~~58-86-102~~ is enacted to read:

#### 58-86-102. Definitions.

As used in this chapter, "pharmacy benefit manager" means the same as that term is defined in Section 31A-22-640.

Section 4. Section ~~58-86-103~~ is enacted to read:

#### 58-86-103. Pharmacy benefit manager registration.

(1) (a) To conduct business in the state, a pharmacy benefit manager shall register with the division and renew the registration annually.

(b) To register under this chapter, the pharmacy benefit manager shall submit to the division an application containing:

(i) the name of the pharmacy benefit manager;

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

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

(2) The division 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.

(3) The division shall:

(a) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish an application process and an application form for registration under this chapter; and

(b) retain the registration fees imposed under Subsection (2) as a dedicated credit to the division to pay for the cost of administering this chapter.

(4) The following entities are not required to register as a pharmacy benefit manager under Subsection (7)(a) when the entity is providing formulary services to the entity's patients, employees, members, or beneficiaries:

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

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

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

(d) a labor union.

(5) This section does not apply to a pharmacy benefit manager when the pharmacy benefit manager is providing pharmacy benefit management services on behalf of:

(a) the state Medicaid program;

(b) a motor vehicle insurer; or

(c) a workers' compensation insurer.

Section 5. Section 58-86-104 is enacted to read:

### **58-86-104. Self-certification to division -- Complaints.**

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(a) for the purpose of ensuring compliance with the provisions of this section, require a self-certification of a person:

(i) registered under this chapter; or

(ii) who engages in activities that require registration under this chapter;

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(b) create a form on which a person described in Subsection (1)(a) certifies that the person is in full compliance with each requirement of this section and any other applicable laws, rules, regulations, or registration conditions; and

(c) establish procedures to:

(i) receive, evaluate, and investigate complaints regarding failures to comply with this section by a person described in Subsection (1)(a), including, if applicable, adjudicative procedures under Title 63G, Chapter 4, Administrative Procedures Act; and

(ii) provide the notice described in Section 58-86-105.

(2) A person described in Subsection (1)(a) shall honestly and in good faith complete the self-certification process described in Subsections (1)(a) and (b).

Section 6. Section 58-86-105 is enacted to read:

### 58-86-105. Notification of Insurance Department and insurance carriers.

(1) (a) The division shall give the notice described in Subsection (1)(b) to the person who is the subject of the complaint described in Subsection (1)(a)(i) when, through procedures established under Subsection 58-86-104(1)(c), the division:

(i) receives a complaint that a person who is not registered, as required in Subsection 58-86-103(1), is conducting business as a pharmacy benefit manager or providing pharmacy benefit management services, as defined in Section 49-20-502; and

(ii) determines that the complaint described in Subsection (1)(a)(i) is true.

(b) The division shall ensure that the notice required in Subsection (1)(a) contains a statement:

(i) that the person is not registered as a pharmacy benefit manager as required by this chapter; and

(ii) that the person is prohibited from providing services as a pharmacy benefit manager, unless the person registers, as required in this chapter, within 30 days of the date of the notice.

(2) (a) The division shall give the notice described in Subsection (2)(b) when the person who is the subject of the complaint described in Subsection (1)(a)(i) does not register, as required in Subsection 58-86-103(1), within 30 days of the date of the notice described in Subsection (1)(b).

(b) The division shall:

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(i) ensure that the notice required in Subsection (2)(a) contains a statement that the person is:

(A) not registered as a pharmacy benefit manager, as required by Subsection 58-86-103(1); and

(B) subject to fines, in accordance with Subsection (3), if the person provides services as a pharmacy benefit manager; and

(ii) give the notice required in Subsection (2)(a) to:

(A) each insurance carrier with which the division has reason to believe the person engages as a pharmacy benefit manager; and

(B) the Insurance Department, to promote insurer compliance with Section 31A-22-640.

(3) (a) The division shall impose the escalating fines described in Subsection (3)(b) upon a person that is the subject of a notice described in Subsection (2) if:

(i) the person does not register as required in Subsection 58-86-103(1) within 30 days of the date of the notice; and

(ii) the person provides services as a pharmacy benefit manager after the 30-day period described in Subsection (3)(a)(i).

(b) In accordance with Subsection (3)(a), until the person registers as required in Subsection 58-86-103(1) the division shall impose escalating fines as follows:

(i) beginning on the 31st day until the 60th day after the date of the original notice described in Subsection (1)(b), a fine of \$50 per day;

(ii) beginning on the 61st day until the 90th day after the date of the original notice described in Subsection (1)(b), a fine of \$250 per day; and

(iii) beginning on the 91st day until the 120th day after the date of the original notice described in Subsection (1)(b), a fine of \$1,000 per day.

(4) A person that is the subject of a notice described in Subsection (2) may not provide services as a pharmacy benefit manager beginning on the 121st day after the date of the original notice described in Subsection (1)(b) until the person registers as required in Subsection 58-86-103(1).

(5) The division shall retain the fines imposed under this section as a dedicated credit to the division to pay for the cost of administering this chapter.

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(6) To promote insurer compliance with Section 31A-22-640, the division shall, at least once every three months, provide the Insurance Department with a list of all current and valid registrations under this chapter.