

PHARMACY BENEFIT MANAGER AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Evan J. Vickers

LONG TITLE

General Description:

This bill amends and creates requirements for pharmacy benefit managers.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ specifies that a pharmaceutical benefit manager has a fiduciary responsibility to an insurer that the pharmaceutical benefit manager contracts with;
- ▶ requires a pharmaceutical benefit manager to inform an insurer of policies, practices, or actions that could impair the pharmacy benefit manager's ability to fulfill its fiduciary duty or contractual obligations to the insurer;
- ▶ requires a pharmaceutical benefit manager to report information about rebates and administrative fees to the Insurance Department;
- ▶ requires the department to publish certain information; ~~H→~~ [and]
- ▶ prohibits certain billing practices by a pharmacy ~~H→~~ [service entity] benefit

manager ~~←H~~ ; and ~~←H~~

▶ amends the limit on the amount a pharmaceutical benefit manager may require an insured customer to pay for a covered prescription drug.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 58-17b-626, as enacted by Laws of Utah 2018, Chapter 305

30 ENACTS:

31 31A-22-640.1, Utah Code Annotated 1953



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

34 Section 1. Section 31A-22-640.1 is enacted to read:

35 **31A-22-640.1. Pharmaceutical benefit managers -- Fiduciary responsibility --**
36 **Reporting of rebates and fees -- Publication of rebates and fees -- Disclosure of certain**
37 **information prohibited.**

38 (1) As used in this section:

39 (a) "Administrative fee" means any payment, other than a rebate, that a pharmaceutical
40 manufacturer makes directly ~~H~~→ or indirectly ←~~H~~ to a pharmacy benefit manager.

41 (b) "Contracting insurer" means an insurer as defined in Section 31A-22-636 with
42 whom a pharmacy benefit manager contracts to provide a pharmacy benefit management
43 service.

44 (c) "Pharmacy benefit management service" means the same as that term is defined in
45 Section 49-20-502.

46 (d) "Pharmacy benefit manager" means the same as that term is defined in Section
47 31A-22-640.

48 (e) (i) "Rebate" means a refund, discount, or other price concession that is paid by a
49 pharmaceutical manufacturer to a pharmacy benefit manager based on a prescription drug's
50 utilization or effectiveness.

51 (ii) "Rebate" does not include an administrative fee.

52 (f) "Retained rebate percentage" means the percentage of total rebates not paid to or
53 otherwise passed on to a contracting insurer during a calendar year.

54 (g) "Total administrative fees" means the amount of administrative fees received by a
55 pharmacy benefit manager during a calendar year from a pharmaceutical manufacturer as a
56 result of the pharmacy benefit manager's contractual relationship with a specific contracting
57 insurer.

58 (h) "Total rebates" means the dollar amount of rebates received by a pharmacy benefit

121 entity shall:

122 (a) include the adjusted compensation amount related to a claim and the reason for the
123 adjusted compensation; and

124 (b) provide the reimbursement report:

125 (i) in accordance with the contract between the pharmacy and the pharmacy service
126 entity;

127 (ii) in an electronic format that is easily accessible; and

128 (iii) within 120 days after the day on which the pharmacy benefits manager or
129 coordinator receives a report of a sale of a product or service by the pharmacy.

130 (4) A pharmacy service entity shall, upon a pharmacy's request, provide the pharmacy
131 with:

132 (a) the reasons for any adjustments contained in a reimbursement report; and

133 (b) an explanation of the reasons provided in Subsection (4)(a).

134 (5) (a) A pharmacy benefits manager or coordinator may not prohibit or penalize the
135 disclosure by a pharmacist of:

136 (i) an insured customer's cost share for a covered prescription drug;

137 (ii) the availability of any therapeutically equivalent alternative medications; or

138 (iii) alternative methods of paying for the prescription medication, including paying the
139 cash price, that are less expensive than the cost share of the prescription drug.

140 (b) Penalties that are prohibited under Subsection (5)(a) include increased utilization
141 review, reduced payments, and other financial disincentives.

142 (6) A pharmacy benefits manager or coordinator may not require an insured customer
143 to pay, for a covered prescription drug, more than the lesser of:

144 (a) the applicable cost share of the prescription drug being dispensed; ~~or~~

145 (b) the applicable allowable claim amount of the prescription drug being dispensed;

146 (c) the applicable pharmacy reimbursement of the prescription drug being dispensed; or

147 ~~[(b)]~~ (d) the retail price of the drug without prescription drug coverage.

147a ~~H→~~ **(7) A pharmacy ~~H→~~ [service entity] benefit manager ←H :**

147b **(a) may not require a pharmacy to collect the amount of a customer's cost share for a**
147c **prescription drug or device solely from the customer or the customer's agent;**

147d **(b) shall permit a pharmacy to cover all or part of the amount of a customer's cost share for a**
147e **prescription drug or device; and**

147f **(c) may not reduce or deny a claim for a prescription drug or device more than 90 days after**
147g **the day on which the claim is submitted to the pharmacy ~~H→~~ [service entity] benefit**

147h **manager ←H . ←H**