

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; and
- 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:



AMENDS:

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

ENACTS:

31A-22-640.1, Utah Code Annotated 1953

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

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

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

(1) As used in this section:

(a) "Administrative fee" means any payment, other than a rebate, that a pharmaceutical manufacturer makes directly to a pharmacy benefit manager.

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

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

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

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

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

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

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

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

manager during a calendar year as a result of the pharmacy benefit manager's contractual relationship with a specific contracting insurer.

(2) (a) For a contract between a pharmacy benefit manager and a contracting insurer entered into or renewed on or after July 1, 2019, the pharmacy benefit manager owes a fiduciary duty to the contracting insurer.

(b) The pharmacy benefit manager shall inform the contracting insurer of any policy, practice, or action of the pharmacy benefit manager that could impair the pharmacy benefit manager's ability to fulfill the duty described in Subsection (2)(a).

(c) The pharmacy benefit manager shall provide the information described in Subsection (2)(b) to the contracting insurer within 30 days after the day on which the pharmacy benefit manager knows or should have known about an impairment.

(3) Before March 1 of each year, a pharmacy benefit manager shall report to the department, for the previous calendar year:

(a) for each contracting insurer:

(i) total rebates; and

(ii) total administrative fees;

(b) the sum of total rebates reported under Subsection (3)(a)(i);

(c) the sum of total administrative fees reported under Subsection (3)(a)(ii); and

(d) with respect to all of the pharmacy benefit manager's contracting insurers, for the previous calendar year:

(i) the minimum retained rebate percentage;

(ii) the maximum retained rebate percentage; and

(iii) the median retained rebate percentage.

(4) Before April 1 of each year, the department shall publish on the department's website:

(a) the information reported under Subsection (3); and

(b) the name of the pharmacy benefit manager that submitted the information.

Section 2. Section **58-17b-626** is amended to read:

58-17b-626. Direct or indirect remuneration by pharmacy benefits managers -- Disclosure of customer costs -- Limit on customer payment for prescription drugs.

(1) As used in this section:

(a) "Allowable claim amount" means the amount paid by an insurer under the customer's health benefit plan.

~~[(a)]~~ (b) "Cost share" means the amount paid by an insured customer under the customer's health benefit plan.

~~[(b)]~~ (c) "Direct or indirect remuneration" means any adjustment in the total compensation:

(i) received by a pharmacy from a pharmacy benefits manager or coordinator for the sale of a drug, device, or other product or service; and

(ii) that is determined after the sale of the product or service.

~~[(c)]~~ (d) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.

(e) "Pharmacy reimbursement" means the amount paid to a pharmacy by a pharmacy benefits manager or coordinator for a dispensed prescription drug.

~~[(d)]~~ (f) "Pharmacy services administration organization" means an entity that contracts with a pharmacy to assist with third-party payer interactions and administrative services related to third-party payer interactions, including:

(i) contracting with a pharmacy benefits manager or coordinator on behalf of the pharmacy; and

(ii) managing a pharmacy's claims payments from third-party payers.

~~[(e)]~~ (g) "Pharmacy service entity" means:

(i) a pharmacy services administration organization; or

(ii) a pharmacy benefits manager or coordinator.

~~[(f)]~~ (h) (i) "Reimbursement report" means a report on the adjustment in total compensation for a claim.

(ii) "Reimbursement report" does not include a report on adjustments made pursuant to a pharmacy audit or reprocessing.

~~[(g)]~~ (i) "Sale" means a prescription drug claim covered by a health benefit plan.

(2) If a pharmacy service entity engages in direct or indirect remuneration with a pharmacy, the pharmacy service entity shall make a reimbursement report available to the pharmacy upon the pharmacy's request.

(3) For the reimbursement report described in Subsection (2), the pharmacy service

entity shall:

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

(b) provide the reimbursement report:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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