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**H.B. 370**
**1st Sub. (Buff)**

**Senator Evan J. Vickers** proposes the following substitute bill:

1 # PHARMACY BENEFIT MANAGER AMENDMENTS

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: Evan J. Vickers

6 Cosponsors: Dan N. Johnson, Angela Romero
7 Patrice M. Arent, Brian S. King, Douglas V. Sagers
8 Melissa G. Ballard, Karen Kwan, Mike Schultz
9 Stewart E. Barlow, Kelly B. Miles, Lawanna Shurtliff
10 Walt Brooks, Carol Spackman Moss, Casey Snider
11 Kay J. Christofferson, Merrill F. Nelson, Norman K. Thurston
12 Brad M. Daw, Lee B. Perry, Christine F. Watkins
13 Steve Eliason, Val K. Potter, Elizabeth Weight
14 Francis D. Gibson, Marie H. Poulson, Mark A. Wheatley
15 Stephen G. Handy, Susan Pulsipher, Mike Winder
16 Jon Hawkins, Tim Quinn
Sandra Hollins

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18 **LONG TITLE**

19 **General Description:**

20 This bill amends and creates requirements for pharmacy benefit managers.

21 **Highlighted Provisions:**

22 This bill:

23 ▸ creates a pharmacy benefit manager license;

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24 ▸ requires a person who acts as a pharmacy benefit manager in the state to be licensed
25 by the Insurance Department; and
26 ▸ creates certain operating and reporting requirements for pharmacy benefit managers.
27 **Money Appropriated in this Bill:**
28 None
29 **Other Special Clauses:**
30 None
31 **Utah Code Sections Affected:**
32 AMENDS:
33 **31A-2-201.2**, as last amended by Laws of Utah 2018, Chapter 319
34 ENACTS:
35 **31A-46-101**, Utah Code Annotated 1953
36 **31A-46-102**, Utah Code Annotated 1953
37 **31A-46-201**, Utah Code Annotated 1953
38 **31A-46-202**, Utah Code Annotated 1953
39 **31A-46-301**, Utah Code Annotated 1953
40 **31A-46-304**, Utah Code Annotated 1953
41 **31A-46-401**, Utah Code Annotated 1953
42 **31A-46-402**, Utah Code Annotated 1953
43 RENUMBERS AND AMENDS:
44 **31A-46-302**, (Renumbered from 58-17b-626, as enacted by Laws of Utah 2018,
45 Chapter 305)
46 **31A-46-303**, (Renumbered from 31A-22-640, as last amended by Laws of Utah 2015,
47 Chapter 258)
48

49 *Be it enacted by the Legislature of the state of Utah:*
50 Section 1. Section **31A-2-201.2** is amended to read:
51 **31A-2-201.2. Evaluation of health insurance market.**
52 (1) Each year the commissioner shall:
53 (a) conduct an evaluation of the state's health insurance market;
54 (b) report the findings of the evaluation to the Health and Human Services Interim

55 Committee before December 1 of each year; and
56 (c) publish the findings of the evaluation on the department website.
57 (2) The evaluation required by this section shall:
58 (a) analyze the effectiveness of the insurance regulations and statutes in promoting a
59 healthy, competitive health insurance market that meets the needs of the state, and includes an
60 analysis of:
61 (i) the availability and marketing of individual and group products;
62 (ii) rate changes;
63 (iii) coverage and demographic changes;
64 (iv) benefit trends;
65 (v) market share changes; and
66 (vi) accessibility;
67 (b) assess complaint ratios and trends within the health insurance market, which
68 assessment shall include complaint data from the Office of Consumer Health Assistance within
69 the department;
70 (c) contain recommendations for action to improve the overall effectiveness of the
71 health insurance market, administrative rules, and statutes; [~~and~~]
72 (d) include claims loss ratio data for each health insurance company doing business in
73 the state[~~.~~]; and
74 (e) include information about pharmacy benefit managers collected under Section
75 31A-46-301.
76 (3) When preparing the evaluation and report required by this section, the
77 commissioner may seek the input of insurers, employers, insured persons, providers, and others
78 with an interest in the health insurance market.
79 (4) The commissioner may adopt administrative rules for the purpose of collecting the
80 data required by this section, taking into account the business confidentiality of the insurers.
81 (5) Records submitted to the commissioner under this section shall be maintained by
82 the commissioner as protected records under Title 63G, Chapter 2, Government Records
83 Access and Management Act.
84 Section 2. Section **31A-46-101** is enacted to read:
85 **CHAPTER 46. PHARMACY BENEFIT MANAGER LICENSING ACT**

86 **Part 1. General Provisions**

87 **31A-46-101. Title.**

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

89 Section 3. Section **31A-46-102** is enacted to read:

90 **31A-46-102. Definitions.**

91 As used in this chapter:

92 (1) "Administrative fee" means any payment, other than a rebate, that a pharmaceutical

93 manufacturer makes directly or indirectly to a pharmacy benefit manager.

94 (2) "Contracting insurer" means an insurer as defined in Section 31A-22-636 with

95 whom a pharmacy benefit manager contracts to provide a pharmacy benefit management

96 service.

97 (3) "Pharmacist" means the same as that term is defined in Section 58-17b-102.

98 (4) "Pharmacy" means the same as that term is defined in Section 58-17b-102.

99 (5) "Pharmacy benefits management service" means any of the following services

100 provided to a health benefit plan, or to a participant of a health benefit plan:

101 (a) negotiating the amount to be paid by a health benefit plan for a prescription drug; or

102 (b) administering or managing a prescription drug benefit provided by the health

103 benefit plan for the benefit of a participant of the health benefit plan, including administering

104 or managing:

105 (i) a mail service pharmacy;

106 (ii) a specialty pharmacy;

107 (iii) claims processing;

108 (iv) payment of a claim;

109 (v) retail network management;

110 (vi) clinical formulary development;

111 (vii) clinical formulary management services;

112 (viii) rebate contracting;

113 (ix) rebate administration;

114 (x) a participant compliance program;

115 (xi) a therapeutic intervention program;

116 (xii) a disease management program; or

117 (xiii) a service that is similar to, or related to, a service described in Subsection (5)(a)
118 or (5)(b)(i) through (xii).
119 (6) "Pharmacy benefit manager" means a person licensed under this chapter to provide
120 a pharmacy benefit management service.
121 (7) "Pharmacy service" means a product, good, or service provided to an individual by
122 a pharmacy or pharmacist.
123 (8) (a) "Rebate" means a refund, discount, or other price concession that is paid by a
124 pharmaceutical manufacturer to a pharmacy benefit manager based on a prescription drug's
125 utilization or effectiveness.
126 (b) "Rebate" does not include an administrative fee.
127 Section 4. Section **31A-46-201** is enacted to read:
128 **Part 2. Licensure**
129 **31A-46-201. License required.**
130 (1) A person may not perform, offer to perform, or advertise any service as a pharmacy
131 benefit manager in the state without a valid license under this chapter.
132 (2) A person may not utilize the services of another person as a pharmacy benefit
133 manager if the person knows or has reason to know that the other person does not have a
134 license under this chapter.
135 Section 5. Section **31A-46-202** is enacted to read:
136 **31A-46-202. Application for licensure.**
137 (1) To obtain or renew a license as a pharmacy benefit manager, a person shall:
138 (a) submit an application to the commissioner on forms and in a manner established by
139 the commissioner by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
140 Rulemaking Act; and
141 (b) pay a licensure fee established by the department in accordance with Section
142 31A-3-103.
143 (2) (a) The commissioner may require an applicant to submit information or
144 documentation regarding the management and ownership of the pharmacy benefit manager in
145 the application described in Subsection (1)(a).
146 (b) Any material change in the information submitted in an application described in
147 Subsection (1)(a) shall be reported to the department within 30 days after the day on which the

148 information changes.
149 (3) The term of a license issued under this section is one year.
150 Section 6. Section **31A-46-301** is enacted to read:
151 **Part 3. Operating Requirements**
152 **31A-46-301. Reporting requirements.**
153 (1) Before April 1 of each year, a pharmacy benefit manager operating in the state shall
154 report to the department, for the previous calendar year:
155 (a) any insurer, pharmacy, or pharmacist in the state with which the pharmacy benefit
156 manager had a contract; and
157 (b) for all of the pharmacy benefit manager's contracting insurers, in aggregate:
158 (i) the amount of all rebates; and
159 (ii) the amount of all administrative fees.
160 (2) The department shall publish the information provided by a pharmacy benefit
161 manager under Subsection (1)(b) in the annual report described in Section 31A-2-201.2.
162 Section 7. Section **31A-46-302**, which is renumbered from Section 58-17b-626 is
163 renumbered and amended to read:
164 **[~~58-17b-626~~]. 31A-46-302. Direct or indirect remuneration by pharmacy**
165 **benefit managers -- Disclosure of customer costs -- Limit on customer payment for**
166 **prescription drugs.**
167 (1) As used in this section:
168 (a) "Allowable claim amount" means the amount paid by an insurer under the
169 customer's health benefit plan.
170 [~~(a)~~] (b) "Cost share" means the amount paid by an insured customer under the
171 customer's health benefit plan.
172 [~~(b)~~] (c) "Direct or indirect remuneration" means any adjustment in the total
173 compensation:
174 (i) received by a pharmacy from a pharmacy [~~benefits manager or coordinator~~] benefit
175 manager for the sale of a drug, device, or other product or service; and
176 (ii) that is determined after the sale of the product or service.
177 [~~(c)~~] (d) "Health benefit plan" means the same as that term is defined in Section
178 31A-1-301.

179 (e) "Pharmacy reimbursement" means the amount paid to a pharmacy by a pharmacy
180 benefit manager for a dispensed prescription drug.
181 [(d)] (f) "Pharmacy services administration organization" means an entity that contracts
182 with a pharmacy to assist with third-party payer interactions and administrative services related
183 to third-party payer interactions, including:
184 (i) contracting with a pharmacy [benefits manager or coordinator] benefit manager on
185 behalf of the pharmacy; and
186 (ii) managing a pharmacy's claims payments from third-party payers.
187 [(e)] (g) "Pharmacy service entity" means:
188 (i) a pharmacy services administration organization; or
189 (ii) a pharmacy [benefits manager or coordinator] benefit manager.
190 [(f)] (h) (i) "Reimbursement report" means a report on the adjustment in total
191 compensation for a claim.
192 (ii) "Reimbursement report" does not include a report on adjustments made pursuant to
193 a pharmacy audit or reprocessing.
194 [(g)] (i) "Sale" means a prescription drug claim covered by a health benefit plan.
195 (2) If a pharmacy service entity engages in direct or indirect remuneration with a
196 pharmacy, the pharmacy service entity shall make a reimbursement report available to the
197 pharmacy upon the pharmacy's request.
198 (3) For the reimbursement report described in Subsection (2), the pharmacy service
199 entity shall:
200 (a) include the adjusted compensation amount related to a claim and the reason for the
201 adjusted compensation; and
202 (b) provide the reimbursement report:
203 (i) in accordance with the contract between the pharmacy and the pharmacy service
204 entity;
205 (ii) in an electronic format that is easily accessible; and
206 (iii) within 120 days after the day on which the pharmacy [benefits manager or
207 coordinator] benefit manager receives a report of a sale of a product or service by the
208 pharmacy.
209 (4) A pharmacy service entity shall, upon a pharmacy's request, provide the pharmacy

210 with:

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

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

213 (5) (a) A pharmacy [benefits manager or coordinator] benefit manager may not prohibit

214 or penalize the disclosure by a pharmacist of:

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

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

217 (iii) alternative methods of paying for the prescription medication, including paying the

218 cash price, that are less expensive than the cost share of the prescription drug.

219 (b) Penalties that are prohibited under Subsection (5)(a) include increased utilization

220 review, reduced payments, and other financial disincentives.

221 (6) A pharmacy [benefits manager or coordinator] benefit manager may not require an

222 insured customer to pay, for a covered prescription drug, more than the lesser of:

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

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

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

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

227 Section 8. Section **31A-46-303**, which is renumbered from Section 31A-22-640 is

228 renumbered and amended to read:

229 **[31A-22-640]. 31A-46-303. Insurer and pharmacy benefit management**

230 **services -- Registration -- Maximum allowable cost -- Audit restrictions.**

231 (1) [For purposes of] As used in this section:

232 (a) "Maximum allowable cost" means:

233 (i) a maximum reimbursement amount for a group of pharmaceutically and

234 therapeutically equivalent drugs; or

235 (ii) any similar reimbursement amount that is used by a pharmacy benefit manager to

236 reimburse pharmacies for multiple source drugs.

237 (b) "Obsolete" means a product that may be listed in national drug pricing compendia

238 but is no longer available to be dispensed based on the expiration date of the last lot

239 manufactured.

240 (c) " Pharmacy benefit manager" means a person or entity that provides pharmacy

241 benefit management services as defined in Section 49-20-502 on behalf of an insurer as defined
242 in Subsection 31A-22-636(1).
243 (2) An insurer and an insurer's pharmacy benefit manager is subject to the pharmacy
244 audit provisions of Section 58-17b-622.
245 (3) A pharmacy benefit manager shall not use maximum allowable cost as a basis for
246 reimbursement to a pharmacy unless:
247 (a) the drug is listed as "A" or "B" rated in the most recent version of the United States
248 Food and Drug Administration's approved drug products with therapeutic equivalent
249 evaluations, also known as the "Orange Book," or has an "NR" or "NA" rating or similar rating
250 by a nationally recognized reference; and
251 (b) the drug is:
252 (i) generally available for purchase in this state from a national or regional wholesaler;
253 and
254 (ii) not obsolete.
255 (4) The maximum allowable cost may be determined using comparable and current
256 data on drug prices obtained from multiple nationally recognized, comprehensive data sources,
257 including wholesalers, drug file vendors, and pharmaceutical manufacturers for drugs that are
258 available for purchase by pharmacies in the state.
259 (5) For every drug for which the pharmacy benefit manager uses maximum allowable
260 cost to reimburse a contracted pharmacy, the pharmacy benefit manager shall:
261 (a) include in the contract with the pharmacy information identifying the national drug
262 pricing compendia and other data sources used to obtain the drug price data;
263 (b) review and make necessary adjustments to the maximum allowable cost, using the
264 most recent data sources identified in Subsection (5)(a), at least once per week;
265 (c) provide a process for the contracted pharmacy to appeal the maximum allowable
266 cost in accordance with Subsection (6); and
267 (d) include in each contract with a contracted pharmacy a process to obtain an update
268 to the pharmacy product pricing files used to reimburse the pharmacy in a format that is readily
269 available and accessible.
270 (6) (a) The right to appeal in Subsection (5)(c) shall be:
271 (i) limited to 21 days following the initial claim adjudication; and

272 (ii) investigated and resolved by the pharmacy benefit manager within 14 business
273 days.
274 (b) If an appeal is denied, the pharmacy benefit manager shall provide the contracted
275 pharmacy with the reason for the denial and the identification of the national drug code of the
276 drug that may be purchased by the pharmacy at a price at or below the price determined by the
277 pharmacy benefit manager.
278 (7) The contract with each pharmacy shall contain a dispute resolution mechanism in
279 the event either party breaches the terms or conditions of the contract.
280 [~~(8) (a) To conduct business in the state, a pharmacy benefit manager shall register~~
281 ~~with the Division of Corporations and Commercial Code within the Department of Commerce~~
282 ~~and annually renew the registration. To register under this section, the pharmacy benefit~~
283 ~~manager shall submit an application which shall contain only the following information:~~]
284 [~~(i) the name of the pharmacy benefit manager;~~]
285 [~~(ii) the name and contact information for the registered agent for the pharmacy benefit~~
286 ~~manager; and~~]
287 [~~(iii) if applicable, the federal employer identification number for the pharmacy benefit~~
288 ~~manager.~~]
289 [~~(b) The Department of Commerce may establish a fee in accordance with Title 63J,~~
290 ~~Chapter 1, Budgetary Procedures Act, for the initial registration and the annual renewal of the~~
291 ~~registration, which may not exceed $100 per year.~~]
292 [~~(c) The following entities do not have to register as a pharmacy benefit manager under~~
293 ~~Subsection (8)(a) when the entity is providing formulary services to its own patients,~~
294 ~~employees, members, or beneficiaries:~~]
295 [~~(i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility~~
296 ~~Licensing and Inspection Act;~~]
297 [~~(ii) a pharmacy licensed under Title 58, Chapter 17b, Pharmacy Practice Act;~~]
298 [~~(iii) a health care professional licensed under Title 58, Occupations and Professions;~~]
299 [~~(iv) a health insurer; and~~]
300 [~~(v) a labor union.~~]
301 [~~(9)~~] (8) This section does not apply to a pharmacy benefit manager when the
302 pharmacy benefit manager is providing pharmacy benefit management services on behalf of the

303 state Medicaid program.
304 Section 9. Section **31A-46-304** is enacted to read:
305 **31A-46-304. Claims practices.**
306 (1) A pharmacy benefit manager shall permit a pharmacy to collect the amount of a
307 customer's cost share from any source.
308 (2) A pharmacy benefit manager may not deny or reduce a reimbursement to a
309 pharmacy or a pharmacist after the adjudication of the claim, unless:
310 (a) the pharmacy or pharmacist submitted the original claim fraudulently;
311 (b) the original reimbursement was incorrect because:
312 (i) the pharmacy or pharmacist had already been paid for the pharmacy service; or
313 (ii) an unintentional error resulted in an incorrect reimbursement; or
314 (c) the pharmacy service was not rendered by the pharmacy or pharmacist.
315 (3) Subsection (2) does not apply if:
316 (a) the pharmacy benefit manager and the pharmacy or pharmacist enter into a written
317 agreement that explicitly states that the provisions of Subsection (2) do not apply; or
318 (b) an investigative audit of pharmacy records for fraud, waste, abuse, or other
319 intentional misrepresentation indicates that the pharmacy or pharmacist engaged in criminal
320 wrongdoing, fraud, or other intentional misrepresentation.
321 Section 10. Section **31A-46-401** is enacted to read:
322 **Part 4. Miscellaneous**
323 **31A-46-401. Penalties.**
324 A person that violates a provision of this chapter is subject to the penalties described in
325 Section 31A-2-308.
326 Section 11. Section **31A-46-402** is enacted to read:
327 **31A-46-402. Severability.**
328 If any provision of this chapter or the application of any provision of this chapter is
329 found invalid, the remainder of this chapter shall be given effect without the invalid provision
330 or application.