

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

**PHARMACY BENEFIT AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: Evan J. Vickers

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21  
22 **LONG TITLE**

23 **General Description:**

24 This bill amends the Insurance Code.



25 **Highlighted Provisions:**

26 This bill:

27 ▶ renames the Pharmacy Benefit Manager Licensing Act as the Pharmacy Benefits

28 Act;

29 ▶ creates and amends definitions;

30 ▶ amends pharmacy benefit manager reporting provisions;

31 ▶ prohibits a pharmacy benefit manager from:

32 • prohibiting or penalizing a pharmacist's disclosure of certain information

33 regarding a prescription device;

34 • requiring an insured customer from paying more than a specified amount for a

35 prescription device;

36 • reducing a pharmacy's total compensation for the sale of a drug, device, or other

37 product or service unless the pharmacy benefit manager provides the pharmacy

38 with at least 30 days notice;

39 ▶ amends provisions related to a pharmacy benefit manager denying or reducing a

40 reimbursement to a pharmacy or a pharmacist after the adjudication of a claim;

41 ▶ prohibits a pharmacy benefit manager from:

42 • reimbursing a network pharmacy in the aggregate less than a pharmacy benefit

43 manager affiliate in the aggregate in the same network;

44 • engaging in certain actions related to a pharmacy that mails or delivers a

45 prescription drug to an enrollee as an ancillary service; and

46 • contracting with a health insurer in certain instances unless the pharmacy benefit

47 manager agrees to regularly report to the insurer detailed, claim-level

48 information regarding pharmaceutical manufacturer rebates received by the

49 pharmacy benefit manager in connection with the contract;

50 ▶ amends provisions related to out-of-state mail service pharmacies;

51 ▶ amends provisions related to a prescription drug or device that is not readily

52 available in all pharmacies;

53 ▶ requires manufacturers and insurers to report certain information on the cost of

54 prescription drugs to the Insurance Department;

55 ▶ requires the Insurance Department to publish prescription drug information reported

56 to the department;

57       ▶ requires the Insurance Department to make rules, as necessary, to promote  
58 comparability of information reported to the department; and

59       ▶ makes certain records a protected record under the Government Records Access and  
60 Management Act.

61 **Money Appropriated in this Bill:**

62       None

63 **Other Special Clauses:**

64       None

65 **Utah Code Sections Affected:**

66 AMENDS:

67       **31A-46-101**, as enacted by Laws of Utah 2019, Chapter 241

68       **31A-46-102**, as enacted by Laws of Utah 2019, Chapter 241

69       **31A-46-301**, as enacted by Laws of Utah 2019, Chapter 241

70       **31A-46-302**, as renumbered and amended by Laws of Utah 2019, Chapter 241

71       **31A-46-303**, as renumbered and amended by Laws of Utah 2019, Chapter 241

72       **31A-46-304**, as enacted by Laws of Utah 2019, Chapter 241

73       **63G-2-305**, as last amended by Laws of Utah 2019, Chapters 128, 193, 244, and 277

74 ENACTS:

75       **31A-46-305**, Utah Code Annotated 1953

76       **31A-46-306**, Utah Code Annotated 1953

77       **31A-46-307**, Utah Code Annotated 1953

78       **31A-47-101**, Utah Code Annotated 1953

79       **31A-47-102**, Utah Code Annotated 1953

80       **31A-47-103**, Utah Code Annotated 1953

81 RENUMBERS AND AMENDS:

82       **31A-46-308**, (Renumbered from 58-17b-619, as enacted by Laws of Utah 2004,  
83 Chapter 280)



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

86       Section 1. Section **31A-46-101** is amended to read:

87 CHAPTER 46. PHARMACY BENEFITS ACT

88 31A-46-101. Title.

89 This chapter is known as ~~[the]~~ "Pharmacy ~~[Benefit Manager Licensing Act]~~ Benefits  
90 Act."

91 Section 2. Section 31A-46-102 is amended to read:

92 31A-46-102. Definitions.

93 As used in this chapter:

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

96 (2) "Contracting insurer" means an insurer ~~[as defined in Section 31A-22-636]~~ with  
97 whom a pharmacy benefit manager contracts to provide a pharmacy benefit management  
98 service.

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

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

101 (5) "Drug" means the same as that term is defined in Section 58-17b-102.

102 (6) "Insurer" means the same as that term is defined in Section 31A-22-636.

103 (7) "Patient counseling" means the same as that term is defined in Section 58-17b-102.

104 (8) "Pharmaceutical facility" means the same as that term is defined in Section  
105 58-17b-102.

106 (9) "Pharmaceutical manufacturer" means a pharmaceutical facility that manufactures  
107 prescription drugs.

108 ~~[(3)]~~ (10) "Pharmacist" means the same as that term is defined in Section 58-17b-102.

109 ~~[(4)]~~ (11) "Pharmacy" means the same as that term is defined in Section 58-17b-102.

110 ~~[(5)]~~ (12) "Pharmacy benefits management service" means any of the following  
111 services provided to a health benefit plan, or to a participant of a health benefit plan:

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

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

114 benefit plan for the benefit of a participant of the health benefit plan, including administering  
115 or managing:

116 (i) ~~[a]~~ mail service pharmacy;

117 (ii) a specialty pharmacy;

- 118 (iii) claims processing;
- 119 (iv) payment of a claim;
- 120 (v) retail network management;
- 121 (vi) clinical formulary development;
- 122 (vii) clinical formulary management services;
- 123 (viii) rebate contracting;
- 124 (ix) rebate administration;
- 125 (x) a participant compliance program;
- 126 (xi) a therapeutic intervention program;
- 127 (xii) a disease management program; or
- 128 (xiii) a service that is similar to, or related to, a service described in Subsection [~~(5)~~]
- 129 (12)(a) or [~~(5)~~] (12)(b)(i) through (xii).

130 [~~(6)~~] (13) "Pharmacy benefit manager" means a person licensed under this chapter to  
 131 provide a pharmacy benefits management service.

132 [~~(7)~~] (14) "Pharmacy service" means a product, good, or service provided to an  
 133 individual by a pharmacy or pharmacist.

134 (15) "Prescription device" means the same as that term is defined in Section  
 135 [58-17b-102](#).

136 (16) "Prescription drug" means the same as that term is defined in Section [58-17b-102](#).

137 [~~(8)~~] (17) (a) "Rebate" means a refund, discount, or other price concession that is paid  
 138 by a pharmaceutical manufacturer to a pharmacy benefit manager based on a prescription  
 139 drug's utilization or effectiveness.

140 (b) "Rebate" does not include an administrative fee.

141 (18) "Retail pharmacy" means the same as that term is defined in Section [58-17b-102](#).

142 (19) "Wholesale acquisition cost" means the same as that term is defined in 42 U.S.C.  
 143 Sec. 1395w-3a.

144 Section 3. Section **31A-46-301** is amended to read:

145 **31A-46-301. Reporting requirements.**

146 (1) Before April 1 of each year, a pharmacy benefit manager operating in the state shall  
 147 report to the department, for the previous calendar year:

- 148 (a) any insurer, pharmacy, or pharmacist in the state with which the pharmacy benefit

149 manager had a contract;

150 (b) the total value, in the aggregate, of all rebates and administrative fees that are  
151 attributable to enrollees of a contracting insurer; and

152 (c) if applicable, the percentage of aggregate rebates that the pharmacy benefit manager  
153 retained under the pharmacy benefit manager's agreement to provide pharmacy benefits  
154 management services to a contracting insurer.

155 (2) Records submitted to the commissioner under Subsections (1)(b) and (c) are a  
156 protected record under Title 63G, Chapter 2, Government Records Access and Management  
157 Act.

158 (3) (a) The department shall publish the information provided by a pharmacy benefit  
159 manager under Subsection (1)(c) in the annual report described in Section 31A-2-201.2.

160 (b) The department may not publish information submitted under Subsection (1)(b) or  
161 (c) in a manner that:

162 (i) makes a specific submission from a contracting insurer or pharmacy benefit  
163 manager identifiable; or

164 (ii) is likely to disclose information that is a trade secret as defined in Section 13-24-2.

165 (c) At least 30 days before the day on which the department publishes the data, the  
166 department shall provide a pharmacy benefit manager that submitted data under Subsection  
167 (1)(b) or (c) with:

168 (i) a general description of the data that will be published by the department;

169 (ii) an opportunity to submit to the department, within a reasonable period of time and  
170 in a manner established by the department by rule made in accordance with Title 63G, Chapter  
171 3, Utah Administrative Rulemaking Act:

172 (A) any correction of errors, with supporting evidence and comments; and

173 (B) information that demonstrates that the publication of the data will violate  
174 Subsection (3)(b), with supporting evidence and comments.

175 Section 4. Section 31A-46-302 is amended to read:

176 **31A-46-302. Direct or indirect remuneration by pharmacy benefit managers --**  
177 **Pharmacist disclosures -- Limit on customer payment for prescription drugs and**  
178 **prescription devices -- 30-day notice required to reduce total compensation.**

179 (1) As used in this section:

- 180 (a) "Allowable claim amount" means the amount paid by an insurer under the  
181 customer's health benefit plan.
- 182 (b) "Cost share" means the amount paid by an insured customer under the customer's  
183 health benefit plan.
- 184 (c) "Direct or indirect remuneration" means any adjustment in the total compensation:  
185 (i) received by a pharmacy from a pharmacy benefit manager for the sale of a drug,  
186 device, or other product or service; and  
187 (ii) that is determined after the sale of the product or service.
- 188 (d) "Health benefit plan" means the same as that term is defined in Section [31A-1-301](#).
- 189 (e) "Pharmacy reimbursement" means the amount paid to a pharmacy by a pharmacy  
190 benefit manager for a dispensed prescription drug or prescription device.
- 191 (f) "Pharmacy services administration organization" means an entity that contracts with  
192 a pharmacy to assist with third-party payer interactions and administrative services related to  
193 third-party payer interactions, including:  
194 (i) contracting with a pharmacy benefit manager on behalf of the pharmacy; and  
195 (ii) managing a pharmacy's claims payments from third-party payers.
- 196 (g) "Pharmacy service entity" means:  
197 (i) a pharmacy services administration organization; or  
198 (ii) a pharmacy benefit manager.
- 199 (h) (i) "Reimbursement report" means a report on the adjustment in total compensation  
200 for a claim.  
201 (ii) "Reimbursement report" does not include a report on adjustments made pursuant to  
202 a pharmacy audit or reprocessing.
- 203 (i) "Sale" means a prescription drug or prescription device claim covered by a health  
204 benefit plan.
- 205 (2) If a pharmacy service entity engages in direct or indirect remuneration with a  
206 pharmacy, the pharmacy service entity shall make a reimbursement report available to the  
207 pharmacy upon the pharmacy's request.
- 208 (3) For the reimbursement report described in Subsection (2), the pharmacy service  
209 entity shall:  
210 (a) include the adjusted compensation amount related to a claim and the reason for the

211 adjusted compensation; and  
212 (b) provide the reimbursement report:  
213 (i) in accordance with the contract between the pharmacy and the pharmacy service  
214 entity;  
215 (ii) in an electronic format that is easily accessible; and  
216 (iii) within 120 days after the day on which the pharmacy benefit manager receives a  
217 report of a sale of a product or service by the pharmacy.  
218 (4) A pharmacy service entity shall, upon a pharmacy's request, provide the pharmacy  
219 with:  
220 (a) the reasons for any adjustments contained in a reimbursement report; and  
221 (b) an explanation of the reasons provided in Subsection (4)(a).  
222 (5) (a) A pharmacy benefit manager may not prohibit or penalize the disclosure by a  
223 pharmacist of:  
224 (i) an insured customer's cost share for a covered prescription drug or prescription  
225 device;  
226 (ii) the availability of any therapeutically equivalent alternative medications or devices;  
227 or  
228 (iii) alternative methods of paying for the prescription medication or prescription  
229 device, including paying the cash price, that are less expensive than the cost share of the  
230 prescription drug.  
231 (b) Penalties that are prohibited under Subsection (5)(a) include increased utilization  
232 review, reduced payments, and other financial disincentives.  
233 (6) A pharmacy benefit manager may not require an insured customer to pay, for a  
234 covered prescription drug or prescription device, more than the lesser of:  
235 (a) the applicable cost share of the prescription drug or prescription device being  
236 dispensed;  
237 (b) the applicable allowable claim amount of the prescription drug or prescription  
238 device being dispensed;  
239 (c) the applicable pharmacy reimbursement of the prescription drug or prescription  
240 device being dispensed; or  
241 (d) the retail price of the prescription drug or prescription device without prescription



242 drug coverage.

243 (7) For a contract entered into or renewed on or after May 12, 2020, a pharmacy benefit  
244 manager may not engage in direct or indirect remuneration that results in a reduction in total  
245 compensation received by a pharmacy from the pharmacy benefit manager for the sale of a  
246 drug, device, or other product or service unless the pharmacy benefit manager provides the  
247 pharmacy with at least 30 days notice of the direct or indirect remuneration.

248 Section 5. Section 31A-46-303 is amended to read:

249 **31A-46-303. Insurer and pharmacy benefit management services -- Registration**  
250 **-- Maximum allowable cost -- Audit restrictions.**

251 (1) As used in this section:

252 (a) "Maximum allowable cost" means:

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

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

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

260 (c) "Pharmacy benefit manager" means a person or entity that provides pharmacy  
261 benefit management services as defined in Section 49-20-502 on behalf of an insurer [~~as~~  
262 ~~defined in Subsection 31A-22-636(1)~~].

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

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

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

271 (b) the drug is:

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

273 and

274 (ii) not obsolete.

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

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

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

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

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

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

290 (6) (a) The right to appeal in Subsection (5)(c) shall be:

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

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

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

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

300 (8) This section does not apply to a pharmacy benefit manager when the pharmacy  
301 benefit manager is providing pharmacy benefit management services on behalf of the state  
302 Medicaid program.

303 Section 6. Section ~~31A-46-304~~ is amended to read:

304 **31A-46-304. Claims practices.**

305 (1) A pharmacy benefit manager shall permit a pharmacy to collect the amount of a  
306 customer's cost share from any source.

307 (2) A pharmacy benefit manager may not deny or reduce a reimbursement to a  
308 pharmacy or a pharmacist after the adjudication of the claim, unless:

309 (a) the pharmacy or pharmacist submitted the original claim fraudulently;

310 (b) the original reimbursement was incorrect because:

311 (i) the pharmacy or pharmacist had already been paid for the pharmacy service; or

312 (ii) an unintentional error resulted in an incorrect reimbursement; or

313 (c) the pharmacy service was not rendered by the pharmacy or pharmacist.

314 (3) Subsection (2) does not apply if:

315 (a) ~~[an investigative audit]~~ any form of an investigation or audit of pharmacy records  
316 for fraud, waste, abuse, or other intentional misrepresentation indicates that the pharmacy or  
317 pharmacist engaged in criminal wrongdoing, fraud, or other intentional misrepresentation; or

318 (b) the reimbursement is reduced as the result of the reconciliation of a reimbursement  
319 amount under a performance contract if:

320 (i) the performance contract lays out clear performance standards under which the  
321 reimbursement for a specific drug may be increased or decreased; and

322 (ii) the agreement between the pharmacy benefit manager and the pharmacy or  
323 pharmacist explicitly states, in a separate document that is signed by the pharmacy benefit  
324 manager and the pharmacy or pharmacist, that the provisions of Subsection (2) do not apply.

325 Section 7. Section **31A-46-305** is enacted to read:

326 **31A-46-305. Pharmacy reimbursement.**

327 A pharmacy benefit manager shall reimburse a network pharmacy, in the aggregate, in  
328 an amount no less than the amount that the pharmacy benefit manager reimburses an affiliate of  
329 the pharmacy benefit manager in the same network, in the aggregate, for providing the same or  
330 equivalent pharmacy service.

331 Section 8. Section **31A-46-306** is enacted to read:

332 **31A-46-306. Mailing or delivering prescription drugs.**

333 (1) A pharmacy benefit manager or an insurer may not, directly or indirectly:

334 (a) prohibit an in-network retail pharmacy from:

335 (i) mailing or delivering a prescription drug to an enrollee as an ancillary service of the  
336 in-network retail pharmacy;

337 (ii) charging a shipping or handling fee to an enrollee who requests that the in-network  
338 retail pharmacy mail or deliver a prescription drug to the enrollee, as an ancillary service; or

339 (iii) offering or soliciting the ancillary services described in Subsection (1)(a)(i) to an  
340 enrollee; or

341 (b) charge an enrollee who uses an in-network retail pharmacy that offers to mail or  
342 deliver a prescription drug to an enrollee as an ancillary service a fee or copayment that is  
343 higher than the fee or copayment the enrollee would pay if the enrollee used an in-network  
344 retail pharmacy that does not offer to mail or deliver a prescription drug to an enrollee as an  
345 ancillary service.

346 Section 9. Section **31A-46-307** is enacted to read:

347 **31A-46-307. Pharmacy benefit manager reporting.**

348 (1) A pharmacy benefit manager may not enter into or renew a contract with an insurer  
349 on or after January 1, 2021, to administer or manage rebate contracting or rebate administration  
350 unless the pharmacy benefit manager agrees to regularly report to the insurer information  
351 regarding pharmaceutical manufacturer rebates received by the pharmacy benefit manager  
352 under the contract.

353 (2) The quality and type of information required under Subsection (1) shall be detailed,  
354 claims level information unless the pharmacy benefit manager and insurer agree to waive this  
355 requirement in a separate written agreement.

356 Section 10. Section **31A-46-308**, which is renumbered from Section 58-17b-619 is  
357 renumbered and amended to read:

358 ~~[58-17b-619].~~ **31A-46-308. Out-of-state mail service pharmacies -- Drugs**  
359 **not readily available in all pharmacies.**

360 (1) As used in this section, "out-of-state mail service pharmacy" means the same as that  
361 term is defined in Section [58-17b-102](#).

362 ~~[(1) Any]~~ (2) Except as provided in Subsection (3), a third party payor [for] of  
363 pharmaceutical services within the state, or its agent or contractor, may not require [any] a  
364 pharmacy patient to obtain prescription drug benefits from [a specific] one or more out-of-state  
365 [pharmacy] mail service pharmacies as a condition of obtaining third party payment

366 prescription drug benefit coverage as defined in rule.

367 ~~[(2)(a) This section does not prohibit any third party payor of pharmaceutical services;~~  
368 ~~who provides for reimbursement to the pharmacy patient or payment on his behalf, from~~  
369 ~~exercising the right to limit the amount reimbursed for the cost of prescription drugs based~~  
370 ~~upon the cost of identical prescription drugs available through a designated out-of-state~~  
371 ~~pharmacy;]~~

372 ~~[(b) Notwithstanding Subsection (2)(a), any third party payor of pharmaceutical~~  
373 ~~services may restrict the type of outlet where a patient may obtain certain prescriptive drugs~~  
374 ~~and devices, such as injectable medications, that are not readily available in all pharmacies.~~  
375 ~~The payor may also restrict access to no more than one mail-order pharmacy.]~~

376 ~~[(3) Each third party payor of pharmaceutical services shall identify as a part of the~~  
377 ~~third party agreement or contract the designated out-of-state pharmacy which shall be used as~~  
378 ~~the base line comparison.]~~

379 (3) For a prescription drug or device that is not readily available in all pharmacies,  
380 including an injectable medication, a third party payor of pharmaceutical services may require a  
381 pharmacy patient to obtain prescription drug benefits from certain pharmacies, including one or  
382 more out-of-state mail service pharmacies.

383 (4) (a) A violation of this section is a class A misdemeanor.

384 (b) Each violation of this section is a separate offense.

385 Section 11. Section **31A-47-101** is enacted to read:

386 **CHAPTER 47. PRESCRIPTION DRUG PRICE TRANSPARENCY ACT**

387 **31A-47-101. Title.**

388 This chapter is known as "Prescription Drug Price Transparency Act."

389 Section 12. Section **31A-47-102** is enacted to read:

390 **31A-47-102. Definitions.**

391 As used in this chapter:

392 (1) "Drug" means a prescription drug, as defined in Section [58-17b-102](#).

393 (2) "Insurer" means the same as that term is defined in Section [31A-22-634](#).

394 (3) "Manufacturer" means a person that is engaged in the manufacturing of a drug that  
395 is available for purchase by residents of the state.

396 (4) "Rebate" means the same as that term is defined in Section [31A-46-102](#).

397 (5) "Wholesale acquisition cost" means the same as that term is defined in 42 U.S.C.  
398 Sec. 1395w-3a.

399 Section 13. Section **31A-47-103** is enacted to read:

400 **31A-47-103. Manufacturer reports -- Insurer report -- Publication by department.**

401 (1) (a) A manufacturer of a drug shall report to the department the information  
402 described in Subsection (1)(b) no more than 30 days after the day on which an increase to the  
403 wholesale acquisition cost of the drug results in an increase to the wholesale acquisition cost of  
404 the drug of:

405 (i) greater than 16% over the preceding two years; or

406 (ii) greater than 10% over the preceding 12 months.

407 (b) The manufacturer shall report:

408 (i) (A) the name of the drug;

409 (B) the dosage form of the drug; and

410 (C) the strength of the drug;

411 (ii) whether the drug is a brand name drug or a generic drug;

412 (iii) the effective date of the increase in the wholesale acquisition cost of the drug;

413 (iv) a written description, suitable for public release, of the factors that led to the  
414 increase in the wholesale acquisition cost of the drug and the significance of each factor;

415 (v) the manufacturer's aggregate company-wide research and development costs for the  
416 most recent year for which final audit data is available;

417 (vi) the name of each of the manufacturer's drugs approved by the United States Food  
418 and Drug Administration during the preceding three calendar years; and

419 (vii) the names of drugs manufactured by the manufacturer that lost patent exclusivity  
420 in the United States during the preceding three calendar years.

421 (c) Subsection (1)(a) applies only to a drug with a wholesale acquisition cost of at least  
422 \$100 for a 30-day supply before the effective date of the increase in the wholesale acquisition  
423 cost of the drug.

424 (d) The quality and types of information that a manufacturer submits to the department  
425 under Subsection (2)(a) shall be consistent with the quality and types of information the  
426 manufacturer includes in:

427 (i) the manufacturer's annual consolidated report on Securities and Exchange

428 Commission Form 10-K; and

429 (ii) other public disclosures.

430 (e) The department shall consult with representatives of manufacturers to establish a  
431 single, standardized format for reporting information under this section that minimizes the  
432 administrative burden of reporting for manufacturers and the state.

433 (f) Information provided to the department under Subsection (1)(b) may not be released  
434 in a manner that:

435 (i) would allow for the identification of an individual drug, therapeutic class of drugs,  
436 or manufacturer; or

437 (ii) is likely to compromise the financial, competitive, or proprietary nature of the  
438 information.

439 (2) Before August 1 of each year, an insurer shall report to the department in aggregate  
440 the following information for the preceding plan year for health benefit plans offered by the  
441 insurer:

442 (a) for the 25 drugs for which spending by the insurer was the greatest, after adjusting  
443 for rebates:

444 (i) the name of the drug;

445 (ii) the dosage form of the drug; and

446 (iii) the strength of the drug;

447 (b) the percentage increase over the previous year in net spending for all drugs, after  
448 adjusting for rebates; and

449 (c) the percentage of the increase in premiums over the previous year attributable to all  
450 drugs; and

451 (d) the percentage of the increase in premiums over the previous year attributable to  
452 specialty drugs.

453 (3) The department shall publish on the department's website:

454 (a) no later than 60 days after receiving the information, information reported to the  
455 department under Subsection (1); and

456 (b) no later than August 1 of each year, information reported to the department under  
457 Subsection (2).

458 (4) The department may not publish information under Subsection (3)(b) in a manner

459 that allows the identity of an insurer to be determined.

460 (5) The department shall make rules, as necessary, in accordance with Title 63G,  
461 Chapter 3, Utah Administrative Rulemaking Act, to promote comparability of information  
462 reported to the department under this chapter.

463 Section 14. Section **63G-2-305** is amended to read:

464 **63G-2-305. Protected records.**

465 The following records are protected if properly classified by a governmental entity:

466 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret  
467 has provided the governmental entity with the information specified in Section 63G-2-309;

468 (2) commercial information or nonindividual financial information obtained from a  
469 person if:

470 (a) disclosure of the information could reasonably be expected to result in unfair  
471 competitive injury to the person submitting the information or would impair the ability of the  
472 governmental entity to obtain necessary information in the future;

473 (b) the person submitting the information has a greater interest in prohibiting access  
474 than the public in obtaining access; and

475 (c) the person submitting the information has provided the governmental entity with  
476 the information specified in Section 63G-2-309;

477 (3) commercial or financial information acquired or prepared by a governmental entity  
478 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
479 commodities that will interfere with a planned transaction by the governmental entity or cause  
480 substantial financial injury to the governmental entity or state economy;

481 (4) records, the disclosure of which could cause commercial injury to, or confer a  
482 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
483 defined in Subsection 11-13-103(4);

484 (5) test questions and answers to be used in future license, certification, registration,  
485 employment, or academic examinations;

486 (6) records, the disclosure of which would impair governmental procurement  
487 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
488 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this  
489 Subsection (6) does not restrict the right of a person to have access to, after the contract or



490 grant has been awarded and signed by all parties:

491 (a) a bid, proposal, application, or other information submitted to or by a governmental  
492 entity in response to:

493 (i) an invitation for bids;

494 (ii) a request for proposals;

495 (iii) a request for quotes;

496 (iv) a grant; or

497 (v) other similar document; or

498 (b) an unsolicited proposal, as defined in Section [63G-6a-712](#);

499 (7) information submitted to or by a governmental entity in response to a request for  
500 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict  
501 the right of a person to have access to the information, after:

502 (a) a contract directly relating to the subject of the request for information has been  
503 awarded and signed by all parties; or

504 (b) (i) a final determination is made not to enter into a contract that relates to the  
505 subject of the request for information; and

506 (ii) at least two years have passed after the day on which the request for information is  
507 issued;

508 (8) records that would identify real property or the appraisal or estimated value of real  
509 or personal property, including intellectual property, under consideration for public acquisition  
510 before any rights to the property are acquired unless:

511 (a) public interest in obtaining access to the information is greater than or equal to the  
512 governmental entity's need to acquire the property on the best terms possible;

513 (b) the information has already been disclosed to persons not employed by or under a  
514 duty of confidentiality to the entity;

515 (c) in the case of records that would identify property, potential sellers of the described  
516 property have already learned of the governmental entity's plans to acquire the property;

517 (d) in the case of records that would identify the appraisal or estimated value of  
518 property, the potential sellers have already learned of the governmental entity's estimated value  
519 of the property; or

520 (e) the property under consideration for public acquisition is a single family residence

521 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
522 the property as required under Section 78B-6-505;

523 (9) records prepared in contemplation of sale, exchange, lease, rental, or other  
524 compensated transaction of real or personal property including intellectual property, which, if  
525 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
526 of the subject property, unless:

527 (a) the public interest in access is greater than or equal to the interests in restricting  
528 access, including the governmental entity's interest in maximizing the financial benefit of the  
529 transaction; or

530 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
531 the value of the subject property have already been disclosed to persons not employed by or  
532 under a duty of confidentiality to the entity;

533 (10) records created or maintained for civil, criminal, or administrative enforcement  
534 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
535 release of the records:

536 (a) reasonably could be expected to interfere with investigations undertaken for  
537 enforcement, discipline, licensing, certification, or registration purposes;

538 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
539 proceedings;

540 (c) would create a danger of depriving a person of a right to a fair trial or impartial  
541 hearing;

542 (d) reasonably could be expected to disclose the identity of a source who is not  
543 generally known outside of government and, in the case of a record compiled in the course of  
544 an investigation, disclose information furnished by a source not generally known outside of  
545 government if disclosure would compromise the source; or

546 (e) reasonably could be expected to disclose investigative or audit techniques,  
547 procedures, policies, or orders not generally known outside of government if disclosure would  
548 interfere with enforcement or audit efforts;

549 (11) records the disclosure of which would jeopardize the life or safety of an  
550 individual;

551 (12) records the disclosure of which would jeopardize the security of governmental

552 property, governmental programs, or governmental recordkeeping systems from damage, theft,  
553 or other appropriation or use contrary to law or public policy;

554 (13) records that, if disclosed, would jeopardize the security or safety of a correctional  
555 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere  
556 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

557 (14) records that, if disclosed, would reveal recommendations made to the Board of  
558 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
559 Board of Pardons and Parole, or the Department of Human Services that are based on the  
560 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
561 jurisdiction;

562 (15) records and audit workpapers that identify audit, collection, and operational  
563 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
564 audits or collections;

565 (16) records of a governmental audit agency relating to an ongoing or planned audit  
566 until the final audit is released;

567 (17) records that are subject to the attorney client privilege;

568 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,  
569 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,  
570 quasi-judicial, or administrative proceeding;

571 (19) (a) (i) personal files of a state legislator, including personal correspondence to or  
572 from a member of the Legislature; and

573 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
574 legislative action or policy may not be classified as protected under this section; and

575 (b) (i) an internal communication that is part of the deliberative process in connection  
576 with the preparation of legislation between:

577 (A) members of a legislative body;

578 (B) a member of a legislative body and a member of the legislative body's staff; or

579 (C) members of a legislative body's staff; and

580 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
581 legislative action or policy may not be classified as protected under this section;

582 (20) (a) records in the custody or control of the Office of Legislative Research and

583 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
584 legislation or contemplated course of action before the legislator has elected to support the  
585 legislation or course of action, or made the legislation or course of action public; and

586 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
587 Office of Legislative Research and General Counsel is a public document unless a legislator  
588 asks that the records requesting the legislation be maintained as protected records until such  
589 time as the legislator elects to make the legislation or course of action public;

590 (21) research requests from legislators to the Office of Legislative Research and  
591 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
592 in response to these requests;

593 (22) drafts, unless otherwise classified as public;

594 (23) records concerning a governmental entity's strategy about:

595 (a) collective bargaining; or

596 (b) imminent or pending litigation;

597 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
598 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
599 Uninsured Employers' Fund, or similar divisions in other governmental entities;

600 (25) records, other than personnel evaluations, that contain a personal recommendation  
601 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
602 personal privacy, or disclosure is not in the public interest;

603 (26) records that reveal the location of historic, prehistoric, paleontological, or  
604 biological resources that if known would jeopardize the security of those resources or of  
605 valuable historic, scientific, educational, or cultural information;

606 (27) records of independent state agencies if the disclosure of the records would  
607 conflict with the fiduciary obligations of the agency;

608 (28) records of an institution within the state system of higher education defined in  
609 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,  
610 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
611 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
612 the final decisions about tenure, appointments, retention, promotions, or those students  
613 admitted, may not be classified as protected under this section;

614 (29) records of the governor's office, including budget recommendations, legislative  
615 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
616 policies or contemplated courses of action before the governor has implemented or rejected  
617 those policies or courses of action or made them public;

618 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
619 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
620 recommendations in these areas;

621 (31) records provided by the United States or by a government entity outside the state  
622 that are given to the governmental entity with a requirement that they be managed as protected  
623 records if the providing entity certifies that the record would not be subject to public disclosure  
624 if retained by it;

625 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a  
626 public body except as provided in Section [52-4-206](#);

627 (33) records that would reveal the contents of settlement negotiations but not including  
628 final settlements or empirical data to the extent that they are not otherwise exempt from  
629 disclosure;

630 (34) memoranda prepared by staff and used in the decision-making process by an  
631 administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
632 other body charged by law with performing a quasi-judicial function;

633 (35) records that would reveal negotiations regarding assistance or incentives offered  
634 by or requested from a governmental entity for the purpose of encouraging a person to expand  
635 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
636 person or place the governmental entity at a competitive disadvantage, but this section may not  
637 be used to restrict access to a record evidencing a final contract;

638 (36) materials to which access must be limited for purposes of securing or maintaining  
639 the governmental entity's proprietary protection of intellectual property rights including patents,  
640 copyrights, and trade secrets;

641 (37) the name of a donor or a prospective donor to a governmental entity, including an  
642 institution within the state system of higher education defined in Section [53B-1-102](#), and other  
643 information concerning the donation that could reasonably be expected to reveal the identity of  
644 the donor, provided that:

- 645 (a) the donor requests anonymity in writing;
- 646 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
647 classified protected by the governmental entity under this Subsection (37); and
- 648 (c) except for an institution within the state system of higher education defined in  
649 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
650 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
651 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
652 by the donor or the donor's immediate family;
- 653 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
654 73-18-13;
- 655 (39) a notification of workers' compensation insurance coverage described in Section  
656 34A-2-205;
- 657 (40) (a) the following records of an institution within the state system of higher  
658 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
659 or received by or on behalf of faculty, staff, employees, or students of the institution:
- 660 (i) unpublished lecture notes;
- 661 (ii) unpublished notes, data, and information:
- 662 (A) relating to research; and
- 663 (B) of:
- 664 (I) the institution within the state system of higher education defined in Section  
665 53B-1-102; or
- 666 (II) a sponsor of sponsored research;
- 667 (iii) unpublished manuscripts;
- 668 (iv) creative works in process;
- 669 (v) scholarly correspondence; and
- 670 (vi) confidential information contained in research proposals;
- 671 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
672 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 673 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 674 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
675 that would reveal the name of a particular legislator who requests a legislative audit prior to the

676 date that audit is completed and made public; and

677 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
678 Office of the Legislative Auditor General is a public document unless the legislator asks that  
679 the records in the custody or control of the Office of Legislative Auditor General that would  
680 reveal the name of a particular legislator who requests a legislative audit be maintained as  
681 protected records until the audit is completed and made public;

682 (42) records that provide detail as to the location of an explosive, including a map or  
683 other document that indicates the location of:

684 (a) a production facility; or

685 (b) a magazine;

686 (43) information:

687 (a) contained in the statewide database of the Division of Aging and Adult Services  
688 created by Section [62A-3-311.1](#); or

689 (b) received or maintained in relation to the Identity Theft Reporting Information  
690 System (IRIS) established under Section [67-5-22](#);

691 (44) information contained in the Management Information System and Licensing  
692 Information System described in Title 62A, Chapter 4a, Child and Family Services;

693 (45) information regarding National Guard operations or activities in support of the  
694 National Guard's federal mission;

695 (46) records provided by any pawn or secondhand business to a law enforcement  
696 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
697 Secondhand Merchandise Transaction Information Act;

698 (47) information regarding food security, risk, and vulnerability assessments performed  
699 by the Department of Agriculture and Food;

700 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
701 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or  
702 prepared or maintained by the Division of Emergency Management, and the disclosure of  
703 which would jeopardize:

704 (a) the safety of the general public; or

705 (b) the security of:

706 (i) governmental property;

707 (ii) governmental programs; or  
708 (iii) the property of a private person who provides the Division of Emergency  
709 Management information;

710 (49) records of the Department of Agriculture and Food that provides for the  
711 identification, tracing, or control of livestock diseases, including any program established under  
712 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control  
713 of Animal Disease;

714 (50) as provided in Section 26-39-501:

715 (a) information or records held by the Department of Health related to a complaint  
716 regarding a child care program or residential child care which the department is unable to  
717 substantiate; and

718 (b) information or records related to a complaint received by the Department of Health  
719 from an anonymous complainant regarding a child care program or residential child care;

720 (51) unless otherwise classified as public under Section 63G-2-301 and except as  
721 provided under Section 41-1a-116, an individual's home address, home telephone number, or  
722 personal mobile phone number, if:

723 (a) the individual is required to provide the information in order to comply with a law,  
724 ordinance, rule, or order of a government entity; and

725 (b) the subject of the record has a reasonable expectation that this information will be  
726 kept confidential due to:

727 (i) the nature of the law, ordinance, rule, or order; and  
728 (ii) the individual complying with the law, ordinance, rule, or order;

729 (52) the portion of the following documents that contains a candidate's residential or  
730 mailing address, if the candidate provides to the filing officer another address or phone number  
731 where the candidate may be contacted:

732 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,  
733 described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408,  
734 20A-9-408.5, 20A-9-502, or 20A-9-601;

735 (b) an affidavit of impecuniosity, described in Section 20A-9-201; or  
736 (c) a notice of intent to gather signatures for candidacy, described in Section  
737 20A-9-408;



738 (53) the name, home address, work addresses, and telephone numbers of an individual  
739 that is engaged in, or that provides goods or services for, medical or scientific research that is:

740 (a) conducted within the state system of higher education, as defined in Section  
741 [53B-1-102](#); and

742 (b) conducted using animals;

743 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance  
744 Evaluation Commission concerning an individual commissioner's vote on whether or not to  
745 recommend that the voters retain a judge including information disclosed under Subsection  
746 [78A-12-203\(5\)\(e\)](#);

747 (55) information collected and a report prepared by the Judicial Performance  
748 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter  
749 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
750 the information or report;

751 (56) records contained in the Management Information System created in Section  
752 [62A-4a-1003](#);

753 (57) records provided or received by the Public Lands Policy Coordinating Office in  
754 furtherance of any contract or other agreement made in accordance with Section [63J-4-603](#);

755 (58) information requested by and provided to the 911 Division under Section  
756 [63H-7a-302](#);

757 (59) in accordance with Section [73-10-33](#):

758 (a) a management plan for a water conveyance facility in the possession of the Division  
759 of Water Resources or the Board of Water Resources; or

760 (b) an outline of an emergency response plan in possession of the state or a county or  
761 municipality;

762 (60) the following records in the custody or control of the Office of Inspector General  
763 of Medicaid Services, created in Section [63A-13-201](#):

764 (a) records that would disclose information relating to allegations of personal  
765 misconduct, gross mismanagement, or illegal activity of a person if the information or  
766 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services  
767 through other documents or evidence, and the records relating to the allegation are not relied  
768 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation

769 report or final audit report;

770 (b) records and audit workpapers to the extent they would disclose the identity of a  
771 person who, during the course of an investigation or audit, communicated the existence of any  
772 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or  
773 regulation adopted under the laws of this state, a political subdivision of the state, or any  
774 recognized entity of the United States, if the information was disclosed on the condition that  
775 the identity of the person be protected;

776 (c) before the time that an investigation or audit is completed and the final  
777 investigation or final audit report is released, records or drafts circulated to a person who is not  
778 an employee or head of a governmental entity for the person's response or information;

779 (d) records that would disclose an outline or part of any investigation, audit survey  
780 plan, or audit program; or

781 (e) requests for an investigation or audit, if disclosure would risk circumvention of an  
782 investigation or audit;

783 (61) records that reveal methods used by the Office of Inspector General of Medicaid  
784 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or  
785 abuse;

786 (62) information provided to the Department of Health or the Division of Occupational  
787 and Professional Licensing under Subsection 58-68-304(3) or (4);

788 (63) a record described in Section 63G-12-210;

789 (64) captured plate data that is obtained through an automatic license plate reader  
790 system used by a governmental entity as authorized in Section 41-6a-2003;

791 (65) any record in the custody of the Utah Office for Victims of Crime relating to a  
792 victim, including:

793 (a) a victim's application or request for benefits;

794 (b) a victim's receipt or denial of benefits; and

795 (c) any administrative notes or records made or created for the purpose of, or used to,  
796 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim  
797 Reparations Fund;

798 (66) an audio or video recording created by a body-worn camera, as that term is  
799 defined in Section 77-7a-103, that records sound or images inside a hospital or health care

800 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care  
801 provider, as that term is defined in Section 78B-3-403, or inside a human service program as  
802 that term is defined in Section 62A-2-101, except for recordings that:

803 (a) depict the commission of an alleged crime;

804 (b) record any encounter between a law enforcement officer and a person that results in  
805 death or bodily injury, or includes an instance when an officer fires a weapon;

806 (c) record any encounter that is the subject of a complaint or a legal proceeding against  
807 a law enforcement officer or law enforcement agency;

808 (d) contain an officer involved critical incident as defined in Subsection  
809 76-2-408(1)(d); or

810 (e) have been requested for reclassification as a public record by a subject or  
811 authorized agent of a subject featured in the recording;

812 (67) a record pertaining to the search process for a president of an institution of higher  
813 education described in Section 53B-2-102, except for application materials for a publicly  
814 announced finalist; and

815 (68) an audio recording that is:

816 (a) produced by an audio recording device that is used in conjunction with a device or  
817 piece of equipment designed or intended for resuscitating an individual or for treating an  
818 individual with a life-threatening condition;

819 (b) produced during an emergency event when an individual employed to provide law  
820 enforcement, fire protection, paramedic, emergency medical, or other first responder service:

821 (i) is responding to an individual needing resuscitation or with a life-threatening  
822 condition; and

823 (ii) uses a device or piece of equipment designed or intended for resuscitating an  
824 individual or for treating an individual with a life-threatening condition; and

825 (c) intended and used for purposes of training emergency responders how to improve  
826 their response to an emergency situation;

827 (69) records submitted by or prepared in relation to an applicant seeking a  
828 recommendation by the Research and General Counsel Subcommittee, the Budget  
829 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an  
830 employment position with the Legislature;

- 831 (70) work papers as defined in Section [31A-2-204](#);
- 832 (71) a record made available to Adult Protective Services or a law enforcement agency
- 833 under Section [61-1-206](#);
- 834 (72) a record submitted to the Insurance Department in accordance with Section
- 835 [31A-37-201](#); and
- 836 (73) a record described in Section [31A-37-503](#).
- 837 (74) any record created by the Division of Occupational and Professional Licensing as
- 838 a result of Subsection [58-37f-304\(5\)](#) or [58-37f-702\(2\)\(a\)\(ii\)](#); [~~and~~]
- 839 (75) a record described in Section [72-16-306](#) that relates to the reporting of an injury
- 840 involving an amusement ride[-]; and
- 841 (76) a record submitted to the Insurance Department under Subsection
- 842 [31A-47-103\(1\)\(b\)](#).