HB0272S04 compared with HB0272S03

~~{deleted text}~~ shows text that was in HB0272S03 but was deleted in HB0272S04.

inserted text shows text that was not in HB0272S03 but was inserted into HB0272S04.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

Cosponsors:

Cheryl K. Acton

Kyle R. Andersen

Patrice M. Arent

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Keven J. Stratton

Mark A. Strong

Norman K. Thurston

Raymond P. Ward

Christine F. Watkins

Elizabeth Weight

Brad R. Wilson Mike Winder

LONG TITLE

General Description:

This bill amends the Insurance Code.

Highlighted Provisions:

This bill:

- renames the Pharmacy Benefit Manager Licensing Act as the Pharmacy Benefits Act;
- creates and amends definitions;
- amends pharmacy benefit manager reporting provisions;
- prohibits a pharmacy benefit manager from:
  - prohibiting or penalizing a pharmacist's disclosure of certain information regarding a prescription device;
  - requiring an insured customer from paying more than a specified amount for a prescription device;
  - reducing a pharmacy's total compensation for the sale of a drug, device, or other product or service unless the pharmacy benefit manager provides the pharmacy with at least 30 days notice;
- amends provisions related to a pharmacy benefit manager denying or reducing a reimbursement to a pharmacy or a pharmacist after the adjudication of a claim;
- prohibits a pharmacy benefit manager from:
  - reimbursing a network pharmacy in the aggregate less than a pharmacy benefit manager affiliate in the aggregate in the same network;
  - engaging in certain actions related to a pharmacy that mails or delivers a prescription drug to an enrollee as an ancillary service; and
  - contracting with a health insurer in certain instances unless the pharmacy benefit manager agrees to regularly report to the insurer detailed, claim-level information regarding pharmaceutical manufacturer rebates received by the pharmacy benefit manager in connection with the contract;

- amends provisions related to out-of-state mail service pharmacies;
- amends provisions related to a prescription drug or device that is not readily available in all pharmacies;
- requires manufacturers and insurers to report certain information on the cost of prescription drugs to the Insurance Department;
- requires the Insurance Department to publish prescription drug information reported to the department;
- requires the Insurance Department to make rules, as necessary, to promote comparability of information reported to the department; and
- makes certain records a protected record under the Government Records Access and Management Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None}~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

ENACTS:

31A-46-305, Utah Code Annotated 1953

31A-46-306, Utah Code Annotated 1953

31A-46-307, Utah Code Annotated 1953

31A-47-101, Utah Code Annotated 1953

31A-47-102, Utah Code Annotated 1953

31A-47-103, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

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

Utah Code Sections Affected by Coordination Clause:

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

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

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

CHAPTER 46. PHARMACY BENEFITS ACT

31A-46-101. Title.

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

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

31A-46-102. Definitions.

As used in this chapter:

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

(2) "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.

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

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

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

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

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

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

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

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

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

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

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

(b) administering or managing a prescription drug benefit provided by the health benefit plan for the benefit of a participant of the health benefit plan, including administering or managing:

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

(ii) a specialty pharmacy;

(iii) claims processing;

(iv) payment of a claim;

(v) retail network management;

(vi) clinical formulary development;

(vii) clinical formulary management services;

(viii) rebate contracting;

(ix) rebate administration;

(x) a participant compliance program;

(xi) a therapeutic intervention program;

(xii) a disease management program; or

(xiii) a service that is similar to, or related to, a service described in Subsection [~~(5)~~] (12)(a) or [~~(5)~~] (12)(b)(i) through (xii).

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

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

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

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

[~~(8)~~] (17) (a) "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.

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

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

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

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

31A-46-301. Reporting requirements.

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

(a) any insurer, pharmacy, or pharmacist in the state with which the pharmacy benefit manager had a contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

(i) received by a pharmacy from a pharmacy benefit manager 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.

(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 benefit manager for a dispensed prescription drug or prescription device.

(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 benefit manager on behalf of the pharmacy; and

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

(g) "Pharmacy service entity" means:

(i) a pharmacy services administration organization; or

(ii) a pharmacy benefit manager.

(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.

(i) "Sale" means a prescription drug or prescription device 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 benefit manager 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 benefit manager may not prohibit or penalize the disclosure by a pharmacist of:

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

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

(iii) alternative methods of paying for the prescription medication or prescription device, 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 benefit manager may not require an insured customer to pay, for a

covered prescription drug or prescription device, more than the lesser of:

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

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

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

(d) the retail price of the prescription drug or prescription device without prescription drug coverage.

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

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

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

(1) As used in this section:

(a) "Maximum allowable cost" means:

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

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

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

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

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

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

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

(b) the drug is:

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

(ii) not obsolete.

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

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

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

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

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

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

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

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

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

(b) If an appeal is denied, the pharmacy benefit manager shall provide the contracted pharmacy with the reason for the denial and the identification of the national drug code of the

drug that may be purchased by the pharmacy at a price at or below the price determined by the pharmacy benefit manager.

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

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

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

31A-46-304. Claims practices.

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

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

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

(b) the original reimbursement was incorrect because:

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

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

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

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

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

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

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

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

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

31A-46-305. Pharmacy reimbursement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 47. PRESCRIPTION DRUG PRICE TRANSPARENCY ACT

31A-47-101. Title.

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

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

31A-47-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

(ii) greater than 10% over the preceding ~~{~~12 months~}~~calendar year.

(b) The manufacturer shall report:

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

(B) the dosage form of the drug; and

(C) the strength of the drug;

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

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

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

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

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

(vii) the names of drugs manufactured by the manufacturer that lost patent exclusivity

in the United States during the preceding three calendar years.

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

(d) ~~{The quality and types}~~A manufacturer's obligations under this Subsection (1) are fully satisfied by submission of information and data that a~~{ manufacturer submits to the department under Subsection (2)(a) shall be consistent with the quality and types of information the}~~ manufacturer includes in~~{:~~

~~(i) }~~ the manufacturer's annual consolidated report on Securities and Exchange Commission Form 10-K~~{; and~~

~~(ii) }~~ or any other public ~~{disclosures}~~disclosure.

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

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

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

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

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

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

(i) the name of the drug;

(ii) the dosage form of the drug; and

(iii) the strength of the drug;

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

(c) the percentage of the increase in premiums over the previous year attributable to all

drugs; and

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

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

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

(b) no later than ~~{August}~~November 1 of each year, information reported to the department under Subsection (2).

(4) The department may not publish information under Subsection (3)(b) in a manner that allows the identity of an insurer to be determined.

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

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

63G-2-305. Protected records.

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

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

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

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

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

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

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

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

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

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

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

(i) an invitation for bids;

(ii) a request for proposals;

(iii) a request for quotes;

(iv) a grant; or

(v) other similar document; or

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

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

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

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

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

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

(a) public interest in obtaining access to the information is greater than or equal to the

governmental entity's need to acquire the property on the best terms possible;

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

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

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

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

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

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

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

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

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

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

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

(d) reasonably could be expected to disclose the identity of a source who is not

generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

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

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

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

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

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

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

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

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

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

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

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of

legislative action or policy may not be classified as protected under this section; and

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

(A) members of a legislative body;

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

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

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

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

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

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

(22) drafts, unless otherwise classified as public;

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

(a) collective bargaining; or

(b) imminent or pending litigation;

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

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

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of

valuable historic, scientific, educational, or cultural information;

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

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

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

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

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

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

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

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

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the

person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

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

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

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

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

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

(a) a production facility; or

(b) a magazine;

(43) information:

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

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

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

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

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

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

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

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

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

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

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

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

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

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

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

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

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

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

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

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

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

(b) conducted using animals;

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

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

(56) records contained in the Management Information System created in Section 62A-4a-1003;

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

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

(59) in accordance with Section 73-10-33:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(66) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 62A-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

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

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

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

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

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

(68) an audio recording that is:

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

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

(i) is responding to an individual needing resuscitation or with a life-threatening

condition; and

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

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

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

(70) work papers as defined in Section 31A-2-204;

(71) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

(72) a record submitted to the Insurance Department in accordance with Section 31A-37-201; and

(73) a record described in Section 31A-37-503.

(74) any record created by the Division of Occupational and Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii); [~~and~~]

(75) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride[~~.~~]; and

(76) a record submitted to the Insurance Department under Subsection 31A-47-103(1)(b).

Section 15. **Coordinating H.B. 272 with S.B. 138 -- Superseding technical and substantive amendments.**

If this H.B. 272 and S.B. 138, Pharmacy Benefit Manager Revisions, both pass and become law, it is the intent of the Legislature that the amendments to Subsection 31A-46-302(1) in S.B. 138 supersede the amendments to Subsection 31A-46-302(1) in this bill when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.