

**PRESCRIPTION COST AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill enacts provisions related to health benefit plan cost sharing.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires an insurer to calculate any amounts paid on behalf of an individual towards the individual's cost sharing requirement;
- ▶ requires a pharmacy benefit manager to calculate any amounts paid on behalf of an individual towards the individual's cost sharing requirement;
- ▶ prohibits designating prescription drugs as nonessential drugs; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-46-102**, as last amended by Laws of Utah 2020, Chapters 198, 275 and 372

ENACTS:

**31A-46-311**, Utah Code Annotated 1953



28 REPEALS AND REENACTS:

29 [31A-22-657](#), as enacted by Laws of Utah 2022, Chapter 198



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

32 Section 1. Section [31A-22-657](#) is repealed and reenacted to read:

33 **31A-22-657. Cost sharing requirements for health benefit plans.**

34 (1) As used in this section:

35 (a) (i) "Cost sharing requirement" means any copayment, coinsurance, deductible, or  
36 annual limitation on cost sharing required by a health benefit plan for a specific health care  
37 service covered by the health benefit plan.

38 (ii) "Cost sharing requirement" includes any copayment, coinsurance, deductible, or  
39 annual limitation that is subject to 42 U.S.C. Secs. 18022(c) or 300gg-6(b).

40 (b) (i) "Health care service" means an item or service furnished to an individual for the  
41 purpose of preventing, alleviating, curing, or healing human illness, injury, or physical  
42 disability.

43 (ii) "Health care service" includes a prescription drug.

44 (c) "High deductible health plan" means the same as that term is defined in 26 U.S.C.  
45 Sec. 223(c)(2).

46 (d) "Insurer" means the same as that term is defined in Section [31A-22-636](#).

47 (2) When calculating an enrollee's contribution to any applicable cost sharing  
48 requirement for a health care service, an insurer shall include any cost sharing amounts paid:

49 (a) by the enrollee; or

50 (b) on behalf of the enrollee by another person.

51 (3) (a) Except as provided in Subsection (3)(b), an insurer shall calculate cost sharing  
52 requirements for a health care service in accordance with Subsection (2) even if the enrollee  
53 has not met the enrollee's deductible.

54 (b) An insurer may calculate cost sharing requirements for a health care service in  
55 accordance with Subsection (2) after the enrollee has met the enrollee's minimum deductible  
56 under 26 U.S.C. Sec. 223 only if:

57 (i) the enrollee is enrolled in a health benefit plan that is a high deductible health plan;

58 (ii) calculating the cost sharing requirements in accordance with Subsection (2) before

59 the enrollee has met the high deductible health plan's minimum deductible under 26 U.S.C.  
 60 Sec. 223 would result in health savings account ineligibility under 26 U.S.C. Sec. 223; and  
 61 (iii) the health care service is not preventive care under 26 U.S.C. Sec. 223(c)(2)(C).  
 62 (4) An insurer may not designate a prescription drug as non-essential.  
 63 (5) This section applies to any health benefit plan entered into, amended, extended, or  
 64 renewed on or after January 1, 2024.  
 65 (6) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah  
 66 Administrative Rulemaking Act, to implement this section.

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

68 **31A-46-102. Definitions.**

69 As used in this chapter:

- 70 (1) "340B drug" means a drug purchased through the 340B drug discount program by a  
 71 340B entity.
- 72 (2) "340B drug discount program" means the 340B drug discount program described in  
 73 42 U.S.C. Sec. 256b.
- 74 (3) "340B entity" means:  
 75 (a) an entity participating in the 340B drug discount program;  
 76 (b) a pharmacy of an entity participating in the 340B drug discount program; or  
 77 (c) a pharmacy contracting with an entity participating in the 340B drug discount  
 78 program to dispense drugs purchased through the 340B drug discount program.
- 79 (4) "Administrative fee" means any payment, other than a rebate, that a pharmaceutical  
 80 manufacturer makes directly or indirectly to a pharmacy benefit manager.
- 81 (5) "Allowable claim amount" means the amount paid by an insurer under the  
 82 ~~[customer's]~~ enrollee's health benefit plan.
- 83 (6) "Contracting insurer" means an insurer with whom a pharmacy benefit manager  
 84 contracts to provide a pharmacy benefit management service.
- 85 (7) "Cost share" means the amount paid by an ~~[insured customer under the customer's]~~  
 86 enrollee under the enrollee's health benefit plan.
- 87 (8) "Cost sharing requirement" means the same as that term is defined in Section  
 88 31A-22-657.
- 89 ~~[(8)]~~ (9) "Device" means the same as that term is defined in Section 58-17b-102.

90           ~~[(9)]~~ (10) "Direct or indirect remuneration" means any adjustment in the total  
91 compensation:

92           (a) received by a pharmacy from a pharmacy benefit manager for the sale of a drug,  
93 device, or other product or service; and

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

95           ~~[(10)]~~ (11) "Dispense" means the same as that term is defined in Section [58-17b-102](#).

96           ~~[(11)]~~ (12) "Drug" means the same as that term is defined in Section [58-17b-102](#).

97           (13) "Health care service" means the same as that term is defined in Section

98 [31A-22-657](#).

99           (14) "High deductible health plan" means the same as that term is defined in 26 U.S.C.  
100 [Sec. 223\(c\)\(2\)](#).

101           ~~[(12)]~~ (15) "Insurer" means the same as that term is defined in Section [31A-22-636](#).

102           ~~[(13)]~~ (16) "Maximum allowable cost" means:

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

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

107           ~~[(14)]~~ (17) "Medicaid program" means the same as that term is defined in Section  
108 [26-18-2](#).

109           ~~[(15)]~~ (18) "Obsolete" means a product that may be listed in national drug pricing  
110 compendia but is no longer available to be dispensed based on the expiration date of the last lot  
111 manufactured.

112           ~~[(16)]~~ (19) "Patient counseling" means the same as that term is defined in Section  
113 [58-17b-102](#).

114           ~~[(17)]~~ (20) "Pharmaceutical facility" means the same as that term is defined in Section  
115 [58-17b-102](#).

116           ~~[(18)]~~ (21) "Pharmaceutical manufacturer" means a pharmaceutical facility that  
117 manufactures prescription drugs.

118           ~~[(19)]~~ (22) "Pharmacist" means the same as that term is defined in Section [58-17b-102](#).

119           ~~[(20)]~~ (23) "Pharmacy" means the same as that term is defined in Section [58-17b-102](#).

120           ~~[(21)]~~ (24) "Pharmacy benefits management service" means any of the following

121 services provided to a health benefit plan, or to a participant of a health benefit plan:

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

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

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

125 or managing:

126 (i) an out-of-state mail service pharmacy;

127 (ii) a specialty pharmacy;

128 (iii) claims processing;

129 (iv) payment of a claim;

130 (v) retail network management;

131 (vi) clinical formulary development;

132 (vii) clinical formulary management services;

133 (viii) rebate contracting;

134 (ix) rebate administration;

135 (x) a participant compliance program;

136 (xi) a therapeutic intervention program;

137 (xii) a disease management program; or

138 (xiii) a service that is similar to, or related to, a service described in Subsection ~~[(21)(a)~~

139 ~~or (21)(b)(i)] (24)(a) or (24)(b)(i) through (xii).~~

140 ~~[(22)] (25)~~ "Pharmacy benefit manager" means a person licensed under this chapter to

141 provide a pharmacy benefits management service.

142 ~~[(23)] (26)~~ "Pharmacy service" means a product, good, or service provided to an

143 individual by a pharmacy or pharmacist.

144 ~~[(24)] (27)~~ "Pharmacy services administration organization" means an entity that

145 contracts with a pharmacy to assist with third-party payer interactions and administrative

146 services related to third-party payer interactions, including:

147 (a) contracting with a pharmacy benefit manager on behalf of the pharmacy; and

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

149 ~~[(25)] (28)~~ "Pharmacy service entity" means:

150 (a) a pharmacy services administration organization; or

151 (b) a pharmacy benefit manager.

152 [~~(26)~~] (29) "Prescription device" means the same as that term is defined in Section  
153 58-17b-102.

154 [~~(27)~~] (30) "Prescription drug" means the same as that term is defined in Section  
155 58-17b-102.

156 [~~(28)~~] (31) (a) "Rebate" means a refund, discount, or other price concession that is paid  
157 by a pharmaceutical manufacturer to a pharmacy benefit manager based on a prescription  
158 drug's utilization or effectiveness.

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

160 [~~(29)~~] (32) (a) "Reimbursement report" means a report on the adjustment in total  
161 compensation for a claim.

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

164 [~~(30)~~] (33) "Retail pharmacy" means the same as that term is defined in Section  
165 58-17b-102.

166 [~~(31)~~] (34) "Sale" means a prescription drug or prescription device claim covered by a  
167 health benefit plan.

168 [~~(32)~~] (35) "Wholesale acquisition cost" means the same as that term is defined in 42  
169 U.S.C. Sec. 1395w-3a.

170 Section 3. Section **31A-46-311** is enacted to read:

171 **31A-46-311. Cost sharing requirements for pharmacy benefit managers.**

172 (1) When calculating an enrollee's contribution to any applicable cost sharing  
173 requirement for a health care service, a pharmacy benefit manager shall include any cost  
174 sharing amounts paid:

175 (a) by the enrollee; or

176 (b) on behalf of the enrollee by another person.

177 (2) (a) Except as provided in Subsection (2)(b), a pharmacy benefit manager shall  
178 calculate cost sharing requirements for a health care service in accordance with Subsection (1)  
179 even if the enrollee has not met the enrollee's minimum deductible.

180 (b) A pharmacy benefit manger may calculate cost sharing requirements for a health  
181 care service in accordance with Subsection (1) after the enrollee has met the minimum  
182 deductible under 26 U.S.C. Sec. 223 only if:

- 183           (i) the enrollee is enrolled in a health benefit plan that is a high deductible health plan;
- 184           (ii) calculating the cost sharing requirements in accordance with Subsection (1) before
- 185 the enrollee has met the high deductible health plan's minimum deductible would result in
- 186 health savings account ineligibility under 26 U.S.C. Sec. 223; and
- 187           (iii) the health care service is not preventive care under 26 U.S.C. Sec. 223(c)(2)(C).
- 188           (3) An insurer may not designate a prescription drug as non-essential.
- 189           (4) This section applies to any health benefit plan entered into, amended, extended, or
- 190 renewed on or after January 1, 2024.
- 191           (5) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah
- 192 Administrative Rulemaking Act, to implement this section.