

Senator Curtis S. Bramble proposes the following substitute bill:

COST SHARING MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Karianne Lisonbee

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; 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:



26 [31A-46-311](#), Utah Code Annotated 1953

27 REPEALS AND REENACTS:

28 [31A-22-657](#), as enacted by Laws of Utah 2022, Chapter 198

29

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

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 Section [31A-22-657](#) is repealed and reenacted to read:

32 **31A-22-657. Cost sharing requirements for health benefit plans.**

33 (1) As used in this section:

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

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

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

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

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

45 (d) "Insurer" means the same as that term is defined in Section [31A-1-301](#).

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

48 (a) by the enrollee; or

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

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

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

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

57 (ii) calculating the cost sharing requirements in accordance with Subsection (2) before
58 the enrollee has met the high deductible health plan's minimum deductible under 26 U.S.C.
59 Sec. 223 would result in health savings account ineligibility under 26 U.S.C. Sec. 223; and

60 (iii) the health care service is not preventive care under 26 U.S.C. Sec. 223(c)(2)(C).

61 (4) This section applies to any health benefit plan entered into, amended, extended, or
62 renewed on or after January 1, 2024.

63 (5) Except for the Public Employees' Health Program created in Section 49-20-103,
64 nothing in this section applies to self-insured health insurance coverage that is regulated by
65 federal law.

66 (6) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah
67 Administrative Rulemaking Act, to implement this section.

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

69 **31A-46-102. Definitions.**

70 As used in this chapter:

71 (1) "340B drug" means a drug purchased through the 340B drug discount program by a
72 340B entity.

73 (2) "340B drug discount program" means the 340B drug discount program described in
74 42 U.S.C. Sec. 256b.

75 (3) "340B entity" means:

76 (a) an entity participating in the 340B drug discount program;

77 (b) a pharmacy of an entity participating in the 340B drug discount program; or

78 (c) a pharmacy contracting with an entity participating in the 340B drug discount
79 program to dispense drugs purchased through the 340B drug discount program.

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

82 (5) "Allowable claim amount" means the amount paid by an insurer under the
83 ~~[customer's]~~ enrollee's health benefit plan.

84 (6) "Contracting insurer" means an insurer with whom a pharmacy benefit manager
85 contracts to provide a pharmacy benefit management service.

86 (7) "Cost share" means the amount paid by an ~~[insured customer under the customer's]~~
87 enrollee under the enrollee's health benefit plan.

88 (8) "Cost sharing requirement" means the same as that term is defined in Section
89 31A-22-657.

90 [~~8~~] (9) "Device" means the same as that term is defined in Section 58-17b-102.

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

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

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

96 [~~10~~] (11) "Dispense" means the same as that term is defined in Section 58-17b-102.

97 [~~11~~] (12) "Drug" means the same as that term is defined in Section 58-17b-102.

98 (13) "Health care service" means the same as that term is defined in Section
99 31A-22-657.

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

102 [~~12~~] (15) "Insurer" means the same as that term is defined in Section 31A-22-636.

103 [~~13~~] (16) "Maximum allowable cost" means:

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

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

108 [~~14~~] (17) "Medicaid program" means the same as that term is defined in Section
109 26-18-2.

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

113 [~~16~~] (19) "Patient counseling" means the same as that term is defined in Section
114 58-17b-102.

115 [~~17~~] (20) "Pharmaceutical facility" means the same as that term is defined in Section
116 58-17b-102.

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

119 ~~[(19)]~~ (22) "Pharmacist" means the same as that term is defined in Section 58-17b-102.

120 ~~[(20)]~~ (23) "Pharmacy" means the same as that term is defined in Section 58-17b-102.

121 ~~[(21)]~~ (24) "Pharmacy benefits management service" means any of the following
122 services provided to a health benefit plan, or to a participant of a health benefit plan:

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

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

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

128 (ii) a specialty pharmacy;

129 (iii) claims processing;

130 (iv) payment of a claim;

131 (v) retail network management;

132 (vi) clinical formulary development;

133 (vii) clinical formulary management services;

134 (viii) rebate contracting;

135 (ix) rebate administration;

136 (x) a participant compliance program;

137 (xi) a therapeutic intervention program;

138 (xii) a disease management program; or

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

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

141 ~~[(22)]~~ (25) "Pharmacy benefit manager" means a person licensed under this chapter to
142 provide a pharmacy benefits management service.

143 ~~[(23)]~~ (26) "Pharmacy service" means a product, good, or service provided to an
144 individual by a pharmacy or pharmacist.

145 ~~[(24)]~~ (27) "Pharmacy services administration organization" means an entity that
146 contracts with a pharmacy to assist with third-party payer interactions and administrative
147 services related to third-party payer interactions, including:

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

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

150 [~~(25)~~] (28) "Pharmacy service entity" means:

151 (a) a pharmacy services administration organization; or

152 (b) a pharmacy benefit manager.

153 [~~(26)~~] (29) "Prescription device" means the same as that term is defined in Section

154 58-17b-102.

155 [~~(27)~~] (30) "Prescription drug" means the same as that term is defined in Section

156 58-17b-102.

157 [~~(28)~~] (31) (a) "Rebate" means a refund, discount, or other price concession that is paid

158 by a pharmaceutical manufacturer to a pharmacy benefit manager based on a prescription

159 drug's utilization or effectiveness.

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

161 [~~(29)~~] (32) (a) "Reimbursement report" means a report on the adjustment in total

162 compensation for a claim.

163 (b) "Reimbursement report" does not include a report on adjustments made pursuant to

164 a pharmacy audit or reprocessing.

165 [~~(30)~~] (33) "Retail pharmacy" means the same as that term is defined in Section

166 58-17b-102.

167 [~~(31)~~] (34) "Sale" means a prescription drug or prescription device claim covered by a

168 health benefit plan.

169 [~~(32)~~] (35) "Wholesale acquisition cost" means the same as that term is defined in 42

170 U.S.C. Sec. 1395w-3a.

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

172 **31A-46-311. Cost sharing requirements for pharmacy benefit managers.**

173 (1) When calculating an enrollee's contribution to any applicable cost sharing

174 requirement for a health care service, a pharmacy benefit manager shall include any cost

175 sharing amounts paid:

176 (a) by the enrollee; or

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

178 (2) (a) Except as provided in Subsection (2)(b), a pharmacy benefit manager shall

179 calculate cost sharing requirements for a health care service in accordance with Subsection (1)

180 even if the enrollee has not met the enrollee's minimum deductible.

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

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

185 (ii) calculating the cost sharing requirements in accordance with Subsection (1) before
186 the enrollee has met the high deductible health plan's minimum deductible would result in
187 health savings account ineligibility under 26 U.S.C. Sec. 223; and

188 (iii) the health care service is not preventive care under 26 U.S.C. Sec. 223(c)(2)(C).

189 (3) This section applies to any health benefit plan entered into, amended, extended, or
190 renewed on or after January 1, 2024.

191 (4) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah
192 Administrative Rulemaking Act, to implement this section.