

SB0152S01 compared with SB0152

~~{deleted text}~~ shows text that was in SB0152 but was deleted in SB0152S01.

inserted text shows text that was not in SB0152 but was inserted into SB0152S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

COST SHARING AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: ~~{_____}~~ Kera Birkeland

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an insurer and a pharmacy benefit manger to calculate ~~{any amounts paid}~~ drug or device discount coupons on behalf of an individual towards the individual's cost sharing requirement unless certain circumstances are met;
- ▶ requires a ~~{pharmacy benefit manager to calculate any amounts paid on behalf of an individual toward the individual's cost sharing requirement}~~ entity that provides a drug or device discount coupon to allow the full amount of the coupon amount to be used for the drug or device;

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- ▶ provides an exception to the requirements for a qualifying health benefit plan; 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}~~31A-22-660, Utah Code Annotated 1953

~~{REPEALS AND REENACTS:~~

~~———— 31A-22-657, as last amended by Laws of Utah 2023, Chapter 139}~~ 31A-48-104, Utah

Code

Annotated

1953

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

Section 1. Section ~~{31A-22-657}~~31A-22-660 is ~~{repealed and reenacted}~~enacted to read:

~~{31A-22-657}~~31A-22-660. **Cost sharing requirements for health benefit plans.**

(1) As used in this section:

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

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

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

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

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

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

~~(2) When } "Qualifying health benefit plan" means a health benefit plan that:~~

~~(i) allows the full value of available copay assistance to reduce the out-of-pocket costs of an enrollee;~~

~~(ii) includes, when two or more individuals are covered, an individual maximum out-of-pocket that is not greater than 50% of the health benefit plan's combined total maximum out-of-pocket for family coverage;~~

~~(iii) after the deductible has been met, only requires payment by the enrollee at the equivalent of the plan's lowest payment tier for any drug that has been subject to copay assistance and that copay assistance has been exhausted; and~~

~~(iv) for a covered lower cost drug that an enrollee is required to take under the plan instead of a covered higher cost drug for which copay assistance reduces the enrollee's out-of-pocket costs to a negligible amount, the plan:~~

~~(A) only requires payment by the enrollee of the preferred drug at the equivalent of the plan's lowest payment tier; and~~

~~(B) may share cost savings due to the lower cost drug with the enrollee, including while the enrollee is subject to a deductible.~~

~~(2) Except as provided in Subsection (3), when calculating an enrollee's contribution to any applicable cost sharing requirement for a ~~{health care service}~~covered prescription drug or device, an insurer shall include any cost sharing amounts paid:~~

~~(a) by the enrollee; or~~

~~(b) ~~{on behalf of the enrollee by another person}~~.~~

~~(3) (a) ~~Except as provided in Subsection (3)(b), an insurer shall calculate}~~using a drug discount coupon.~~

~~(3) An insurer may refuse to apply a drug discount coupon to an enrollee's applicable cost sharing ~~{requirements}~~requirement for ~~{a health care service in accordance with Subsection (2) even if}~~the drug or device that is eligible for the drug discount coupon if:~~

~~(a) the drug or device that is eligible for the drug discount coupon has:~~

~~(i) a generic alternative; or~~

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(ii) a biological product as defined in 42 U.S.C. Sec. 262 that has been approved by the federal Food and Drug Administration to treat the enrollee's condition; or

(b) the enrollee has not ~~met the enrollee's deductible.~~

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

~~— (i) the enrollee is enrolled in a } obtained a necessary approval from the health benefit plan ~~{that is a high deductible health plan;~~~~

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

~~— (iii) the health care service is not preventive care under 26 U.S.C. Sec. 223(c)(2)(C)} to have the drug covered by the health benefit plan or has not completed the necessary requirements, restrictions, or clinical criteria to obtain the approval.~~

(4) This section:

(a) applies to any health benefit plan entered into, amended, extended, or renewed on or after ~~{January}~~ July 1, 2025~~{.}~~; and

(b) does not apply to a qualifying health benefit plan.

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

Section 2. Section ~~{31A-46-102}~~ 31A-48-104 is ~~{amended}~~ enacted to read:

~~{31A-46-102}~~ 31A-48-104. ~~{~~ Definitions:

~~—~~ As used in this chapter:

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

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

~~—~~ (3) "340B entity" means:

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

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

~~—~~ (c) a pharmacy contracting with an entity participating in the 340B drug discount

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~~program to dispense drugs purchased through the 340B drug discount program:~~

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

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

~~—— (6) "Contracting insurer" means an insurer with whom a pharmacy benefit manager contracts to provide a pharmacy benefit management service:~~

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

~~—— (8) "Cost sharing equipment"; **Drug discount coupon requirements.**~~

~~(1) As used in this section, "cost sharing requirement" means the same as that term is defined in Section 31A-22-657.~~

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

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

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

~~—— (b) that is determined after the sale of the product or service:~~

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

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

~~—— (13) "Health care service" means the same as that term is defined in Section 31A-22-657:~~

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

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

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

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

~~—— (b) any similar reimbursement amount that is used by a pharmacy benefit manager to reimburse pharmacies for multiple source drugs:~~

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~~[(14)] (17) "Medicaid program" means the same as that term is defined in Section 26B-3-101.~~

~~[(15)] (18) "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.~~

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

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

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

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

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

~~[(21)] (24) "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) an out-of-state 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~~

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~~_____ (xiii) a service that is similar to, or related to, a service described in Subsection [(21)(a) or (21)(b)(i)] (24)(a) or (24)(b)(i) through (xii):~~

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

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

~~_____ [(24)] (27) "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:~~

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

~~_____ (b) managing a pharmacy's claims payments from third-party payers:~~

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

~~_____ (a) a pharmacy services administration organization; or~~

~~_____ (b) a pharmacy benefit manager:~~

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

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

~~_____ [(28)] (31) (a) "Rebate" means a refund, discount, or other price concession that is paid by a} 31A-22-660.~~

(2) A pharmaceutical manufacturer {to} or other entity that provides a drug discount coupon with the expectation that the drug discount coupon will be applied toward an enrollee's cost sharing requirement:

(a) shall allow an insurer, complying with Section 31A-22-660, or a pharmacy benefit {manager based on a} manger, complying with Section 31A-46-311, to utilize the full value of the drug discount coupon:

(i) first to reduce the enrollee's cost sharing requirement, including the enrollee's maximum out-of-pocket expense, at the point of sale; and

(ii) for any remainder, to lower the cost of the prescription {drug's utilization or effectiveness:

~~_____ (b) "Rebate" does not include an administrative fee:~~

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

~~(b) "Reimbursement report" does not include a report on adjustments made pursuant to a pharmacy audit or reprocessing:~~

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

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

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

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

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

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

~~(a) by the enrollee; or~~

~~(b) on behalf of the enrollee by another person:~~

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

~~(b) A} drug or device; and~~

~~(b) shall disclose to the insurer and the pharmacy benefit manger {may calculate cost sharing requirements for a health care service in accordance with Subsection (1) after the enrollee has met the minimum deductible under 26 U.S.C. Sec. 223 only if:~~

~~(i) the enrollee is enrolled in a} the terms and conditions associated with the drug discount coupon; and~~

~~(c) may not modify the terms and conditions associated with the drug discount coupon on the basis that it is redeemed by an enrollee of the health benefit plan that is fa high deductible health plan;~~

~~(ii) calculating the cost sharing requirements in accordance with Subsection (1) before the enrollee has met the high deductible health plan's minimum deductible would result in~~

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~~health savings account ineligibility under 26 U.S.C. Sec. 223; and~~

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

~~—— (3) This section applies to any health benefit plan entered into, amended, extended, or renewed on or after January 1, 2025.~~

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

~~—— Section 4} complying with Section 31A-22-660.~~

Section 3. **Effective date.**

This bill takes effect on May 1, 2024.