

PHARMACY BENEFIT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

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21

22 LONG TITLE

23 General Description:

24 This bill amends the Insurance Code.

25 Highlighted Provisions:

26 This bill:

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

- 28 Act;
- 29 ▶ creates and amends definitions;
- 30 ▶ amends pharmacy benefit manager reporting provisions;
- 31 ▶ prohibits a pharmacy benefit manager from:
- 32 • prohibiting or penalizing a pharmacist's disclosure of certain information
- 33 regarding a prescription device;
- 34 • requiring an insured customer from paying more than a specified amount for a
- 35 prescription device;
- 36 • reducing a pharmacy's total compensation for the sale of a drug, device, or other
- 37 product or service unless the pharmacy benefit manager provides the pharmacy
- 38 with at least 30 days notice;
- 39 ▶ amends provisions related to a pharmacy benefit manager denying or reducing a
- 40 reimbursement to a pharmacy or a pharmacist after the adjudication of a claim;
- 41 ▶ prohibits a pharmacy benefit manager from:
- 42 • reimbursing a network pharmacy in the aggregate less than a pharmacy benefit
- 43 manager affiliate in the aggregate in the same network;
- 44 • engaging in certain actions related to a pharmacy that mails or delivers a
- 45 prescription drug to an enrollee as an ancillary service; and
- 46 • contracting with a health insurer in certain instances unless the pharmacy benefit
- 47 manager agrees to regularly report to the insurer detailed, claim-level
- 48 information regarding pharmaceutical manufacturer rebates received by the
- 49 pharmacy benefit manager in connection with the contract;
- 50 ▶ amends provisions related to out-of-state mail service pharmacies;
- 51 ▶ amends provisions related to a prescription drug or device that is not readily
- 52 available in all pharmacies;
- 53 ▶ requires manufacturers and insurers to report certain information on the cost of
- 54 prescription drugs to the Insurance Department;
- 55 ▶ requires the Insurance Department to publish prescription drug information reported

56 to the department;

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

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

61 **Money Appropriated in this Bill:**

62 None

63 **Other Special Clauses:**

64 This bill provides a coordination clause.

65 **Utah Code Sections Affected:**

66 AMENDS:

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

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

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

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

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

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

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

74 ENACTS:

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

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

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

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

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

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

81 RENUMBERS AND AMENDS:

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

84 Utah Code Sections Affected by Coordination Clause:

85 [31A-46-302](#), as renumbered and amended by Laws of Utah 2019, Chapter 241



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

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

89 **CHAPTER 46. PHARMACY BENEFITS ACT**

90 **31A-46-101. Title.**

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

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

94 **31A-46-102. Definitions.**

95 As used in this chapter:

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

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

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

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

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

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

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

106 (8) "Pharmaceutical facility" means the same as that term is defined in Section
107 [58-17b-102](#).

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

110 ~~[(3)]~~ (10) "Pharmacist" means the same as that term is defined in Section [58-17b-102](#).

111 ~~[(4)]~~ (11) "Pharmacy" means the same as that term is defined in Section [58-17b-102](#).

112 ~~[(5)]~~ (12) "Pharmacy benefits management service" means any of the following
113 services provided to a health benefit plan, or to a participant of a health benefit plan:

114 (a) negotiating the amount to be paid by a health benefit plan for a prescription drug; or
115 (b) administering or managing a prescription drug benefit provided by the health
116 benefit plan for the benefit of a participant of the health benefit plan, including administering
117 or managing:

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

132 ~~[(6)]~~ (13) "Pharmacy benefit manager" means a person licensed under this chapter to
133 provide a pharmacy benefits management service.

134 ~~[(7)]~~ (14) "Pharmacy service" means a product, good, or service provided to an
135 individual by a pharmacy or pharmacist.

136 (15) "Prescription device" means the same as that term is defined in Section
137 [58-17b-102.](#)

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

139 ~~[(8)]~~ (17) (a) "Rebate" means a refund, discount, or other price concession that is paid

140 by a pharmaceutical manufacturer to a pharmacy benefit manager based on a prescription
141 drug's utilization or effectiveness.

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

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

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

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

147 **31A-46-301. Reporting requirements.**

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

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

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

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

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

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

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

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

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

167 (c) At least 30 days before the day on which the department publishes the data, the

168 department shall provide a pharmacy benefit manager that submitted data under Subsection
169 (1)(b) or (c) with:

- 170 (i) a general description of the data that will be published by the department;
- 171 (ii) an opportunity to submit to the department, within a reasonable period of time and
172 in a manner established by the department by rule made in accordance with Title 63G, Chapter
173 3, Utah Administrative Rulemaking Act:

- 174 (A) any correction of errors, with supporting evidence and comments; and
- 175 (B) information that demonstrates that the publication of the data will violate
176 Subsection (3)(b), with supporting evidence and comments.

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

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

181 (1) As used in this section:

- 182 (a) "Allowable claim amount" means the amount paid by an insurer under the
183 customer's health benefit plan.
- 184 (b) "Cost share" means the amount paid by an insured customer under the customer's
185 health benefit plan.
- 186 (c) "Direct or indirect remuneration" means any adjustment in the total compensation:
 - 187 (i) received by a pharmacy from a pharmacy benefit manager for the sale of a drug,
188 device, or other product or service; and
 - 189 (ii) that is determined after the sale of the product or service.
- 190 (d) "Health benefit plan" means the same as that term is defined in Section [31A-1-301](#).
- 191 (e) "Pharmacy reimbursement" means the amount paid to a pharmacy by a pharmacy
192 benefit manager for a dispensed prescription drug or prescription device.
- 193 (f) "Pharmacy services administration organization" means an entity that contracts with
194 a pharmacy to assist with third-party payer interactions and administrative services related to
195 third-party payer interactions, including:

- 196 (i) contracting with a pharmacy benefit manager on behalf of the pharmacy; and
197 (ii) managing a pharmacy's claims payments from third-party payers.
- 198 (g) "Pharmacy service entity" means:
199 (i) a pharmacy services administration organization; or
200 (ii) a pharmacy benefit manager.
- 201 (h) (i) "Reimbursement report" means a report on the adjustment in total compensation
202 for a claim.
203 (ii) "Reimbursement report" does not include a report on adjustments made pursuant to
204 a pharmacy audit or reprocessing.
- 205 (i) "Sale" means a prescription drug or prescription device claim covered by a health
206 benefit plan.
- 207 (2) If a pharmacy service entity engages in direct or indirect remuneration with a
208 pharmacy, the pharmacy service entity shall make a reimbursement report available to the
209 pharmacy upon the pharmacy's request.
- 210 (3) For the reimbursement report described in Subsection (2), the pharmacy service
211 entity shall:
- 212 (a) include the adjusted compensation amount related to a claim and the reason for the
213 adjusted compensation; and
- 214 (b) provide the reimbursement report:
- 215 (i) in accordance with the contract between the pharmacy and the pharmacy service
216 entity;
- 217 (ii) in an electronic format that is easily accessible; and
218 (iii) within 120 days after the day on which the pharmacy benefit manager receives a
219 report of a sale of a product or service by the pharmacy.
- 220 (4) A pharmacy service entity shall, upon a pharmacy's request, provide the pharmacy
221 with:
- 222 (a) the reasons for any adjustments contained in a reimbursement report; and
223 (b) an explanation of the reasons provided in Subsection (4)(a).

224 (5) (a) A pharmacy benefit manager may not prohibit or penalize the disclosure by a
225 pharmacist of:

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

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

230 (iii) alternative methods of paying for the prescription medication or prescription
231 device, including paying the cash price, that are less expensive than the cost share of the
232 prescription drug.

233 (b) Penalties that are prohibited under Subsection (5)(a) include increased utilization
234 review, reduced payments, and other financial disincentives.

235 (6) A pharmacy benefit manager may not require an insured customer to pay, for a
236 covered prescription drug or prescription device, more than the lesser of:

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

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

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

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

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

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

251 **31A-46-303. Insurer and pharmacy benefit management services -- Registration**

252 -- **Maximum allowable cost -- Audit restrictions.**

253 (1) As used in this section:

254 (a) "Maximum allowable cost" means:

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

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

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

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

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

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

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

273 (b) the drug is:

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

276 (ii) not obsolete.

277 (4) The maximum allowable cost may be determined using comparable and current
278 data on drug prices obtained from multiple nationally recognized, comprehensive data sources,
279 including wholesalers, drug file vendors, and pharmaceutical manufacturers for drugs that are

280 available for purchase by pharmacies in the state.

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

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

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

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

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

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

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

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

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

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

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

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

306 **31A-46-304. Claims practices.**

307 (1) A pharmacy benefit manager shall permit a pharmacy to collect the amount of a

308 customer's cost share from any source.

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

- 311 (a) the pharmacy or pharmacist submitted the original claim fraudulently;
- 312 (b) the original reimbursement was incorrect because:
 - 313 (i) the pharmacy or pharmacist had already been paid for the pharmacy service; or
 - 314 (ii) an unintentional error resulted in an incorrect reimbursement; or
 - 315 (c) the pharmacy service was not rendered by the pharmacy or pharmacist.

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

- 317 (a) ~~[an investigative audit]~~ any form of an investigation or audit of pharmacy records
318 for fraud, waste, abuse, or other intentional misrepresentation indicates that the pharmacy or
319 pharmacist engaged in criminal wrongdoing, fraud, or other intentional misrepresentation; or
320 (b) the reimbursement is reduced as the result of the reconciliation of a reimbursement
321 amount under a performance contract if:

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

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

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

328 **31A-46-305. Pharmacy reimbursement.**

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

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

334 **31A-46-306. Mailing or delivering prescription drugs.**

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

- 336 (a) prohibit an in-network retail pharmacy from:
- 337 (i) mailing or delivering a prescription drug to an enrollee as an ancillary service of the
- 338 in-network retail pharmacy;
- 339 (ii) charging a shipping or handling fee to an enrollee who requests that the in-network
- 340 retail pharmacy mail or deliver a prescription drug to the enrollee, as an ancillary service; or
- 341 (iii) offering or soliciting the ancillary services described in Subsection (1)(a)(i) to an
- 342 enrollee; or
- 343 (b) charge an enrollee who uses an in-network retail pharmacy that offers to mail or
- 344 deliver a prescription drug to an enrollee as an ancillary service a fee or copayment that is
- 345 higher than the fee or copayment the enrollee would pay if the enrollee used an in-network
- 346 retail pharmacy that does not offer to mail or deliver a prescription drug to an enrollee as an
- 347 ancillary service.

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

349 **31A-46-307. Pharmacy benefit manager reporting.**

350 (1) A pharmacy benefit manager may not enter into or renew a contract with an insurer

351 on or after January 1, 2021, to administer or manage rebate contracting or rebate administration

352 unless the pharmacy benefit manager agrees to regularly report to the insurer information

353 regarding pharmaceutical manufacturer rebates received by the pharmacy benefit manager

354 under the contract.

355 (2) The quality and type of information required under Subsection (1) shall be detailed,

356 claims level information unless the pharmacy benefit manager and insurer agree to waive this

357 requirement in a separate written agreement.

358 Section 10. Section **31A-46-308**, which is renumbered from Section 58-17b-619 is

359 renumbered and amended to read:

360 ~~[58-17b-619].~~ **31A-46-308. Out-of-state mail service pharmacies -- Drugs**

361 **not readily available in all pharmacies.**

362 (1) As used in this section, "out-of-state mail service pharmacy" means the same as that

363 term is defined in Section [58-17b-102](#).

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

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

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

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

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

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

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

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

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

389 **31A-47-101. Title.**

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

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

392 **31A-47-102. Definitions.**

393 As used in this chapter:

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

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

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

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

399 (5) "Wholesale acquisition cost" means the same as that term is defined in 42 U.S.C.

400 Sec. 1395w-3a.

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

402 **31A-47-103. Manufacturer reports -- Insurer report -- Publication by department.**

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

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

408 (ii) greater than 10% over the preceding calendar year.

409 (b) The manufacturer shall report:

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

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

412 (C) the strength of the drug;

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

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

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

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

419 (vi) the name of each of the manufacturer's drugs approved by the United States Food

420 and Drug Administration during the preceding three calendar years; and

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

423 (c) Subsection (1)(a) applies only to a drug with a wholesale acquisition cost of at least
424 \$100 for a 30-day supply before the effective date of the increase in the wholesale acquisition
425 cost of the drug.

426 (d) A manufacturer's obligations under this Subsection (1) are fully satisfied by
427 submission of information and data that a manufacturer includes in the manufacturer's annual
428 consolidated report on Securities and Exchange Commission Form 10-K or any other public
429 disclosure.

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

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

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

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

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

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

444 (i) the name of the drug;

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

446 (iii) the strength of the drug;

447 (b) the percentage increase over the previous year in net spending for all drugs, after

448 adjusting for rebates; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

475 (c) the person submitting the information has provided the governmental entity with

476 the information specified in Section [63G-2-309](#);

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

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

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

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

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

493 (i) an invitation for bids;

494 (ii) a request for proposals;

495 (iii) a request for quotes;

496 (iv) a grant; or

497 (v) other similar document; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

532 under a duty of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

557 (14) records that, if disclosed, would reveal recommendations made to the Board of
558 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
559 Board of Pardons and Parole, or the Department of Human Services that are based on the

560 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
561 jurisdiction;

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

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

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

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

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

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

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

577 (A) members of a legislative body;

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

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

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

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

586 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
587 Office of Legislative Research and General Counsel is a public document unless a legislator

588 asks that the records requesting the legislation be maintained as protected records until such
589 time as the legislator elects to make the legislation or course of action public;

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

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

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

595 (a) collective bargaining; or

596 (b) imminent or pending litigation;

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

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

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

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

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

614 (29) records of the governor's office, including budget recommendations, legislative
615 proposals, and policy statements, that if disclosed would reveal the governor's contemplated

616 policies or contemplated courses of action before the governor has implemented or rejected
617 those policies or courses of action or made them public;

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

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

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

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

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

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

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

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

644 the donor, provided that:

645 (a) the donor requests anonymity in writing;

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

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

653 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
654 73-18-13;

655 (39) a notification of workers' compensation insurance coverage described in Section
656 34A-2-205;

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

660 (i) unpublished lecture notes;

661 (ii) unpublished notes, data, and information:

662 (A) relating to research; and

663 (B) of:

664 (I) the institution within the state system of higher education defined in Section
665 53B-1-102; or

666 (II) a sponsor of sponsored research;

667 (iii) unpublished manuscripts;

668 (iv) creative works in process;

669 (v) scholarly correspondence; and

670 (vi) confidential information contained in research proposals;

671 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public

672 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
673 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
674 (41) (a) records in the custody or control of the Office of Legislative Auditor General
675 that would reveal the name of a particular legislator who requests a legislative audit prior to the
676 date that audit is completed and made public; and
677 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
678 Office of the Legislative Auditor General is a public document unless the legislator asks that
679 the records in the custody or control of the Office of Legislative Auditor General that would
680 reveal the name of a particular legislator who requests a legislative audit be maintained as
681 protected records until the audit is completed and made public;
682 (42) records that provide detail as to the location of an explosive, including a map or
683 other document that indicates the location of:
684 (a) a production facility; or
685 (b) a magazine;
686 (43) information:
687 (a) contained in the statewide database of the Division of Aging and Adult Services
688 created by Section 62A-3-311.1; or
689 (b) received or maintained in relation to the Identity Theft Reporting Information
690 System (IRIS) established under Section 67-5-22;
691 (44) information contained in the Management Information System and Licensing
692 Information System described in Title 62A, Chapter 4a, Child and Family Services;
693 (45) information regarding National Guard operations or activities in support of the
694 National Guard's federal mission;
695 (46) records provided by any pawn or secondhand business to a law enforcement
696 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
697 Secondhand Merchandise Transaction Information Act;
698 (47) information regarding food security, risk, and vulnerability assessments performed
699 by the Department of Agriculture and Food;

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

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

705 (b) the security of:

706 (i) governmental property;

707 (ii) governmental programs; or

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

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

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

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

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

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

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

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

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

- 728 (ii) the individual complying with the law, ordinance, rule, or order;
- 729 (52) the portion of the following documents that contains a candidate's residential or
730 mailing address, if the candidate provides to the filing officer another address or phone number
731 where the candidate may be contacted:
- 732 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,
733 described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408,
734 20A-9-408.5, 20A-9-502, or 20A-9-601;
- 735 (b) an affidavit of impecuniosity, described in Section 20A-9-201; or
- 736 (c) a notice of intent to gather signatures for candidacy, described in Section
737 20A-9-408;
- 738 (53) the name, home address, work addresses, and telephone numbers of an individual
739 that is engaged in, or that provides goods or services for, medical or scientific research that is:
- 740 (a) conducted within the state system of higher education, as defined in Section
741 53B-1-102; and
- 742 (b) conducted using animals;
- 743 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
744 Evaluation Commission concerning an individual commissioner's vote on whether or not to
745 recommend that the voters retain a judge including information disclosed under Subsection
746 78A-12-203(5)(e);
- 747 (55) information collected and a report prepared by the Judicial Performance
748 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
749 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
750 the information or report;
- 751 (56) records contained in the Management Information System created in Section
752 62A-4a-1003;
- 753 (57) records provided or received by the Public Lands Policy Coordinating Office in
754 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
- 755 (58) information requested by and provided to the 911 Division under Section

756 63H-7a-302;

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

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

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

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

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

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

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

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

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

783 (61) records that reveal methods used by the Office of Inspector General of Medicaid

784 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
785 abuse;

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

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

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

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

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

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

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

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

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

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

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

808 (d) contain an officer involved critical incident as defined in Subsection

809 76-2-408(1)(d); or

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

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

815 (68) an audio recording that is:

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

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

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

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

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

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

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

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

834 (72) a record submitted to the Insurance Department in accordance with Section
835 31A-37-201; and

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

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

839 (75) a record described in Section 72-16-306 that relates to the reporting of an injury

840 involving an amusement ride[-]; and

841 (76) a record submitted to the Insurance Department under Subsection

842 31A-47-103(1)(b).

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

845 If this H.B. 272 and S.B. 138, Pharmacy Benefit Manager Revisions, both pass and

846 become law, it is the intent of the Legislature that the amendments to Subsection

847 31A-46-302(1) in S.B. 138 supersede the amendments to Subsection 31A-46-302(1) in this bill

848 when the Office of Legislative Research and General Counsel prepares the Utah Code database

849 for publication.