

Representative Bradley G. Last proposes the following substitute bill:

PHARMACY BENEFIT MANAGER AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: _____

LONG TITLE

General Description:

This bill creates registration requirements for pharmacy benefit managers.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ establishes the Pharmacy Benefit Manager Act;
 - ▶ requires a person providing pharmacy benefit management services to:
 - register with the Division of Occupational and Professional Licensing (DOPL)
- instead of the Division of Corporations and Commercial Code; and
- self-audit and certify compliance with applicable laws and rules;
 - ▶ establishes certain requirements for the practice of a pharmacy benefit manager;
 - ▶ requires DOPL to:
 - establish a registration process and requirements;
 - investigate noncompliance and complaints; and
 - provide certain notice to the Insurance Department and insurance carriers

regarding registrations;

- ▶ authorizes administrative rules; and
- ▶ makes technical changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 ENACTS:

32 **58-86-101**, Utah Code Annotated 1953

33 **58-86-102**, Utah Code Annotated 1953

34 **58-86-103**, Utah Code Annotated 1953

35 **58-86-104**, Utah Code Annotated 1953

36 **58-86-105**, Utah Code Annotated 1953

37 REPEALS AND REENACTS:

38 **31A-22-640**, as last amended by Laws of Utah 2015, Chapter 258



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

41 Section 1. Section **31A-22-640** is repealed and reenacted to read:

42 **31A-22-640. Insurers using pharmacy benefit management services --**

43 **Registration required**

44 (1) A person may not perform, offer to perform, or advertise any service as a pharmacy
45 benefit manager in Utah without a valid registration under Title 58, Chapter 86, Pharmacy
46 Benefit Manager Act.

47 (2) A person may not use the pharmacy benefit management services of another if the
48 person knows or should know that the other does not have the registration required in
49 Subsection (1).

50 Section 2. Section **58-86-101** is enacted to read:

51 **CHAPTER 86. PHARMACY BENEFIT MANAGER ACT**

52 **58-86-101. Title.**

53 This chapter is known as the "Pharmacy Benefit Manager Act."

54 Section 3. Section **58-86-102** is enacted to read:

55 **58-86-102. Definitions.**

56 As used in this chapter:

57 (1) "Maximum allowable cost" means:

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

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

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

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

68 Section 4. Section **58-86-103** is enacted to read:

69 **58-86-103. Insurer and pharmacy benefit management services -- Registration --**
70 **Maximum allowable cost -- Audit restrictions.**

71 (1) An insurer and an insurer's pharmacy benefit manager are subject to the pharmacy
72 audit provisions of Section [58-17b-622](#).

73 (2) A pharmacy benefit manager may not use maximum allowable cost as a basis for
74 reimbursement to a pharmacy unless:

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

79 (b) the drug is:

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

81 (ii) not obsolete.

82 (3) A pharmacy benefit manager shall determine maximum allowable cost by using
83 comparable and current data on drug prices obtained from multiple nationally recognized,
84 comprehensive data sources, including wholesalers, drug file vendors, and pharmaceutical
85 manufacturers for drugs that are available for purchase by pharmacies in Utah.

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

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

90 (b) review and make necessary adjustments to the maximum allowable cost, using the
91 most recent data sources identified in Subsection (4)(a), at least once per week;

92 (c) provide a process for the contracted pharmacy to appeal the maximum allowable
93 cost, in accordance with Subsection (5); and

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

97 (5) (a) (i) A contracted pharmacy may appeal the maximum allowable cost, in
98 accordance with Subsection (4)(c), within 21 days following the initial claim adjudication.

99 (ii) The pharmacy benefit manager shall investigate and resolve the appeal within 14
100 business days.

101 (b) If an appeal is denied, the pharmacy benefit manager shall provide the contracted
102 pharmacy with:

103 (i) the reason for the denial; and

104 (ii) the identification of the national drug code of the drug for which the pharmacy
105 appealed that may be purchased by the pharmacy at a price at or below the price determined by
106 the pharmacy benefit manager.

107 (6) The pharmacy benefit manager shall ensure that the contract with each pharmacy
108 contains a dispute resolution mechanism to be used if either party breaches the terms or
109 conditions of the contract.

110 (7) (a) To conduct business in the state, a pharmacy benefit manager shall register with
111 the division and renew the registration annually.

112 (b) To register under this chapter, the pharmacy benefit manager shall submit to the
113 division an application containing:

114 (i) the name of the pharmacy benefit manager;

115 (ii) the name and contact information for the registered agent for the pharmacy benefit
116 manager; and

117 (iii) if applicable, the federal employer identification number for the pharmacy benefit
118 manager.

119 (c) The division may establish a fee, in accordance with Title 63J, Chapter 1,
 120 Budgetary Procedures Act, for the initial registration and the annual renewal of the registration.

121 (d) The division shall:

122 (i) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
 123 Rulemaking Act, to establish an application process and an application form for registration
 124 under this chapter; and

125 (ii) retain the registration fees imposed under Subsection (7)(c) as a dedicated credit, as
 126 defined in Section 51-5-3, to the division to pay for the cost of administering this chapter.

127 (e) The following entities are not required to register as a pharmacy benefit manager
 128 under Subsection (7)(a) when the entity is providing formulary services to the entity's patients,
 129 employees, members, or beneficiaries:

130 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
 131 Licensing and Inspection Act;

132 (ii) a pharmacy licensed under Title 58, Chapter 17b, Pharmacy Practice Act;

133 (iii) a health care professional licensed under Title 58, Occupations and Professions;

134 and

135 (iv) a labor union.

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

139 Section 5. Section **58-86-104** is enacted to read:

140 **58-86-104. Self-audit and certification to division -- Complaints.**

141 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah
 142 Administrative Rulemaking Act, that:

143 (a) for the purpose of ensuring compliance with the provisions of this ~~Chapter~~
 143a ~~section~~ ~~←~~ ~~Chapter~~ , require a

144 self-audit and certification of a person:

145 (i) registered under this ~~Chapter~~ ~~section~~ ~~←~~ ~~Chapter~~ ; or

146 (ii) who engages in activities that require registration under this ~~Chapter~~

146a ~~section~~ ~~←~~ ~~Chapter~~ ;

147 (b) create a form on which a person described in Subsection (1)(a):

148 (i) certifies that the person is in full compliance with each requirement of this chapter

149 and any other applicable laws, rules, regulations, or registration conditions; and

150 (ii) names each insurance carrier with which the person engages as a pharmacy benefit
 151 manager; and

152 (c) establish procedures to:

153 (i) receive, evaluate, and investigate complaints regarding failures to comply with this

154 Ĥ→ [chapter] section ←Ĥ by a person described in Subsection (1)(a), including, if applicable,
 154a adjudicative

155 procedures under Title 63G, Chapter 4, Administrative Procedures Act; and

156 (ii) provide the notice described in Section [58-86-105](#).

157 (2) A person described in Subsection (1)(a) shall honestly and in good faith complete
 158 the self-audit and certification process described in Subsections (1)(a) and (b).

159 Section 6. Section **58-86-105** is enacted to read:

160 **58-86-105. Notification of Insurance Department, insurance carriers.**

161 (1) (a) The division shall give the notice described in Subsection (1)(b) when, through
 162 procedures established under Subsection [58-86-104](#)(1)(c), the division:

163 (i) receives a complaint that a person who is not registered in compliance with this

164 Ĥ→ [chapter] section ←Ĥ is conducting business as a pharmacy benefit manager or providing
 164a pharmacy benefit

165 management services, as defined in Section [49-20-502](#); and

166 (ii) determines that the complaint described in Subsection (1)(a)(i) is true.

167 (b) The division shall ensure that the notice required in Subsection (1)(a) contains a
 168 statement:

169 (i) that the person is not registered as a pharmacy benefit manager as required by this

170 Ĥ→ [chapter] section ←Ĥ ; and

171 (ii) that the person is prohibited from providing services as a pharmacy benefit
 172 manager.

173 (c) The division shall give the notice required in Subsection (1)(a) to:

174 (i) the person who is the subject of the complaint described in Subsection (1)(a);

175 (ii) each insurance carrier with which the division has reason to believe the person
 176 engages as a pharmacy benefit manager; and

177 (iii) the Insurance Department, to promote insurer compliance with Section
 178 [31A-22-640](#).

179 (2) To promote insurer compliance with Section [31A-22-640](#), the division shall, at
 180 least once every three months, provide the Insurance Department with a list of all current and

181 valid registrations under this chapter.