

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: Evan J. Vickers

LONG TITLE

General Description:

This bill amends registration and practice requirements for pharmacy benefit managers.

Highlighted Provisions:

This bill:

- ▶ prohibits the use of an unregistered pharmacy benefit manager;
- ▶ requires the commissioner of the Insurance Department to give certain notice and impose certain fines; and
- ▶ requires the Division of Corporations and Commercial Code to provide certain notice to the Insurance Department regarding registrations.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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



26 Section 1. Section 31A-22-640 is amended to read:

27 **31A-22-640. Insurer and pharmacy benefit management services -- Registration**
28 **-- Maximum allowable cost -- Audit restrictions.**

29 (1) For purposes of this section:

30 (a) "Maximum allowable cost" means:

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

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

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

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

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

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

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

49 (b) the drug is: (i) generally available for purchase in this state from a national or
50 regional wholesaler; and (ii) not obsolete.

51 (4) The maximum allowable cost may be determined using comparable and current
52 data on drug prices obtained from multiple nationally recognized, comprehensive data sources,
53 including wholesalers, drug file vendors, and pharmaceutical manufacturers for drugs that are
54 available for purchase by pharmacies in the state .

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

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

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

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

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

66 (6) (a) The right to appeal in Subsection (5)(c) shall be: (i) limited to 21 days
67 following the initial claim adjudication; and

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

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

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

76 (8) (a) To conduct business in the state, a pharmacy benefit manager shall register with
77 the Division of Corporations and Commercial Code within the Department of Commerce and
78 annually renew the registration. To register under this section, the pharmacy benefit manager
79 shall submit an application which shall contain only the following information:

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

81 (ii) the name and contact information for the registered agent for the pharmacy benefit
82 manager; and

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

85 (b) The Department of Commerce may establish a fee in accordance with Title 63J,
86 Chapter 1, Budgetary Procedures Act, for the initial registration and the annual renewal of the
87 registration, which may not exceed \$100 per year.

88 (c) The following entities do not have to register as a pharmacy benefit manager under
89 Subsection (8)(a) when the entity is providing formulary services to its own patients,
90 employees, members, or beneficiaries:

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

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

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

95 and

96 [~~(iv) a health insurer; and~~]

97 [~~(v)~~] (iv) a labor union.

98 (d) A person may not use the pharmacy benefit management services of another if the
99 person knows or should know that the other does not have the registration required in
100 Subsection (8)(a).

101 (e) To promote insurer compliance with this section, the Division of Corporations and
102 Commercial Code, created in Section 13-1-2, shall, at least once every three months, provide
103 the Insurance Department with a list of all current and valid registrations described in Section
104 (8)(a).

105 (f) If the commissioner receives a complaint that a person is providing pharmacy
106 benefit management services without the registration required in Subsection (8)(a), the
107 commissioner shall:

108 (i) give notice to the person who is the subject of the complaint that the person is:

109 (A) not registered as required in Subsection (8)(a); and

110 (B) subject to the fines described in Subsection (e)(ii) if the person does not register
111 within 30 days of the date of the notice; and

112 (ii) impose a fine of \$250 per day, beginning on the 31st day after the date of the
113 notice, until the person registers.

114 (9) This section does not apply to a pharmacy benefit manager when the pharmacy
115 benefit manager is providing pharmacy benefit management services on behalf of the state
116 Medicaid program.