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TO THE HOUSE COMMITTEE ON  
HEALTH

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Tuesday, February 8, 2011  
9:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 275 – RELATING TO PHARMACY BENEFIT  
MANAGEMENT COMPANIES.**

TO THE HONORABLE RYAN I. YAMANE., CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department opposes this bill which creates a regulatory scheme for pharmacy benefit management companies enforced by the Insurance Commissioner. We don't oppose the idea of regulation of pharmacy benefit managers, but we do oppose the idea that the regulation should be conducted by the Insurance Commissioner.

The primary justification for regulation of insurance companies is that they are risk-bearing and that therefore potential insolvencies can be harmful to consumers and disruptive to the market. Pharmacy benefit management companies do not present these issues. Simply put, the regulation contemplated by this bill is not insurance regulation and therefore does not belong under the Insurance Commissioner.

We thank this Committee for the opportunity to present testimony on this matter.

# HMSA



Blue Cross  
Blue Shield  
of Hawaii

An Independent Licensee of the Blue Cross and Blue Shield Association

February 8, 2011

The Honorable Ryan Yamane, Chair  
The Honorable Dee Morikawa, Vice Chair  
House Committee on Health

**Re: HB 275 – Relating to Pharmacy Benefit Management Companies**

Dear Chair Yamane, Vice Chair Morikawa and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 275 which would regulate pharmacy benefit management companies (PBMs) in Hawaii. HMSA opposes this measure. This Bill restricts the use of out-of-state and mail order pharmacies. In doing so, it will increase the cost of pharmacy benefits without providing a concomitant increase in quality of care.

PBMs aggregate the buying clout of large numbers of enrollees through their client health plans, enabling plan sponsors and individuals to obtain lower prices for their prescription drugs through price discounts from retail pharmacies, rebates from pharmaceutical manufacturers, and the efficiencies of mail-service pharmacies. PBMs also use clinical tools aimed at reducing inappropriate prescribing by physicians, reducing medication errors, and improving consumer compliance and health outcomes.

A 2003 study by the U.S. Government Accounting Office on the effect of PBMs on federal employees' health benefits found:

The PBMs reviewed produced savings for health plans participating in FEHBP by obtaining drug price discounts from retail pharmacies and dispensing drugs at lower costs through mail-order pharmacies, passing on certain manufacturer rebates to the plans, and operating drug utilization control programs. For example, the average price PBMs obtained from retail pharmacies for 14 brand name drugs was about 18 percent below the average price paid by customers without third-party coverage.

While we understand the desire to have local access to pharmacy services, to restrict access to out-of-state services is counter-productive to the overall effort to reduce health care costs. The use of on-line prescription services that are available through PBMs is in line with President Obama's goal of streamlining the health care system through technology. In implementing the Affordable Care Act, the State joins the rest of the nation in striving for a more efficient health care system. To restrict a service that already helps reduce pharmaceutical costs does not make sense, and we are opposed to this Bill which moves in that direction. Thank you for the opportunity to testify today.

Sincerely,

Jennifer Diesman  
Vice President  
Government Relations



**Cynthia Laubacher**  
Senior Director,  
Western Region

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February 7, 2011

TO: Chair, Ryan Yamane, Members, House Health Committee

FR: Cindy Laubacher, Senior Director, State Government Affairs, Medco Health Solutions, Inc.

Re: HB 275 – Oppose

Hearing Date: February 8, 2011 9:30am

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Medco Health Solutions, Inc. must respectfully oppose House Bill 275 relating to regulation of pharmacy benefits and pharmacy audits. Medco is one of the nation's largest pharmacy benefits managers, serving nearly 650,000 residents of Hawaii – approximately 50% of the state's population.

- HB 275 would increase pharmacy costs for our clients and their members.
- Section B of H.B. 275 would require a PBM to disclose proprietary contract information to a purchaser before and after entering into a contract. In addition, a PBM would also have to disclose such information to the Insurance Commissioner on a quarterly and yearly basis.
- The Federal Trade Commission (FTC) has warned several states that legislation requiring PBM disclosure could increase costs and “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford.”
- Section C of H.B. 275 takes choices away from consumers and would force one-size-fits-all copayments. Mail-service pharmacies are able to keep prescription drug costs down because they have greater efficiency and lower overhead costs than independent pharmacies.
- Health plans and employers frequently choose to provide their members and employees with the option of a lower copayment on a 90-day supply of their medications through the use of mail-service pharmacies. This provides significant cost savings, particularly for medications prescribed for chronic conditions.
- Section C of H.B. 275 also mandates that a PBM would have to allow any provider that wants to join their pharmacy network in, regardless of whether they have committed illegal activities or are not as competitive in service or quality as other pharmacies.
- PBMs build networks of pharmacies to provide consumers convenient access to prescriptions at discounted rates. It is important to have pharmacies compete to be

part of the pharmacy network for a particular PBM in order to keep the rising costs of prescription drugs down. Network pharmacies compete on service, convenience, and quality to attract consumers within a particular plan.

- This legislation, although it appears to help pharmacies, will actually have the unintended consequence of opening the door to fraud, abuse, and wasteful spending in health care.
- Health plans and employers with pharmacy benefit plans rely on audits of their network pharmacies to recoup monies incorrectly paid for claims with improper quantity, improper days supply, improper coding, duplicative claims, and other irregularities.
- Health plans and employers should have the right to ensure that the pharmacy claims that they are paying for are legitimate. In a time of rising health care costs, preventing fraudulent activity is an important tool to keeping health care costs down.
- H.B. 275 severely restricts the ability of health plans and employers to make sure they are getting what they pay for. Auditing is part of the cost of doing business. That goes for any type of business – pharmacies should not be an exception to the rule.
- Legislation that requires entities to provide pharmacies/pharmacists with an advanced notice of two weeks before an audit would give individuals ample time to hide evidence of fraudulent activities or evade authorities altogether.
- PBMs look for errors, irregularities, and suspicious patterns over time. Claims are compared with historical information as well as claims submitted by similarly situated pharmacies. Substantial changes in the volume of claims or the dollar amount of claims from particular pharmacies can indicate fraudulent activity.
- In 2010 alone, a joint health care fraud prevention effort between the Department of Justice and the Department of Health and Human Services resulted in the recovery of more than \$4 billion in taxpayer dollars. Some of the recovered money came from uncovering pharmacy fraud schemes that included fraudulent billing practices and illegal dispensing of medications.

For these reasons, Medco must respectfully oppose House Bill 275. Please feel free to contact me with any questions. Thank you.



Representative Ryan Yamane, Chair  
Representative Dee Morikawa, Vice Chair  
COMMITTEE ON HEALTH

Tuesday, February 8, 2011 – 9:30 a.m.  
State Capitol, Conference Room 329

**CVS CAREMARK TESTIMONY**  
**HB 275 Relating to Pharmacy Benefit Management Companies**

Chair Yamane, Vice Chair Morikawa, and members of the Committee:

Thank you for the opportunity to provide comments on behalf of CVS Caremark Corporation (“CVS Caremark”). CVS Caremark has concerns related to provisions contained in HB 275, Relating to Pharmacy Benefit Management Companies which requires the registration and regulation of pharmacy benefit management companies and periodic auditing of pharmacies that submit claims to pharmacy benefit management companies.

CVS Caremark is one of the nation’s largest independent providers of health improvement services, touching the lives of millions of health plan participants. As CVS Pharmacy and Longs Drugs in Hawaii, we are the largest employer of licensed pharmacists in the United States with over 25,000 pharmacists.

Caremark, a pharmacy benefit manager (PBM), offers our health plan customers a wide range of health improvement products and services designed to lower the cost and improve the quality of pharmaceutical care. Through our unique healthcare model and clinically-based services, CVS Caremark is able to reduce medication errors, increase compliance with drug therapies, and improve health outcomes. In addition, through the use of cost containment and formulary management tools that Caremark clients utilize, they in turn are able to offer a high-quality, cost effective outpatient drug benefit for their enrollees. CVS Caremark clients include a broad range of highly sophisticated private and public health plan sponsors, including Blue Cross Blue Shield plans, health insurance plans, employers, governments, third-party administrators and Taft-Hartley plans.

After reviewing HB 275 Relating to Pharmacy Benefit Management Companies, CVS Caremark respectfully offers the following comments:

**Disclosure Mandates Undermine Price Competition and Increase Costs**

Section B of HB 275 would require a PBM to disclose proprietary contract information to a purchaser before and after entering into a contract. In addition, a PBM would also have to disclose such information to the Insurance Commissioner on a fiscal quarter and fiscal year basis. We believe this will adversely impact competition in the marketplace and create a “cookie cutter” approach for PBM contracting, which would ultimately result in higher prescription drug costs for consumers.



The Federal Trade Commission (FTC) has warned several states that legislation requiring PBM disclosure could increase costs and “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford.”<sup>1</sup>

In a March 2009 analysis of similar provisions, the FTC stated that such disclosure mandates would “preclude health plans and PBMs from entering into efficient (*i.e.*, cost-effective) contracts for the administration of pharmacy benefits” and “they may have the unintended consequence of publicizing proprietary business information in a way that could foster collusion among pharmaceutical manufacturers.”<sup>2</sup>

Requiring PBMs to disclose their price negotiation strategies with pharmaceutical manufacturers also damages competition. In fact, the FTC looked at the likely effect of making such information publicly available and found that “if pharmaceutical manufacturers learn the exact amount of rebates being offered by their competitors . . . then tacit collusion among manufacturers is more feasible. Consequently, the required disclosures may lead to higher prices for PBM services and pharmaceuticals.”<sup>3</sup> According to the FTC and the Department of Justice, “vigorous competition in the marketplace for PBMs is more likely to arrive at an optimal level of transparency than regulation of those terms.”<sup>4</sup>

Transparency is already available in today’s competitive marketplace. Each PBM client is uniquely situated and some have elected to not request disclosure for business reasons of their own. CVS Caremark recommends that it should be left to the decision of the PBM clients to decide to what extent certain disclosures are needed to make informed purchasing decisions. If a health plan or employer wants certain financial information, then they should make this a requirement of their bid and negotiate the terms in their contract.

### **Dictating Private Contract Rights Only Benefits Network Pharmacies While Hurting Consumers**

Section C of HB 275 mandates that a PBM be required to allow any willing provider to join their pharmacy network, regardless of whether they have committed illegal activities or are not as competitive in service or quality as other pharmacies.

PBMs build networks of pharmacies to provide consumers convenient access to prescriptions at discounted rates, but must do so while meeting network adequacy requirements. It is important to have pharmacies compete to be part of the pharmacy network for a particular PBM in order to keep the rising costs of prescription drugs down. Network pharmacies compete on service, convenience, and quality to attract consumers within a particular plan. Further, the ability of PBMs to negotiate with pharmacies in the private marketplace without government interference plays a critical role in reducing prescription drug benefit costs to health plans and employers, and ultimately consumers.

CVS Caremark recommends that government not create private contract rights that would hinder the ability of PBM clients to create pharmacy networks that meet their needs while providing health benefits at a lower cost.

### **Pharmacy Audit Restrictions Increase Costs and Encourage Fraudulent Activity**

The provisions contained in Section E of HB 275 are overly prescriptive and would hinder our ability to perform audit functions on behalf of our clients.

<sup>1</sup> FTC letter to Rep. Patrick T McHenry, U.S. Congress, (July 15, 2005); FTC letter to Assembly Member Greg Aghazarian on California’s AB 1960, (September 3, 2004); *see also* FTC Letter to Senator James Seward, New York Senate, (March 31, 2009).

<sup>2</sup> FTC letter to Sen. James Seward, New York Senate, (March 31, 2009).

<sup>3</sup> FTC letter to Assembly Member Greg Aghazarian on California’s AB 1960, (September 3, 2004); FTC letter to Assemblywoman Nellie Pou, New Jersey General Assembly, (April 17, 2007); *see also* FTC Letter to Senator James Seward, New York Senate, (March 31, 2009).

<sup>4</sup> US Federal Trade Commission & US Department of Justice Antitrust Division, “Improving Health Care: A Dose of Competition,” July 2004



Caremark has contracts with over 60,000 pharmacies nationwide including pharmacies in Hawaii. Our relationship with our network pharmacies is a critical component to the value we bring to our clients and their beneficiaries. To deter fraud and ensure contract pharmacies comply with Caremark quality assurance requirements, Caremark audits at least 5 percent of its contracted pharmacies annually. Caremark audits network pharmacies based on statistical analysis of claims data or as a result of state regulatory authorities and clients informing Caremark about potential violations. PBMs look for errors, irregularities, and suspicious patterns over time. Claims are compared with historical information as well as claims submitted by similarly situated pharmacies. Substantial changes in the volume of claims or the dollar amount of claims from particular pharmacies can indicate fraudulent activity.

Following an audit, Caremark allows a pharmacy 30 days to submit additional documentation on claim discrepancies. This is especially important to a pharmacy that has itself been the victim of a fraudulent activity by one of its employees. Unacceptable findings discovered by an audit may include the submission of a fraudulent claim or a pharmacy consistently not following the claims submission policies outlined in their provider manual. However, the most common type of fraud discovered is a "phantom" billing where a claim is submitted by the pharmacy but not supported by a valid prescription.

For pharmacies that have unacceptable audits or have submitted fraudulent claims, the Caremark Pharmacy Management Review Committee meets quarterly to review unacceptable and fraudulent activity to determine if continued membership in our network places our clients and their beneficiaries at risk. The Committee is made up of Caremark employees from various cross functional departments. Additionally, when we find irrefutable evidence of fraud we report it to the appropriate authorities and state agencies. Caremark is active in both the National Association of Drug Diversion Investigators (NADDI) and the National Health Care Anti-Fraud Association (NHCAA), two organizations whose mission is to investigate and prosecute pharmaceutical drug diversion.

"Health care fraud is a pervasive and costly drain on the U.S. health care system. In 2008, Americans spent \$2.34 trillion dollars on health care. Of those trillions of dollars, the Federal Bureau of Investigation (FBI) estimates that between 3 and 10 percent was lost to health care fraud."<sup>5</sup>

In 2010 alone, a joint health care fraud prevention effort between the Department of Justice and the Department of Health and Human Services resulted in the recovery of more than \$4 billion in taxpayer dollars. Some of the recovered money came from uncovering pharmacy fraud schemes that included fraudulent billing practices and illegal dispensing of medications.<sup>6</sup>

CVS Caremark recommends that the government not impose pharmacy audit restrictions that will lessen the PBM's ability to detect and recover monies resulting from fraud, abuse, and wasteful spending in healthcare.

**Insurance Commissioner Adoption of Rules Which Include a Schedule of Allowable Acquisition Cost and Professional Dispensing Fees Would Prevent the Delivery of an Affordable Prescription Drug Benefit**

Section F of HB 275 would require that the insurance commissioner adopt rules that would include a schedule of allowable acquisition costs and professional dispensing fees.

CVS Caremark recommends that the insurance commissioner not publish rules containing a schedule of allowable acquisition cost and professional dispensing fees. Pharmacy reimbursement for drugs and services,

<sup>5</sup> National Health Care Anti-Fraud Association, "Combating Health Care Fraud in a Post-Reform World: Seven Guiding Principles for Policymakers," October 2010, available at [http://www.nhcaa.org/web/docs/nhcaa/PDFs/Member%20Services/WhitePaper\\_Oct10.pdf](http://www.nhcaa.org/web/docs/nhcaa/PDFs/Member%20Services/WhitePaper_Oct10.pdf).

<sup>6</sup> U.S. Department of Health and Human Services & U.S. Department of Justice, "Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2010," January 2011, available at <http://oig.hhs.gov/publications/docs/hcfac/hcfacreport2010.pdf>.



which includes an allowable acquisition cost and professional dispensing fee, is determined, negotiated and agreed upon contractually between the contracting network pharmacies and the PBM and plays a critical role in the delivery of an affordable prescription drug benefit to health plans and employers and ultimately the consumer.

In closing, a PBM contracts with purchasers of health care and is required to respond to very specific requirements in a Request for Proposal (RFP) then must vigorously compete with other PBMs for that business. Ultimately, the purchaser of PBM services should determine what the benefit design will be for its beneficiaries.

CVS Caremark appreciates the opportunity to provide comments.

Todd Inafuku

Director of Government Affairs

C/O 2270 Hoonee Place

Honolulu, Hawaii 96819

808-620-2288



Testimony for PBM Transparency Bill HB275 (Feb 8, 2011)

From: Mike Martin Owner/Pharmacist, Papalina Pharmacy, Kalaheo, Kauai, Hawaii

PBM stands for Pharmacy Benefits Manager, a neutral entity created at the start of online computer billing to coordinate benefits between the **patient, insurance company, and pharmacy**. The goal of a PBM is to represent all parties and audit and report any abuse and misuse of funds and services. One of the main problems with the Informed Rx Mandatory Mail order program for State of Hawaii employees is the **pharmacy, the insurance company and PBM** (pharmacy benefits manager) are all part of **one company**. No Audits, no checking on abuse, no representation of the patient, and no complaining. Well you can complain but it will fall on deaf ears.

### **What are the negative aspects of Mail order pharmacy?**

No freedom of choice

Your pharmacy is now 5,000 miles away

Your pharmacy is 5 to 6 hours ahead of you time wise

Your pharmacy and Doctor are 5 to 6 hours apart and 5,000 miles apart

Your Hawaii pharmacy could solve problems in minutes' not days or weeks

Prescription drugs are subject to shipping problems (in 5,000 miles: prescriptions are lost, stolen, are too hot, are too cold, are delayed by bad weather, are left in the mail box, are left on the front porch)

Loss of Jobs (I had to lay off 1 employee)

Loss of wholesale tax on drugs purchased in Hawaii

Loss of Pharmacy corporate tax

Communication problems (Language in Hawaii is unique)

They have a take it or leave it attitude (no taking your business elsewhere)

I will be flying from Kauai Feb 8 to testify in person and will be available to answer questions about PBM'S and the impact of mail order pharmacy on Hawaii of State employees.

Thank You

Mike Martin

Papalina Pharmacy

Kalaheo, Kauai, Hawaii

808-332-9130

Papalina@hawaii.rr.com

Testimony on HB 275 and SB 591

Tom Jones, Pharmacist and President - Haiku Pharmacy 810 Haiku Road #127 Haiku, HI 96708

I have provided services to patients in Haiku, Makawao, Huelo, Hana and other rural areas throughout the island of Maui.

The past two years have been difficult for me and my patients because of the lack of choice for my patients. My patients have been forced into a mandatory mail prescription service that they do not want to participate. It has caused problems like delays getting medications, illegal substitution, damaged drugs and an inability to get information from the mail order pharmacy.

After 15 years, I have decided to retire due to all of the problems dealing with take it or leave it contracts being dictated to by ruthless PBM's who care little for my patients and whose only goal is the fill their pockets with money from patients, pharmacies and insurance companies. The PBM's are now making more on a prescription than the pharmacy or the drug company. They have become billion dollar profit centers owned and operated by other health care corporations.

I own a little store that has been there for my patients. They have come to me for their prescriptions, advice and the personal service I have provided the community. The PBM's do not give anything back to Hawaii or the communities we service. I still give advice to patients that are forced to use mandatory mail order and provide emergency fills when the mail order pharmacy does not get prescriptions to patients.

The proposed bill, HB 275, will help allow our patients to choose who fills their prescriptions. It allows the patient to control choice. It also helps level the playing field for community pharmacies.

I ask for your support in helping pass this bill. PBM's main concern is a profit for their shareholders, not for the patient. PBM's are taking money from everyone and not providing quality professional services. They are actually using our patient information against us to try to steal patients from our stores. This is due to the fact that they process our online claims and have access to the patient information. I have been called by Medco and told that I could save money by switching to their mail order program sponsored by HMSA.

Help our patients. Vote for this bill and make a difference for the people of Hawaii and allow them to choose how they get their prescriptions and drug information.

I am retiring and selling my store to another Independent Pharmacy so I personally will not be involved, but as a pharmacist I feel compelled to speak out against the practices and profits of the PBM's. PBM's are making excessive profits and are breaking small independent pharmacies with their take it or leave it contracts. Thank you for allowing me to submit testimony in support of these important bills.

HOUSE OF REPRESENTATIVES  
THE TWENTY-SIXTH LEGISLATURE

REGULAR SESSION OF 2011

**COMMITTEE ON HEALTH**

Rep. Ryan I. Yamane, Chair

Rep. Dee Morikawa, Vice Chair

Rep. Della Au Belatti

Rep. John M. Mizuno

Rep. Faye P. Hanohano

Rep. Jessica Wooley

Rep. Jo Jordan

Rep. Corinne W.L. Ching

Rep. Chris Lee

Rep. Kymberly Marcos Pine

***AMENDED NOTICE OF HEARING***

***DATE:***

***Tuesday, February 08, 2011***

TIME:

9:30am

PLACE:

Conference Room 329

State Capitol

415 South Beretania Street

Brian Carter RPh.  
PO Box 939  
Hanapepe, HI 96716  
808 645-0491  
[wbkotter@hotmail.com](mailto:wbkotter@hotmail.com)

## **I SUPPORT SB 591/HB 275**

I am an independent community pharmacist on the west side of Kauai. I am testifying in support of HB 275/ SB 591.

This bill will protect the patient right to choose a healthcare provider, improve compliance to drug therapy, minimize healthcare costs to the state, create a more sustainable drug delivery system, and help to create a healthier and happier workforce.

The patient's right to choose a provider is one that has been compromised by the **mandatory mail order** clauses in the current insurance plan offered by the EUTF. This has caused much frustration by county and state employees. Many errors in medication delivery have resulted in hospitalization and increased cost to the patient as well as the state. This bill will enable for patients a right to receive prescriptions from whomever they choose, whenever they choose.

This ability to go to the local drug store and receive medication has been available during the past 2 years under the EUTF plan but the patient has been severely punished by having to pay out of pocket for medicine that they have not received by mail order. Having the option to go to their local drug store without penalty will increase compliance with physician's orders and give a more supportive care system for our patients.

The cost of doing business outside the state can only be seen as foolish in many ways. The current mail order facility in Florida that has been receiving **ALL** of the prescriptions for state and county employees does not pay taxes in Hawaii. All of the revenue generated by the facility stays in Florida. This "mail order to save money" strategy that has been used by the state has no statistical backing. There has never been **released** any study that finds the mail order is saving money and if one is eventually released it will not encompass costs like Emergency Room costs due to failure to receive medication on time. How much is it worth to have patients having to be hospitalized due to missed heart or blood pressure medication? There are studies that have shown the waste and higher cost of using mail order. See <http://www.ncpanet.org/pdf/leg/falsesavingsofmailorder.pdf> or [www.ncpanet.org/pdf/leg/ncpamailorderpres.ppt](http://www.ncpanet.org/pdf/leg/ncpamailorderpres.ppt) for more information regarding the higher costs of mail order. One study "Effects of Mail Order Incentives on Prescription Plan Costs" by the University of

Arkansas clearly debunks the mail order savings myth. (see above for link or call me I will e-mail it to you)

The increased competition in the marketplace will allow for a more sustainable drug delivery system. It is not to say that by the passage of this bill we will see a return to “old times” without mail order in the marketplace. Community pharmacies will have to work hard to provide a level of care that will compete with a mail order alternative. The service that we provide must be superior or patients won’t mind the hassles associated with mail order or may find it easier than going into a local pharmacy. The competitive market has been shown to bring out the best in many industries, this will be no different.

With mail order not being a mandatory requirement to receive medication people will be happier. Patients will respect their legislators giving them the freedom of choice and the opportunity to support their local economy. The pride of a self sustained community is in everyone within that community. **!** **care** for my neighbors and their needs. I want to live in a healthy community and am willing to do whatever it takes to make it a better more vibrant society.

I appreciate the opportunity to express my support for HB 275/ SB 591. I hope you will realize the value of this bill and what it means to the people of Hawaii. Thank you for taking the time to read my testimony.

## **morikawa2 - Grant**

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**From:** Emerick O. [emericko@gmail.com]  
**Sent:** Monday, February 07, 2011 12:56 PM  
**To:** HLTtestimony  
**Subject:** HB275 Testimony in advance of verbal testimony (RE:Hearing 2/8 9:30am, Rm 329)

Rep. Ryan I. Yamane, Chair  
Rep. Dee Morikawa, Vice Chair  
Committee on Health

Emerick Orimoto, Pharm.D., R.Ph.  
Pharmacy Director

Tuesday, February 8, 2011

### **Support for HB275, Relating to Pharmacy Benefit Management Companies**

I have been a pharmacist for over 30 years, and I am currently a pharmacy director associated with the largest private hospital in the state. My testimony reflects my personal opinion, and is not necessarily that of my employer.

I strongly support HB275, which would provide much needed transparency and regulation over the actions of Pharmacy Benefit Management (PBM) companies doing business in the state.

My concerns are twofold:

First From the patient care standpoint:

Let me state that I do not stand against mail-order pharmacy (particularly since my employer's healthplan offers it as an option), but I AM against PBM practices that border on predatory, particularly when they are able to dictate \*mandatory\* mail order to certain of their patient groups.

My staff and I have spent hours trying to assist many of our patients who have either struggled confusing rules imposed on them by some of these companies. Some patients have ended up going without important medications for as long as a week because their drugs were either lost in the mail or were delivered to them damaged. I have also had communications with co-workers who related to me stories of patients who were forced to visit our Emergency Room because of health problems developed as a result of delayed mail delivery of their medications. In 2009, when the EUTF began mandatory mail order pharmacy for maintenance medications on their employed members, Local news outlets reported that the Board of Pharmacy had fielded, "dozens of complaints" regarding problems associated with their out-of-state pharmacy.

To allow these companies to dictate practices such as mandatory mail order bars these patient groups from necessary access to face-to-face healthcare providers, which can result in increased healthcare costs as well as adverse health for some patients.

My second concern comes from the state's economic standpoint for small business:

Small, independent community-based pharmacies not only represent a significant portion of the

U.S.'s health care delivery system but the local, independent community pharmacist is among our most accessible and trusted source of health care and health information.

Unfortunately, independent pharmacies are a dying breed. According to a recent National Community Pharmacists survey, The average Net Operating Income by independent pharmacies neared a mere 3 pennies on the dollar.

In the 18 months since implementation of the EUTF's mandatory mail order, well over a half-dozen small pharmacies have either closed or been absorbed by mainland pharmacy chains. Any not coincidentally, many of the chains also happen to own PBMs and mail order pharmacy operations.

I am prohibited from revealing my company's specific financial data publicly, but I can say that I have seen statistics for a number of pharmacies in Hawaii in the months following the implementation of the state of Hawaii's EUTF mandatory mail order plan, and all noted double-digit percentage drops in prescriptions. A number of my colleagues have seen their net profitability drop to zero.

To allow PBMs to do business in an unregulated fashion in this state is bad for the health of the economy as well as bad for the health of its people.

I strongly urge that you move HB275 forward in your deliberations.

-Emerick Orimoto, Pharm.D., R.Ph.  
Pharmacy Director