

# LATE TESTIMONY



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

KEALI'I S. LOPEZ  
DIRECTOR

EVERETT KANESHIGE  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2011

Tuesday, March 15, 2011  
8:30 a.m.

## TESTIMONY ON SENATE BILL NO. 591, S.D. 2 – 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 ("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 Commissioner. The  
Department does not oppose the regulation of pharmacy benefit managers, but does  
not believe that pharmacy benefit managers should be regulated by the Commissioner  
since the Commissioner does not have staff with the expertise or experience in this  
subject matter.

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 Commissioner.

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

# LATE TESTIMONY



94-450 Mokuola Street, Suite 106, Waipahu, HI 96767  
808.675.7300 | www.ohanahealthplan.com

March 15, 2011

To: The Honorable Ryan I. Yamane  
Chair, House Committee on Health

From: 'Ohana Health Plan

Re: Senate Bill 591, Senate Draft 2-Relating to Pharmacy Benefit Management  
Companies

Hearing: March 15, 2011, 8:30 a.m.  
Hawai'i State Capitol, Room 329

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Since February 2009, 'Ohana Health Plan has provided services under the Hawai'i QUEST Expanded Access (QExA) program. 'Ohana is managed by a local team of experienced health care professionals who embrace cultural diversity, advocate preventative care and facilitate communications between members and providers. Our philosophy is to place members and their families at the center of the health care continuum.

'Ohana Health Plan is offered by WellCare Health Insurance of Arizona, Inc. WellCare provides managed care services exclusively for government-sponsored health care programs serving approximately 2.3 million Medicaid and Medicare members nationwide. 'Ohana has utilized WellCare's national experience to develop an 'Ohana care model that addresses local members' healthcare and health coordination needs.

We appreciate this opportunity to testify in opposition to Senate Bill 591, Senate Draft 2-Relating to Pharmacy Benefit Management Companies.

The purpose of this bill is to require the registration of and regulation of pharmacy benefit management companies (PBMs) practices, and additionally authorizes periodic audits of pharmacies that submit claims to PBMs.

While we understand the reasons behind this legislation, we cannot support it as it could prevent 'Ohana Health Plan's current PBM from fulfilling its contractual requirements that maintain our compliance with State and Federal contracts and regulations. This may also become a disincentive for mainland-based PBMs to enter into contracts with local-based health insurance companies. If the genesis of this measure is to address a specific problem or PBM, we would respectfully request that this bill be amended to limit its impact against other PBMs that have maintained good standards and practices within the State and would be unnecessarily impacted by this bill's passage.

Health Plan Pharmacy & Therapeutics (P&T) Committee; or physicians and pharmacists decide on the prescription benefits and the PBM implements the benefit through sophisticated information technology systems). The Health Plans also develop policies and procedures, for which they are solely responsible, and the PBMs develop and implement the processes that enact the policies, such as mail order programs. Any issues that occur with administering the pharmacy benefit should be directed to the Health Plan, not the PBM.

This bill also requires an auditing agency (defined as managed care company, insurance company, third-party payor or the representatives of the managed care company, insurance company, third-party payor) to conduct an audit of the records of a pharmacy for claims submitted for payment after July 1, 2011 under restrictive criteria that set a State audit standard that may not meet nationally recognized standards.

This bill could weaken the oversight nature of the audit process by allowing the subject of the audit to determine how the audit is conducted and would be especially difficult to implement, as it would require health care plans to also become auditing agencies, or to hire an auditing agency to act on their behalf.

It is unclear as to whether each "auditing agency" as defined by this bill is responsible for auditing a pharmacy, or how to determine which "auditing agency" takes the lead. The bill is also silent on how a pharmacy is selected for audit. It should be noted that there are over 200 pharmacies in the state of Hawai'i. Without a mechanism outlined to determine how "auditing agencies" select a pharmacy for audit it is plausible that every "auditing agency" could select the same pharmacy for audit.

This bill also prohibits the exclusion of any willing provider from any contract offered within the State, regardless of the pharmacies standing in regard to fraud, waste and abuse. PBMs provide network contracting services to health plans that set standards and criteria for participation in their pharmacy network. With over 200 pharmacies in the State of varying sizes and business practices, 'Ohana Health Plan provides quality oversight of their pharmacy providers to insure our members get the standard of care they require. This bill would allow a poor performing pharmacy to continue to see 'Ohana members.

The PBM market is very competitive and releasing proprietary contractual information will dissuade health plans from doing business in Hawaii. Since advanced information technology infrastructure is required and Hawai'i's small market size cannot support this level of sophistication, this legislation may deprive Hawai'i people of the advantages of state-of-the-art PBM technology. PBM technology automates the claims process so eligibility and benefits are checked instantly unlike claims for other medical claims which typically take weeks. PBM technology also provides immediate patient safety features which address overdoses, drug-drug interactions and other possible dangers to patients.

Many of Hawai'i's locally-based health care insurance providers with local staff choose to contract with PBMs in order to better manage the complex business of managing pharmacy benefits for their members. Pharmacy costs account for approximately 20% of health care costs and therefore is an area that needs to be very carefully managed in order to better control the rising cost of health care. Without state-of-the-art PBM services, Hawai'i would experience increased costs for the same level of care.

If the Legislature feels that there is continued problems with a PBM's delivery of service, we would recommend that this bill be amended to be limited to address only those specific issues rather than impacting the state's entire health care system overall.

We respectfully request that you hold Senate Bill 591, Senate Draft 2- Relating to Pharmacy Benefit Management Companies. Thank you for the opportunity to provide these comments on this measure.

morikawa2 - Grant

**From:** Kevin Glick [kevin@wheelchair-kauai.com]  
**Sent:** Monday, March 14, 2011 4:09 PM  
**To:** HLTtestimony  
**Subject:** SB591

COMMITTEE ON HEALTH  
Rep. Ryan I. Yamane, Chair  
Rep. Dee Morikawa, Vice Chair

Honorable Chair and Vice-Chair:

I am writing in STRONG SUPPORT of SB191. This bill and its provisions will have far reaching impact on the practice of pharmacy and availability of pharmacy services to the residents of our state. Currently the State of Hawaii has invested in the area of 100 million in the development and construction of the School of Pharmacy. The pharmacy school is on track to graduate approximately 90 student yearly of which about ½ or 45 are residents of Hawaii. Currently the large chain drugstores have indicated that there is little hope for jobs for the first class of graduates, much less upcoming classes.

**Mandatory mail order** for the EUTF and other portions of the population has resulted in a decrease in business of anywhere 15% (community pharmacies) to 40% for chain drug stores. This translates directly into decreased demand for pharmacists in Hawaii. For instance if the average pharmacist accounts for 2 million in prescription value per year, the export of EUTF prescription value of 65 million out of state amounts to a net export of in the area of 30 full time pharmacist positions. Pharmacists intervention in the delivery of healthcare and prescription medications can increase the compliance from 40% to as high as 60 to 80%. This translates directly to increased health and decreased healthcare costs for the state. The avoidance of adverse health outcomes in the areas of diabetes, hypertension, and high cholesterol amounts to a tangible increase in the health and welfare of the people of Hawaii.

**The registration of Pharmacy Benefit Managers** in the state is tantamount to the management of the healthcare dollar spend. Currently PBM's can do millions of dollars of business in the state while under no direct governance by any state agency. They are the only stake holders in the healthcare delivery system not governed by state law, or accountable to the state.

**Unfair and punitive audit practices** in the state performed by PBM's outside the state are not used as a method to increase accuracy, or the quality of pharmacy services, but as a means of recovering the value of high dollar prescriptions thereby increasing the profit of the PBM. For instance in my pharmacy the most current audit by the EUTF PBM Informed consists almost entirely (99%) of expensive brand named medications. There was not a single inexpensive generic on the list. This leads me to believe that the intent is not to increase the accuracy or quality of the services provided, but their bottom line. By requiring the PBM's to audit in a fair and equitable manner, they would be obligated to audit their own pharmacies, (of which each PBM has one) in the same manner and under the same guidelines.

**Any willing provider provisions** will go far in protecting access to pharmacy services in patients community. Currently there are plans by form of the states largest chains to develop restricted networks with PBM's. This will have the result of decreasing the financial viability of community pharmacies at the expense of residents health, while further enriching large corporations. If this trend is allowed to continue the final outcome will be the localization of pharmacy services

based upon the business plans of the largest chains in the country, thereby forever changing the healthcare landscape of Hawaii.

**Equal pay for equal services** essentially prohibits PBM's from paying themselves and their associated pharmacies more than other local or non-par providers. This provision in combination with the previous any willing provider clause will go far in creating a level playing field for pharmacy providers both large and small across the state.

**Transparency in the PBM industry** and especially for those doing business in the State of Hawaii will enable business in the state both large and small as well as the State of Hawaii to become informed consumers and purchasers of services. Currently we only have the word of the PBM's that the services they provide are cost effective and of good value. With their track record of across the United States of questionable financial practices transparency in the business of Pharmacy Benefit Management is an idea whose time has come. There can only be good to come from it.

In conclusion pharmacists across the state of Hawaii are ready and willing to work with all of the state holders to develop regulations in the implementation of this bill which will result in the betterment of the healthcare of all the residents of Hawaii.

With the importance of these issues and others the future may hold please make every effort to pass this bill intact from your committee.

Sincerely,  
Kevin Glick, R.Ph.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 14, 2011 9:27 PM  
**To:** HLTtestimony  
**Cc:** Christopher.Ayson@gmail.com  
**Subject:** Testimony for SB591 on 3/15/2011 8:30:00 AM

Testimony for HLT 3/15/2011 8:30:00 AM SB591

Conference room: 329  
Testifier position: support  
Testifier will be present: No  
Submitted by: Christopher Ayson  
Organization: Individual  
Address:  
Phone:  
E-mail: [Christopher.Ayson@gmail.com](mailto:Christopher.Ayson@gmail.com)  
Submitted on: 3/14/2011

Comments:

I support SB591. It only makes sense that people should have the right to choose where they get their prescriptions filled.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 15, 2011 2:12 AM  
**To:** HLTtestimony  
**Cc:** cms23@hotmail.com  
**Subject:** Testimony for SB591 on 3/15/2011 8:30:00 AM

Testimony for HLT 3/15/2011 8:30:00 AM SB591

Conference room: 329  
Testifier position: support  
Testifier will be present: No  
Submitted by: Catherine Kim  
Organization: Individual  
Address:  
Phone:  
E-mail: [cms23@hotmail.com](mailto:cms23@hotmail.com)  
Submitted on: 3/15/2011

Comments:



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 15, 2011 2:10 AM  
**To:** HLTtestimony  
**Cc:** djkim3@hawaii.edu  
**Subject:** Testimony for SB591 on 3/15/2011 8:30:00 AM

Testimony for HLT 3/15/2011 8:30:00 AM SB591

Conference room: 329  
Testifier position: support  
Testifier will be present: No  
Submitted by: Daniel Kim  
Organization: Individual  
Address:  
Phone:  
E-mail: [djkim3@hawaii.edu](mailto:djkim3@hawaii.edu)  
Submitted on: 3/15/2011

Comments:

# LATE TESTIMONY

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, March 14, 2011***

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.

# LATE TESTIMONY

**morikawa2 - Grant**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 15, 2011 7:36 AM  
**To:** HLTtestimony  
**Cc:** denisedk@hawaii.edu  
**Subject:** Testimony for SB591 on 3/15/2011 8:30:00 AM

Testimony for HLT 3/15/2011 8:30:00 AM SB591

Conference room: 329  
Testifier position: support  
Testifier will be present: No  
Submitted by: Denise Kobashikawa  
Organization: Individual  
Address:  
Phone:  
E-mail: [denisedk@hawaii.edu](mailto:denisedk@hawaii.edu)  
Submitted on: 3/15/2011

Comments:  
I support SB591 SD2

**morikawa2 - Grant**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 15, 2011 7:35 AM  
**To:** HLTtestimony  
**Cc:** denisedk@hawaii.edu  
**Subject:** Testimony for SB591 on 3/15/2011 8:30:00 AM

Testimony for HLT 3/15/2011 8:30:00 AM SB591

Conference room: 329  
Testifier position: support  
Testifier will be present: No  
Submitted by: Denise Kobashikawa  
Organization: Individual  
Address:  
Phone:  
E-mail: [denisedk@hawaii.edu](mailto:denisedk@hawaii.edu)  
Submitted on: 3/15/2011

Comments:  
I support SB591 SD2

**morikawa2 - Grant**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 15, 2011 9:28 AM  
**To:** HLTtestimony  
**Cc:** tabandera@yahoo.com  
**Subject:** Testimony for SB591 on 3/15/2011 8:30:00 AM

Testimony for HLT 3/15/2011 8:30:00 AM SB591

Conference room: 329  
Testifier position: support  
Testifier will be present: No  
Submitted by: Nicole Tabandera  
Organization: Individual  
Address:  
Phone:  
E-mail: [tabandera@yahoo.com](mailto:tabandera@yahoo.com)  
Submitted on: 3/15/2011

Comments:  
I support SB591 SD2.