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State of Hawaii
Senate Committee on Commerce and Consumer Protection
Hearing on PBM Regulation Legislation
Testimony of the National Community Pharmacists Association
February 7th, 2012

Chairman Baker and honorable members of the committee:

Thank you for conducting this hearing and for providing NCPA with the opportunity to present the views of the National Community Pharmacists Association (NCPA) regarding the impacts of the Pharmacy Benefit Manager, or PBM, industry on Independent Community Pharmacy. NCPA represents the pharmacist owners, managers and employees of more than 23,000 independent community pharmacies across the United States. In Hawaii alone, there are 95 independent community pharmacies which employ an estimated 1,000 employees. The National Community Pharmacists Association provides this testimony to voice community pharmacies strong support of Hawaii's S.B.2078 as legislation that would require PBMs to simply register annually with the Department of Commerce and Consumer Affairs and authorizes the Department of Commerce and Consumer Affairs to assess an annual registration fee. Let me stress that this level of regulation is fair, reasonable and simply provides the PBM industry with a basic level of oversight.

NCPA would like to take this opportunity and provide the committee with some background on the PBM industry. PBMs have been permitted to operate virtually unchecked since their inception—slowed only by the increasing amount of litigation alleging fraudulent and deceptive business practices filed each year and some extremely limited regulation at the state and federal level. PBMs have continued to work around any regulation and as a result continuously record billions of dollars in profit. Also, the PBM industry is extremely concentrated with the “Big Three” PBMs, Express Scripts, Medco and CVS/Caremark, dominating the large employer market. Although during a recent hearing in the United States Senate Judiciary Committee Subcommittee on Antitrust, Competition Policy and Consumer Rights, regarding the proposed merger of Express Scripts and Medco, PBM executives reported the market is *very competitive* NCPA adamantly disagrees— a recent Morgan Stanley Report revealed that Medco alone controlled the pharmacy benefits for 50% of the top ten employer groups. At the same hearing, Senator Kohl opened his comments by stating that the committee attempted to secure a plan sponsor to testify at the hearing but was unsuccessful due to their “fear of retaliation from large PBMs from which they do business.” These facts are provided to demonstrate the true power of this industry and its unchecked nature of operation.

One can also look at the 2010 annual non-bundled revenues and profits of the PBM industry to demonstrate their true influence and market power. Medco Health Solutions recorded approximately \$66 billion in revenue in 2010, Express Scripts recorded approximately \$45 billion, and CVS/Caremark recorded a staggering \$47 billion. Even the “small PBMs” record staggering revenues with the smallest of the top ten PBMs recording over \$900 million in revenue. Out of the “Big Three”

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PBM's chief executives, each of these individuals recorded over \$10 million in annual compensation in 2010. Taking this into consideration, NCPA feels that the steps being taken by S.B.2078 are quite reasonable.

Even though PBM's report otherwise, the industry is truly unregulated. Hawaii's proposed legislation is a positive first step in the reasonable regulation of PBMs. Let me take a brief moment and state the facts behind PBM regulation. The PBM industry has vigorously resisted any and all attempts at regulation at either the federal or state level. PBMs are not regulated at the federal level. There are only eight states (not fifty) in which the PBM simply has to register with the State Insurance Department. There are six states in which the health plan has the basic right to request the disclosure of certain information from their PBM; however, none of these states actually require the PBM to affirmatively make these disclosures on a regular basis. Also, most likely the health plans are not well versed in what information to request or how to decipher the PBM's purposely complicated records in practical terms.

Regarding abusive PBM audit practices there are a handful of states that have passed "fair audit" provisions to try to curb the frequently overreaching and abusive audits conducted by the PBMs of retail pharmacies. Finally, there is one (not fifty) state board of pharmacy that has any jurisdiction over PBMs. With this being said, there is a long track record of enforcement actions alleging fraudulent and deceptive conduct against the PBMs by state and private entities due to this lack of regulation.

Here is an example, if Walgreens, the largest pharmacy in the country with 7,000 pharmacies, had to drop out of the Express Scripts network because they couldn't negotiate fair terms within their contracts, how can a one or two store independent pharmacy in Hawaii have any chance of negotiating contract terms with these corporate giants? Therefore, what is the harm in requiring these corporate giants to simply register and pay a reasonable fee?

S.B.2078 simply ensures that PBMs are "on the record" with the state of Hawaii. NCPA feels this is an extremely reasonable step in the fight to insure that PBMs operate fairly and reasonably in the pharmacy marketplace.

In conclusion, plan sponsors, pharmacists and even the public should be confident that PBM's are acting in their interests and not just the interests of their profits. S.B.2078 represents a positive first step in the battle against unregulated PBMs across the nation. As testament to how PBMs truly operate, in recent history unbiased studies have proven that there is reason to be concerned. A March 2011 Report of the U.S. Department of Health and Human Services' Office of Inspector General (OIG) examined concerns with rebates within the Medicare Part D program. The report concluded that PBMs are not always passing along expected cost savings. It also stated that lack of transparency raised concerns that plan sponsors may not always receive enough information to oversee services. In addition, a 2009 hearing of the House Oversight Subcommittee on Federal Workforce, Postal Service and the District of Columbia, Susan A. Hayes of Pharmacy Outcome Specialists testified that PBMs engage in spread pricing, where, unbeknownst to the plan sponsor, they pay pharmacies one price for prescription drugs dispensed, but charge the plan sponsor a much higher price, thereby pocketing the difference. The fact that PBMs are withholding funds that should have been passed through speaks strongly to the need for increased oversight and monitoring. Community pharmacy simply requests that an open and fair marketplace exist.

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

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TESTIMONY OF RUSSELL KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON COMMERCE AND CONSUMER
PROTECTION

February 7, 2012
9:30 A.M.

SENATE BILL NO. 2446
RELATING TO MOTOR VEHICLE FUEL

Chairperson Baker and Members of the Committee:

Thank you for this opportunity to provide testimony on SB 2446, which establishes a pilot program to conduct random, unannounced tests of octane and ethanol levels of motor vehicle fuel sold in the State, and establishes civil penalties. The department supports the intent of the bill and has some concerns.

The Measurement Standards Branch currently conducts an annual surveillance electronic testing of octane, however, ethanol is regulated by the Department of Business and Economic Development. The Branch is currently researching costs for equipment and testing to conduct this activity.

The department looks forward to continuing communication with the Legislature, the petroleum industry, and interested stakeholders to craft the best possible program.

Thank you for the opportunity to testify.





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Wednesday, February 15, 2012

To: The Honorable Rosalyn H. Baker
Chair, Senate Committee on Commerce and Consumer Protection

From: 'Ohana Health Plan

Re: Senate Bill 2078-Relating to Professions and Occupations

Hearing: Wednesday, February 15, 2012, 9:30 a.m.
Hawai'i State Capitol, Room 229

'Ohana Health Plan 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 2.4 million Medicaid and Medicare members nationwide. 'Ohana has been able to take WellCare's national experience and that of our local team to develop an 'Ohana care model that addresses local members' health care, long-term care and care coordination needs.

We appreciate this opportunity to respectfully oppose Senate Bill 2078-Relating to Professions and Occupations. The purpose of this bill is to require pharmacy benefit managers (PBMs) to register annually with the Department of Commerce and Consumer Affairs (DCCA), and authorizes the DCCA to assess an annual registration fee.

While we understand the reasons behind this legislation, we cannot support it as it may serve as a disincentive for mainland-based PBMs to enter into contracts with local-based health insurance companies.

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.

Thank you for the opportunity to provide these comments on this measure.