



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 27, 2013

**GOV. MSG. NO. 1329**

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 27, 2013, the following bill was signed into law:

HB65 HD2 SD2 CD1

RELATING TO PRESCRIPTION DRUGS  
**ACT 226 (13)**

*Aloha*  
Signed  
*Neil Abercrombie*

NEIL ABERCROMBIE  
Governor, State of Hawaii

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# A BILL FOR AN ACT

RELATING TO PRESCRIPTION DRUGS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that many pharmacy  
2 benefit managers and other prescription drug benefit plan  
3 providers impose certain requirements, including the requirement  
4 for beneficiaries to purchase prescription drugs from a mail  
5 order pharmacy. The legislature also finds that this  
6 requirement can create significant hardships on beneficiaries in  
7 rural areas. Recent cuts to post office hours in some neighbor  
8 island communities have increased delivery times for  
9 prescription mail orders. These factors may prevent  
10 beneficiaries from promptly obtaining urgently needed  
11 prescription drugs. Furthermore, many beneficiaries, especially  
12 senior citizens, trust and rely on face-to-face interactions  
13 with their local pharmacists, who are more familiar with a  
14 beneficiary's medical history and who can better assist with any  
15 questions relating to other prescription drugs, over-the-counter  
16 medications, or potentially dangerous drug interactions.

17           Mandating prescription drug purchases by mail order denies  
18 beneficiaries of this important interaction, takes away consumer



1 choice, and can create hardships for beneficiaries.  
2 Accordingly, the legislature concludes that beneficiaries should  
3 have the choice to purchase prescription drugs from a mail order  
4 pharmacy or a local retail pharmacy.

5 The purpose of this Act is to:

- 6 (1) Specify that an otherwise qualified retail community  
7 pharmacy that requests to enter into a contractual  
8 retail pharmacy network agreement shall be considered  
9 part of a pharmacy benefit manager's retail pharmacy  
10 network for purposes of a beneficiary's right to  
11 choose where to purchase covered prescription drugs;
- 12 (2) Require a prescription drug benefit plan, health  
13 benefits plan under chapter 87A, Hawaii Revised  
14 Statutes, or pharmacy benefit manager to permit  
15 beneficiaries to fill any covered prescription that  
16 may be obtained by mail order at any pharmacy of the  
17 beneficiary's choice within the pharmacy benefit  
18 manager's retail pharmacy network;
- 19 (3) Require a prescription drug benefit plan, health  
20 benefits plan under chapter 87A, Hawaii Revised  
21 Statutes, or pharmacy benefit manager to file an  
22 annual report with the insurance commissioner



1 disclosing certain amounts, terms, and conditions  
 2 associated with a prescription drug benefit plan; and  
 3 (4) Require affected entities to submit a report to the  
 4 legislature no later than twenty days prior to the  
 5 convening of the regular sessions of 2014 and 2015.

6 SECTION 2. The Hawaii Revised Statutes is amended by  
 7 adding a new chapter to be appropriately designated and to read  
 8 as follows:

9 "CHAPTER

10 PRESCRIPTION DRUG BENEFITS

11 § -1 Definitions. As used in this chapter, unless the  
 12 context indicates otherwise:

13 "Beneficiary of a prescription drug benefit plan" or  
 14 "beneficiary" means a person who is a member, subscriber,  
 15 enrollee, or dependent of a member, subscriber, or enrollee of  
 16 or otherwise covered under a prescription drug benefit plan.

17 "Pharmacy benefit manager" means any person, business, or  
 18 entity that performs pharmacy benefit management, including but  
 19 not limited to a person or entity under contract with a pharmacy  
 20 benefit manager to perform pharmacy benefit management on behalf  
 21 of a managed care company, nonprofit hospital or medical service



1 organization, insurance company, third-party payor, or health  
2 program administered by the State.

3 "Pharmacy benefit manager's retail pharmacy network" means  
4 a retail pharmacy located and licensed in the State and  
5 contracted by the pharmacy benefit manager to sell prescription  
6 drugs to beneficiaries of a prescription drug benefit plan  
7 administered by the manager.

8 "Prescription drug benefit plan" means an accident and  
9 sickness insurance plan or health benefits plan that includes  
10 coverage for prescription drugs. For the purposes of this  
11 definition, a "health benefits plan" has the same meaning as in  
12 section 87A-1.

13 "Prescription drug benefit plan provider" means a person  
14 who provides prescription drug coverage as part of an accident  
15 and health or sickness insurance contract or other type of  
16 health insurance or benefits plan that is offered by the person  
17 and is subject to regulation under article 10A of chapter 431,  
18 chapter 432, or chapter 432D.

19 "Retail community pharmacy" means a pharmacy, permitted by  
20 the board of pharmacy pursuant to section 461-14, that is open  
21 to the public, dispenses prescription drugs to the general  
22 public, and makes available face-to-face consultations between



1 licensed pharmacists and the general public to whom prescription  
2 drugs are dispensed.

3 § -2 Retail community pharmacies; retail pharmacy  
4 network; contractual agreements. (a) An otherwise qualified  
5 retail community pharmacy registered to do business in this  
6 State that requests to enter into a contractual retail pharmacy  
7 network agreement accepting the standard terms, conditions,  
8 formularies, or requirements relating to dispensing fees,  
9 payments, reimbursement amounts, or other pharmacy services  
10 shall be considered part of a pharmacy benefit manager's retail  
11 pharmacy network for purposes of a beneficiary's right to choose  
12 where to purchase covered prescription drugs under section  
13 -3.

14 (b) It shall be a violation of this section for a  
15 prescription drug benefit plan, health benefits plan under  
16 chapter 87A, or pharmacy benefit manager to refuse to accept an  
17 otherwise qualified retail community pharmacy as part of a  
18 pharmacy benefit manager's retail pharmacy network.

19 (c) A contractual retail pharmacy network agreement  
20 entered into under this section shall be renewed annually,  
21 unless agreed to by the parties. If a prescription drug benefit  
22 plan, health benefits plan under chapter 87A, or pharmacy



1 benefit manager who has entered into a contractual retail  
2 pharmacy network agreement with a retail community pharmacy  
3 considers such retail community pharmacy no longer otherwise  
4 qualified, the prescription drug benefit plan, health benefits  
5 plan under chapter 87A, or pharmacy benefit manager may appeal  
6 the retail community pharmacy's qualifications with the  
7 insurance commissioner.

8 (d) The insurance commissioner shall determine the  
9 standards and requirements necessary for a retail community  
10 pharmacy to be deemed "otherwise qualified" for purposes of this  
11 section.

12 § -3 Prescription drugs; beneficiary choice; mail order  
13 opt out. (a) If a retail community pharmacy enters into a  
14 contractual retail pharmacy network agreement pursuant to  
15 section -2, a prescription drug benefit plan, health benefits  
16 plan under chapter 87A, or pharmacy benefit manager shall permit  
17 each beneficiary, at the beneficiary's option, to fill any  
18 covered prescription that may be obtained by mail order at any  
19 retail community pharmacy of the beneficiary's choice within the  
20 pharmacy benefit manager's retail pharmacy network.

21 (b) A prescription drug benefit plan, health benefits plan  
22 under chapter 87A, or pharmacy benefit manager who has entered



1 into a contractual retail pharmacy network agreement with a  
2 retail community pharmacy shall not:

3 (1) Require a beneficiary to exclusively obtain any  
4 prescription from a mail order pharmacy;

5 (2) Impose upon a beneficiary utilizing the retail  
6 community pharmacy a copayment, fee, or other  
7 condition not imposed upon beneficiaries electing to  
8 utilize a mail order pharmacy;

9 (3) Subject any prescription dispensed by a retail  
10 community pharmacy to a beneficiary to a minimum or  
11 maximum quantity limit, length of script, restriction  
12 on refills, or requirement to obtain refills not  
13 imposed upon a mail order pharmacy;

14 (4) Require a beneficiary in whole or in part to pay for  
15 any prescription dispensed by a retail community  
16 pharmacy and seek reimbursement if the beneficiary is  
17 not required to pay for and seek reimbursement in the  
18 same manner for a prescription dispensed by a mail  
19 order pharmacy;

20 (5) Subject a beneficiary to any administrative  
21 requirement to use a retail community pharmacy that is  
22 not imposed upon the use of a mail order pharmacy; or





1           (6) Impose any other term, condition, or requirement  
2           pertaining to the use of the services of a retail  
3           community pharmacy that materially and unreasonably  
4           interferes with or impairs the right of a beneficiary  
5           to obtain prescriptions from a retail community  
6           pharmacy of the beneficiary's choice.

7           § -4 Report to insurance commissioner. (a) No later  
8 than March 31 of each calendar year, each prescription drug  
9 benefit plan, health benefits plan under chapter 87A, and  
10 pharmacy benefit manager shall file with the insurance  
11 commissioner, in such form and detail as the insurance  
12 commissioner shall prescribe, a report for the preceding  
13 calendar year stating that the pharmacy benefit manager or  
14 prescription drug benefit plan is in compliance with this  
15 chapter. The report shall fully disclose the amount, terms, and  
16 conditions relating to copayments, reimbursement options, and  
17 other payments associated with a prescription drug benefit plan.

18           (b) The insurance commissioner shall review and examine  
19 records supporting the accuracy and completeness of the report  
20 and, no later than ninety days after the receipt of the report,  
21 shall make available to a purchaser of a prescription drug  
22 benefit plan and to any retail community pharmacy participating



1 in a retail pharmacy network under section -2 that provides  
2 benefits to beneficiaries of a prescription drug benefit plan a  
3 summary of the amount, terms, and conditions relating to  
4 copayments, reimbursement options, and other payments associated  
5 with a prescription drug benefit plan.

6 § -5 Violations; penalties. (a) The insurance  
7 commissioner may assess a fine of up to \$10,000 for each  
8 violation by a pharmacy benefit manager or prescription drug  
9 benefit plan provider who is in violation of section -2  
10 or -3. In addition, the insurance commissioner may order the  
11 pharmacy benefit manager to take specific affirmative corrective  
12 action or make restitution.

13 (b) Failure of a pharmacy benefit manager to comply with a  
14 previously agreed upon contractual retail pharmacy network  
15 agreement pursuant to section -2 or -3 shall be an unfair  
16 or deceptive act or practice as provided in section 431:13-102.

17 (c) A pharmacy benefit manager or prescription drug  
18 benefit plan provider may appeal any decision made by the  
19 insurance commissioner in accordance with chapter 91.

20 § -6 Application. If this chapter or any provision of  
21 this chapter conflicts at any time with any federal law, then  
22 the federal law shall prevail and this chapter or the relevant



1 provisions of this chapter shall become ineffective and invalid.  
2 The ineffectiveness or invalidity of this chapter or any of its  
3 provisions shall not affect any other provisions or applications  
4 of this chapter, which shall be given effect without the invalid  
5 provision or application, and to this end, the provisions of  
6 this chapter are severable.

7 § -7 Rules. The insurance commissioner may adopt rules  
8 pursuant to chapter 91 to implement the requirements of this  
9 chapter."

10 SECTION 3. Chapter 87A, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13 "§87A- Prescription drugs; mail order opt out option. A  
14 Hawaii employer-union health benefits trust fund health benefits  
15 plan shall permit each beneficiary to fill any covered  
16 prescription in accordance with chapter \_\_\_\_\_."

17 SECTION 4. (a) Each pharmacy benefit manager,  
18 prescription drug benefit plan provider, and the Hawaii  
19 employer-union health benefits trust fund shall submit a report  
20 to the legislature no later than twenty days prior to the  
21 convening of the regular sessions of 2014 and 2015.

22 (b) Each report shall include:



- 1           (1) The number of beneficiaries affected by the provisions  
2           of this measure;
- 3           (2) The number of beneficiaries who opted out of a  
4           requirement to purchase prescription drugs from a mail  
5           order pharmacy or, in the case of a prescription drug  
6           benefit plan subject to regulation under chapter 432D,  
7           Hawaii Revised Statutes, the number of beneficiaries  
8           who opt to purchase prescription drugs from a retail  
9           community pharmacy; and
- 10          (3) The status of the report filed with the insurance  
11          commissioner as required pursuant to section -4,  
12          Hawaii Revised Statutes.

13           SECTION 5. This Act shall not apply to contracts  
14           negotiated between pharmacy benefit managers and community  
15           retail pharmacies with a rural pharmacy designation pursuant to  
16           federal law.

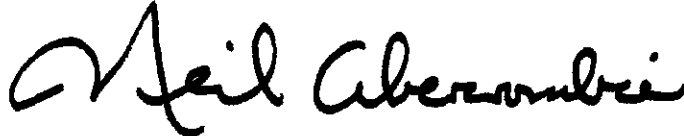
17           SECTION 6. If any provision of this Act, or the  
18           application thereof to any person or circumstance, is held  
19           invalid, the invalidity does not affect other provisions or  
20           applications of the Act that can be given effect without the  
21           invalid provision or application, and to this end the provisions  
22           of this Act are severable.



1 SECTION 7. New statutory material is underscored.

2 SECTION 8. This Act shall take effect upon its approval  
3 and shall apply to all prescription drug benefit plans issued,  
4 renewed, modified, altered, or amended on or after such  
5 effective date.

APPROVED this 27 day of JUN , 2013



GOVERNOR OF THE STATE OF HAWAII

