

161

Honolulu, Hawaii

April 26, 2013

RE: H.B. No. 65
H.D. 2
S.D. 2
C.D. 1

Honorable Joseph M. Souki
Speaker, House of Representatives
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Sir and Madam:

Your Committee on Conference on the disagreeing vote of the House of Representatives to the amendments proposed by the Senate in H.B. No. 65, H.D. 2, S.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PRESCRIPTION DRUGS,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to:

- (1) Allow beneficiaries of prescription drug benefit plans to opt out of the requirement to purchase prescription drugs from a mail order pharmacy and, as an alternative, choose to purchase prescription drugs from a pharmacy within the pharmacy benefit manager's retail pharmacy network;
- (2) Prohibit a pharmacy benefit manager from restricting a beneficiary's choice of pharmacy from which to purchase prescription drugs if the pharmacy is within the network; and



- (3) Require affected entities to report to the Legislature prior to the Regular Session of 2018.

Your Committee on Conference finds that many pharmacy benefit managers and other prescription drug benefit plan providers impose certain requirements, including the requirement for beneficiaries to purchase prescription drugs from a mail order pharmacy. This mail order requirement can create significant hardships on beneficiaries, especially in rural areas, and may prevent beneficiaries from promptly obtaining urgently needed prescription drugs. Furthermore, many beneficiaries trust and rely on face-to-face interactions with their local community pharmacists, who are more familiar with a beneficiary's medical history and who can better assist with any questions relating to other prescription drugs, over-the-counter medications, or potentially dangerous drug interactions.

Your Committee on Conference further finds that mandating mail order prescription drug purchases denies beneficiaries of this important interaction, takes away consumer choice, and can create hardship. In comparison, the implementation of this measure is intended to enhance consumer choice related to prescription benefits delivery for the State's residents by allowing beneficiaries to opt out of mandatory mail order provisions. This measure is also intended to increase competition in the marketplace, foster better utilization of community pharmacists who communicate important prescription drug information and assist in managing the health of consumers, while remaining cost neutral to plans and beneficiaries.

Your Committee on Conference notes that nothing in this measure is intended to interfere with existing incentive programs sponsored by health plans and health maintenance organizations that are designed to encourage wellness and healthy behaviors. Rather, this measure is necessary to ensure that Hawaii continues to have a robust network of pharmacies to serve and provide choices to prescription drug benefit plan beneficiaries in the State.

Your Committee on Conference has amended this measure by:

- (1) Adding a definition for "retail community pharmacy";
- (2) Permitting an otherwise qualified retail community pharmacy that requests to enter into a contractual retail pharmacy network agreement accepting certain standard terms, conditions, formularies, or requirements to be considered part of a pharmacy benefit manager's retail



pharmacy network, for purposes of a beneficiary's right to choose where to purchase covered prescription drugs;

- (3) Clarifying that it is a violation for specified entities to refuse to accept an otherwise qualified retail community pharmacy as part of a pharmacy benefit manager's retail pharmacy network;
- (4) Specifying that a contractual retail pharmacy network agreement between a retail community pharmacy and specified entities shall be renewed annually unless agreed to by the parties, and permitting specified entities to appeal a retail community pharmacy's qualifications with the Insurance Commissioner;
- (5) Permitting the Insurance Commissioner to determine the standards and requirements necessary for a retail community pharmacy to be deemed otherwise qualified;
- (6) Clarifying that if a retail community pharmacy enters into a contractual retail pharmacy network agreement, specified entities shall permit beneficiaries to fill any covered prescription that may be obtained by mail order at any pharmacy of the beneficiary's choice within the pharmacy benefit manager's retail pharmacy network;
- (7) Clarifying that specific entities who have entered into a contractual retail pharmacy network agreement with a retail community pharmacy are prohibited from imposing certain terms, conditions, or requirements on prescriptions, beneficiaries, or the use of services of a retail community pharmacy;
- (8) Requiring specific entities to file an annual report with the Insurance Commissioner disclosing certain amounts, terms, and conditions associated with a prescription drug benefit plan for the preceding calendar year, and requiring the Insurance Commissioner to review and examine records supporting the accuracy and completeness of the report;
- (9) Clarifying violations, penalties, and appeals under the new chapter established by this measure;



- (10) Permitting the Insurance Commissioner to adopt rules to implement the requirements of the new chapter established by this measure;
- (11) Clarifying that a Hawaii employer-union health benefits trust fund health benefits plan shall permit each beneficiary to fill any covered prescription in accordance with the new chapter created by this measure;
- (12) Clarifying that specific entities are required to submit a report to the Legislature no later than twenty days prior to the Regular Sessions of 2014 and 2015, rather than the Regular Session of 2018, and clarifying the scope of the reports;
- (13) Specifying that this measure shall not apply to contracts negotiated between pharmacy benefit managers and community retail pharmacies with a rural pharmacy designation pursuant to federal law;
- (14) Amending the purpose section for clarity;
- (15) Inserting an effective date of upon approval and specifying that this measure applies to all prescription drug benefit plans issued, renewed, modified, altered, or amended on or after such effective date; and
- (16) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of H.B. No. 65, H.D. 2, S.D. 2, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 65, H.D. 2, S.D. 2, C.D. 1.



Respectfully submitted on behalf
of the managers:

ON THE PART OF THE SENATE

ON THE PART OF THE HOUSE

Rosalyn H. Baker

ROSALYN H. BAKER, Chair

Clayton Lee

CLAYTON LEE, Co-Chair

David Y. Ice

DAVID Y. ICE, Co-Chair

Delia Au Belatti

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Angus L.K. McKelvey

ANGUS L.K. MCKELVEY, Co-Chair

Karl Rhoads

KARL RHOADS, Co-Chair



