

HB 62, HD2, SD1

Measure Title: RELATING TO PHARMACY BENEFITS MANAGERS.

Report Title: Pharmacy Benefits Managers; Prohibited Practices

Description: Prohibits a pharmacy benefits manager from using a patient's prescription drug benefits claim information to market to that patient the services of a preferred pharmacy network that is owned by the pharmacy benefits manager, except in certain situations. Effective July 1, 2112. (SD1)

Companion:

Package: None

Current Referral: HTH, CPN

Introducer(s): EVANS, MIZUNO, MORIKAWA, Ing



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI'I S. LOPEZ
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DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

THURSDAY, MARCH 28, 2013
9:30 A.M.

TESTIMONY ON HOUSE BILL NO. 62, H.D. 2, S.D. 1
RELATING TO PHARMACY BENEFITS MANAGERS.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND THE HONORABLE BRICKWOOD GALUTERIA, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify on House Bill No. 62, H.D. 2, S.D., 1 Relating to Pharmacy Benefits Managers. My name is Bruce B. Kim and I am the Executive Director of OCP. **OCP supports the intent of House Bill No. 62, H.D. 2, S.D. 1 but has concerns about its enforcement mechanisms and offers comments.**

The purpose and intent of this measure is to prohibit pharmacy benefits managers from using a patient's claim information to market or advertise to that patient the services of a preferred pharmacy network that is owned by the pharmacy benefits

manager.

OCP agrees that the practice by pharmacy benefits managers of using a patient's private prescription drug claims information to market the services of a preferred pharmacy provider that is owned by the pharmacy benefits manager ("PBM") may require more scrutiny and oversight.

OCP lacks the necessary resources and requisite technical expertise to enforce matters related to the marketing of private health information by out-of-state pharmacy benefits managers doing business in Hawaii. Given the topic of the prohibition, that is, dissemination of protected health information without the knowledge or consent of the patient, this matter may already be subject to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

In addition, federal law may preempt state regulation of employee benefit plans and practices under the Employee Retirement Income Security Act of 1974 ("ERISA"). Before passing a law implicating private health information sharing and/or employee benefit plans, further study should be done to determine what regulations currently apply to this practice.

Thank you for the opportunity to testify on House Bill No. 62, H.D. 2, S.D. 1. I will be happy to answer any questions that the members of the Committee may have.



The Honorable Rosalyn Baker
Hawaii State Capitol, Room 230
415 S. Beretania Street
Honolulu, HI 96813

March 18, 2013

RE: National Community Pharmacists Association (NCPA) Support of H.B. 62

Dear Chairwoman Baker:

On behalf of the National Community Pharmacists Association (NCPA), I offer NCPA's strong support for H.B.62 and respectfully request this legislations favorable advancement through the legislative process. H.B. 62 would protect the right of Hawaii residents to utilize the valuable services of their community pharmacist rather than being forced to obtain their needed prescription medications only through mail order pharmacies that are typically owned by Pharmacy Benefit Managers (PBMs) This legislation not only ensures patient choice, but would also enable Hawaii to take important and needed steps towards leveling the playing field between large PBMs and local community pharmacies and small businesses which are so vital to Hawaii's economy. H.B. 62 would also prohibit a PBM from selling or utilizing health plan beneficiary information that they obtain while processing pharmacy claims.


NCPA represents America's independent community pharmacists, including the owners of more than 23,000 community pharmacies, pharmacy franchises and chains. Together, NCPA members employ over 300,000 full-time employees and dispense nearly half of the nation's retail prescription medicines. In Hawaii alone, there are 98 independent community pharmacies which employ over 1,000 employees.

This bill will allow Hawaii residents to gain the benefit of face-to-face interaction with their trusted community pharmacist if they choose to do so, instead of being forced to utilize an out-of-state mail order pharmacy. This legislation would also prohibit a PBM from selling or utilizing health plan beneficiary information. Under current practices, PBMs frequently sell or otherwise utilize medication utilization and patient data to corporate entities such as pharmaceutical manufacturers at a significant profit. NCPA feels strongly that such data should remain confidential or should not be utilized for the financial benefit of the PBM without the knowledge or express consent of the health plan.

A study done by Wirthlin Worldwide showed that 83% of customers prefer to fill their prescriptions at a community pharmacy rather than through a mail order pharmacy and overall, 72% of customers oppose mandatory mail order plans. Nearly two-thirds of seniors (63 percent) have indicated in a recent study they were fearful of losing access to the pharmacy of their choice if they were required to use mail order and a plurality of seniors expressed the following concerns about using mail order pharmacies, including running out of their medications; obtaining prescriptions in a timely manner; lost, stolen or damaged medications; and the ability to consult with a pharmacist they know and trust. This bill would not prevent Hawaii residents from choosing mail-order if they feel that option is best. It simply allows the freedom of choice a resident of the state of Hawaii deserves and wishes to have.

In conclusion, NCPA respectfully requests that you do all in your authority to advance H.B. 62 through the legislative process. We offer NCPA's full resources should you wish to discuss this issues impact in Hawaii, or its national perspective. Please feel free to contact me at matt.diloreto@ncpanet.org or 703-600-1223 should you have any questions or concerns.

Sincerely,



Matthew J. DiLoreto

Director, State Government Affairs Cc: Members of the Commerce and Consumer Protection Committee

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HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
1050 Bishop St. PMB 235
Honolulu, HI 96813
Fax: 808-791-0702
Telephone : 808-533-1292

DATE: Thursday, March 28, 2013
TIME: 9:30am
PLACE: Conference Room 229

TO

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brickwood Galuteria, Vice Chair

FROM: Hawaii Food Industry Association - Lauren Zirbel, Executive Director

Re: HB 62- Relating to Pharmacy Benefit Managers

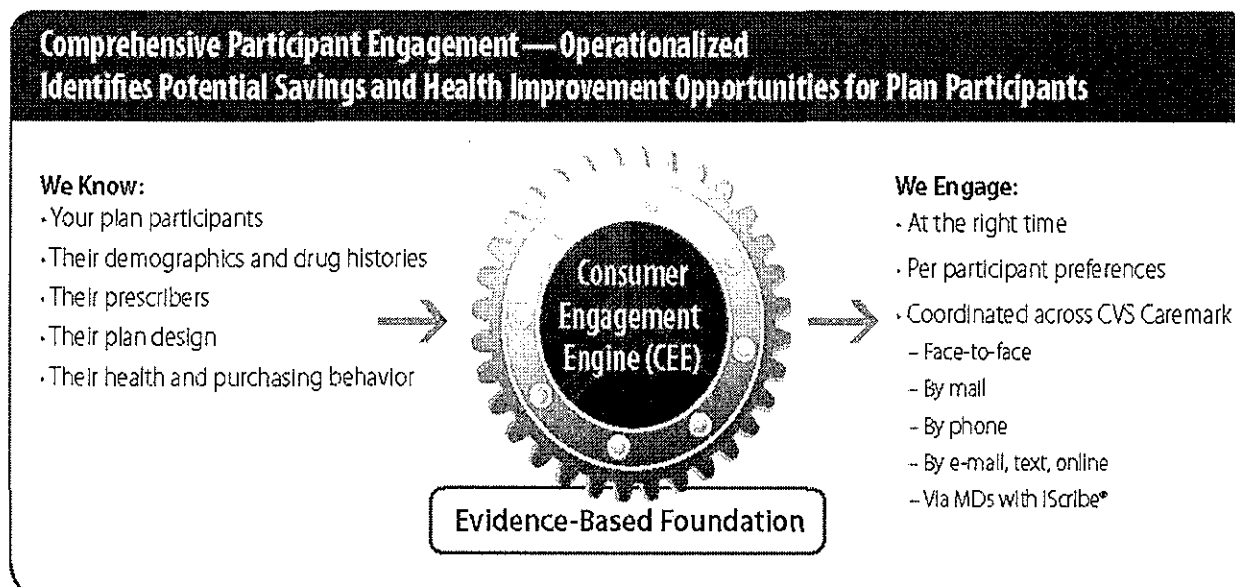
Strong Support

The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers and distributors of food and beverage related products in the State of Hawaii.

I am writing on behalf of HFIA members across the State of Hawaii regarding Pharmacy Benefit Managers, (PBM's) and the importance of increasing oversight as it relates to their use of prescription claims information to directly market the services of an affiliated of wholly owned pharmacy provider.

CVS/Caremark as of January 2013 has become the dominant PBM/Pharmacy/Mail order business in the State of Hawaii. HFIA has calculated that CVS/Caremark either fills, or adjudicates over 80% of the pharmacy claims in the state. Across the United States CVS Caremark fills or manages more than 1.2 billion prescriptions annually. The information from these prescriptions is not simply used to process prescription claims. It

is compiled by CVS Caremark to form a complete medical picture of the patient. As described in a CVS Caremark publication, CVS Caremark then utilizes these complete medical pictures for its own financial gain to market products and services to (or “engage”) the patients. The engagement engine shown below is a graphic example of how this information is processed.



CVS Caremark collects proprietary patient information it receives from non-CVS Pharmacies and transfers that same information to its own CVS pharmacies and other business segments and otherwise uses the information for CVS Caremark’s own financial benefit. CVS Caremark accepts payments from drug companies for directly marketing to those patients who are likely candidates for a drug because of their prescription history. CVS Caremark also directly targets non-CVS patients and solicits their business to CVS-owned retail stores and their purchase of CVS-branded over-the-counter products.

The importance of this act HB62 can not be over stated. By preventing CVS from using patients claims information to manipulate their choice of pharmacy provider we protect the most vulnerable in our society. This act would prevent call centers from repeatedly calling patients with offers of 20% discounts on other goods if they will only fill their prescriptions at a CVS/Longs store. By implying that the member must purchase their pharmacy services from a CVS store during a series of calls is not in the best interest of our patients and is oriented toward bigger profits not better care. For these reason

HFIA respectfully asks that HB-62 be passed intact from this committee with the blessings of its members.

Thank you for the opportunity to provide this testimony.

**Testimony of
Gary M. Slovin / Mihoko E. Ito
on behalf of
Walgreens**

DATE: March 26, 2013

TO: Senator Rosalyn Baker
Chair, Committee on Commerce and Consumer Protection
Submitted Via CPNtestimony@capitol.hawaii.gov

RE: **H.B. 62 H.D.2, S.D.1 – Relating to Pharmacy Benefits Managers**
Hearing Date: Thursday, March 28, 2013 at 9:30 am
Conference Room 229

Dear Chair Baker and Members of the Committee on Commerce and Consumer Protection:

We submit these comments on behalf of Walgreen Co. (“Walgreens”).

Walgreens operates more than 8,200 locations in all 50 states, the District of Columbia and Puerto Rico. In Hawai`i, Walgreens now has 11 stores on the islands of Oahu, Maui and Hawai`i.

Walgreens **supports** H.B. 62 H.D.2, S.D.1, which prohibits a pharmacy benefits manager from using a patient's prescription drug benefits claim information to market to that patient the services of a preferred pharmacy network that is owned by the pharmacy benefits manager.

Walgreens believes that transparency is an important part of the pharmacy industry, and that patients should be in control of their choices when filling their prescriptions. PBMs that own preferred pharmacy networks can seek to limit patients from accessing their pharmacy of choice, by utilizing drug benefits claim information to market to these patients.

Walgreens supports state efforts to regulate pharmacy benefits managers, and believes this parity in the industry is important. For these reasons, Walgreens supports H.B. 62 H.D. 2, S.D.1 and respectfully requests that you pass this measure.

Mahalo for the opportunity to submit comments on this measure.

Gary M. Slovin
Mihoko E. Ito
Tiffany N. Yajima
Nicole A. Velasco

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Honorable Rosalyn Baker, Chair
Honorable Brickwood Galuteria, Vice Chair
Senate Committee on Commerce and Consumer Protection

Thursday, March 28, 2013; 9:30am
State Capitol; Conference Room 229

RE: HB 62 HD2 SD1– Relating to Pharmacy Benefits Managers – In Opposition

Chair Baker, Vice Chair Galuteria, and Members of the Committee:

My name is Lauren Rowley, Vice-President of Government Affairs submitting testimony on behalf of CVS Caremark Corporation (“CVS Caremark”) in opposition to HB 62 HD2 SD1, Relating to Pharmacy Benefits Managers. It is the plan sponsors, including self-insured employer plans, commercial health plans, Medicare Part D plans, state government employee plans such as the Employer Union Trust Fund (EUTF), union plans, and the Federal Employees Health Benefits Program (FEHBP) that determine the pharmacy benefit plan for their beneficiaries and employees. Pharmacy benefit managers (PBMs) do *not* determine the plan design, but administer the benefit under contract with the plan sponsors. **The plan sponsor contractually controls the use of plan beneficiary information by a PBM and the use of that information is also governed by the federal HIPAA privacy rules.**

We believe that HB 62 HD2 SD1 would run afoul of ERISA by not allowing the PBM to execute the plan sponsors’ desired pharmacy benefit plan design for their beneficiaries and employees. PBMs are subject to ERISA regulation because they are service providers to employee benefit plans. All group health plans, whether insured or self-insured, are subject to ERISA, which is a “comprehensive system for the federal regulation of employee benefit plans,” in the words of the Supreme Court (*District of Columbia v. Greater Wash.Bd. of Trade*, 506 U.S. 125, 127 (1992)). As such, the federal statute expressly pre-empts “any and all State laws insofar as they * * * relate to any employee benefit plan.” 29 U.S.C. §1144(a) One of ERISA’s primary goals is to allow employers “to establish a uniform administrative scheme, which provides a standard set of procedures to guide processing of claims and disbursement of benefits.” *Egelhoff v. Egelhoff*, 532 U.S. 141, 147 (2001).

The U.S. Court of Appeals for the D.C. Circuit found that ERISA preempted parts of a District of Columbia statute¹ that required PBMs to follow specific practices in administering benefits because they bound health plan administrators to a particular choice.² The D.C. Circuit Court also held that specifying the specific standard of conduct to which a PBM must conform (that of a fiduciary) also regulated the administration of employee benefits and was preempted by ERISA.³ Like the invalidated DC statute, HB 62 HD2 SD1 would require PBMs to follow a specific practice in its administration of benefits by prohibiting a PBM from requiring patients to receive drug benefits from an affiliated or owned company of the PBM. This prohibition

¹ The relevant sections of the District of Columbia’s Access Rx Act of 2004, *D.C. Code § 48-832.01 et. seq.*, held to be preempted by ERISA were (a) § 48-832.01(a) requiring that a PBM owe a fiduciary duty to a covered entity, (b) § 48-832.01(b)(1) requiring that a PBM notify a covered entity in writing of certain conflicts of interest, and (c) § 48-832.01(d) requiring that if a PBM dispenses a more expensive drug that it substituted for the prescribed drug, it notify the covered entity of the cost of both drugs and of any benefit to the PBM, and transfer back the benefit received to the covered entity.

² *Id.* at 185, 188.

³ *Id.*



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violates the purpose of ERISA's preemption clause which is to afford employers uniform procedures governed by one set of regulations.

HB 62 HD2 SD1 section 481B(a)(1) forbids PBMs from restricting a patient's choice of pharmacy, but then provides under (a)(1): if "use of the individual's prior prescription drug benefits claim information is medically necessary to the health and safety of the individual or the individual has consented to use of the information." The federal HIPAA privacy law and regulations dictate how patient information may be used. HIPAA does *not* require individual consent for a PBM to use a member's prescription information for a range of purposes under treatment, payment and health care operations, including plan administration. A PBM has to use a patient's prescription drug information to process claims efficiently, prevent fraud and abuse, and assure that the PBM can accomplish safety and quality functions like drug utilization review, pharmacy network administration and mail service pharmacy programs. If a PBM were forbidden to use that information, it would place patients and efficient plan administration at risk.

It is important to emphasize that PBM ownership of a mail order pharmacy does *not* result in higher cost to the consumer. The Congressional Budget Office, Government Accountability Office and Federal Trade Commission have all reviewed mail service pharmacy and have affirmed a significant cost savings at mail and an alignment in interest of the PBM to its clients.

In summary, this legislation takes away the ability of plan sponsors to design a cost effective pharmacy benefit plan that best suits their needs and the needs of their beneficiaries and employees, and the ability to offer a uniform pharmacy benefit plan to all of their employees. It also runs afoul of ERISA by not allowing the PBM to execute the desired pharmacy benefit plan design for the plan sponsor's beneficiaries and employees. This legislation will also prohibit CVS Caremark from administering the terms of its current contract with plan sponsors to provide their desired pharmacy benefit plan for their beneficiaries and employees. For the reasons stated above, CVS Caremark respectfully requests this bill be held.

Thank you for the opportunity to testify on this matter of importance.

Lauren Rowley

Vice-President, Government Affairs

CVS Caremark

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Thursday, March 28, 2013

Senate Committee on Commerce and Consumer Protection

Re: HB 62, HD2, SD1, Relating to Pharmacy Benefits Managers

Dear Chair Baker, Vice Chair Galuteria and members of the Committee,

We appreciate the opportunity to testify on House Bill 62, HD2, SD1, and respectfully submit the following written testimony in support of the bill. Times Supermarket is based on Oahu and operates 26 stores with locations in Maui, Kauai and Oahu.

HB 62, HD2, SD1, prohibits a pharmacy benefits manager from using a patient's prescription drug benefits claim information to market to that patient the services of a preferred pharmacy network that is owned by the pharmacy benefits manager.

Times and Big Save Supermarkets support this measure and respectfully request that it move forward.

Thank you for the opportunity to testify.

Respectfully,

Bob Gutierrez
Director of Government Affairs, Times Supermarket



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March 27, 2013

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

From: 'Ohana Health Plan

Re: House Bill 62, HD2, SD1, Relating to Pharmacy Benefit Managers
In Opposition

Hearing: Thursday, March 28, 2013 at 9:30 am
Hawai'i State Capitol, Conference Room 229

'Ohana Health Plan ('Ohana) is a member of the WellCare Health Plans, Inc.'s ("WellCare") family of companies and provides healthcare for over 30,000 Hawai'i residents. Since 2009, 'Ohana has utilized WellCare's national experience to develop a Hawai'i -specific care model that addresses local members' healthcare and health coordination needs. 'Ohana currently provides services for the Hawai'i's Department of Human Services' (DHS) MedQUEST Division for three Medicaid programs: (1) QUEST, (2) QUEST Expanded Access (QExA), and (3) Behavioral Health services for Medicaid-eligible adults who have serious mental illnesses and are participants in the QExA program.

'Ohana **opposes** House Bill 62, HD2, SD1, Relating to Pharmacy Benefit Managers, as drafted, and would respectfully request the bill be amended to exclude its application to health care plans serving Medicare and Medicaid beneficiaries. The stated purpose of this bill is to prohibit pharmacy benefits managers (PBM) from using a patient's claim information to market or advertise to a patient the services of a preferred pharmacy network that is owned by the pharmacy benefits manager.

However, HB 62, HD2, SD1 as drafted, goes much further, and seems to unintentionally regulate all aspects of 'Ohana's Medicaid and Medicare plans' use of PBMs. This bill restricts 'Ohana from appropriately and effectively controlling costs and improving the quality of care delivered to our members.

In Hawai'i, 'Ohana uses a subcontracted PBM, Catamaran, to provide high quality care at a reasonable cost to our members. Catamaran neither owns nor is affiliated with any particular pharmacy and manages 'Ohana's local pharmacy network, as applicable, consistent with the terms of 'Ohana's contracts with DHS and federal guidelines for Medicare. 'Ohana has contracted a large and robust pharmacy network throughout Hawai'i, and our members may choose the pharmacy that best suits their needs. In fact, there are about 220 pharmacies in the State, and, between our Medicaid and Medicare programs, 'Ohana's networks include close to 90% of those pharmacies.

All of the pharmacies in 'Ohana's network are under contract with 'Ohana and are required to meet specific credentialing criteria necessary in order for us to meet our contract requirements with DHS and Medicare; i.e., geographical access to a pharmacy and/or licensure requirements. 'Ohana reserves the right to refuse to allow a pharmacy to participate in our network, or terminate a pharmacy if they do not meet our requirements. For example Ohana reserves the right to exclude a pharmacy from our network if that pharmacy refuses to fill a member's prescription if they will lose money by filling a prescription for a particular drug.

One of our primary concerns about this bill is the limitation it could place on the use of pharmacy information to improve the quality of care we provide to our members. Pharmacy claims information is used by 'Ohana for quality programs that may be inadvertently prohibited by this bill. As an example, if a member is not regularly filling a prescription for a drug they are using, we may recommend a pharmacy that has a home delivery service.

In addition, we are concerned that restrictions on the use of pharmacy data will prohibit contact with our members that also results in significant cost savings to the State. For example, in the past 'Ohana has used member claim information to

negotiate directly with a local pharmacy to reduce an unreasonably high profit margin for a very expensive drug.

In summary, `Ohana Health Plan opposes HB62, HD2, SD1 because it would interfere with our ability to use claims information to provide quality care at a reasonable cost to our members as required under State and Federal law. If it is the intent of the committee to move the bill forward however, we would respectfully request that the bill be amended to clarify that the bill does not apply to government sponsored health plans such as `Ohana.

Thank you for the opportunity to testify on this measure.

Lifeway Pharmacy

Lihue

Facsimile

Date March 10, 2013

Number of pages including cover sheet 1

TO: Senator Rosalyn Baker

Phone

Fax Phone (808) 586-6071

FROM: Lianne Malapit, Pharm.D.

3-3295 Kuhio Highway,

Ste 102

Lihue, HI 96766

Phone Cell (808) 639-1891

Fax Phone (808) 212-1716

CC:

REMARKS: Urgent For your review Reply ASAP Please Comment

-SUPPORT HB 62-

Dear Senator Baker,

A hearing is scheduled Mon., 3/11 for HB 62. Please pass HB 62. HB 62 will prevent PBMs from using the billing information I submit to them when filling a patient's prescription and use it to contact the patient in order to convince the patient to switch to a pharmacy the PBM owns.

Last week I noticed that my long time patient, R.A., did not come in last month for his monthly prescription which I special order for him every month. I called his MD to see if he picked up a rx last month or was ill and found that he did get a rx from the MD and filled it at Safeway. My staff contacted the patient to see if he was ill or needed other help w our free delivery service. The patient told my staff that he received a call from his insurance company who told him to fill his prescription at Safeway so he thought he could no longer come to us, his usual pharmacy, and told us he was rather upset that he had to switch when he has an established, long relationship with us "who knows him, his meds and history". Lifeway Pharmacy never stopped and continues to be a provider for his insurance. He brought his prescription to us last week, we filled it as usual for his usual copay of \$0 and he asked us why the insurance company would lie to him and tell him to go to Safeway. We had no answer for him. Please pass HB62 so such sly dealings of large PBMs stop misleading, steering patients away from clinics and pharmacies to profit the PBM at the patient's expense.

The professional pharmaceutical and personal care independent pharmacies provides to patients is valuable and such care should not be steered away from to profit PBMs.

Please, by your authority given, pass HB 62.

Thank you for your dedication and work in serving the many people in Hawaii.

Lianne Malapit, Pharm. .D

Confidentiality Notice: Confidential Health Information Enclosed

Protected Health Information (PHI) is personal and sensitive information related to a person's health care. It is being faxed to you after appropriate authorization from the patient or under circumstances that do not require patient authorization. You, the recipient, are obligated to maintain it in a safe, secure and confidential manner. Re-disclosure without additional patient consent or as permitted by law is prohibited. Unauthorized re-disclosure or failure to maintain confidentiality could subject you to penalties described in federal and state law.

To the Honorable Hawaii State Senators & Representatives:

Large PBMs (Pharmacy Benefit Managers) are overstepping their role as originally intended in simply being a switch to run pharmacy prescription claims through. Practices of PBMs today are causing patients harm and damage to the infrastructure of the healthcare system regarding pharmacy practice.

PBMs have now brought these practices to Hawaii which are aimed at increasing their profits by pushing prescriptions to be filled at the pharmacies owned by the PBMs using methods such as forcing mandatory mail order to have rx's filled only at the pharmacies they own or deceptively guiding patients to use their PBM owned networks. Today in Hawaii we see the intentional misuse of the term "Mail Order" where CVS ignores the national pharmacy guidelines of mail order where prescriptions should be MAILED to the patient, but they do not follow the rules and instead have patients pick up prescriptions at their PBM owned retail pharmacies in order to force the mandatory mail order stipulation on patients and get around the fact that they can't serve many patients by the true federal pharmacy rules of mail order due to barriers such as: patients do not receive mail in their rural area, patients don't own a credit card or have a checking account, patients with communication difficulties who speak English as a second language, etc. There are many patients who are handicapped, elderly or busy working two jobs who tell us they are having great difficulty finding transportation to a Longs CVS/do not receive mail in their rural area/have to pass several towns and pharmacies to get to a Longs CVS Pharmacy and are thus often going days without their needed medication. My pharmacists and I routinely counsel patients who come to our pharmacies to answer their many health or medication-related questions because they're not adequately served by mail order or a too busy chain pharmacy. Several patients have opted to pay outright for their medications at other pharmacies just to get their needed medications because their plan isn't allowed to be honored at other pharmacies other than CVS and they are outraged that they pay premiums and have coverage but are having great difficulty getting their prescriptions.

A study just released by the largest Community Pharmacy Organization, the National Community Pharmacist's Association, found that non-chain community pharmacies actually save the plan sponsor more money as they give greater personal care in drug selection and utilization, working more closely with the physician and patient, utilizing generics to a greater degree than mail order pharmacies who instead often select drugs to be on their formularies which give the PBM greater rebates by using expensive, brand name drugs. As comments to the study mentions, this and other studies over the years repeatedly show cost savings with prescriptions filled at independent pharmacies vs large PBM owned pharmacies which blows a hole in their whole premise that mail order and PBM pharmacies save plan sponsors money.

On top of PBMs forcing certain groups of people to fill prescriptions at their own pharmacies by mandatory mail order, another harmful practice to the healthcare structure is the PBM often simultaneously cuts reimbursements to other pharmacies which accept other insurance groups that the PBM runs, running competing pharmacies out of business (my pharmacies have experienced a drastic and detrimental drop in prescription payments for our prescriptions with CVS's debilitating reimbursements. The drop is so big it's not only stopped hiring and growth, but is threatening the closure of our three stores, two of which are in rural areas with not another pharmacy for many miles.) Please note that Waianae Drug closed last week due to the cut in CVS reimbursements in the last two months which has caused them to go out of business after decades of serving people on the westside of Oahu, leaving only a CVS Longs in the area standing/ The PBM can now raise their prices without competition.

Patient care decreases and study after study shows adherence to proper medication usage decrease hospital stays and adherence to proper drug usage is optimized when the patient has face to face communication with a pharmacist rather than a mailbox or a chain that is too busy for them.

Please support and pass HB 62 which will stop PBMs from using prescription data collected from non PBM owned pharmacies to market patients in order to push them to their PBM owned pharmacies.

Please also support and pass HB 65 which will allow patients who wish to, opt out of mandatory mail order and get their prescriptions where it best suits their needs. Patients who wish to use mail order many continue to do so without any changes.

By your authority, please help Hawaii's people have access to medications and proper pharmacy care. Thank you for your dedication and service to the people and betterment of Hawaii and for hearing my testimony as I witness it on the front lines of patient care in our communities as a pharmacist in Hawaii.

Respectfully submitted,



Lianne Malapit, Pharm. D.

(808) 120-1891

Brian Carter RPh.
Hawaii Pharmacist since 1997
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808 645-0491

Honorable Members of the Senate,

I strongly support *HB62*

This week I have identified 2 cases where the physician was contacted by Longs/CVS for new prescriptions for patients that have NEVER been to a Longs drug store.

I found this out because when the patient called my pharmacy for a refill and there were none on the prescription I contacted the Dr.. The Dr.'s office informed me that the prescription had already been sent into Longs Drugs. The Dr.'s nurse informed me that Longs requested a refill so she had the Dr. sign the request and send it back to Longs. The Patient was NEVER MADE AWARE that the prescription was sent to Longs and has never had a prescription filled at a Longs pharmacy. **The only way for them to have this information was to get it from a claim that I had submitted to CVS/Longs and use it to illegally contact the Dr. (HIPPA violation) for a prescription without the patient ever knowing.** If the patient was to contact the nurse instead of contacting the pharmacy she would have been told that her prescription was at Longs/CVS and would be told to pick it up there. **This has to be stopped.** It is anti competitive and sneaky.

I have found many cases where CVS has settled lawsuits by paying large fines for illegal business practices. This one I found on a 2 second Google search.

<http://diamondbar-walnut.patch.com/articles/cvs-settles-2-million-consumer-lawsuit-brought-by-prosecutors-in-la-riverside-ventura-counties>

This company has and will continue to operate illegally in our state unless we pass legislation to stop them.

Please pass HB 62.

Thank You,

Brian Carter RPh

William Farlander
Hawaii Pharmacist since 1972
farx43@gmail.com
808 335-5342

Honorable Members of the Senate,

I strongly support HB62

The way a PBM works in Hawaii is to first contract with the large insurance companies (like HMSA) and establish a rate for their cost saving services (usually a bit less than they spent the year before). The way they "save" this money is by managing the formulary for medications (deciding which medications are covered and deciding which need "prior authorization"= not covered). These decisions are made by the PBM's clinical pharmacist who determines whether a medication is being used for a FDA approved indication. Unfortunately the FDA indications do not include off label uses as well the FDA has not approved MANY of the medications we use for patient care on a daily basis. (1)These CLINICAL decisions need to be regulated as such. PBM's are the only health care entity that is not regulated in our state, Doctors, Pharmacists, Hospitals, Insurance companies even Beauticians and Barbers have a professional license but not PBM's?

They also manage the reimbursement structure for pharmacy providers in Hawaii which as of this year is one of the lowest in the nation. (in many cases pharmacies are not paid enough to cover the costs of the medication) There has been many cases where PBM's have been known to report to an insurance company that they reimbursed a pharmacy far differently than they actually have creating a profit for the PBM exceeding 10 and 20 dollars per prescription. This is while pharmacies are being paid at or below their costs. As a service provider assuming the risks and responsibilities of actually caring for patients I find it appalling that these PBM's are taking huge profits without a shred of concern or responsibility for the patient.

http://www.policychoices.org/pharmacy_benefit_managers.shtml

The dominate PBM here CVS/Caremark owns Longs drug stores. Patient information which is protected by the HIPAA laws (<http://www.hhs.gov/ocr/privacy/>) is collected by

CVS/Caremark used illegally to identify patients who use pharmacies other than Longs (CVS). These patients are called at home and made to believe that they can save money by using a Longs pharmacy. This is not only illegal but not true in many cases.

Meanwhile, Longs exorbitant wait times create such a barrier to receiving pharmacy care that many patients give up trying to get their medications and go without. This situation may create a "savings" for the PBM but causes many unnecessary readmissions to hospitals and return visits to the doctor. This kind of scenario places the public in danger.

We desperately need to have some control over this irresponsible and out of control situation. Please pass HB 65 and give patients back control over the most important part of the health care system, their treatment.

Thank you for the opportunity to testify for this important piece of legislation.

William Farlander RPh.

1. Medications not approved by the FDA (ex. ASPIRIN, Acetaminophen, Oxycodone, Codiene, Fluoride, Digoxin, Nitroglycerine, Thyroid tabletsa good list is at http://www.ijpc.com/Patient_Info/Unapproved_Drugs.pdf) Many of other medications are approved by the FDA but not for certian indications. Gabapentin is approved as a seizure medication but is used for diabetic neuropathy. PBM Clinical Pharmacists or Physicians ***decide*** which of these medications should be covered or not for patients.

<http://www.cms.gov/Medicare/Health-Plans/MedicareAdvtgSpecRateStats/Downloads/Advance2014.pdf>

HB62

Submitted on: 3/27/2013

Testimony for CPN on Mar 28, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Okamura, R.Ph.	Individual	Support	No

Comments: As a community pharmacist, I have dealt with numerous patients who were under the impression they could not continue to obtain their prescriptions from my pharmacy. The confusion was due to mailings which intended to steer patients to PBM-owned pharmacies. Many patients have established relationships with their community pharmacist which ultimately benefits the quality of care they receive. It is not in the best interest of the patient and it is a conflict of interest when a PBM steers their patients to its own pharmacy.

HB62

Submitted on: 3/22/2013

Testimony for CPN on Mar 28, 2013 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald Taniguchi, Pharm.D.	Individual	Support	No

Comments: Support for HB62,HD2,SD1