

HB62

**LATE
TESTIMONY**



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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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON HEALTH

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

MONDAY, MARCH 11, 2013
4:00 P.M.

TESTIMONY ON HOUSE BILL NO. 62, HD2
RELATING TO PHARMACY BENEFITS MANAGERS.

TO THE HONORABLE JOSH GREEN, CHAIR,
AND TO THE HONORABLE ROSALYN H. BAKER, 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, Relating to Pharmacy Benefits Managers. My name is Bruce B. Kim and I am the Executive Director of OCP. **OCP takes no position on the merits of House Bill No. 62, H.D. 2 but submits the following comments:**

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 is a concern.

OCP lacks the necessary resources and requisite technical expertise to take on enforcement oversight on 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 whether the claimed practices constitute antitrust violations under existing statutes or may already be prohibited by HIPAA or ERISA, as the penalties provided for by HIPAA and ERISA are easily severe enough to dissuade entities regulated by HIPAA or ERISA from violating them.

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



3375 Koapaka Street, D-108
Honolulu, HI 96819

Phone: (808) 831-0811
Fax: (808) 831-0833

Monday, March 11, 2013

Senate Committee on Health

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

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

We appreciate the opportunity to testify on House Bill 62, House Draft 2, 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, 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

Re: H.B. No. 62
H.D. 1

March 11th, 2012

Senator Josh Green
Chair Senate Committee on Health
Senator Rosalyn Baker
Vice Chair Senate Committee on Health
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Sir:

Hawaii Community Pharmacists Association, (HCPA) wishes to provide this letter of **STRONG SUPPORT** for this bill.

Pharmacy Benefit Managers such as CVS/Caremark and Express Scripts routinely utilize patients claims and or medical information to market the goods and services of their wholly owned mail order pharmacies as well as wholly owned brick and mortar pharmacies. Programs such as CVS/Caremarks' "Customer Engagement Engine" gather claims information that is then used to steer patients to their own pharmacies. In addition PBM's utilize a variety of inducements up to and including developing closed networks of pharmacies often excluding the patients community pharmacy in order to boost their profits at the expense of patient choice.

Hawaii Community Pharmacists Association feels strongly that patients medical claims information is protected health information and should only be utilized for medically necessary purposes. In addition when this claims information originates from a non PBM owned pharmacy HCPA believes that the information is proprietary business information and its use for marketing purposes anticompetitive. Currently the major PBM in the Hawaii market CVS/Caremark routinely uses both patient information and private claims information to market non-CVS/Caremark patients to leave their current pharmacy.

For the reasons stated above HCPA strongly supports this bill and the restrictions it would place on the use of protected patient information.

Sincerely,

Kevin Glick, R.Ph.
HCPA Chair
Hawaii Community Pharmacists Association
3-3295 Kuhio Hwy, Ste. 102
Lihue, HI 96766

Dear Honorable Senator Green,

A hearing is scheduled today, Monday, March 11, 2013, for HB 62, which is being heard by your Senate Health Committee. HB 62 will prevent PBMs (Pharmacy Benefit Managers) such as CVS/Caremark and others from using the billing information to try to coerce the patients into ordering prescriptions via mail from them.

One of my customers has complained to me that she and her husband are always receiving mail solicitations from CVS urging them to purchase all of their chronic medications through their mail order system. Many seniors such as herself and her husband have a difficult time understanding these solicitations and do not have the money to purchase the high end (brand) 90 day prescriptions as the mail order has wanted them to do so. Especially on the refrigerated items such as insulin and other refrigerated prescription items. The senior citizens should have the right to choose to pick up their prescriptions from the local pharmacy if they choose without being bombarded by the continuous mailings from the PBMs.

Sincerely,

Miles Nakatsu, Pharmacist

Ululani Pharmacy

868 Ululani St., Hilo, HI 96720



TESTIMONY ON HOUSE BILL NO. 62, RELATING TO PHARMACY BENEFITS MANAGERS

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, THE HONORABLE DEREK THE HONORABLE S.K. KAWAKAMI, VICE CHAIR, THE HONORABLE SENATOR JOSH GREEN, CHAIR, THE HONORABLE SENATOR ROSALYN H. BAKER, VICE CHAIR AND THE MEMBERS OF THE COMMITTEE:

Mina Pharmacy appreciates the opportunity to submit testimony in strong support of House Bill 62. Mina Pharmacy is a locally owned and operated pharmacy chain with 15 retail and long-term care locations, serving residents throughout the state of Hawaii with locations on Oahu, Maui and the Big Island of Hawaii.

HB 62 prohibits PBMs from using protected patient data to market their own pharmacy network.

If passed, this bill will enable patients:

The right to choice,

Access to speak in person with their community pharmacist and receive specialized services therefore be more likely to remain adherent to medication regimen,

The right to protected health information,

Not be bombarded with marketing collateral to use PBM preferred medications,

Are not be led to believe they must utilize mail order, and

Have the ability to access a local community pharmacy location with which they are familiar.

If passed, this bill will also assist in keeping with our fiscal responsibility to:

Ensure the community local pharmacies have sustainability,

Provide jobs to our local community,

Help support the Hawaii economy.

Thank you very much for the opportunity to provide testimony.

Miri Yi

Director of Business Development, Client Services

Mina Pharmacy and Mina Long Term Care

3375 Koapaka Street #F245

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From: mailinglist@capitol.hawaii.gov
To: [HTHTestimony](#)
Cc: acchun@hawaii.edu
Subject: *Submitted testimony for HB62 on Mar 11, 2013 16:00PM*
Date: Sunday, March 10, 2013 5:49:52 PM

HB62

Submitted on: 3/10/2013

Testimony for HTH on Mar 11, 2013 16:00PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Aaron Chun	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HB62

Submitted on: 3/11/2013

Testimony for HTH on Mar 11, 2013 16:00PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Cathy Kadokawa	Individual	Support	No

Comments:

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HB62

Submitted on: 3/10/2013

Testimony for HTH on Mar 11, 2013 16:00PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Kerri Okamura	Individual	Support	No

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HB62

Submitted on: 3/10/2013

Testimony for HTH on Mar 11, 2013 16:00PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Tricia Anderson	Individual	Support	No

Comments:

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Date: Sunday, March 10, 2013 7:27:55 PM

HB62

Submitted on: 3/10/2013

Testimony for HTH on Mar 11, 2013 16:00PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
William Snider	Individual	Support	No

Comments: Please vote in support of this bill. Seems like a conflict of interest for industry of health care to continue to allow big business to profit by such activity.

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