HB 65, HD2

Measure Title:	RELATING TO PRESCRIPTION DRUGS.
Report Title:	Prescription Drugs; Mail-Order Pharmacy; Opt out
Description:	Allows beneficiaries of prescription drug benefits providers to opt out of the requirement to purchase prescription drugs from a mail-order pharmacy and may alternatively purchase prescription drugs from a retail pharmacy. Effective July 1, 2112. (HB65 HD2)
Companion:	
Package:	None
Current Referral:	CPN/JDL, WAM
Introducer(s):	EVANS, MCKELVEY, MIZUNO, MORIKAWA, Ing

NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION AND JUDICIARY AND LABOR

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Tuesday, March 19, 2013
9:45 a.m.

TESTIMONY ON HOUSE BILL NO. 65 H.D. 2 – RELATING TO PRESCRIPTION DRUGS.

TO THE HONORABLE ROSALYN BAKER AND CLAYTON HEE, CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department submits the following comments on this bill.

The intent of the bill is to allow prescription drug beneficiaries to opt-out of a requirement to purchase prescription medications through mail-order. Providing consumers a choice is good; however, the result may be increased prescription drug costs. Furthermore, the Department has concerns regarding the provisions which require the Insurance Commissioner to enforce the opt-out provision on the pharmacy benefit managers. The Insurance Division does not license pharmacy benefit managers and their activity is not regulated by the Insurance Code.

We thank this Committee for the opportunity to present testimony on this matter.

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION AND JUDICIARY AND LABOR
ON
HOUSE BILL 65, H.D. 2

March 19, 2013

RELATING TO PRESCRIPTION DRUGS

House Bill No. 65, House Draft 2, will allow beneficiaries of prescription drug benefits providers to opt out of the requirement to purchase prescription drugs from a mail-order pharmacy and as an alternative allow the purchase of prescription drugs at a retail pharmacy; prohibit a pharmacy benefit management company from restricting a patient's choice of pharmacy to include a requirement to receive prescription medications from mail-order pharmacies; and also prohibits a pharmacy benefits manager from providing incentive co-payments to members for the utilization of the mail order channel.

We oppose this bill. First, the Department of Budget and Finance has serious concerns that this bill would eliminate from the current Hawaii Employer-Union Health Benefits Trust Fund (EUTF) benefit plans the mandatory mail order/maintenance choice and specialty drug carve out benefits which would impact the costs for the subscribers, their dependent beneficiaries, and employers. Second, this bill would eliminate any pharmacy network, and this would require the EUTF and Kaiser to pay the charges that are rendered by any pharmacy, without regard to any existing contracted pharmacies or contracted discounts. These impacts would be counter to cost control measures which have been implemented by the EUTF that have benefited the overall group of subscribers, dependent beneficiaries, and the employers.

While this bill would benefit a certain group, it would in effect increase the overall costs for the majority of subscribers, their dependent beneficiaries, and the employers through higher premiums and co-payments and would impact both the active employee and retiree drug benefits. This bill, by increasing the overall cost for retiree benefits would also increase the State's already substantial Other Post-Employment Benefits liability which is driven primarily by the costs of these benefit plans. Finally, another consequence of this bill is that it could make it more likely for the costs of retiree benefit plans to one day exceed the cap rates as established in the statute and thereby could result in out of pocket premium costs being partially borne by retirees in addition to possibly higher drug co-payment amounts.

TESTIMONY BY SANDRA YAHIRO
ACTING ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION AND JUDICIARY AND LABOR
ON
HOUSE BILL 65, H.D. 2

March 19, 2013

RELATING TO PRESCRIPTION DRUGS

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees (Board) met on February 26, 2013, and discussed House Bill 65, H.D.1. **The Board opposes this bill.**

House Bill 65, H.D.1 proposes three things. First, prescription drug plan enrollees must have the option to opt out of any 'mandatory' mail order program. Second, a pharmacy benefit manager (PBM) may not restrict a member's choice of pharmacy from which to receive prescription medications. And, third, a PBM may not offer lower co-pays to encourage participation in a mail-order program.

We would like to point out that it is not the PBM who dictates to EUTF whether or not to offer mandatory mail order, or whether or not to restrict the plan's network (participating) pharmacies, or whether or not to offer lower co-pays to encourage mail-order. Rather these are programs that are offered by the PBM which EUTF has chosen to use as part of our prescription drug plan.

Currently, over 37,000 EUTF members (active employees and non-Medicare retirees and their dependents) use some form of channel through mail order or through visiting a CVS Longs pharmacy to pick up their long-term (maintenance) medications at lowered co-payments. EUTF members pay $10 for a 90-day supply of generic maintenance medications through mail order. However, if this bill passes, EUTF members would pay $15 for the same 90-day supply. This will result in a higher cost to members.

If this bill passes and, for example, only 20% of the current 37,000+ members opt out of mail-order, it would cost the plan approximately $2.5 million more per year. Of the $2.5 million, approximately $1.4 million would be the increased cost to members per year.

The EUTF Board believes that EUTF should be allowed to design prescription drug plans that benefit both the employees and employers by implementing cost-saving measures, such as lower co-pays with mail-order.

The EUTF Board respectfully requests that this bill be held.

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. 65

Dear Chairwoman Baker:

On behalf of the National Community Pharmacists Association (NCPA), I offer NCPA's strong support for H.B. 65 and respectfully request the favorable advancement of this piece of legislation. H.B. 65 is a bill that would protect the right of Hawaii residents enrolled in the employer-union health benefits trust fund to utilize the valuable services of their community pharmacist, instead of being forced to obtain their needed prescription medications strictly through the mail. This legislation not only preserves patient choice, but would also enable Hawaii to take important and needed steps towards leveling the playing field between large Pharmacy Benefit Managers (PBMs) and local community pharmacies which are so vital to Hawaii's economy.

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 Hawaiians.

Those opposing this legislation will attempt to use a common scare-tactic to gain support from sta te legislators. Their false claim is that supporting the advancement of H.B. 65 will result in cost increases to health plans, beneficiaries and government programs. History has proven that there is little credibility to such inaccurate statements. In 2012, Pennsylvania and in 2011 New York both enacted anti-mandatory mail order legislation with the state legislature scoring both as cost-neutral. Typically, the PBM industry, when faced with any type of legislation that seeks to enforce any limits to their business model, typically makes the blanket statement that the legislation "will raise costs." Kentucky legislation that would require the PBMs to provide needed disclosures to pharmacists about how they will be reimbursed for generic drugs has advanced to the governor's desk with no fiscal note attached despite the PBMs dire predictions of increased costs. In addition, limited PBM transparency provisions were included in the Affordable Care Act (ACA) for PBMs serving the Exchanges and Part D. These provisions were also deemed "cost-neutral" by the Congressional Budget Office (CBO). The PBM industry adamantly claimed that all of the above examples would result in significant cost increases to the programs they impact. Unbiased government review bodies continue to claim otherwise.

Another relevant example to consider is the recent actions of the Oklahoma State and Education Employees Group Insurance Board. In 2011, this group was moving forward with plans to require its beneficiaries to use out-of-state mail order pharmacies for all maintenance medications based on the assumption that mail order pharmacy is cheaper. Once word spread, Oklahoma patients and pharmacists pushed back, challenging these assumptions and asked for a chance to demonstrate the savings community pharmacy could bring to the table. Ultimately, a new plan proposed by pharmacists was adopted to achieve both greater savings and a level playing field between local independent pharmacies, chains and mail service pharmacies. To date the state has not moved towards another mandatory mail order program thanks to the savings achieved by working with community retail pharmacists.

100 Daingerfield Road
Alexandria, VA 22314-2888
(703) 683-8200 PHONE
(703) 683-3619 FAX

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. In another recent study, nearly two-thirds of seniors (63 percent) indicated that they were fearful of losing access to the pharmacy of their choice if they were required to use mail order. That same study showed that a plurality of seniors expressed the following concerns about using mail order pharmacies: 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 state employees from choosing mail-order if they feel that option is best. It simply preserves the freedom of choice that an employee of the state of Hawaii deserves and desires.

In conclusion, NCPA respectfully requests that you do all in your authority to advance H.B. 65 through the legislative process. We offer NCPA's full resources should you wish to discuss this issue's impact in Hawaii, or its nationwide implications. 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

Re: H.B. No. 65
H.D. 2

March 18th, 2012

Senator Rosalyn Baker
Chair Senate Consumer Protection
Senator Brickwood Galuteria
Vice Chair Consumer Protection
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawaii

Sir:

The Hawaii Community Pharmacists Association, a professional pharmacists' association, respectfully submits this testimony in **strong support of House Bill 65, HD2**. .

Professional pharmacists are an indispensable part of the successful health care team for a majority of patients. The portion of premiums going to prescription medication has rapidly increased over the past several years as new discoveries have made it possible to avoid expensive and risky medical interventions such as surgery and even transplantation. The trend continues to accelerate, but the trend is a solution, not a problem. The trend does mean, however, that professional pharmacists are playing and will play an increasingly important role on the health care team as medication management becomes more complex and plays an even more important role. Professional pharmacists cannot play their role through the mails.

If health plans began requiring that patient access to their doctors, physical therapists or other health care providers be limited to telephone calls or email, or even video calls, to allegedly save money, a bill prohibiting the restriction would surely sail through the Legislature. The situation is not significantly different with professional pharmacists. Ask any doctor today and they will tell you that they and their patients rely on pharmacists for knowledge of medications because the field has become too complex for physicians to master along with the other demands of keeping up in their specialties and with modern medicine's advances.

Patients with new prescriptions and patients who take multiple medications, especially for chronic conditions, are at highest risk for accidents involving medication. For many, the professional pharmacist is the only health care provider who carefully reviews interactions and visualizes a patient's physical presentation before dispensing medication. It is not enough to do that once when dispensing new medication. Patients see new or different doctors, and may have prescriptions filled at more than one pharmacy. The professional pharmacist takes stock of everything involving a patient's medication before dispensing, and visualization and interview, as well as familiarity with the patient, are all essential components of safe medical management.

In addition to the foregoing, Hawaii law requires all health insurance plans to prove, whenever the insurance commissioner orders, that they provide adequate access to health care services. The law provides no exception for medication management. Mandatory mail order denies patients access to face-to-face contact with a professional pharmacist. It creates a disparity between what Medicare requires, adequate access to brick-and-mortar pharmacies, for a large portion of our population. (Federal law has specific access requirements for Medicare Part D.) In litigating access to pharmacy benefits before the insurance commissioner in 2008, there was never any question that HRS § 432E-3 requires health plans to provide access to brick-and-mortar pharmacies equal to or better than that required for Medicare Part D subscribers.

You have many good reasons before you for passing House Bill 65, HD2. The opposition, which argues that mail order "saves money" is based on the very narrow view that pharmacy practice involves shoving pills in bottles and affixing a proper label. Virtually anything can be made to appear cost-effective by applying a sufficiently skewed or narrow view. We all know that the narrow view is far from the true picture of modern professional pharmacy. Indeed, this Legislature saw fit, wisely so, to establish a School of Pharmacy in the University of Hawaii, foreseeing the increasingly important role professional pharmacists will play in medicine of the future. Permitting health plans to mandate mail order prescriptions undermines purposes of the School of Pharmacy and accepts a narrow and inaccurate view of health care costs.

In conclusion HB-65 is the single best way to assure that patients continue to receive the appropriate face to face pharmaceutical care that has been shown to be the single largest determinate of adherence to drug regimens, most cost effective use of generic medications, and consistently the choice of patients across the country.

Sincerely:

Kevin Glick, R.Ph.
HCPA Board Chair

HMSA

Blue Cross
Blue Shield
of Hawaii

An Independent Licensee of the Blue Cross and Blue Shield Association

March 19, 2013

The Honorable Rosalyn H. Baker, Chair
The Honorable Clayton Hee, Vice Chair

Senate Committees on Commerce & Consumer Protection and Judiciary & Labor

Re: HB 65, HD2 – Relating to Prescription Drugs

Dear Chair Baker, Chair Hee, and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 65, HD2, which would allow health plan beneficiaries to opt out of a plan requirement to purchase prescriptions by mail. HMSA opposes this Bill.

HMSA's goal in the provision of outpatient pharmacy services is to ensure our members have access to affordable, high quality medication. HMSA believes that optimal drug therapy results in positive medical outcomes, which helps to manage overall health care costs.

There may be a misconception that PBMs dictate pharmacy benefits – such as restrictive network, mandatory mail order and copayments. This is not the case. The employer groups or other payers are the entities that make these benefit design decisions.

Prohibiting employer groups the authority to design the best plan for their employees will prohibit health plans from utilizing cost-saving methods. We believe health plans should retain the flexibility to develop the most economical plans that meet the needs of our varied customers.

Thank you for the opportunity to testify in opposition to this measure.

Sincerely,

Mark K. Oto

Mark K. Oto
Director
Government Relations

Hawaii Medical Service Association 818 Keeaumoku St.• P.O. Box 860 Honolulu, HI 96808-0860 (808) 948-5110 Branch offices located on Hawaii, Kauai and Maui Internet address www.HMSA.com

HAWAII FOOD INDUSTRY ASSN.

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

DATE: March 219, 2013 TIME: 9:45 AM PLACE: CR 016

TO: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator Brickwood Galuteria, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

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

Re: HB 65 RELATING TO PRESCRIPTION DRUGS

In 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. We support this measure which allows beneficiaries of prescription drug benefits providers to opt out of the requirement to purchase prescription drugs from a mail – order pharmacy and may alternatively purchase prescription drugs from a retail pharmacy.

This measure is necessary to ensure that Hawaii continues to have a robust network of pharmacies to serve our population.

Thank you for the opportunity to provide this testimony.

SUPERMARKETS times
BIG SAVE MARKETS
3375 Koapaka Street, D-108
Honolulu, HI 96819
Phone: (808) 831-0811
Fax: (808) 831-0833

Tuesday, March 19, 2013

Senate Committee on Commerce and Consumer Protection
Senate Committee on Judiciary and Labor

Re: HB 65, HD2, Relating to Prescription Drugs

Dear Chair Baker, Chair Hee, Vice Chair Galuteria, Vice Chair Shimabukuro and members of the Committees,

We appreciate the opportunity to testify on House Bill 65, 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 65, HD2, allows beneficiaries of prescription drug benefits providers to opt out of the requirement to purchase prescription drugs from a mail-order pharmacy and allows beneficiaries to alternatively purchase prescription drugs from a retail pharmacy.

Times and Big Save Supermarkets support this measure based on the choice it provides to our customers and we request that you move the bill forward.

Thank you for the opportunity to testify.

Respectfully,

Bob Gutierrez
Director of Government Affairs, Times Supermarket

CVS CAREMARK | 1300 I Street, N. W., Suite 525 West| Washington, DC 20005 | T: 202-772-3500

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

Honorable Clayton Hee, Chair
Honorable Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Tuesday, March 19, 2013; 9:45 a.m.
Hawaii State Capitol; Conference Room 016

RE: HB 65 HD2 – Relating to Prescription Drugs – In Opposition

Chairs Baker and Hee, Vice Chairs Galuteria and Shimabukuro, and Members of the Committees:

My name is Lauren Rowley, Vice-President of Government Affairs submitting testimony on behalf of CVS Caremark Corporation ("CVS Caremark") in opposition to HB 65 HD2, Relating to Prescription Drugs. 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) determine the pharmacy benefit plan for their beneficiaries and employees. The pharmacy benefit plan includes the pharmacy network and the use of mail service pharmacies. Pharmacy benefit managers (PBMs) do ***not*** determine the plan design, but administer the benefit under contract with the plan sponsors. We also believe that the bill raises concerns under the federal Employee Retirement Income Security Act (ERISA).

<u>Mail-Service Pharmacies Make Prescriptions More Affordable</u>

- Beneficiaries and employees of the plan sponsor may go to any retail pharmacy to have their prescriptions filled. However, they will only be able to access their determined pharmacy benefit if they select a retail pharmacy that is participating within the plan network.
- While local retail pharmacies in the plan sponsor's pharmacy network are used for new therapy starts and acute care prescriptions, plan sponsors sometimes choose to provide their beneficiaries and employees with the option of a lower co-payment on a 90-day supply of their chronic medications through the use of mail-service pharmacies. This provides significant cost savings for the plan sponsors.
- The Federal Trade Commission ("FTC") concluded in a 2005 study of the PBM industry that for a common basket of drugs, with the same sized prescriptions, "retail prices were typically higher than [PBM] mail prices[.]" (p. 23) More specifically, the FTC's analysis of more than five million prescriptions showed that retail prices for 90-day prescriptions were higher than PBM-owned mail service prices by 6.8% for generic drugs and 11.3% for single-source brands. (p. 34) [1]

[1] Federal Trade Commission, Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies, August 2005.

- A recent study by Visante concluded that mail-service pharmacies will save employers, unions, government employee plans, consumers, and other commercial-sector payers $203 million over the next ten years in Hawaii.[2]

We also believe that HB 65 HD2 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. 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).

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. This bill would also prohibit the use of co-payment incentives that would encourage beneficiaries and employees to utilize a more cost-effective prescription drug channel that would result in savings for the plan sponsor as well as lessening the out of pocket expense for beneficiaries and employees. In effect, this bill would have the unintended consequence of restricting the choices that a plan sponsor would be able to offer to their beneficiaries and employees, while penalizing the beneficiaries and employees for making a better choice. For these reasons and the ERISA concerns, 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

Telephone (202) 772-3516

Email – lauren.rowley@cvscaremark.com

[2] "How Mail-Service Pharmacies will Save $46.6 Billion Over the Next Decade," Visante, February, 2012.

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

DATE: March 18, 2013

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

Senator Clayton Hee
Chair, Committee on Judiciary & Labor

RE: **H.B. 65 H.D.2 – Relating to Prescription Drugs**
Hearing Date: Tuesday, March 19, 2013 at 9:45 am
Conference Room 016

Dear Chair Baker, Chair Hee, and Members of the Joint Committees on Commerce & Consumer Protection, and on Judiciary & Labor:

We submit this testimony 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. 65 H.D.2, which allows beneficiaries of prescription drug benefits providers to opt out of the requirement to purchase prescription drugs from a mail-order pharmacy and to alternatively purchase prescription drugs from a retail pharmacy.

Walgreens believes that patients should be in control of their choices when filling their prescriptions. From a patient perspective, face-to-face counseling is the most effective at driving patient adherence. Regulating prescription drug benefit plans by 1) prohibiting mandatory mail order and 2) prohibiting the ability of prescription drug benefit plans to manipulate pricing that it charges in a way that encourages mail order will help to protect patient choice, and will level the playing field among pharmacy service providers.

Thank you very much for the opportunity to submit testimony regarding this measure.

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

1099 Alakea Street, Suite 1400
Honolulu, HI 96813
(808) 539-0840

EXPRESS SCRIPTS®

Cynthia M. Laubacher
Senior Director, State Affairs
(916) 771-3328
Cynthia_Laubacher@express-scripts.com

March 18, 2013

To: Senator Roz Baker, Chair
Senate Committee on Commerce and Consumer Protection
Senator Clayton Hee, Chair
Senate Committee on Judiciary and Labor

Fr: Cynthia Laubacher, Senior Director, State Government Affairs
Express Scripts Holding Company

Re: House Bill 65
Hearing: March 19, 2013 9:45am

On behalf of Express Scripts, I am writing to express our opposition to House Bill 65. Express Scripts administers prescription drug benefits on behalf of our clients – employers, health plans, unions, and government health programs including the Department of Defense TRICARE program. We provide integrated pharmacy benefit management services including pharmacy claims processing, home delivery, specialty benefit management, benefit-design consultation, drug-utilization review, formulary management, medical and drug data analysis services, as well as extensive cost-management and patient-care services.

Our clients – the plan sponsors – design their pharmacy benefit to meet their needs. The details as to how that benefit is structured including the pharmacy network, mail service options, and copayment structure are governed by the plan sponsor. PBMs offer a variety of cost-management tools from which our clients can choose to build their pharmacy benefit while also providing an affordable benefit to their members/employees. These tools include pharmacy networks and lower copayments to use mail service pharmacy. Plan sponsors often choose a limited pharmacy network in order to lower their costs by securing discounts from pharmacies who want to be in the network. Pharmacies are incentivized to offer deeper discounts in exchange for a contract-based expectation that they will, in return, receive a substantial amount of the plan sponsor's business.

HB 65 proposes two things. First, patients can fill their prescription at any pharmacy and they cannot be required to fill prescriptions through a mail service pharmacy. This is generally referred to as an "any willing provider" or "freedom of choice" law. The Federal Trade Commission has written extensively on similar proposals, warning states that, "By eliminating an important form of competition in the market for pharmaceutical services, the bills are likely to increase the cost of those services. These cost increases are likely to undermine the ability of some consumers to obtain the pharmaceutical services they need at a price they can afford." (Letter to RI Attorney General Lynch, 2004).

HB 65 also prohibits plan sponsors from offering their members lower copayments in exchange for filling their prescriptions through mail service. Eighty-five percent or more of our patients fill their prescription drugs at a local pharmacy. Mail service is generally limited to patients taking maintenance medications or medications available only through regular or specialty mail service pharmacies. The FTC concluded in a 2005 report that PBM-owned mail-order pharmacies offer lower prices on prescription drugs than retail pharmacies and are very effective at capitalizing on opportunities to dispense generic medications. Limiting mail service incentives takes choices away from consumers to lower their prescription drug costs and would force one-size-fits-all copayments.

Thank you for the opportunity to provide testimony on this measure.

Aloha Honorable Senators, Health Care Committee Members and EUTF Administrators,

My name is Miri Yi. I am the Director of Business Development and Client Services for Mina Pharmacy, with 15 professional retail and long-term care pharmacies serving Oahu, Maui, and the Big Island. Mina Pharmacy is a member of the Hawaii Community Pharmacists Association.
I respectfully request the opportunity for me and my colleagues to meet with you concerning pending legislation HB 62 HD2 and HB 65 HD2 prior to the hearing at 9:45 am on Tuesday March 19. I would greatly appreciate an email or telephone call to confirm an appointment time. Thank you very much for your attention regarding these crucial bills.

-Please take a moment to view the weblink to NCPA:
http://www.ncpanet.org/pdf/leg/sep11/mail_order_waste.pdf
and view attached examples of why mandatory mail order is NOT the answer.

There are so many problems and issues that arise from forcing patients to go through a mail order pharmacy including, but not limited to:

-Unintended consequence of allowing this monolopy, at which point prices may skyrocket and we are left with few, if any alternatives to obtain medications
-Depriving patients of their choice in preferred pharmacy (even with a slightly higher cost to *consumer*),
-Not having access to consult with a community pharmacist in person,
-Not allowing the pharmacist to physically assess the patients when needed,
-Creating waste when a medication is changed or dosage altered by physician (this also may prevent patient from filling a new order due to insurance expecting patient to use up 75% of previously filled medication,
-Creating hardship on patients who do not have postmaster/mail service in their area and have to go to a PO BOX or a specific unfamiliar pharmacy (this may lead to non-adherence of medications), when forced to use mail order (please see attachment on mail order from the National Community Pharmacists Assn),
-Depriving patients choice of generic (and brand) medications (PBMs will default to their own preferred drug formulary largely due to rebates from drug manufacturers),
-Allowing for a monopoly in areas like Hawaii where the market share of patients are under one provider (HMSA's member website currently defaults all pharmacy inquiries to CVS locations),
- Using marketing tactics to lead active and retired consumers to believe they are mandated to use mail order (this also creates a laundry list of issuess for long-term care residents and staff in nursing homes and care homes who are led to believe they are forced to use mail order),

PLEASE SUPPORT BILL HR 62 and 65 and do not let the people of Hawaii be deprived to their choice of pharmacy healthcare provider!

Yours Truly,
Miri Yi
Director of Business Development
Client Services
MINA PHARMACY & MINA LTC

NCPA
NATIONAL COMMUNITY PHARMACISTS ASSOCIATION

Mail Order Is Not For Everyone!

Face-to-face patient counseling by pharmacists can have a powerful impact on long-term health care costs and quality. So, the way health plan sponsors promote mail and generics use is crucial, because the wrong way could stifle patient care and adherence

Adherence

- $290 billion is the estimated minimum annual cost of non-adherence to the U.S. health system[1]
- A retrospective analysis of data published over 40 years found that in-store face-to-face counseling was the most effective at driving patient adherence followed by nurses talking directly with patients as they were leaving the hospital[2]
- Face-to-face counseling by a pharmacist is 2 to 3 times more effective at increasing patient adherence[3]
- Complex regimens with multiple prescriptions negatively impact patient adherence [4]
- 10% of cardiovascular patients made 11 or more pharmacy visits in 90 days and had 23 or more prescriptions[5]
- 12: Average number of retail prescriptions per capita, 2009[6]
- Patient behavior indicates that certain patients prefer to access prescription medications via mail service and others through community pharmacy channels. [7]
- Mandatory mail appears to cause some members to discontinue therapy prematurely, particularly those without previous mail service pharmacy experience[8]
- Restrictive benefit designs that incentivize patients to use less preferable pharmacy channels may adversely affect patient convenience, which could have the unintended consequence of reducing medication use and adherence.[9]
- Fifty-eight percent of employers are using retail pharmacies to dispense 90-day supplies of medications[10]

1 The New England Healthcare Institute (NEHI); August 11, 2009

2 Modes of Delivery for Interventions to Improve Cardiovascular Medication Adherence; Sarah L. Cutrona, MD, MPH; Niteesh K. Choudhry, MD, PhD; Michael A. Fischer, MD, MPH; Amber Servi, BA; Joshua N. Liberman, PhD; Troyen A. Brennan, MD, JD; and William H. Shrank, MD, MSHS; Am J Managed Care. 2010;16(12):929-942)

3The Asheville Project: Clinical and economic outcomes of a community-based long-term medication therapy management program for hypertension and dyslipidemia; Barry A. Bunting, Benjamin H. Smith, and Susan E. Sutherland; *J Am Pharm Assoc.* 2008;48:23–31.
doi: 10.1331/JAPhA.2008.07140

4 The Implications of Therapeutic Complexity on Adherence to Cardiovascular Medications. *Archives of Internal Medicine*, January 2010.

5 Niteesh K. Choudhry, Michael A. Fischer, Jerry Avorn, Joshua N. Liberman, Sebastian Schneeweiss, Juliana Pakes, Troyen A. Brennan, William H. Shrank. The Implications of Therapeutic Complexity on Adherence to Cardiovascular Medications. *Archives of Internal Medicine.* Published onlineJanuary 10, 2011. doi:10.1001/archinternmed.2010.495

6 Prescription Drug Trends, Kaiser Family Foundation, May 2011.

7 Revealed preference for community and mail service pharmacy Joshua N. Liberman, Yun Wang, David S. Hutchins, Julie Slezak, and Will H. Shrank *J Am Pharm Assoc.* 2011;51:50–57. doi: 10.1331/JAPhA.2011.09161

8 Adherence to Medication Under Mandatory and Voluntary Mail Benefit Designs Joshua N. Liberman, PhD; David S. Hutchins, MHSA, MBA; Will H. Shrank, MD; Julie Slezak, MS; and Troyen A. Brennan, JD, MD Am J Managed Care. 2011;17 (7):e260-e269

9 Revealed preference for community and mail service pharmacy Joshua N. Liberman, Yun Wang, David S. Hutchins, Julie Slezak, and Will H. Shrank *J Am Pharm Assoc.* 2011;51:50–57. doi: 10.1331/JAPhA.2011.09161

10 201- 2011Prescription Drug Benefit Cost and Plan Design Report, Executive Summary pp3. Pharmacy Benefit Management Institute, LP

Generic Utilization

- Almost no payers are maximizing potential generic drug savings[11]
- Retail pharmacies dispensed generics 72.7% of the time[12]
- The Big 3 PBMs Mail Order pharmacies dispense generics less than 62% of the time[13]
- In 2006, the generic market share was just 63 percent; in 2010, it is 78 percent[14]
- The prescription drug market available for generic substitution rose from just 70 percent in 2006 to 84 percent in 2010[15]
- Twenty-two of the top 25 most-prescribed products in 2010 are generics, versus three brand drugs[16]
- Within six months of brand patent loss, patients received the generic form of the drug 80 percent of the time in 2010. This compares to just 55 percent in 2006[17]
- For patients starting therapy for chronic conditions in 2010, 3.2 million more patients started their therapy with a generic while 6.6 million fewer patients started therapy with a brand[18]
- For every 1 percent increase in generic utilization, health plans can expect to save 2.5%. That's a 2.5:1 ROI[19]
- Improved PBM "contracting" empowers retention of <u>all</u> generic savings[20]
- Challenge PBMs to significantly increase and guarantee GDRs rather than simply float on market dynamics[21]
- PBM misclassification of generic drugs reduce health plan savings[22]
- In 2009, Medicaid had $329 million of overspending as a result of underutilizing generics[23]
- Today, 7 out of 10 prescriptions are filled with generic drugs[24]
- Average price of generic drug is about one quarter of the average brand: $35.22 vs. $137.90[25]
- Approximately 80% of FDA-approved drugs available as generic[26]
- 2.6B Rx are filled with generics annually[27]
- Generics account for 69% of all U.S. Rx but only 16% of all dollars spend on Rx[28]
- Generic Drugs saved the health system $931B from 2001 – 2010 & $158B in 2010 alone[29]
- In 2011 & 2012, 6 of the 10 largest-selling brands in the U.S. will lose their patents, enabling a windfall in generic savings [30]
- The PBMs common practice of cost shifting 33 percent of the patients' cost sharing responsibility (co-payments) for 90-day supplies of brand drugs back to the health plans reduces the financial motivation for mail order patients to move away from expensive brand drugs.
- For a health plan with 10,000 members every 1 percent increase in generics saved the plan $180,000.[31]

---

[11] Don't Pay Too Much for Generic Fills; L. Cahn, Managed Care Magazine– November 2010, pp. 21-27
[12] Big 3 GDR by Channel, SEC filings and company reports; 2007-2010
[13] Big 3 GDR by Channel, SEC filings and company reports; 2007-2010
[14] The Use of Medicines in the United States; Review of 2010; IMS Institute for Health Informatics, Executive Summary, pp 1
[15] The Use of Medicines in the United States; Review of 2010; IMS Institute for Health Informatics, , pp 22
[16] The Use of Medicines in the United States; Review of 2010; IMS Institute for Health Informatics, Appendix 4, pp 33
[17] The Use of Medicines in the United States; Review of 2010; IMS Institute for Health Informatics, Executive Summary, pp 3
[18] The Use of Medicines in the United States; Review of 2010; IMS Institute for Health Informatics, Executive Summary, pp 3
[19] Prescription Drug Costs and the Generic Dispensing Ratio; J N. Liberman, PhD, M. Christopher Roebuck, MBA, Journal of Managed Care Pharmacy, Sept. 2010, pp. 502-506, Vol. 16, No. 7
[20] Don't Pay Too Much for Generic Fills; L. Cahn, Managed Care Magazine– November 2010, pp. 21-27
[21] Insights 2011 Advancing The Science Of Pharmacy Care pp 5
[22] Don't Pay Too Much for Generic Fills; L. Cahn, Managed Care Magazine– November 2010, pp. 21-27
[23] AEI Health Policy Studies Working Paper 2011-01, March 28, 2011; A. Brill, Executive Summary pp1
[24] Don't Pay Too Much for Generic Fills; L. Cahn, Managed Care Magazine– November 2010, pp. 21-27
[25] The Use of Medicines in the United States; Review of 2010; IMS Institute for Health Informatics, , pp 22
[26] Don't Pay Too Much for Generic Fills; L. Cahn, Managed Care Magazine– November 2010, pp. 21-27
[27] Don't Pay Too Much for Generic Fills; L. Cahn, Managed Care Magazine– November 2010, pp. 21-27
[28] Don't Pay Too Much for Generic Fills; L. Cahn, Managed Care Magazine– November 2010, pp. 21-27
[29] Analysis, conducted for GPhA by the IMS Institute for Healthcare Informatics and IMS Health, Sept. 21 2011
[30] Don't Pay Too Much for Generic Fills; L. Cahn, Managed Care Magazine– November 2010, pp. 21-27
[31] Walgreens Health Initiatives – 2010 Trend Report; 2010, pp. 3

Total Cost of Drugs

- Plans offering no mail-service co-payment incentives have a 6.6% - 18.7% lower cost share [32]
- A 2009 study concluded that co-payment incentives to use mail-service pharmacies were associated with higher costs to plan sponsors.[33]
- The study's conclusions were consistent with previous studies and examined plans that utilized co-payments as an incentive for members to use mail-service pharmacies.[34]
- These plans paid more for mail service medications; between 4.5% - 8.3% more overall. [35]
- Plans promoting mail with co-payment incentives paid 21.4% - 25% more for generic drugs.[36]

[32] Clark BE PhD, Siracuse MV, PharmD, PhD, Garis RI MBS, PhD Comparison of mail-service and retail community pharmacy claims in 5 prescription benefit plans, pp1
[33] Clark BE PhD, Siracuse MV, PharmD, PhD, Garis RI MBS, PhD Comparison of mail-service and retail community pharmacy claims in 5 prescription benefit plans, pp1
[34] Carroll NV, Brusilovsky I, York B, et al. Comparison of costs of community and mail service pharmacy. J. Am Phar Assoc 2005;45:336-343
[35] Clark BE PhD, Siracuse MV, PharmD, PhD, Garis RI MBS, PhD Comparison of mail-service and retail community pharmacy claims in 5 prescription benefit plans, pp1

- A study concluded that generic dispensing ratios were lower in the mail-order channel than in the community pharmacy channel by 10.3% - 11.3% [37]
- Over 96% of health plans offer mail order service for maintenance medications, but only about 19% mandate the use of mail order[38]
- Forty-one percent of health plans use pharmacists counseling to improve utilization and control pharmacy cost while only 25 percent use co-payment waiver or reduction [39]
- PBMs will not guarantee on a dollar-for-dollar basis mail order promised savings because savings are seldom achieved

[36] Comparison of Mail-Order With Community Pharmacy in Plan Sponsor Cost and Member Cost in Two Large Pharmacy Benefit Plans; Michael Johnsrud, PhD, RPh; Kenneth A. Lawson, PhD, RPh; and Marvin D. Shepherd, PhD, RPh; J Manag Care Pharm. 2007;13(2):122-34 2005;45:336-343JohnsrudM, Lawson KA, Shepherd MD
[37] Comparison of mail-order with community pharmacy in plan sponsor cost and member cost in two large pharmacy benefit plans. J Manage Care Phar 2007;13:122-134
[38] 201- 2011Prescription Drug Benefit Cost and Plan Design Report, Executive Summary pp3. Pharmacy Benefit Management Institute, LP
[39] 201- 2011Prescription Drug Benefit Cost and Plan Design Report, Executive Summary pp3. Pharmacy Benefit Management Institute, LP

- Year-over-year mail order growth as a percentage of total prescriptions remains flat to negative because patients prefer retail channel[40]

[40] Atlantic Information Systems Mail Order Penetration Q12011

Patient Pharmacy Preference

- Mail Order market share as a percentage of the overall prescription drug market has remained flat. Mail order growth began declining in 2009 and reached its lowest point since 2005 in 2010[41].
- Across pharmacy types, overall satisfaction levels are relatively steady from 2010 to 2011. Independent pharmacy customers continue to be most satisfied[42].
- In 2011, only 55% of mail order customers surveyed said they were "very satisfied" with their pharmacy while 77% of independent pharmacy patients said they were "very satisfied"[43]
- Independent pharmacy customers are most likely to recommend their pharmacy to others (74% are very likely to recommend) while mail order customers are least likely to make such a recommendation (only 37% said they are very likely to recommend)[44]
- Filling medications accurately and efficiently is extremely important. Customer satisfaction is high and consistent for Independent pharmacies with 84 percent of respondents saying there are "very satisfied". Mail Order/Online pharmacy satisfaction declined to just 70 percent in 2011[45]
- While PBMs attempt to sell the convenience of mail order in 2011 only 61 percent of customers surveyed were "very satisfied with this aspect of service. Eighty-one percent of Independent customers were "very satisfied" with the convenience offer at local pharmacies[46]
- Eighty-two percent of mail order/online pharmacy customers seldom or never engage with a pharmacist while 72 percent of Independent pharmacy patients engage with pharmacists[47]
- Independent pharmacies perform well on the features most important to their customers—Filling Rxs, Convenience, and Pharmacist & Pharmacy Staff. Additional medical services also improved in 2011[48]

[41] Atlantic Information Systems, Drug Benefit News (DBN 4/30/10, p.5
[42] PULSE Pharmacy Satisfaction Data, Full Industry Report March 2011, Boehringer Ingelheim, pp19
[43] PULSE Pharmacy Satisfaction Data, Full Industry Report March 2011, Boehringer Ingelheim, pp19
[44] PULSE Pharmacy Satisfaction Data, Full Industry Report March 2011, Boehringer Ingelheim, pp21
[45] PULSE Pharmacy Satisfaction Data, Full Industry Report March 2011, Boehringer Ingelheim, pp24
[46] PULSE Pharmacy Satisfaction Data, Full Industry Report March 2011, Boehringer Ingelheim, pp25
[47] PULSE Pharmacy Satisfaction Data, Full Industry Report March 2011, Boehringer Ingelheim, pp31
[48] PULSE Pharmacy Satisfaction Data, Full Industry Report March 2011, Boehringer Ingelheim, pp45

Appendix A
The Demonstrated Savings from PBM Transparency

Below is just a sample of the many examples of the cost savings that transparent PBMs offer plan sponsors, from small employers to large corporations, state governments and TRICARE.

- **TRICARE anticipates savings of $1.67 billion by negotiating its own drug prices, including rebates, rather than going through a PBM.** Following the National Defense Authorization Act of 2008, TRICARE, which provides health care coverage to over 9 million Uniformed Services members, dependents and retirees, will administer its own pharmacy benefit through the Department of Defense. This process began in 2004 by negotiating a contract over which TRICARE had greater administrative power, even though they did not have access to federal discounts. In 2007 alone, TRICARE saved $976 million by using one uniform formulary and centralized management to negotiate drug prices and rebates with manufacturers.
- **Texas estimates savings of $265 million by switching to a transparent PBM contract.** Texas decided to enact transparency legislation after an audit of all the state's PBM plans found huge discrepancies between spending on enrollees. While the state's Teacher Retirement System plan administered by Medco Health Solutions, Inc. cost only $994 per member in 2007, the same plan administered by Caremark cost fully $2,737 per member, nearly three times the cost under Medco's plan.[1] The Employee Retirement System anticipated savings of $265 million by enacting transparency in their contract with CVS Caremark.[2] Based on these findings, Texas enacted legislation in 2009 to make all state PBM contracts transparent. This demonstrates that the only way to ensure that PBMs work within the interests of the plan is by mandating transparency, as the $265 million represents a substantial amount of savings that would have been kept by CVS Caremark.
- **The University of Michigan has saved nearly $55 million by administering its own plan for the past six years.** The University of Michigan chose to cancel its five contracts with major PBMs in 2005, citing the lack of transparency in their plans. The University has since hired a single new PBM, InformedRx, which offers transparency and allows the University administrative control over the plan and spending.[3] In the program's Annual Report, the University announces that their per member per year total drug costs are decreasing at a rate of 2.22% annually, and program initiatives have saved nearly $1.5 million in plan costs. Overall, by comparing their spending with national drug trend surveys, the University estimates it has saved nearly $55 million through its self-administered drug plan in just six years.[4]

---

[1] State Auditor's Office. "Pharmacy Benefit Manager Contracts at Selected State Agencies and Higher Education Institutions." August 2008.
[2] Letter from Ann S. Fuelberg, Executive Director, Employees Retirement System of Texas, to Representative Hopson, Texas House of Representatives. April 8, 2008.
[3] http://www.reuters.com/article/pressRelease/idUS213844+03-Mar-2009+BW20090303.
[4] University of Michigan Benefits Office. 2008 Prescription Drug Plan Annual Report. Executive Summary. January 16, 2009. Accessed at http://benefits.umich.edu/forms/2008drug_plan_annual_report.pdf.

- **The State of New Jersey projects savings of $558.9 million over six years when it switches to a transparent contract for its 600,000 covered employees, dependents and retirees.** The state ended its contract with CVS Caremark and required that their next PBM implement a transparent, pass-through pricing contract. Medco Health Solutions, Inc. agreed to a transparent contract that eliminates spread pricing and requires that all rebates be passed onto the state of New Jersey, leading to $558.9 million in savings that would not have occurred without a contract mandating transparency.[5]
- **DC-37, New York City's largest public employee union, signed a contract in 2006 with Innoviant, a transparent PBM, and saved $50 million.** Their new contract, which allows patients to use whichever pharmacy they choose and is transparent, saved this amount on their 274,000 enrollees.
- **The State of Wisconsin saved over $30 million by switching to Navitus, a transparent PBM.** For nearly a decade, Wisconsin had experienced annual increases of 15% on its prescription drug spending. After switching to Navitus, they actually saved money, despite rising drug costs across the country. Navitus charges a flat free for its management services and is transparent to plan sponsors.[6]
- **Successful transparency legislation saved over $800,000 in a single year in South Dakota.** South Dakota passed PBM transparency legislation in 2004. In a single year, the state saved over $800,000.[7]
- **Maryland switched to a transparent PBM after finding it had overpaid $10 million to CVS Caremark.** The State of Maryland conducted an audit and discovered that it had paid Caremark over $10 million in potential rebates and other savings. In 2007, Maryland canceled its contract with CVS Caremark and started a transparent plan with Catalyst Rx.[8]
- **The California Health Care Coalition found that Catalyst Rx, a transparent PBM, could save members between $3 and $6 *per prescription*, and chose Catalyst Rx as its recommended PBM.** [9] These savings come from the fact that Catalyst's revenues are based solely on customer service fees, not from "undisclosed deals with drug companies." In addition, 'Catalyst passes 100 percent of the price discounts and rebates it negotiates with suppliers... on to clients."
- **Privately-run Medicare Part D plans do not save as much on prescription drug costs as do Medicaid or VA plans.** A July 2008 report to the House Committee on Oversight and Government Reform compared the prescription drug spending on dual eligible beneficiaries, each of whom transferred their drug coverage from Medicaid to Medicare Part D when the program started in 2006. On average, Medicare Part D plans received rebates and discounts that reduced these enrollees' drug costs by 14% in 2006 and 2007. Had they remained under Medicaid coverage, however, Medicaid would have cut their

---

[5] State of New Jersey. Department of the Treasury. Purchase Bureau. Award Recommendation. Reference Number 10-X-20899, T2679. August 4, 2009.
[6] Guy Boulton. "State gets prescription for savings." Milwaukee Journal Sentinel. June 7, 2005.
[7] Prescription Policy Choices. "PBM Fiduciary Duty and Transparency." Accessed at http://policychoices.org/documents/PBMTransparency_FastFacts.pdf.
[8] Reuters. "State of Maryland's CVS Caremark Contract Audit Reveals More than $10 Million in Potential Overpayments, Undiclosed Rebates, Improper Drug Switching, According to CtW." March 6, 2009. Accessed at http://www.reuters.com/article/pressRelease/idUS179408+06-Mar-2009+BW20090306.
[9] California Health Care Coalition. "CHCC Develops New Pharmacy Program." Accessed at http://www.chccnet.org/files/CHCC_Pharmacy_Program_1018.pdf.

drug costs for those same drugs another 30%. Those PBMs which manage Medicare Part D plans clearly do not pass all their potential savings on to consumers or plan sponsors.[10]

- **The Lear Corporation saved over $1.1 million on a $3.6 million budget by switching to a transparent PBM.** The Lear Corporation's switch to CatalystRx, a transparent PBM, led to a 4% increase in generic utilization paired with a drop in average price for generics, from over $36 each to under $30. Together, these led to annual savings of $1.1 million on a $3.6 million budget.
- **Local Funds of the Sheet Metal Workers' International Association saved up to 30% in their first year after switching to a transparent PBM.** Local affiliates of the union who chose to switch their contracts experienced savings in a year when prescription drug prices were going up 12% across the country.[11]
- **The HR Policy Association estimates that use of a transparent PBM contract saves employers up to 9% annually.** The HR Policy Association Pharmaceutical Purchasing Coalition has laid out guidelines for PBM transparency. Manufacturer rebates must be passed on to the plan sponsor in full, and the PBM cannot charge a plan sponsor more than the amount they are reimbursing a pharmacist for a given claim. The coalition, which is made up of some of the country's largest companies, announced that using PBMs certified as transparent under these guidelines could save plan sponsors up to nine percent of their prescription drug costs annually.[12]

How does transparency make such a huge impact on savings?

- **PBMs make enormous amounts off of rebates and fees without plan sponsors even being aware.** Susan Hayes of Pharmacy Outcomes Specialists, a pharmacy benefits consulting firm, testified on the Federal Employees Health Benefits Plan before the House Oversight Committee in June 2009. In her experiences overseeing contracts and conducting audits for plan sponsors, she has witnessed alarming industry trends, of which the vast majority of plan sponsors are never aware. Indeed, she noted that most contracts between PBMs and plan sponsors limit the plan sponsor's ability to conduct audits and verify that contract terms are being met. As much as 50% of drug manufacturer rebate payments are retained by a PBM rather than passed on to the plan sponsor, for example. There is an additional margin, known as "the spread," between what the PBM charges a plan sponsor and what it reimburses a pharmacy for the same claim. This amounts to "as much as 5% of drug spend… [that is] retained by PBMs."[13]
- **PBMs charge plan sponsors $23 more for a generic drug prescription than what they reimburse the pharmacist, on average.** A 2003 study from Creighton University

[10] U.S. House of Representatives Committee on Oversight and Government Reform. Majority Staff. "Medicare Part D: Drug Pricing and Manufacturer Windfalls." July 2008. Accessed at http://oversight.house.gov/documents/20080724101850.pdf.

[11] Business Wire. "Envision Pharmaceutical Services 'Lives Up to the Promise' at Sheet Metal Workers' International Association 2006 Business Managers Conference." August 31, 2006.

[12] redOrbit. "Aetna Pharmacy Management Selected by the HR Policy Association for Meeting Transparency Guidelines." August 10, 2005. Accessed at http://www.redorbit.com/news/health/203682/aetna_pharmacy_management_selected_by_the_hr_policy_association_for/.

[13] Susan A. Hayes. Testimony before the Committee on Oversight and Government Reform, Subcommittee on Federal Workforce on "FEHBP's Prescription Drug Benefits: Deal or No Deal?" June 24, 2009.

documents the "spread" between what a PBM charges a plan sponsor and what they reimburse a pharmacist for the same claim. The dollar amount of the spread varies widely, though examples show plan sponsors being charged up to $200 more than what the drug cost the pharmacist.[14]

- **PBMs are able to artificially inflate the price of prescription drugs dispensed through mail order pharmacies through prescription drug repackaging.** Prices for prescription drugs are often set to be a percentage of Average Wholesale Price (AWP), but there are several AWPs for each national dispensing code (NDC) for a prescription drug. According to Hewitt Associates, mail order pharmacies are able to repackage prescription drugs so that the PBM can create a new NDC,[15] thereby allowing the PBM to also create its own AWP to be used for setting the price. One study has shown that PBMs were able to artificially inflate the AWPs charged via mail order pharmacies by 2 to 77 percent compared against the AWPs charged at retail pharmacies for the drug Celebrex, through PBM prescription drug repackaging.[16]
- **PBMs have a financial incentive to encourage the use of more expensive brand name drugs over less expensive generic drugs.** PBMs gain substantial revenue from pharmaceutical manufacturers for promoting certain brand name drugs. Consistently, PBM owned mail order pharmacies have had lower generic fill rates than retail pharmacies, with one study estimating that this PBM conflict of interest would lead to an additional $30 billion in costs to Medicare beneficiaries and to the government over 10 years.[17]
- **Without transparent plans, the rebates PBMs negotiate are not necessarily passed on to the plan sponsor in the form of savings.** Maine passed transparency legislation in 2003, and the Pharmaceutical Care Management Association (PCMA), a PBM industry trade group, promptly challenged the law in federal court. Not only did the First Circuit Court of Appeals uphold the law, but a judge gave this resounding affirmation of the cost-saving benefits of transparency:

  This lack of transparency also has a tendency to undermine a benefits provider's ability to determine which is the best proposal among competing proposals from PBMs. For example, if a benefits provider had proposals from three different PBMs for pharmacy benefits management services, each guaranteeing a particular dollar amount of rebate per prescription, the PBM proposal offering the highest rebate for each prescription filled could actually be the worst proposal as far as net savings are concerned, because that PBM might have a deal with the manufacturer that gives it an incentive to sell, or restrict its formulary, to the most expensive drugs. In other words, although PBMs afford a valuable bundle of services to benefits providers, they

---

[14] Robert I. Garis and Bartholomew E. Clark. "The Spread: Pilot Study of an Undocumented Source of Pharmacy Benefit Manager Revenue." Journal of the American Pharmacists Association. Vol. 44, No. 1. January/February 2004.

[15] Hewitt Associates. "Pharmacy Benefits Purchasing: What Every Employer Should Know." Prepared for the HR Policy Association, January 2005.

[16] James Langenfeld, and Robert Maness. "The Cost of PBM "Self-Dealing" Under a Medicare Prescription Drug Benefit." September 9, 2003.

[17] James Langenfeld, and Robert Maness. "The Cost of PBM "Self-Dealing" Under a Medicare Prescription Drug Benefit." September 9, 2003.

also introduce a layer of fog to the market that prevents benefits providers from fully understanding how to best minimize their net prescription drug costs.[18]

- **PBMs regularly engage in fraud and deception, and have paid over $370 million in damages in six major court cases.** Without the accountability that comes with transparency, PBMs are able to deceive enrollees and plan sponsors and overcharge them. Between 2004 and 2008, the three major PBMs have been the subject of six major federal or multidistrict cases over allegations of fraud; misrepresentation to plan sponsors, patients, and providers; unjust enrichment through secret kickback schemes; and failure to meet ethical and safety standards. These cases have resulted in over $371.9 million in damages to states, plans, and patients so far.

Congress has already recognized that PBMs' pricing practices must be made transparent to plan sponsors to allow for meaningful negotiation between a plan sponsor and the PBM.

- The new CMS regulations, set to take effect in January of 2010, require transparency in a crucial part of Medicare Part D plans. The amount that the PBM reimburses a pharmacy for a given claim must be disclosed to CMS. Under many Part D plans, the amount paid to the PBM by Medicare is predetermined for a given drug. If the PBM reimburses a pharmacy a lower amount for that drug, though, the PBM simply keeps the difference—a practice known as "playing the spread." Under the new regulations, Medicare will be aware when this is happening and be able to negotiate lower drug prices with the various PBMs which administer Medicare Part D plans.[19]

[18] Pharm. Care Mgmt. Ass'n v. Rowe, 2005 U.S. Dist. LEXIS 2339, at *7-8 (D. Me. Feb. 2, 2005), aff'd, 429 F.3d 294 (1st Cir. 2005).
[19] CMS Office of Public Affairs. "Medicare Clarifies 'Negotiated Prices' Under Part D." January 6, 2009.

Testimony Presented Before the
Senate Committee on Commerce and Consumer Protection
and the
Senate Committee on Judiciary and Labor
Tuesday, March 19, 2013 at 9:45 a.m.
By
Dr. John Pezzuto
Dean, College of Pharmacy, UH Hilo

HB65 HD2 RELATING TO PRESCRIPTION DRUGS

Chairs Baker and Hee, Vice Chairs Galuteria and Shimabukuro and Members of the Committees:

My name is Dr. John Pezzuto and I am the Dean of the College of the College of Pharmacy at UH Hilo. I am testifying in support of the enactment of HB65 HD2. I am testifying as a private citizen and not as a representative of UH Hilo.

This bill reads like a breath of fresh air. Forcing patients to rely on mail order pharmacy is the antithesis of proper and effective health care. It is true that some medications taken on a chronic basis may be efficiently filled by mail order, and some patients may elect or prefer this option. More broadly, however, there is not clear evidence that mail order reduces cost, and there is no evidence whatsoever that it improves a patients' health.

The pharmacist is a health care professional, not a human dispensary or robot. As a health care professional, the pharmacist monitors the medication therapy of the patient, and works in collaboration with the physician to monitor a myriad of factors such as drug interactions, optimal therapeutic regimens, proper administration, and compliance. Forcing a patient to receive medications by mail order or even forcing a patient to visit only one pharmacist effectively eliminates all of these benefits.

This bill advocates for the rights of patients and for the best practice in health care.

Thank you for considering this testimony.

Testimony Regarding HB65

March 18, 2013

By Karen Pellegrin, PhD, MBA
Director of Continuing Education, Strategic Planning, and the Center for Rural Health Science
UH Hilo College of Pharmacy

My name is Dr. Karen Pellegrin and I am a senior faculty member and administrator at the UH Hilo College of Pharmacy. I am testifying in ***strong support*** of HB65, the legislation designed to ensure **patients have a choice regarding where to purchase their prescription medication.** I am testifying as a private citizen and not as a representative of UH Hilo.

I support this bill for two primary reasons:

1) **Importance of patient-centered care**: The Institute of Medicine defines patient-centered care as "*providing care that is respectful of and responsive to individual patient preferences, needs, and values and ensuring that patient values guide all clinical decisions*" and considers this a key feature of a high quality healthcare system[1]. To many consumers and business leaders across industries, this focus on the customer is just common sense. **Requiring patients to purchase prescription drugs from a mail-order pharmacy is the antithesis of patient-centered care.** In many communities, especially in rural areas where there are severe physician shortages, patients trust and rely on their local pharmacist to help them with their medications. To the extent that policies prohibit patient use of their local pharmacies, we will likely see more rural communities lose their only pharmacy[23].

2) **Importance of quality and cost impact**: While cost-control is the purpose of many healthcare policies such as mandatory mail-order pharmacy use, many only measure the impact on *medication* costs. This misguided focus excludes the **importance of patient outcomes and *TOTAL* cost of care**. Research in Minnesota, for example, found that a collaborative practice model in which **pharmacists play an integral role in the delivery of care and provide face-to-face medication management services resulted in improved patient outcomes and reduced total cost of care** (mostly through reductions in hospitalizations and ER visits), ***even though prescription drug costs increased[4]***. SEE CHARTS ON NEXT PAGE.

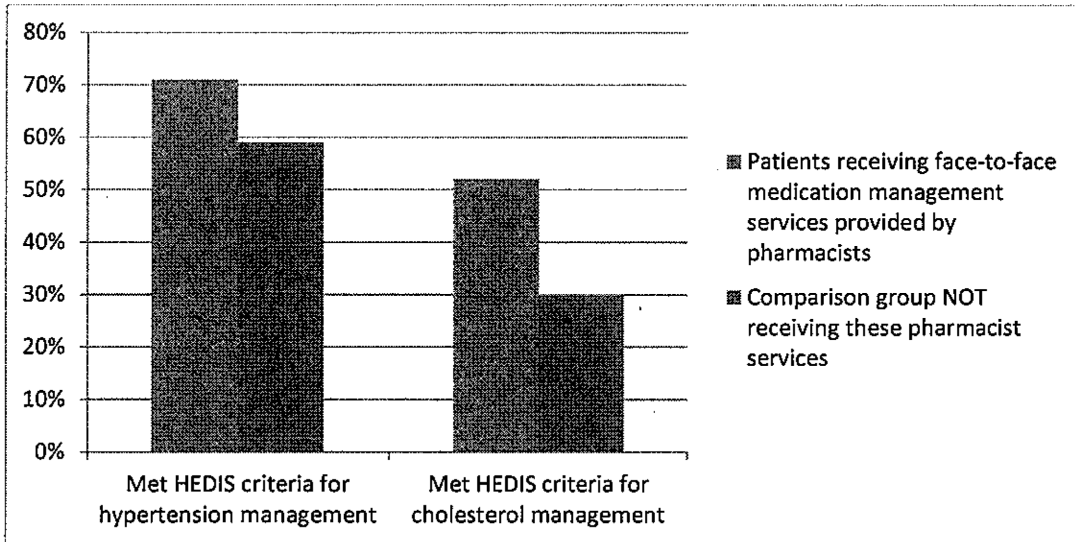
---

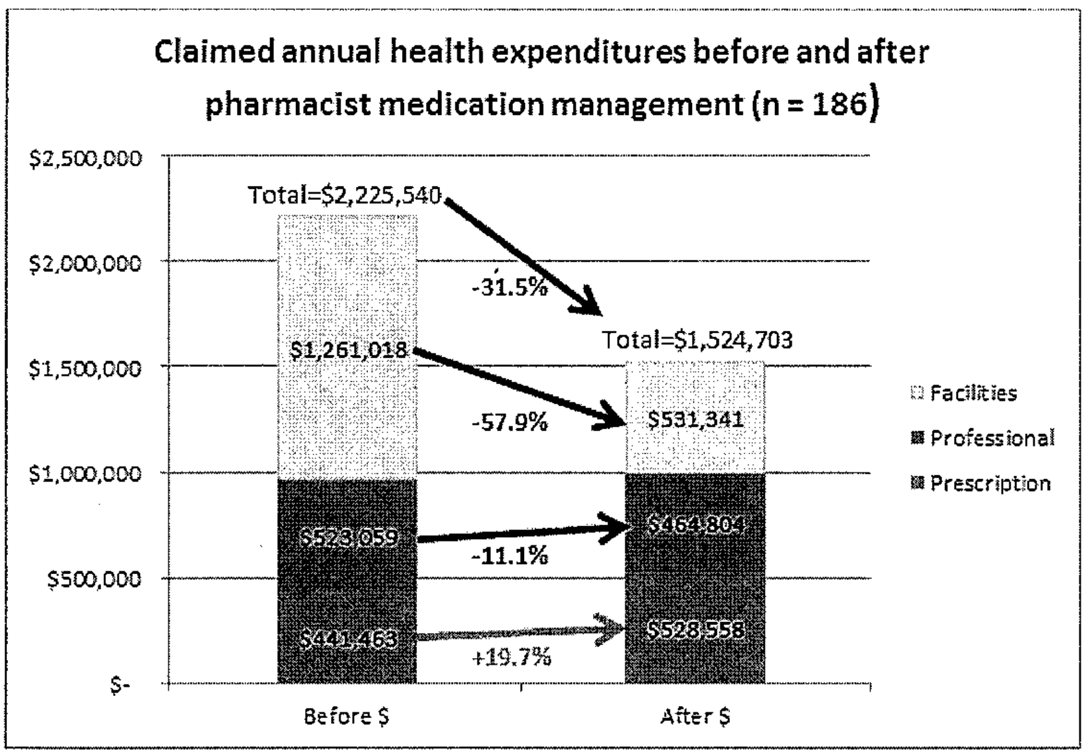
[1] **Crossing the quality chasm: a new health system for the 21st century / Committee on Quality Health Care in America, Institute of Medicine, National Academy Press, Washington, D.C., 2001, page 6.**

[2] **Rural Policy Brief: Independently owned pharmacy closures in rural America. Brief No. 2012-4, July 2012 (http://www.public-health.uiowa.edu/rupri/).**

[3] **Rural Policy Brief: Rural Pharmacy Closures: Implications for Rural Communities. Brief No. 2012-5, January 2013 (http://www.public-health.uiowa.edu/rupri/).**

[4] **Isetts et al., Clinical and economic outcomes of medication therapy management services: The Minnesota experience. *J Am Pharm Assoc.* 2008;48:203-214**





Isetts et al., Clinical and economic outcomes of medication therapy management services: The Minnesota experience. *J Am Pharm Assoc.* 2008; 48:203-214.

To: Committee on Commerce and Consumer Protection
Committee on Judiciary and Labor
From: Patrick Adams, Rph
Re: HB 65, HD 2 Relating to prescription drugs

In Support:

Honorable members of the senate committees this bill is about the health of the Hawaiian residents. Mandatory mail order dismantles our pharmacy network and increases the cost of healthcare by eliminating the first health provider most patients see on a regular basis.

1. Pharmacist counsel on over the counter and prescription medication resulting in fewer hospitalizations and emergency room visits.
2. Pharmacists give immunizations on demand reducing the appointments to doctor's offices. This reduces the Physician load, decreases the cost to immunize and reduces healthcare cost. More people are immunized because it is readily available.
3. Pharmacists are educators for the general public on diabetes, weight control, high blood pressure, high cholesterol and many diseases and conditions to help reduce the cost of healthcare.
4. Mail order companies often send medication without request resulting in loss because of changes in medication therapy and the inability to return medications once they are dispensed.
5. Resident pharmacies are closing in rural areas leaving area without a pharmacy. Wainae Pharmacy closed within the last month because of these pressures. Some areas of 15,000 people do not have a pharmacy in their community. Waikoloa Village closest pharmacy is 20 miles away. Patients must drive 40 miles round trip to fill emergency prescriptions at their own expense.

The thought in the past was that we could lower healthcare cost by lowering prescription medication cost by using mail order to fill prescription. We have reduced prescription cost by pennies but increased our overall healthcare cost in many other areas because pharmacies are closing. The patient has further shouldered the bill by seeing the doctor more often, going to the emergency rooms and driving to the nearest pharmacy in acute situations. Mail order cost patients and the state money. Please support this bill and let the patient decide what is best for their situation.

Sincerely,

Patrick L Adams, Rph

Kyle Sleppy

March 19, 2013- 0945 hours

CPN/JDL- 016

HB65

Pass this bill to show support for patients to decide how they obtain their medicines. After all, it is their own medicine and their own medical treatment and being forced to order such medicine through mail-order is wrong. Allowing this bill to be passed, amending Hawaii Revised Statutes is the right thing to do for the medical patients of Hawaii.

Sincerely,

Kyle Sleppy

HB65, HD2 TESTIMONY

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