

Honolulu, Hawaii

APR 05 2013

RE: H.B. No. 62  
H.D. 2  
S.D. 2

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

Madam:

Your Committee on Commerce and Consumer Protection, to which was referred H.B. No. 62, H.D. 2, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PHARMACY BENEFITS MANAGERS,"

begs leave to report as follows:

The purpose and intent of this measure is to prohibit 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.

Your Committee received testimony in support of this measure from the National Community Pharmacists Association; Hawaii Community Pharmacists Association; Hawaii Food Industry Association; Walgreen Co.; Times Supermarket; and seven individuals. Your Committee received testimony in opposition to this measure from CVS Caremark Corporation and 'Ohana Health Plan. Your Committee received comments on this measure from the Office of Consumer Protection of the Department of Commerce and Consumer Affairs.

Your Committee finds that pharmacy benefits managers are intermediaries that negotiate services and costs between pharmaceutical companies and third party payors, such as insurance companies, businesses, and cash-paying customers.



Your Committee further finds that some pharmacy benefits managers have gone beyond using a patient's health information to process prescription claims and now use this information to directly market to that patient the services of a preferred pharmacy provider that is owned by the pharmacy benefits manager. These marketing practices include permitting call centers to repeatedly call patients and offer discounts only if a patient refills a prescription at a particular pharmacy affiliated with the pharmacy benefits manager. The implication that patients cannot fill their prescriptions at their pharmacy of choice is not in the best interests of patients and is oriented to the financial gain of the pharmacy benefits manager.

Your Committee additionally finds that the practice of pharmacy benefits managers sharing a patient's prescription claims information with their partially- or wholly-owned subsidiaries, for the purpose of marketing, without the patient's express consent is a breach of the patient's right to privacy. This right to privacy is expressed in article I, section 6, of the Hawaii State Constitution and was affirmed, as it relates to a person's medical health information, by the Hawaii Supreme Court in *Brende v. Hara*, 153 P.3d 1109 (2007).

Your Committee concludes that amendments to this measure are necessary to incorporate these personal health information protections, prohibit strict marketing contact on the part of a pharmacy benefits manager, and ensure these protections and restrictions apply to all health care providers and plans in the State. Amendments to this measure are also necessary to ensure that using a patient's medical information is acceptable for legitimate health and safety reasons or if the information is used in conformity with existing federal regulations.

Accordingly, your Committee has amended this measure by:

- (1) Adding a new section on pharmacy benefits managers, health information, and prohibited marketing practices to chapter 487J, Hawaii Revised Statutes, relating to personal information protection, rather than to chapter 481B, Hawaii Revised Statutes, relating to unfair or deceptive practices;
- (2) Deleting language that prohibited 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;

- (3) Specifying that a pharmacy benefits manager shall not use or share an individual's health information for the purpose of marketing, unless:
  - (A) Use of the information is medically necessary to the health and safety of the individual;
  - (B) Use of the information is consistent with federal regulations, if a plan is governed by those rules; or
  - (C) The individual has affirmatively opted in to the use of the information;
- (4) Specifying that a pharmacy benefits manager shall not sell or disseminate an individual's health information unless specific conditions are met;
- (5) Specifying that a pharmacy benefits manager shall not directly contact an individual for certain marketing purposes, but permitting a pharmacy benefits manager to contact an individual if an employee benefit plan, health benefits plan, or managed care plan sponsor first determines that the contact is specifically for health or safety reasons;
- (6) Specifying that this measure shall not prohibit the use of a patient's health information in conjunction with an insurer-authorized program to more effectively use prescription for health and safety reasons;
- (7) Requiring a pharmacy benefits manager to provide each individual with an opportunity to affirmatively opt in to the sale or dissemination of the individual's health information;
- (8) Inserting new definitions for "employee benefit plan", "health benefits plan", "managed care plan", "marketing", and "pharmacy benefits manager" in section 487J-1, Hawaii Revised Statutes;



- (9) Amending the purpose section of this measure for clarity;
- (10) Inserting an effective date of July 1, 2020, to encourage further discussion; and
- (11) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 62, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 62, H.D. 2, S.D. 2.

Respectfully submitted on  
behalf of the members of the  
Committee on Commerce and  
Consumer Protection,

  
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ROSALYN H. BAKER, Chair



