

# HB1444 HD2

Measure Title: RELATING TO PHARMACY BENEFIT MANAGERS.

Report Title: Pharmacy Benefit Managers; Pharmacy Benefit Management; Registration; Insurance Commissioner

Description: Requires pharmacy benefit managers to register with the insurance commissioner. (HB1444 HD2)

Companion: [sb1158](#)

Package: None

Current Referral: CPH, WAM

Introducer(s): MORIKAWA, BELATTI, KOBAYASHI, MCKELVEY, OSHIRO, TODD



DAVID Y. IGE  
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](http://www.hawaii.gov/dcca)

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Friday, March 17, 2017  
9:30 a.m.

**TESTIMONY ON HOUSE BILL NO. 1444, H.D. 2 – RELATING TO PHARMACY  
BENEFIT MANAGERS**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

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

The purpose of this bill is to regulate the conduct of pharmacy benefit managers (“PBMs”) by establishing registration requirements for PBMs.

Section 26H-6 of the Hawaii Revised Statutes requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise analysis. The statute requires that the referral be made by a concurrent resolution that identifies a specific legislative bill to be analyzed. The statute further requires that the analysis set forth the probable effects of regulation and assess whether its enactment is consistent with the legislative policies of the Hawaii Regulatory Licensing Reform Act, and assess alternative forms of regulation. Such an analysis is appropriate in this case, as this bill is creating a mandate that members of a particular industry must comply with a new regulation requiring that they “obtain a valid registration” before conducting business in Hawaii.

**House Bill No. 1444, H.D. 2**  
**DCCA Testimony of Gordon Ito**  
**Page 2**

Therefore, the Department respectfully requests this bill be deferred until a sunrise analysis on this measure is conducted by the Auditor.

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

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 15, 2017 2:11 PM  
**To:** CPH Testimony  
**Cc:** hawaiipharm@gmail.com  
**Subject:** Submitted testimony for HB1444 on Mar 17, 2017 09:30AM

**HB1444**

Submitted on: 3/15/2017

Testimony for CPH on Mar 17, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Hiromi Saito	Hawaii Pharmacists Association	Support	No

Comments: TESTIMONY ON HOUSE BILL NO. 1444 HD 2, RELATING TO PHARMACY BENEFIT MANAGERS TO THE HONORABLE ROSALYN BAKER, CHAIR, AND MEMBERS OF THE COMMERCE, CONSUMER PROTECTION, AND HEALTH COMMITTEE My name is Hiromi Saito, RPh, President of the Hawaii Pharmacists Association (HPhA). HPhA strongly supports this bill that will require Pharmacy Benefits Managers (PBMs) to register with the insurance commissioner. Currently, there is very little oversight of PBM activity in Hawaii. PBMs have become a business conglomerate that delivers health care and pharmacy services throughout Hawaii and our nation. PBMs conducts claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to covered persons. Throughout the years, there has been a SIGNIFICANT decline in reimbursement per prescriptions to the pharmacies including TAKING A "LOSS" ON PRESCRIPTION CLAIMS SUBMISSION. Pharmacies have submitted copies of invoices to show PBMs in good faith the true cost of the medication being billed for yet the PBMs will give a boilerplate response. As you can imagine, many independent pharmacies that do not have the buying power, such as a corporation that is both a retail pharmacy chain and a PBM, have either closed or sold their business to their retail pharmacies only. From the State's perspective, PBMs provide rebate contracting for Hawaii's managed care organizations (MCOs) that participate in the Quest Integration program. PBMs usually are not transparent with rebate contracting for Hawaii's Quest Integration program. Having PBMs register with the insurance commissioner would be the first step for the State to monitor the PBMs' financial activity. For the reasons stated above, HPhA asks that this legislation passes intact from this committee. Hiromi Saito, RPh. President Hawaii Pharmacists Association PO BOX 22954 Honolulu, HI 96823

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)



Testimony of  
John M. Kirimitsu  
Legal & Government Relations Consultant

Before:  
Senate Committee on Commerce, Consumer Protection, and Health  
The Honorable Rosalyn H. Baker, Chair  
The Honorable Clarence K. Nishihara, Vice Chair  
February 14, 2017  
9:00 am  
Conference Room 229

**Re: HB 1444, SD2 Relating to Pharmacy Benefit Managers**

Chair, Vice Chair, and committee members thank you for this opportunity to provide testimony on HB 1444 SD2 requiring pharmacy benefit managers in Hawaii to register with the insurance commissioner.

**Kaiser Permanente Hawaii has some concerns about this bill and requests an amendment.**

In reviewing this measure we can appreciate the desire to regulate pharmacy benefit managers to protect consumers. PBMs can provide value to the health care system, but as third party business entities, may also have economic interests that can add costs, or keep drug prices higher than they should be. As a fully integrated patient care system, Kaiser Permanente performs the value adding functions of a PBM for itself, and for the benefit of its members. Therefore, we believe requiring Kaiser Permanente to register as a PBM would not serve any of the bill's purposes.

As Hawaii's largest HMO, Kaiser Permanente operates and manages its own pharmacies for the delivery of pharmacy benefits directly to its enrollees. In administering its in-house pharmacy benefits, Kaiser Permanente performs those pharmacy services identified as "pharmacy benefits management" in this bill. We have developed each of these functions – mail service, claims processing, disease management, formulary development and aggressive negotiations with manufacturers for the best prices -- over many years of experience to work in concert within Kaiser Permanente's system. All of these functions help us to provide the best outcomes for our members while managing the ever-increasing costs that pharmaceutical manufacturers impose.

Because the costs of these services are already built in to our system, Kaiser Permanente has no need to engage others to perform them. More important, any relevant information about these functions is already available to the Commissioner, who has authority over all of our operations. This is not the case for PBMs who are the subject of this bill.

711 Kapiolani Blvd  
Honolulu, Hawaii 96813  
Telephone: 808-432-5224  
Facsimile: 808-432-5906  
Mobile: 808-282-6642  
E-mail: John.M.Kirimitsu@kp.org

Therefore, since we believe the purpose of this bill is to regulate third-party PBMs, and not internally owned in-house pharmacies, we ask that “health maintenance organization regulated under chapter 432D” be deleted from the definition of “Covered entity” on Page 2, Lines 15-16.

Thank you for the opportunity to comment.



**Eric P. Douglas**  
Senior Director, Government Affairs  
2211 Sanders Road  
Northbrook, IL 60062  
p 847.559.3422  
c 847.651.9807  
f 401.652.9342  
[Eric.Douglas@CVSHealth.com](mailto:Eric.Douglas@CVSHealth.com)

Senator Rosalyn Baker, Chair  
Senator Clarence Nishihara, Vice Chair  
Senate Committee on Commerce, Consumer Protection and Health

Friday, March 17, 2017  
Conference Room 229; 9:30 AM

**RE: HB 1444 HD2 – Relating to Pharmacy Benefit Managers - Comments**

Aloha Chair Baker, Vice Chair Nishihara and members of the Committee:

CVS Health appreciates the opportunity to offer comments on HB 1444 HD2 which requires pharmacy benefit managers to register with the insurance commissioner.

We take no issue with pharmacy benefit manager (“PBM”) registration / entity registration with the state. However, we offer the following comments for your consideration:

- While registration and a fee to establish nexus for certain out of state entities is appropriate, we ask that the Committee consider reducing or waiving the annual fee for a PBM when nexus and established business relationships are already long established by the company on the whole. For example, CVS Health already holds multiple registrations under DCCA’s Business Registration Division, so perhaps additional registration or at least registration fees may be unnecessary.
- Where business/entity registration is required, only the following elements are typically requested: (1) identity of the pharmacy benefits manager; (2) the name and business address of the contact person for the pharmacy benefits manager; and (3) where applicable, the federal employer identification number for the pharmacy benefits manager. We ask that the Committee consider clarifying these elements.
- Having PBM registration housed within the same department that houses the Board of Pharmacy raises some concern. As PBMs and Pharmacies have a financial relationship, we would respectfully submit that oversight of any sort by the Board of Pharmacy would be inappropriate. We request that the Committee entertain clarifying language to ensure no ambiguity as to the Board of Pharmacy’s authority under this bill.
- While we have no objection registering with the Insurance Commissioner, in other states we typically register with the Business Registration Division.

We thank you for your consideration of our comments.

Respectfully,

Eric P. Douglas



**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 14, 2017 2:09 PM  
**To:** CPH Testimony  
**Cc:** kglick@wheelchair-kauai.com  
**Subject:** Submitted testimony for HB1444 on Mar 17, 2017 09:30AM

**HB1444**

Submitted on: 3/14/2017

Testimony for CPH on Mar 17, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kevin Glick	Individual	Support	Yes

Comments: Pharmacy Benefit Managers, (PBM), manage the pharmacy benefits for the vast majority of Hawaii residents. They create and manage drug formularies, set the reimbursement to pharmacies, determine the cost patients pay as a co-pay, and audit pharmacies. PBM's also audit pharmacies, set the rules for audits, determine the outcomes and take back money from pharmacies based upon their own rules. The Hawaii legislature has worked hard to enact laws to prohibit data mining calls, ensure access by patients to the pharmacy of their choice and provide pharmacies a standard method for appealing pricing disputes. These laws have been for the most part ignored by the PBM's, and until the state takes on oversight of them the PBM's have little or no reason to comply. Please pass this legislation out of committee.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 14, 2017 7:01 AM  
**To:** CPH Testimony  
**Cc:** rkorph@gmail.com  
**Subject:** \*Submitted testimony for HB1444 on Mar 17, 2017 09:30AM\*

**HB1444**

Submitted on: 3/14/2017

Testimony for CPH on Mar 17, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ron Okamura	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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, March 14, 2017 1:49 AM  
**To:** CPH Testimony  
**Cc:** rontthi@gmail.com  
**Subject:** \*Submitted testimony for HB1444 on Mar 17, 2017 09:30AM\*

**HB1444**

Submitted on: 3/14/2017

Testimony for CPH on Mar 17, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ronald Taniguchi, Pharm.D.	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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 13, 2017 7:47 PM  
**To:** CPH Testimony  
**Cc:** mendezj@hawaii.edu  
**Subject:** \*Submitted testimony for HB1444 on Mar 17, 2017 09:30AM\*

**HB1444**

Submitted on: 3/13/2017

Testimony for CPH on Mar 17, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 16, 2017 9:01 AM  
**To:** CPH Testimony  
**Cc:** miri@rweinstein.com  
**Subject:** \*Submitted testimony for HB1444 on Mar 17, 2017 09:30AM\*

**HB1444**

Submitted on: 3/16/2017

Testimony for CPH on Mar 17, 2017 09:30AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Miri	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.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

HB 1444

Dear Chair and Members of CPH,

Please accept this testimony as a measure of support for HB1444 along with its amendments. As a pharmacist having worked as the State Medicaid Pharmacist and former Director of Pharmacy for United Healthcare's QExA Program, I was witness to the lack of regulation of PBMs in our state which resulted in runaway costs not by Pharmacy nor health plans but by PBMs who control access to drug formulary items as well as pricing, rebates, and tiering of drugs. By passing this bill, it will place these businesses under the overview of the insurance commissioner. As a community, pharmacists will work closely with our commissioner to make sure Hawaii is no longer overpaying for its medications.

Thank you,

John L. Pang, PharmD, MS

**March 16, 2017**  
**Support for HB1444**

Dear Members of the Committee,

My name is Derek Tengan and I am a pharmacist and independent pharmacy owner here in Honolulu, Hawaii. I am writing to testify my support for HB1444. Pharmacy Benefit Managers (PBMs) manage drug formularies and what is covered by their associated insurance plans. They also determine reimbursements for pharmacies for medications dispensed. It is only fair that they have oversight by a regulatory body such as the insurance commissioner. Pharmacy Benefits Managers affect small independent pharmacies with a huge impact. Larger chains such as CVS are their own pharmacy benefits manager and the reality of below-cost reimbursements is not detrimental to their business as it is for locally owned small businesses. This legislation is the first step toward holding PBMs accountable to state laws and regulations and is necessary if they are doing business here in Hawaii.

Thank you for the opportunity to testify.

Sincerely,

Derek Tengan, PharmD

**March 16, 2017**  
**Support for HB1444**

Dear Members of the Committee,

My name is Joo Kim and I am the Business Development Director at an independent pharmacy here in Honolulu. I am testifying my support for HB1444. Passing this legislation will be the first step in having oversight for Pharmacy Benefit Managers, who currently affect every aspect of a pharmacy. I urge you to pass this bill as it affects many local businesses state wide.

Thank you for the opportunity to testify.

Sincerely,

Joo Kim, CPhT



**March 16, 2017**  
**Support for HB1444**

Dear Members of the Committee,

My name is Keri Oyadomari and I am a community pharmacist here in Honolulu. I am testifying my support for HB1444. Passing this legislation will be the first step in having oversight for Pharmacy Benefit Managers, who currently affect every aspect of a pharmacy. They work with both pharmacies and insurance providers in determining reimbursements for drugs that are dispensed. It is only fair that an entity that affects our everyday business has oversight in the state of Hawaii. Pharmacy Benefits Managers set the amount that pharmacies are reimbursed for drugs. According to previous legislation passed, the pharmacy has the right to appeal this reimbursement if it is below cost, within a designated time period. However, without oversight, these PBMs can ignore or deny without explanation of these appeals. I have heard of pharmacies in the mainland that must turn their patients away and send them to a chain pharmacy because they are reimbursed less than the cost of the drug. Many independent pharmacies nationwide have been bought out or been forced to shut down because of this issue. As a pharmacist at an independent pharmacy, we are able to provide many beneficial services to our patients that larger corporations cannot. We are forced to take the loss because we do not want our patients to be left without their medications.

Thank you for the opportunity to testify.

Sincerely,

Keri Oyadomari, PharmD.

**March 16, 2017**  
**Support for HB1444**

Dear Members of the Committee,

My name is Liam Nitz and I am a Director of Pharmacy for an independent pharmacy here in Honolulu. I am testifying my support for HB1444. Currently, there is little oversight for Pharmacy Benefit Managers, or PBMs in the state of Hawaii. This statute is necessary because PBMs do not have to report to any agency or organization. If a pharmacy has a grievance or concern, there is no one to hold these PBMs accountable.

A statute was passed last year to require these PBMs to provide an electronic MAC list to any requesting pharmacy, in a move toward transparency. If a PBM were to reimburse a pharmacy below the pharmacy's purchasing cost, the pharmacy had the right to appeal and receive a decision within 14 days. We have been denied 90% of our appeals. I am director of an independent pharmacy with four locations. In the year 2016, we measured a total of 23,615 prescriptions that we dispensed in which we made less than zero dollars, or a negative profit. This means for 23,615 instances, we were reimbursed less than the amount we purchased the drug for. This negative profit does not take into account labor hours, utilities, and other expenses that any pharmacy will face.

It is only appropriate that PBMs have to register with the insurance commissioner. This is a step in the right direction of regulation and protection of local independent pharmacies.

Thank you for the opportunity to testify.

Sincerely,

Liam Nitz, BSPS, CSSGB