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TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Monday, April 3, 2017
1:35 p.m.

**TESTIMONY ON HOUSE BILL NO. 1444, H.D. 2, S.D. 1 – RELATING TO
PHARMACY BENEFIT MANAGERS**

TO THE HONORABLE JILL N. TOKUDA, 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

House Bill No. 1444, H.D. 2, S.D. 1
DCCA Testimony of Gordon Ito
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a new regulation requiring that they “obtain a valid registration” before conducting business in Hawaii.

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.



Testimony of
John M. Kirimitsu
Legal & Government Relations Consultant

Before:
Senate Committee on Ways and Means
The Honorable Jill N. Tokuda, Chair
The Honorable Donovan M. Dela Cruz, Vice Chair

April 3, 2017
1:35 pm
Conference Room 211

Re: HB 1444, HD2, SD1, Relating to Pharmacy Benefit Managers

Chair, Vice Chair, and committee members thank you for this opportunity to provide testimony on HB 1444 HD2, SD1, 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 owns 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.

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This is not the case for PBMs who are the subject of this bill. Therefore, since we believe the purpose of this bill is to regulate third-party PBMs, and not internally owned in-house pharmacies, we ask for the following exemption excluding an HMO that owns and/or manages its own pharmacies. Therefore, Page 3, Lines 17-20, should read as follows:

- 9 § **-A Definitions.** As used in this chapter:
- 10 "Commissioner" means the insurance commissioner.
- 11 "Covered entity" means:
- 12 (1) A health benefits plan regulated under chapter 87A;
- 13 health insurer regulated under article IOA of chapter
- 14 431; mutual benefit society regulated under article 1
- 15 of chapter 432; or health maintenance organization
- 16 regulated under chapter 432D; provided that a "covered
- 17 entity" under this paragraph shall ~~not include an HMO regulated~~
- 18 ~~under chapter 432D that owns and/or manages its own pharmacies];~~
- 19 ~~only include those entities that contract with a third-party pharmacy~~
- 20 ~~benefit manager to perform pharmacy benefit~~
- management;

[red bracketed language is added]

Thank you for the opportunity to comment.



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Senator Jill Tokuda, Chair
Senator Donovan Dela Cruz, Vice Chair
Senate Committee on Ways and Means

Monday, April 3, 2017
Conference Room 211; 1:35 PM

RE: HB 1444 HD2 SD1 – Relating to Pharmacy Benefit Managers - Comments

Aloha Chair Tokuda, Vice Chair Dela Cruz and members of the Committee:

CVS Health appreciates the opportunity to offer comments on HB 1444 HD2 SD1 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.
- 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,

A handwritten signature in black ink that reads "Eric P. Douglas". The signature is written in a cursive, flowing style.

Eric P. Douglas

From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 31, 2017 12:07 PM
To: WAM Testimony
Cc: rkorph@gmail.com
Subject: *Submitted testimony for HB1444 on Apr 3, 2017 13:35PM*

HB1444

Submitted on: 3/31/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
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.

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April 1, 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

April 1, 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

April 1, 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.

April 1, 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

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, April 1, 2017 10:22 AM
To: WAM Testimony
Cc: rontthi@gmail.com
Subject: *Submitted testimony for HB1444 on Apr 3, 2017 13:35PM*

HB1444

Submitted on: 4/1/2017

Testimony for WAM on Apr 3, 2017 13:35PM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
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.

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