

# SB1158

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.

Companion: [HB1444](#)

Package: None

Current Referral: CPH, WAM

Introducer(s): BAKER, S. Chang, Espero, Ihara, Kouchi



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
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TO THE SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE  
Regular Session of 2017

Thursday, February 9, 2017  
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 1158 – RELATING TO PHARMACY BENEFIT MANAGERS.**

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

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, HRS, requires that new regulatory measures being considered for enactment be referred to the Auditor for a sunrise analysis. The statute requires 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.

Therefore, this bill should 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:** Friday, February 3, 2017 9:26 AM  
**To:** CPH Testimony  
**Cc:** lduenas@diabetes.org  
**Subject:** \*Submitted testimony for SB1158 on Feb 9, 2017 09:00AM\*

**SB1158**

Submitted on: 2/3/2017

Testimony for CPH on Feb 9, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lawrence Duenas	American Diabetes Association	Support	No

Comments:

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To: Health Committee  
From: Patrick Adams, Rph  
Re: SB 1158  
In Support.

I am a pharmacist and Director of Pharmacy for a small chain in Hawaii. I have seen on a daily basis the actions of Pharmacy Benefits Managers. These actions often favor cost over health. Many of the actions of these Pharmacy Benefits Managers would not be allowed as insurers but because they are unregulated there has been very little a healthcare providers can do to help patients receive the care that is needed.

On November 8<sup>th</sup>, 2012 Carmen Catizone, Executive Director of the National Boards of Pharmacy introduced a resolution to the Model State Pharmacy Act that suggested state boards of pharmacy license Pharmacy Benefits Managers. Specifically, Section 105 (b5) and (c5)

“It is performance of activities that encompass the Practice of Pharmacy that distinguishes Pharmacy Benefits Managers from Pharmacy Benefits Processors. The activities that encompass the Practice of Pharmacy by Pharmacy Benefits Managers include, but are not limited to, the following:

- Disease state management
- Disease compliance management
- Drug adherence management
- Drug interaction management
- Drug utilization management
- Formulary management intervention
- Generic Alternative program management
- Medical and/or Drug data analysis
- Patient Drug Utilization Review (DUR) services
- Prior authorization services
- Provider profiling and outcomes assessment
- Refill reminder program management
- Therapy guidelines management
- Stop therapy protocol management
- Wellness management
- Maintenance of confidential patient information”

This bill is an important step in the regulation of companies that determine medication assess for most of the Hawaiian citizens. Pharmacy Benefits Managers are influencing the health and sickness of the public but they are un-tethered with regard licensing and regulations by Hawaii. This bill will help the state determine the affect the Pharmacy Benefits Managers are having on the health of it's citizens and set some guidelines to insure the best for the people of Hawaii.

Sincerely,  
Patrick L Adams, Rph



February 8, 2017

To: Senator Rosalyn Baker, Chair  
Senator Clarence Nishihara, Vice Chair  
Committee on Commerce, Consumer Protection & Health

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

Re: Senate Bill 1158 – Pharmacy Benefit Manager Registration  
Hearing Date: Thursday, February 9, 2017 9:00 a.m.

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Express Scripts appreciates the opportunity to submit testimony regarding Senate Bill 1158, which proposes to require pharmacy benefit managers to register with the state of Hawaii. Express Scripts manages the pharmacy benefit for 85 million Americans. We do not object to registration, however we do have a few concerns with the bill as drafted and offer the following suggested amendments for your consideration.

Page 1: Findings. This language wrongly states that PBMs decide which drugs are on the plan sponsor formulary, set copayment amounts, and specify prior authorization processes. These are all decisions made by the plan sponsor, not the PBM, and should be removed from the findings.

Page 3, line 1: As drafted, the language excludes federal employees from the definition of a covered entity. We suggest the language be amended to state: A covered entity does not include federal programs including, but not limited to, Medicare, Medicaid and the Department of Defense.

Page 4, lines 9-13: The definition of a pharmacy benefit manager is unclear. We recommend this language be deleted and replaced with the following, more standard definition:

“Pharmacy benefit manager” means a person, business, or other entity that, pursuant to a contract or under an employment relationship with a carrier, health benefit plan sponsor, or other third-party payer, either directly or through an intermediary, manages the prescription drug coverage provided by the carrier, plan sponsor, or other third-party payer, including, but not limited to, the processing and payment of claims for prescription drugs, the performance of drug utilization review, the processing of drug prior authorization requests, the adjudication of appeals or grievances related to prescription drug coverage, contracting with network pharmacies, and controlling the cost of covered prescription drugs.

Page 5, Line 1: Prohibits a PBM from operating without first being registered. While the bill includes a specific date by which renewals shall occur, there is no deadline for the requirement to obtain the registration. In an effort to provide the Insurance Commissioner time to set up this new registration process, we suggest the language regarding registration and renewal be amended to provide a start date of January 1, 2018 with annual renewals on or before January 1 thereafter.

Page 5, lines 7-20: While we do not object to a requirement to register, it is unclear as to the purpose behind the registration. As such, the information required under the bill is overly broad and would require a massive filing of information for no known purpose. States with simple registration requirements as proposed in this bill are usually limited to the identity of the pharmacy benefits manager; 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.

Again, we appreciate your consideration of our concerns and proposed amendments. Please feel free to contact me should you have any questions.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, February 3, 2017 11:47 AM  
**To:** CPH Testimony  
**Cc:** rontthi@gmail.com  
**Subject:** \*Submitted testimony for SB1158 on Feb 9, 2017 09:00AM\*

**SB1158**

Submitted on: 2/3/2017

Testimony for CPH on Feb 9, 2017 09:00AM 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:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, February 8, 2017 10:56 AM  
**To:** CPH Testimony  
**Cc:** rkailianu57@gmail.com  
**Subject:** \*Submitted testimony for SB1158 on Feb 9, 2017 09:00AM\*

**SB1158**

Submitted on: 2/8/2017

Testimony for CPH on Feb 9, 2017 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Individual	Support	Yes

Comments:

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