

Honolulu, Hawaii

FEB 15 2019

RE: S.B. No. 1521
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 1521 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish requirements for pharmacy benefit managers and maximum allowable cost, including the ability of pharmacies to receive comprehensive maximum allowable cost limits;
- (2) Bring complaints regarding maximum allowable cost within the purview of the Department of Commerce and Consumer Affairs, rather than the Department of Health;
- (3) Require pharmacy benefit managers to disclose where an equivalent drug can be obtained at or below the maximum allowable cost, when a maximum allowable cost is upheld on appeal, and allow contracting pharmacies to reverse and rebill claims in certain circumstances; and
- (4) Clarify the available penalties for violations of maximum allowable cost requirements.



Your Committee received testimony in support of this measure from The Queen's Health Systems; Medical Center Northshore Pharmacy; Times Supermarket Pharmacy; North Shore Pharmacy; Pahoia Pharmacy; Shiigi Drug Co., Inc.; Good Health Pharmacy; KTA Super Stores; Hawaii Community Pharmacists; O'ahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i; Hawaii Pharmacist Association; and twenty individuals. Your Committee received comments on this measure from the Department of the Attorney General, Department of Commerce and Consumer Affairs, Office of Information Practices, Hawaii Medical Service Association, CVS Health, and Pharmaceutical Care Management Association.

Your Committee finds that pharmacy benefit managers (PBMs) are third party administrators that contract with health plans, employers, unions, and government entities to manage prescription drug programs on behalf of health plan beneficiaries. Because PBMs control formularies for prices through instruments such as maximum allowable cost lists, they have the ability to create arbitrary pricing uncertainty for pharmacies. In addition to price uncertainty, pharmacies go through undue burdens when accessing maximum allowable cost prices for any given drug and currently do not receive data in standard and comprehensive list formats, meaning pharmacies must obtain maximum allowable cost prices on an individual prescription basis. With no guideline or standard approach when it comes to the disclosure of the maximum allowable cost list, each PBM is able to develop its own burdensome process, which puts many pharmacies at a disadvantage.

This measure is intended to increase oversight and transparency of PBMs' business practices in establishing maximum allowable costs for prescription drugs by requiring PBMs to disclose where an equivalent drug may be obtained, at or below the cost used to establish the maximum allowable cost.

However, your Committee has heard the concern raised by the Department of the Attorney General that certain provisions of this measure, as written, may be subject to an Employee Retirement Income Security Act preemption challenge. Your Committee notes a severability clause should therefore be added to address this concern.

Your Committee has amended this measure by:



- (1) Clarifying that pharmacy benefit managers must disclose where an equivalent drug may be obtained at or below the maximum allowable cost, when a maximum allowable cost is upheld on appeal, and allowing contracting pharmacies to reverse and rebill all claims for an appealed drug if the pharmacy benefit manager establishes a maximum allowable cost that is denied on appeal and pay the maximum allowable cost approved after resolution of the appeal by the contracting pharmacies;
- (2) Clarifying the format and information to be included in the comprehensive report for all drugs on a maximum allowable cost list;
- (3) Clarifying that if the maximum allowable cost is upheld on appeal, the pharmacy benefit manager shall provide the national drug code of an equivalent drug from a source where it may be purchased from a licensed wholesaler by a retail pharmacy at a price that is equal to or less than the maximum allowable cost of the drug that is the subject of the appeal;
- (4) Clarifying the process for the contracting pharmacy to reverse and rebill claims for the appealed drug;
- (5) Clarifying that the maximum allowable cost list and related information disclosed to the Insurance Commissioner or an elected representative shall be considered proprietary and confidential and not subject to disclosure as a public record;
- (6) Clarifying that the Commissioner may, rather than shall, adopt administrative rules and removing language requiring the Department of Commerce and Consumer Affairs to resolve all disputed claims;
- (7) Inserting a severability clause;
- (8) Inserting an effective date of July 1, 2050, to encourage further discussion; and



- (9) 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, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1521, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1521, S.D. 1, and be referred to your Committee on Judiciary.

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



ROSALYN H. BAKER, Chair



