

SB 1521

Measure Title:	RELATING TO PHARMACY BENEFIT MANAGERS.
Report Title:	Pharmacy Benefit Managers; Maximum Allowable Cost; Requirements; Contracting Pharmacies
Description:	Establishes requirements for pharmacy benefit managers and maximum allowable cost, including the ability of pharmacies to receive comprehensive maximum allowable cost lists and bring complaints within the purview of the department of commerce and consumer affairs, rather than the department of health. Requires 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 if the pharmacy benefit manager establishes a maximum allowable cost that is denied on appeal and pay the difference to the contracting pharmacies. Clarifies the available penalties for violations of maximum allowable cost requirements.
Companion:	HB1442
Package:	None

Current
Referral:

CPH, JDC

Introducer(s):

BAKER, INOUYE, KIDANI, KIM, S. Chang, Keith-
Agaran, Nishihara



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

S.B. NO. 1521, RELATING TO PHARMACY BENEFIT MANAGERS.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Tuesday, February 5, 2019 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Clare E. Connors, Attorney General, or
Daniel K. Jacob, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General provides the following comments about the bill.

The purposes of this bill are to: (1) establish requirements for pharmacy benefit managers (PBMs) and maximum allowable cost, including the ability of pharmacies to receive comprehensive maximum allowable cost; (2) bring complaints regarding PBMs and maximum allowable cost within the purview of the department of commerce and consumer affairs rather than the department of health; (3) require PBMs 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 to allow contracting pharmacies to reverse and rebill claims if the PBM establishes a maximum allowable cost that is denied on appeal and to pay the difference to the contracting pharmacies; and (4) clarify the available penalties for violations of maximum allowable cost requirements.

This bill may be subject to an Employee Retirement Income Security Act (ERISA) preemption challenge. ERISA is a comprehensive federal legislative scheme that "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C.A. § 1144(a).¹ A state law relates to an ERISA plan

¹ The subsection, in full, provides as follows:

and is preempted if it has a prohibited connection with or reference to an ERISA plan. We believe this bill may be preempted because of (a) an impermissible connection with an ERISA plan or (b) an impermissible reference to an ERISA plan.

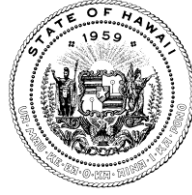
A state law has an impermissible connection with ERISA plans when it governs a central matter of plan administration or interferes with nationally uniform plan administration. *Pharmaceutical Care Management Association v. Gerhart*, 852 F.3d 722, 730 (8th Cir. 2017). The concern here arises from the fact the bill would compel PBMs to include specific information in contracts with contracting pharmacies, require PBMs to provide quarterly comprehensive reports, restrict the class of drugs to which PBMs may establish maximum reimbursement amounts and limit the sources from which they may obtain pricing information, require PBMs to notify contracting pharmacies in the event of an increase in the acquisition cost, and require PBMs to establish a clearly defined process for contracting pharmacies to appeal maximum allowable costs. All of these mandates may be found to implicate areas central to plan administration.

In 2017, the United States Court of Appeals for the Eighth Circuit struck down Iowa's laws regulating PBMs as preempted by ERISA. *Id.* at 732. This bill may be subject to a similar court challenge.

An impermissible reference to an ERISA plan is also problematic. The Eighth Circuit also found that the same Iowa law had an implicit reference to ERISA and ERISA plans because the Iowa law regulated PBMs that administer benefits for health benefit plans, employers, and other groups that provide health coverage. PBMs are subject to ERISA regulation, and the Eighth Circuit found that the law affected benefits provided by these ERISA programs. This bill may be similarly challenged as containing an impermissible reference to ERISA.

Thank you for the opportunity to comment.

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, February 5, 2019
9:00 a.m.
State Capitol, Conference Room 229**

**On the following measure:
S.B. 1521, RELATING TO PHARMACY BENEFIT MANAGERS**

Chair Baker and Members of the Committee:

My name is Colin Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

The purpose of this bill is to establish requirements for pharmacy benefit managers (PBMs) and maximum allowable cost within the purview of the Department, rather than the Department of Health.

By repealing Hawaii Revised Statutes (HRS) section 328-106 and amending HRS chapter 431-R, this bill shifts jurisdiction over the regulation of maximum allowable cost basis reimbursement from the Department of Health to the Insurance Commissioner and amends those regulations.

Page 6, lines 4 to 9 of the bill requires three days' notice "prior to initiating any changes to the maximum allowable cost[.]". Requiring PBMs to provide three days' notice may prompt an increase in appeals, due to discrepancies between wholesale

prices and prices on the maximum allowable cost list. For example, an appeal may arise if wholesale prices increase, and a PBM must wait three days to effect an increase in maximum allowable cost.

Page 8, lines 8 to 13 of the bill provides that if a maximum allowable cost is not upheld on appeal, a contracting pharmacy may “reverse and rebill the claim that is the subject of the appeal, and all claims for the same drug, until the maximum allowable cost list is updated pursuant to subsection (e), to be reimbursed at the maximum allowable cost established by the appeal.” However, the bill does not clearly define the maximum allowable cost established by the appeal.

Page 9, lines 11 to 14 of the bill states “The insurance commissioner **shall** adopt rules pursuant to chapter 91 to establish a process to subject complaints of violations of this section to an external review process **and resolve disputed claims, which may be binding.**” The Department respectfully requests that “shall” be replaced with “may” to give the Insurance Division flexibility to determine how best to enforce this bill. Additionally, the Department respectfully requests deleting “and resolve disputed claims[.]” The Insurance Division lacks the expertise to resolve these disputed claims and would not be able to issue binding resolutions that are precluded from judicial review.

Finally, if the Committee chooses to pass this measure, the Department respectfully requests that its budget ceiling be adjusted to cover the fiscal impact of this bill.

Thank you for the opportunity to testify on this bill.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Consumer Protection and Health

From: Cheryl Kakazu Park, Director

Date: February 5, 2019, 9:00 a.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 1521
Relating to Pharmacy Benefit Managers

Thank you for the opportunity to submit testimony on this bill, which would establish requirements for pharmacy benefit managers and maximum allowable cost. The Office of Information Practices (OIP) takes no position on the substance of this bill, but **recommends a technical amendment.**

Proposed subsection 431R-__(i), at bill page 9 lines 6-10, states that the maximum allowable cost list and related information “shall be considered proprietary and confidential and not subject to public records requests under chapter 92F.” OIP does not object to confidentiality for the maximum allowable cost list and related information, but as written the bill suggests that an agency receiving a request for such information could simply ignore a record request as it would not even have an obligation to respond by denying access and citing the relevant law as required under the Uniform Information Practices Act (UIPA), chapter 92F, HRS. **The language (at lines 8-10) should be amended by adding the words “disclosure under,” to instead read:**

“ . . . shall be considered proprietary and confidential and not subject to disclosure under chapter 92F.”



February 3, 2019

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health

Re: SB 1521 – Relating to Pharmacy Benefit Managers

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 1521, which establishes requirements for pharmacy benefit managers (PBMs) and maximum allowable cost, including the ability of pharmacies to receive comprehensive maximum allowable cost lists and bring complaints within the purview of the Department of Commerce and Consumer Affairs, rather than the Department of Health. It also requires PBMs 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 allows contracting pharmacies to reverse and rebill claims if the PBM establishes a maximum allowable cost that is denied on appeal and pay the difference to the contracting pharmacies.

HMSA would like to express concerns and offer comments on this measure. PBMs play an important role in addressing the rising cost of pharmaceutical drugs. We have been working with community pharmacies since last year to address some of the concerns highlighted in this bill. While we appreciate the intent of this measure, we believe this bill will create additional regulations and pose administrative challenges that could increase costs.

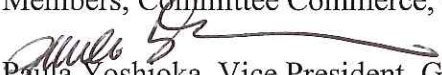
Thank you for the opportunity to provide testimony on this measure.

Sincerely,

Pono Chong
Vice President, Government Relations



To: The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Members, Committee Commerce, Consumer Protection, and Health

From:  Paula Yoshioka, Vice President, Government Relations and External Affairs, The Queen's Health Systems

Date: February 4, 2019

Hrg: Senate Committee on Committee Commerce, Consumer Protection, and Health Hearing; Tuesday, February 5, 2019 at 9:00 AM in Room 229

Re: **Support for S.B. 1521, Relating to Pharmacy Benefit Managers**

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to testify in support of S.B. 1521, Relating to Pharmacy Benefit Managers. Under the insurance commissioner, this measure would establish requirements for pharmacy benefit managers (PBMs) and maximum allowable cost (MAC). Contracted pharmacies will be able to receive comprehensive MAC lists from PBMs as well as know, upon upheld appeal, where an equivalent drug may be obtained at or below the MAC. The measure also clarifies penalties for violations of MAC requirements.

Queen's contracts with over 15 PBMs, with each PBM having multiple MAC lists. Because PBMs control the formularies for prices like those through MAC lists, they have the ability create pricing uncertainty for pharmacies. In addition to price uncertainty, our pharmacies go through undue burdens when accessing MAC prices for any given drug and we currently do not receive data in a standard and comprehensive list format, and must obtain MAC prices on an individual prescription basis. With no guideline or standard approach when it comes to the disclosure of MAC list, each PBM has been able develop their own burdensome process which puts pharmacies at a disadvantage.

Over the past year, Queen's has been able to work with a major PBM and appreciate their willingness to meet, discuss, and address some of the challenges pharmacies face. However, the greater issue is by determining how we can make best practices the standard for doing business across the board for PBMs, therefore Queen's would like to request the following clarifying amendments:

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

Section 1, (1) (Page 3, lines 11):

“Establish requirements for pharmacy benefit managers and maximum allowable cost, including the ability of pharmacies to receive comprehensive maximum allowable cost lists **and moves enforcement bring complaints**, within the purview of the department of commerce and consumer affairs, rather than the department of health;

Section 1, (2) (Page 3, lines 15, 18, and 20-21):

“Require pharmacy benefit managers to disclose where an equivalent drug **may 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 **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 difference to** the contracting pharmacies; and”

Section 2, (c) (Page 4, lines 18 and 19; Page 5, lines 2-3):

“(c) The pharmacy benefit manager shall make available to a contracting pharmacy **not less than once per quarter, and** upon request, a comprehensive report for **the requested plan for** all drugs on the maximum allowable cost list, which contains the most up-to-date maximum allowable cost price or prices used by the pharmacy benefit manager for patients served by the pharmacy, in a readily accessible, secure, **electronic and searchable format, or and** usable web-based or other comparable format **that can be downloaded.**”

Queen’s respectfully requests that the comprehensive report for all the drugs on the maximum allowable cost list include information such as:

- Name of the Drug
- Pharmacy benefit manager’s maximum allowable cost price;
- National Drug Code;
- Generic Code Number;
- Generic Product Identifier;

This information would ease confusion and provide greater clarity for pharmacies when requesting MAC lists from PBMs.

Section 2, (g)(4) (Page 7, line 17-18,)

“(4) If the maximum allowable cost is upheld on appeal, the pharmacy benefit manager shall provide to the contracting pharmacy the reason therefor and the national drug code of an equivalent drug **from a source where it that** may be purchased **by a similarly situated pharmacy 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, with the name of the source, including but not limited to the wholesaler or distributor, where the drug may be purchased; and

Section 2, (g)(5) (Page 8, line 9-10)

“(5) If the maximum allowable cost is not upheld on appeal, the pharmacy benefit manager shall adjust, for the appealing contracting pharmacy, the maximum allowable cost of the drug that is the subject of the appeal, within one calendar day of the date of the decision on the appeal and

allow the contracting pharmacy to reverse and rebill ~~the claim that is the subject of the appeal,~~ ~~and all~~ claims for the ~~appealed same~~ drug, until the maximum allowable cost list is updated pursuant to subsection (e), to be reimbursed at the maximum allowable cost established by the appeal.”

Transparency in the data sources that PBMs utilize to derive costs will greatly benefit our pharmacies and patients. Thank you for the opportunity to testify on this measure.

SB-1521

Submitted on: 2/2/2019 4:52:07 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
magdi latif	Testifying for Medical Center Northshore Pharmacy	Support	No

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by Magdi Latif RPh

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacist in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager's business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

This legislation will transfer oversight of pharmacy benefit manager's business practices related to maximum allowable costs from the department of health to the department of commerce and consumer.

Further, the legislation will increase transparency of pharmacy benefit manager's business practices by requiring pharmacy benefit managers to disclose where an equivalent drug may be obtained, at or below the cost used to establish the maximum allowable cost.

We have provided service to our community since 1988 and we were hoping to continue to do so, as our son who graduated from University of Hawaii is now our main pharmacist. We can't keep losing money when we fill prescriptions for our community. That's what is going on now, we are being paid below our cost when we fill

perscriptions for our patients, with no ability for recourse. We ask that your try to level the playing field and this bill will be a good 1st setp towards accomplishing a more equitable fair relationship with the PBMs

This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.

Magdi Latif

SB-1521

Submitted on: 2/2/2019 1:10:50 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Catalina Cross	Testifying for Times Pharmacy	Support	Yes

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by

Catalina Cross, PhD

Times Pharmacy

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager’s business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

This legislation will transfer oversight of pharmacy benefit manager’s business practices related to maximum allowable costs from the department of health to the department of commerce and consumer.

Further, the legislation will increase transparency of pharmacy benefit manager’s business practices by requiring pharmacy benefit managers to disclose where an equivalent drug may be obtained, at or below the cost used to establish the maximum allowable cost.

This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.

February 4, 2019

Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice Chair
Committee on Commerce, Consumer Protection and Health
415 South Beretania Street
Honolulu, Hawaii 96813

LATE

RE: SB 1521 Relating to Pharmacy Benefit Managers
February 5, 2019, Conference Room 229, 9:00 a.m.

Aloha Chair Baker, Vice Chair Chang and members of the committee:

CVS Health is writing to share with you our concerns and some suggested amendments regarding Senate Bill 1521 (“SB 1521”), relating to pharmacy benefit managers (PBMs). CVS Health is the nation’s premier health innovation company helping people on their path to better health. Whether in one of its pharmacies or through its health services and plans, CVS Health is pioneering a bold new approach to total health by making quality care more affordable, accessible, simple and seamless. CVS Health is community-based and locally focused, engaging consumers with the care they need when and where they need it. The Company has more than 9,800 retail locations, approximately 1,100 walk-in medical clinics, a leading pharmacy benefits manager with approximately 93 million plan members, a dedicated senior pharmacy care business serving more than one million patients per year, expanding specialty pharmacy services, and a leading stand-alone Medicare Part D prescription drug plan. CVS Health also serves an estimated 39 million people through traditional, voluntary and consumer-directed health insurance products and related services, including a rapidly expanding Medicare Advantage offering. This innovative health care model increases access to quality care, delivers better health outcomes and lowers overall health care costs.

SB 1521 seeks to amend the existing law relating to “maximum allowable cost” (MAC). MAC is one of the most common methodologies used in paying pharmacies for dispensing generic drugs. A MAC list is a common cost management tool that is developed from a survey of various sources, including wholesale prices existing in the marketplace, taking into account market share, existing inventory, expected inventories, reasonable profits margins and other factors. Each PBM develops and maintains its own confidential MAC list derived from its specific proprietary methodologies. The MAC list helps to ensure that the PBM, on behalf of their clients (employers and health plans), are paying a fair price for widely available generic drugs.

The existing law was carefully negotiated and agreed to by all stakeholders in 2015. CVS Health believes that any proposed changes to the existing law should stay within the spirit of the negotiations. We are requesting the following amendments:

Section 2(b)(2)(c) (Page 4, lines 17-21, Page 5, lines 1-3):

“(c) The pharmacy benefit manager shall make available to a contracting pharmacy, ~~not less than once per quarter, and~~ upon request, a comprehensive report for all drugs on the maximum allowable cost list ~~for a plan~~, which contains the most-up-to-date maximum allowable cost price or prices used by the pharmacy benefit manager for patients served by the pharmacy, in a readily accessible; ~~and secure;~~ ~~electronic and or~~ usable web-based ~~or other comparable~~ format.”

CVS Health currently already makes available to all Hawaii contracted pharmacies an easily accessible, electronic method of looking up specific drugs subject to MAC reimbursement rates. This provides pharmacies with the most up-to-date, real-time pricing information applicable to a given drug on a MAC list. Currently, upon a pharmacy’s request, CVS Health also provides a comprehensive MAC list by plan sponsor. We do not, however, automatically provide a list because the lists vary by plan and can become

outdated quickly due to the nature of the generic drug marketplace. CVS Health believes that our website portal is the most useful tool for a contracted pharmacy to use to search by individual drug as opposed to working through lists. Therefore, we are requesting the above amendments to balance the contracted pharmacy's ability to request a comprehensive MAC list by plan with encouraging the continued use of the web portal for the most current up-to-date reimbursement information.

Section 2(e) (Page 5, lines 14-21, Page 6, lines 1-3):

~~“(e) The pharmacy benefit manager shall review and make necessary adjustments to the maximum allowable cost of each drug on a maximum allowable cost list at least once every seven days using the most recent date sources available... provided that the pharmacy benefit manager shall reimburse a contracting pharmacy for a drug based on the maximum allowable cost of that drug on the day the drug is dispensed.”~~

We are unclear as to the intent of the new language included at the end of this section (“provided that the...dispensed”). The MAC reimbursement for the pharmacy would be the rate on the day the drug was dispensed. This language is unnecessary and are therefore requesting that it be deleted.

Section 2(f) (Page 6, lines 4-12):

~~“(f) The pharmacy benefit manager shall notify all contracting pharmacies of a ten percent or greater increase in drug acquisition cost for any drug on the maximum allowable cost list from sixty percent or more regional pharmaceutical wholesalers at least three days prior to initiating any change to the maximum allowable cost for that drug. The notification required under this subsection may be provided electronically and shall contain the national drug code of the drug whose acquisition cost is increasing.”~~

We are requesting this amendment because the section assumes that a PBM has access to such wholesaler pricing data at a granular level and specific to a particular pharmacy's acquisition costs. PBMs are not privy to the private contracts between pharmacies and wholesalers and do not have access to such information. As such, compliance with this section would be impossible. Additionally, the requirement of a three day notification for changes to MAC reimbursements prior to initiating the change completely conflicts with the law and would likely be harmful to consumers, payers, and the pharmacies themselves. The law already requires the MAC list to be updated at least once every seven days and for the PBM to immediately implement those changes. If a PBM has to immediately implement the changes, a PBM would be unable to then provide three days' notice. It would also be operationally impossible for a PBM to adjust a MAC price upon a successful MAC appeal by a pharmacy within one calendar day of the date of the decision as is required by law if the PBM must give three days' notice first. Ultimately, if PBMs were to comply with the section, PBMs would be violating other sections of the existing law and prescription drug costs for Hawaiian consumers and employers could increase. Therefore, we request that this section be stricken.

Section 2(g)(4) (Page 7, line 21, Page 8, lines 1-2):

~~“(4)...with the name of the source, including but not limited to the wholesaler or distributor, where the drug may be purchased;”~~

We are requesting this amendment as the new language proposed in this section goes well beyond the intent of the law regarding what should occur if the MAC is upheld on appeal. The provision would require the PBM to provide the specific source where a drug may be purchased. Pharmacy acquisition prices are on an individual basis, and vary by pharmacy and by wholesaler. PBMs do not have access to individual pharmacy acquisition cost information as those arrangements are ultimately negotiated between the wholesaler and the pharmacy based on specific negotiated business terms. Therefore, we request that the above provision be deleted.

Section 2(g)(5) (Page 8, lines 10-13):

“(5) If the maximum allowable cost is not upheld on appeal, the pharmacy benefit managers shall adjust, the appealing contracting pharmacy, the maximum allowable cost of the drug that is the subject of the appeal, within one calendar day of the date of the decision on the appeal and allow the contracting pharmacy to reverse and rebill the claim that is the subject of the appeal, and all claims for the same drug at the plan level, until the maximum allowable cost list is updated pursuant to subsection (e), to be reimbursed at the maximum allowable cost established by the appeal.”

We are requesting this clarifying amendment to this section to reflect current practice that requires a contracted pharmacy to submit a MAC appeal at the plan level.

Section 2(h) (Page 8, lines 14-19):

~~“(h) Any pharmacy benefit manager that refuses a maximum allowable cost reimbursement for a properly documented claim by a contracting pharmacy under this section shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of trade or commerce, within the meaning of section 480 2.”~~

We believe this section is overly broad and out of the context of the bill. It could open up Hawaii plan sponsors to fraud, waste and abuse. A prescription could be “properly documented” but submitted improperly because of a technical or clerical error that resulted in an overpayment to the pharmacy. Such errors should be permitted to be remedied. Additionally, the penalty proposed is overly punitive and unnecessary. Pharmacies already have the right to appeal a disputed reimbursement per their contracts with the PBM/plan sponsor and existing law. Therefore, we are requesting that this section be deleted.

Section 2(i) (Page 9, Lines 5-10)

(i) A contracting pharmacy shall not disclose to any third part the maximum allowable cost list and any related information it receives...~~except to the insurance commissioner or an elected representative. 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 public records requests under chapter 92F.~~

We are requesting this amendment because MAC lists are competitive and proprietary information that is owned by the PBM. A contracting pharmacy should not be permitted to disclose such information without providing proper notification to the PBM first so that the PBM can take steps to properly protect such competitive information. Additionally, we are concerned with the use of the broad term “elected representative” – it could mean many things and if an elected representative happens to be a pharmacy owner, they would then have access to the competitive reimbursement information of other pharmacies. This would be anti-competitive and could lead to increased costs for plan sponsors and consumers.

Section 2(j) (Page 9, Lines 11-20):

~~“(i) The insurance commissioner shall adopt rules pursuant to chapter 91 to enforce the provisions of this section. establish a process to subject complaints of violations of this section to an external review process and resolve disputed claims, which may be binding on a complaining contracting pharmacy and a pharmacy benefit manager against whom a complaint is made, except to the extent that the parties have other remedies available under applicable federal or state law, and which may assign the costs associated with the external review process to a complaining contracting pharmacy and a pharmacy benefit manager against whom a complaint is made.”~~

CVS Health had serious concerns regarding Section 2(j), which requires the insurance commissioner to establish a process to subject any complaints regarding a potential violation of the law to an external review process. CVS Health does not believe that the enforcement of the law should be assigned to an outside entity. We are unclear as to why this is necessary, are concerned that this would lead to frivolous complaints, and believe that such a process would drive up the costs of health care for health plans, employers, and ultimately consumers. If there are any contractual issues that arise between a pharmacy and a PBM, those are already



handled by contract with appropriate remedies available to the parties under the law. CVS Health does not believe that an external review process is necessary and requests the above amendment.

Section 3 (Page 10, lines 7-9):

“Maximum allowable cost list” means a list of ~~the maximum allowable reimbursement costs of multi-source generic~~ drugs for which a maximum allowable cost has been established by a pharmacy benefit manager,”

We are requesting this amendment because the need for the proposed changes in this section are unclear to us. The existing definition was carefully negotiated within the context of the entire bill and is consistent with many other states that have MAC laws in place. For these reasons, we are requesting that the proposed language be amended back to reflect existing law as it was contemplated.

On behalf of CVS Health, I thank you for allowing us to provide our concerns and amendments for consideration.

Respectfully,

A handwritten signature in cursive script that reads "Melissa Schulman".

Melissa Schulman
Senior Vice President, Government and Public Affairs
CVS Health

SB-1521

Submitted on: 2/2/2019 8:58:19 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
jema	Testifying for North Shore Pharmacy	Support	No

Comments:

As a Community(Pharmacy Tech, Pharmacist) in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager's business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

This legislation will transfer oversight of pharmacy benefit manager's business practices related to maximum allowable costs from the department of health to the department of commerce and consumer.

Further, the legislation will increase transparency of pharmacy benefit manager's business practices by requiring pharmacy benefit managers to disclose where an equivalent drug may be obtained, at or below the cost used to establish the maximum allowable cost.

This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

[Tuesday, February 5, 2019](#)

by

Jemaa kealoha

Northshore Pharmacy

SB-1521

Submitted on: 2/4/2019 10:27:10 AM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ismail Abdolahi	Testifying for Paho Pharmacy	Support	No

Comments:

SB-1521

Submitted on: 2/2/2019 10:49:27 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Allan Matsukado	Testifying for Shiigi Drug Co., Inc.	Support	No

Comments:

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

Hearing on Tuesday, February 5, 2019

Testimony to be presented before the Senate Committee on Commerce, Consumer Protection, and Health

Allan Matsukado, Shiigi Drug Co., Inc.

I, Allan Matsukado, am the President of Shiigi Drug, Co., Inc. which is an independent pharmacy located in Hilo (Hawaii, District #2). As a community pharmacy in the State of Hawaii, I would like to see legislation be passed that would increase transparency over pharmacy benefit managers. In particular, transparency over their business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

This legislation aims to transfer oversight of pharmacy benefit managers business practices related to maximum allowable costs from the department of health to the department of commerce and consumer affairs.

Further, the legislation will increase transparency of pharmacy benefit managers business practices by requiring pharmacy benefit managers to disclose where an equivalent drug may be obtained, at or below the cost used to establish the maximum allowable cost.

This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for your service to our state and communities, and for the opportunity to submit testimony.

Sincerely,

Allan Matsukado

SB-1521

Submitted on: 2/3/2019 4:03:11 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jessica Lo	Testifying for Good Health Pharmacy	Support	No

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by

Jessica Lo

Good Health Pharmacy

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager’s business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

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Our pharmacy researches the drug cost from multiple vendors, but for many drugs, we simply cannot find anything near the reimbursement that the PBM's will pay us. (The reimbursement is so bad that it is sometimes \$50 below our true acquisition cost.) We want to help our customers, especially since our customers don't speak English and are low-income earners, and we are often filling their prescriptions out of the kindness of our hearts, using our own personal money. This way of doing business is in no way sustainable.

This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.



You're Someone Special

Testimony presented before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, February 5, 2019
by
Kerri Okamura, R.Ph.
KTA Super Stores

SB1521 - RELATING TO PHARMACY BENEFIT MANAGERS

KTA Super Stores is a locally owned business operating grocery stores on the Island of Hawaii. KTA Super Stores operates pharmacies in Hilo, Waimea, Waikoloa and Keauhou.

As a community pharmacy in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager's business practices on establishing maximum allowable costs (MAC) for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

This legislation will transfer oversight of pharmacy benefit manager's business practices related to maximum allowable costs from the Department of Health to the Department of Commerce and Consumer Affairs.

Further, the legislation will increase transparency of pharmacy benefit manager's business practices by requiring pharmacy benefit managers to disclose where an equivalent drug may be obtained, at or below the cost used to establish the maximum allowable cost.

This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.

PHONE: (808) 959-4575

50 EAST PUAINAKO STREET, HILO, HAWAII'I 96720

WWW.KTASUPERSTORES.COM



SB-1521

Submitted on: 2/4/2019 9:31:35 AM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard S. Mejia	Testifying for Times Supermarket Pharmacy	Support	No

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by

Richard S. Mejia

Times Pharmacy

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

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Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/4/2019 1:14:14 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Glick	Testifying for Hawaii Community Pharmacists	Support	No

Comments:

Similar legislation was developed last year and everyone agreed on the language. Pharmacy Benefit Managers use MAC pricing the push competition out of business. The decision by Walmart to terminate the agreement with CVS should serve as an example of the power these huge corporations have. CVS came to an agreement with Walmart only because of the market size of Walmart. Community pharmacies have only the legislature to look to for a fair and level playing field.

Mahalo,

Kevin Glick, R.Ph.

SB-1521

Submitted on: 2/2/2019 10:34:48 AM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald Taniguchi, Pharm.D.	Individual	Support	No

Comments:

SB-1521

Submitted on: 2/2/2019 3:48:11 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Chikuma	Individual	Support	No

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by

Christine Chikuma

Times Pharmacy - McCully Branch

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

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Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/2/2019 6:00:05 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alexander Latif	Individual	Support	No

Comments:

As a Community Pharmacist in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager's business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

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Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/3/2019 3:00:17 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kelli Kunihiro	Individual	Support	No

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by

Kelli Kunihiro, RPh

Times Pharamcy

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

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This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/3/2019 3:33:53 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Anne Wheelock	Individual	Support	No

Comments:

I have been a retail pharmacist in the state of Hawaii since 1981.

I support SB 1521 relating to pharmacy benefit managers.

Please pass this important bill.

Sincerely,

Anne Wheelock

SB-1521

Submitted on: 2/3/2019 5:28:13 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Christina Wong	Individual	Support	No

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by Christina Wong, PharmD

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

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Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/3/2019 7:22:27 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Martha Harkey	Individual	Support	No

Comments:

As a Community Pharmacist in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager's business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

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Thank you for the opportunity to submit testimony.

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by

Dr Martha Harkey, PhD, RPh

NorthShore Pharmacy

SB-1521

Submitted on: 2/3/2019 7:38:59 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
June Gustina	Individual	Support	No

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by

June Gustina, PharmD

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

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Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/3/2019 8:32:56 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Roger Nishimura	Individual	Support	No

Comments:

I would like to express my strongest support for SB 1521. Pharmacy benefit managers should not be allowed to set arbitrary maximum allowable cost (MAC) for medications with no justification or recourse for such limits. In far too many instances MAC products are not available at MAC pricing and providers are forced to lose financially by providing such products; effectively forcing the providers to subsidize a product for the PBM; if this practice is allowed to continue many providers will be forced out of business. Reasonable MAC pricing and supply must be established and NO product provided from any provider should be reimburse under cost. The current situation allows PBMs to set MAC with impunity. I implore the Hawaii State Legislature so Support and Pass SB1521 NOW!

SB-1521

Submitted on: 2/3/2019 10:16:06 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie S Yonamine	Individual	Support	No

Comments:

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Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/3/2019 10:40:07 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Shibata	Individual	Support	No

Comments:

As a Community Pharmacist in the State of Hawaii, I am seeking legislation to increase transparency over pharmacy benefit managers business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight and transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients. This legislation will transfer oversight of pharmacy benefit managers business practices related to maximum allowable costs from the department of health to the department of commerce and consumer. Further, the legislation will increase transparency of pharmacy benefit managers to disclose where an equivalent drug may be obtained, at or below the cost used to establish the maximum allowable cost. This bill will promote increased transparency of prescription drug pricing for patients and healthcare in the state. Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/3/2019 11:36:26 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melissa Machida	Individual	Support	No

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

[Tuesday, February 5, 2019](#)

by

Melissa Machida

Times Kunia Pharmacy

SB1521 RELATING TO PHARMACY BENEFIT MANAGERS

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This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/4/2019 8:51:42 AM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Alyssa Pang	Testifying for business	Support	No

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by

Alyssa Pang

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager’s business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

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Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/4/2019 8:36:59 AM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Megan Arbles	Individual	Support	No

Comments:

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

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This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.

SB-1521

Submitted on: 2/4/2019 10:18:43 AM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ashok Kota	Individual	Support	No

Comments:

Dear Honorable senators,

I strongly support the bill SB1521. As noted, PBMs role has significantly increased in healthcare without much oversight. With significant consolidation in the PBM industry, not participating in any plan is not an option for small community Pharmacy business. We would like to continue serving our friends, family, local community members and expect reasonable, sustainable payments/reimbursements. Several studies have indicated that there is a huge disparity between the amount charged to the plan sponsor/employer and the amount of reimbursement to the small community Pharmacies. We don't know if this is the case in our state and this bill would bring transparency to review the process. As with any other business, Pharmacy business operation costs are higher than on the mainland with limited options to purchase products. This bill would improve the transparency and protect small community businesses. This bill will protect healthcare access to our community members.

Thank you for the opportunity.

Ashok Kota

Director of Pharmacy

Foodland

Testimony presented before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, February 5, 2019
by
Keri Oyadomari

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

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This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.
Keri Oyadomari, PharmD

SB-1521

Submitted on: 2/4/2019 11:55:36 AM

Testimony for CPH on 2/5/2019 9:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Joo Kim	Individual	Support	No

Comments:

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager's business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

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LATE

SB-1521

Submitted on: 2/4/2019 12:14:09 PM

Testimony for CPH on 2/5/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Derek Tengan	Individual	Support	No

Comments:

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit manager's business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

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SB-1521

Submitted on: 2/4/2019 5:01:57 PM

Testimony for CPH on 2/5/2019 9:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Rayanne Pascua	Testifying for Times Pharmacy	Support	Yes

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by

Rayanne Pascua

Times Waimalu Pharmacy

SB1521 RELATING TO PHARMACY BENEFIT MANAGERS

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Thank you for the opportunity to submit testimony.



February 5, 2018

LATE

The Honorable Rosalyn Baker
Chair, Committee on Commerce, Consumer Protection and Health
415 S. Beretania St,
Honolulu, Oahu, HI, 96813-2425

Sent VIA Email

Re: S.B. 1521, a bill relating to pharmacy benefit managers

Dear Chair Baker:

The Pharmaceutical Care Management Association (PCMA) appreciates the opportunity to provide comments on the provisions in S.B. 1521, a bill relating to pharmacy benefit managers and generic reimbursement using maximum allowable cost (MAC).

PCMA is the national trade association for America's Pharmacy Benefit Managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage through independent businesses, health insurers, labor unions, and federal and state-sponsored health programs.

For over two decades, PBMs have delivered innovative solutions based on payer and patient needs. In an age of high-priced and specialty drugs, payers continue to look to their PBMs for solutions to improve affordability, quality, and access for patients. PBMs bring value to their members and health benefit plan sponsors by limiting excessive prescription drug spending and curbing instances of waste, fraud and abuse.

We have concerns around the analysis presented in the bill as inaccurate as it does not correctly reflect pass-through pricing [The amount the PBM pays the pharmacy is charged (or passed-through) to the client] as well as the cost-share calculation used when there are disparate MAC lists. Therefore, PCMA is concerned about the following provisions in the bill and respectfully request the amendments indicated:

Page4 lines 17 – 21; Page 5 lines 1-3: (c) The pharmacy benefit manager shall make available to a contracting pharmacy, ~~not less than once per quarter, and upon request,~~ a comprehensive report for all drugs on the maximum allowable cost list for a plan, which contains the most-up-to-date maximum allowable cost price or prices used by the pharmacy benefit manager for patients served by the pharmacy, in a readily accessible, and secure, electronic and or usable web-based or ~~other comparable~~ format.



Rationale: Pursuant to current law, PBMs make available to all Hawaii contracted pharmacies an easily accessible, electronic method of looking up specific drugs subject to MAC reimbursement rates. This provides pharmacies with the most up-to-date, real-time pricing information applicable to a given drug on a MAC list. They do not, however, automatically provide a list because the lists vary by plan and can become outdated quickly due to the nature of the generic drug marketplace. Therefore, the above requested amendments seek to balance the contracted pharmacy's ability to request a comprehensive MAC list by plan with encouraging the use tools already in use that provide the most current up-to-date reimbursement information.

Page 5 lines 14-21; Page 6 lines 1-3: (e) The pharmacy benefit manager shall review and make necessary adjustments to the maximum allowable cost of each drug on a maximum allowable cost list at least once every seven days using the most recent data sources available, ~~and shall apply the updated maximum allowable cost list beginning that same day to reimburse the contracting pharmacy until the pharmacy benefit manager next updates the maximum allowable cost list in accordance with this section; provided that the pharmacy benefit manager shall reimburse a contracting pharmacy for a drug based on the maximum allowable cost of that drug on the day the drug is dispensed.~~

Rationale: PBMs don't make price changes effective the same day to avoid having prices change mid-day. This would be impossible to do, as any price change would be effective the following day. This provision also appears to conflict with provision F 'that we have to notify pharmacies of any increase of more than 10% and give them at least 3 days' notice. Therefore, we recommend removing this provision from the bill.

Page 6 lines 4-9: (f) The pharmacy benefit manager shall notify all contracting pharmacies of a ten per cent or greater increase in drug acquisition cost for any drug on the maximum allowable cost list from sixty per cent or more regional pharmaceutical wholesalers at least three days prior to initiating any changes to the maximum allowable cost for that drug. The notification required under this subsection may be provided electronically and shall contain the national drug code of the drug whose acquisition cost is increasing.

Rationale: This requirement is **impossible** for a PBM to comply with as PBMs do not have control of or visibility to pharmaceutical wholesalers' pricing. Also, if we were to confirm price changes online, there is a risk of a breach of proprietary information if competitors were to receive our source data. This provision more appropriately should be required by a pharmacy's PSAO. A PSAO not only signs the contracts with PBMs on behalf of the independent pharmacists it contracts with, it is also often the entity that acts as the pharmacies wholesaler to the contracted pharmacy. As the wholesaler to



the pharmacies it contracts with, a PSAO will have the information when the price to the pharmacy for drugs increases.

Page 7 lines 14-21; Page 8 lines 1-2: (4) If the maximum allowable cost is upheld on appeal, the pharmacy benefit manager shall provide to the contracting pharmacy the reason therefor and the national drug code of an equivalent drug that may be purchased by a similarly situated 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, with the name of the source, including but not limited to the wholesaler or distributor, where the drug may be purchased; and

Rationale: This would be impossible for a PBM to comply with. In Hawaii, 60 of the 62 independent pharmacies that use a PSAO are using a PSAO from a large national wholesaler. PBMs cannot make a wholesaler sell to a pharmacy nor can they make a wholesaler sell a drug at a particular price. If the wholesaler won't or can't sell to a pharmacy it is not in the control of a PBM.

Page 8 lines 14-19: (h) Any pharmacy benefit manager that refuses a maximum allowable cost reimbursement for a properly documented claim from a contracting pharmacy under this section shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of trade or commerce, within the meaning of section 480-2.

Rationale: There may be other reasons to refuse a claim such as audit or patient safety. This provision is very broad and could open up Hawaii plan sponsors to fraud, waste and abuse. As written, this provision could circumvent the established MAC Appeals process agreed to in the PBM-pharmacy contract. A prescription could be "properly documented" but been submitted improperly, which could show up in an audit. Additionally, the penalty is extremely excessive, and section 431R-5 already grants the insurance commissioner the authority to assess a fine for violations of sections 431R-2 and 431R-3. Section 4 of this bill would include the section in 431R where this bill would be codified as one of the sections subject to the commissioner's authority to assess fines for violations. Page 10 Line 20.

Page 8 lines 20-21; Page 9 lines 1-10:

(i) A contracting pharmacy shall not disclose to any third party the maximum allowable cost list and any related information it receives, either directly from a pharmacy benefit manager or through a pharmacy services administrative organization or similar entity with which the pharmacy has a contract to provide administrative services for that pharmacy, except to the insurance commissioner or an elected representative. 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 public records requests under chapter 92F.



Rationale: The information that a contracting pharmacy receives is competitive and proprietary information that is the property of the PBM. A contracted pharmacy should not be permitted to turn over a PBM's competitive and proprietary information without providing proper notice to the PBM so that it may take steps to protect such information. Additionally, we are concerned that the broad use of the term "elected representative" could mean many things and if an elected representative happens to be a pharmacy owner, they would then have access to competitive reimbursement information regarding their competitors. This would be anti-competitive and could lead to increased costs for plan sponsors and consumers.

Page 9 lines 11-20: (i) The insurance commissioner shall adopt rules pursuant to chapter 91 to enforce the provisions of this section. establish a process to subject complaints of violations of this section to an external review process and resolve disputed claims, which may be binding on a complaining contracting pharmacy and a pharmacy benefit manager against whom a complaint is made, except to the extent that the parties have other remedies available under applicable federal or state law, and which may assign the costs associated with the external review process to a complaining contracting pharmacy and a pharmacy benefit manager against whom a complaint is made."

Rationale: Private contracts between the PSAO and PBMs, or pharmacies and PBMs, should utilize the resolution process in their contract. We are concerned that having an external review process through the insurance commissioner would lead to frivolous complaints, and would drive up the costs of health care for health plans, employers, and ultimately consumers. If there are any contractual issues that arise between a PSAO and a PBM or a pharmacy and a PBM, they are handled by contract with appropriate remedies available to the parties under the law making an external review process unnecessary.

Page 10 lines 7-9: "Maximum allowable cost list" means a list of the maximum allowable reimbursement costs of multi-source drugs for which a maximum allowable cost has been established by a pharmacy benefit manager.

Rationale: Our amendment would restore the definition to the definition that was negotiated in 2015 and what is in current law. The proposed language would significantly alter what drugs may be included on a MAC list. This could lead to higher costs for health plan sponsors and consumers.

We appreciate your consideration of our comments.



Sincerely,

A handwritten signature in black ink, appearing to read "Lauren". The signature is fluid and cursive, with a large initial "L" and a trailing flourish.

Lauren Rowley
VP, State Affairs

cc: Senate Commerce, Consumer Protection and Health Committee Members

DRAFT

SB-1521

Submitted on: 2/5/2019 7:04:58 AM

Testimony for CPH on 2/5/2019 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

SB-1521

Submitted on: 2/5/2019 7:14:14 AM

Testimony for CPH on 2/5/2019 9:00:00 AM



Submitted By	Organization	Testifier Position	Present at Hearing
Patrick Uyemoto	Testifying for The Hawaii Pharmacist Association	Support	Yes

Comments:

Testimony presented before the

Senate Committee on Commerce, Consumer Protection, and Health

Tuesday, February 5, 2019

by The Hawaii Pharmacist Association

SB1521 – RELATING TO PHARMACY BENEFIT MANAGERS

The Hawaii Pharmacist Association is seeking legislation to increase transparency over pharmacy benefit manager’s business practices on establishing maximum allowable costs for prescription drugs. The lack of current oversight & transparency has created a hardship on community pharmacies and is directly impacting our ability to provide optimum care for our patients.

This legislation will transfer oversight of pharmacy benefit manager’s business practices related to maximum allowable costs from the department of health to the department of commerce and consumer.

Further, the legislation will increase transparency of pharmacy benefit manager’s business practices by requiring pharmacy benefit managers to disclose where an equivalent drug may be obtained, at or below the cost used to establish the maximum allowable cost.

This bill will promote increased transparency of prescription drug pricing for patients and healthcare providers in the state.

Thank you for the opportunity to submit testimony.

