

STAND. COM. REP. NO. 2747

Honolulu, Hawaii

FEB 14 2020

RE: S.B. No. 2280
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 2280 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 increase
transparency and promote, preserve, and protect the public health,
safety, and welfare by adopting provisions of certain model acts
to:

- (1) Prohibit pharmacy benefit managers from engaging in
self-serving business practices;
- (2) Increase the pharmacy benefit managers' annual reporting
requirements; and
- (3) Replace the registration requirement for pharmacy
benefit managers with a licensure requirement.

Your Committee received testimony in support of this measure
from The Queen's Health Systems, Hawai'i Primary Care Association,
Lifeway Pharmacy, Times Pharmacy, 5 Minute Pharmacy, and four
individuals. Your Committee received testimony in opposition to
this measure from Hawaii Medical Service Association and Hawaii
Association of Health Plans. Your Committee received comments on
this measure from the Department of Commerce and Consumer Affairs,



Department of Health, Department of the Attorney General, Office of Information Practices, and the Pharmaceutical Care Management Association.

Your Committee finds that pharmacy benefit managers have their own way of doing business, and some with little to no transparency. Pharmacy benefit managers control the formularies for drug prices and have the ability to create pricing uncertainty for pharmacies. This measure promotes transparency by increasing reporting requirements and supports efforts to control drug costs by preventing pharmacy benefit managers from promoting medications based on the rebates the pharmacy benefit manager receives from the manufacturer.

Your Committee further finds that, especially for smaller, independent or rural pharmacies, pharmacy benefit managers reimburse pharmacies half of what the cost is to acquire the drug and there is no transparency concerning where the drug is being purchased, in what market, or if it is even available at a certain price in Hawaii. A significant number of independent pharmacies have been forced to close their doors or sell to mainland corporations due to these predatory practices employed by pharmacy benefit managers. Not only do these closures take a toll on local economies, but they also leave residents in less populated areas without a pharmacist to fill prescriptions and provide vital services. Your Committee has also heard the testimony of the Department of Commerce and Consumer Affairs regarding its concerns about replacing the registration requirement for pharmacy benefit managers with a licensing requirement. Accordingly, amendments to this measure are necessary to address these concerns.

Your Committee has amended this measure by:

- (1) Inserting language that prohibits certain contracts for managed care entered into after June 30, 2020 from containing a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis, and voids any such provisions in existing managed care contracts, and repealing this prohibition on June 30, 2025;



- (2) Inserting language that prohibits pharmacy benefit managers from engaging in unfair methods of competition or unfair practices;
- (3) Inserting language that prohibits pharmacy benefit managers from retaining any portion of spread pricing;
- (4) Inserting language that prohibits pharmacy benefit managers from reimbursing pharmacies that participate in the federal drug discount program differently than any other network pharmacy;
- (5) Inserting language that prohibits pharmacy benefit managers from reimbursing independent or rural pharmacies an amount less than the rural rate for each prescription drug, under certain circumstances;
- (6) Inserting language that prohibits pharmacy benefit managers from prohibiting a pharmacist or pharmacy to provide certain information to insureds regarding cost sharing or more affordable alternative drugs;
- (7) Inserting language that provides, in responding to the State's request, any information provided in response to a data call from the Insurance Commissioner or designee shall be treated confidential and privileged;
- (8) Clarifying that each pharmacy benefit manager registered in the State shall file a transparency report with the Insurance Commissioner, no later than September 1 of each year, that shall contain certain data from each preceding year and other specified information;
- (9) Inserting language that requires the Insurance Commissioner to perform an annual examination of the negative impacts on independent and rural pharmacies caused by pharmacy benefit managers and the effects of transactions between health plan insurers and pharmacy benefit managers on health plan premiums;
- (10) Removing language that would have required the Insurance Commissioner to publish annual reports on the Insurance Division's website;

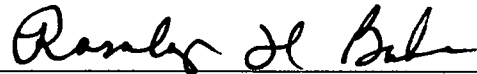


- (11) Inserting language that requires the Insurance Commissioner to file annual reports with the Legislature no later than twenty days prior to the convening of each regular session, to include certain information;
- (12) Reverting to existing statutory language regarding the registration requirement for pharmacy benefit managers, rather than a licensing requirement;
- (13) Inserting a definition for "independent or rural pharmacy";
- (14) Removing language that would have defined "trade secret";
- (15) Clarifying the definition for "covered entity";
- (16) Clarifying the definition for "pharmacy benefit manager";
- (17) Clarifying that a pharmacy benefit manager's registration shall not be transferable;
- (18) Clarifying that a pharmacy benefit manager's application for registration shall include any information the Insurance Commissioner may deem necessary;
- (19) Clarifying that the Insurance Commissioner may suspend, revoke, or place on prohibition a registered pharmacy benefit manager if the pharmacy benefit manager commits a violation of section 480-2 or section 481-1, Hawaii Revised Statutes;
- (20) Clarifying the penalties for a person who acts as a pharmacy benefit manager without first being registered;
- (21) Amending section 1 to reflect its amended purpose; and
- (22) 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. 2280, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2280, 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



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:*	Committee Referral:	Date:
SB2280	CPH, JDC	2/12/20
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____		
The Recommendation is:		
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310
<input type="checkbox"/> Recommit 2313		
Members	Aye	Aye (WR)
Nay	Excused	
BAKER, Rosalyn H. (C)	✓	
CHANG, Stanley (VC)	✓	
NISHIHARA, Clarence K.	✓	
RUDERMAN, Russell E.		✓
THIELEN, Laura H.	✓	
WAKAI, Glenn	✓	
FEVELLA, Kurt		✓
TOTAL	5	2
Recommendation:		
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted		
Chair's or Designee's Signature:		
		
Distribution:		
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency
Goldenrod Committee File Copy		

*Only one measure per Record of Votes