HOUSE OF REPRESENTATIVES
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

H.B. NO. 1805

A BILL FOR AN ACT

RELATING TO PRESCRIPTION DRUGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that one of the greatest threats to the affordability of health care coverage is the pharmaceutical industry's pricing of new and existing medications. New drugs are being approved and marketed at higher prices than their predecessor treatments, often with no difference in effectiveness or safety. Because hospitals and health plans are already reporting pricing information, it is appropriate for pharmaceutical manufacturers to do the same when implementing major price increases.

The purpose of this Act is to:

(1) Require drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers if a proposed increase in the wholesale price of certain drugs would result in a sixteen per cent or more price increase over a two-year period; and

(2) Require drug manufacturers to identify and report to the insurance commissioner information on certain

drugs whose wholesale acquisition cost increases by a certain amount during a specified time frame.

SECTION 2. Chapter 431R, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§431R- Mandatory notification of prescription drug price increases.** (a) A manufacturer of a prescription drug with a wholesale acquisition cost of more than $50 for a course of therapy shall notify each prescription drug benefit plan and pharmacy benefit manager of any planned price increase if that increase will result in a sixteen per cent or more increase in the wholesale acquisition cost of the prescription drug over any two-year period.

(b) The notice required by subsection (a) shall:

(1) Be provided in writing at least sixty days prior to the planned effective date of the price increase; and

(2) Include:

(A) The date the price increase shall take effect;

(B) The current wholesale acquisition cost of the prescription drug;

(C) The dollar amount of the future price increase in the wholesale acquisition cost of the prescription drug; and

(D) A statement regarding whether a change or improvement in the drug necessitates the price increase, and if so, a description of the change or improvement.

(c) The insurance commissioner shall post on the website of the department of commerce and consumer affairs the names and addresses of the prescription drug benefit plans and pharmacy benefit managers required to receive notice pursuant to this section.

(d) A manufacturer of a prescription drug shall identify annually up to ten prescription drugs on which the State spends significant health care moneys and for which the wholesale acquisition cost increased by a total of fifty per cent or more during the prior two calendar years or by twenty per cent or more during the prior calendar year. The drugs identified shall represent different drug classes and shall include generic drugs.

(e) For each prescription drug identified pursuant to subsection (d), the insurance commissioner shall require the drug manufacturer to report the following information:

(1) A schedule of the drug's wholesale acquisition cost increases over the previous five calendar years;

(2) A written narrative description, suitable for public release, of the factors that have contributed to the drug's recent cost increase;

(3) The date and price of acquisition of the identified drug if it was not developed by the manufacturer, and the drug's wholesale acquisition cost at the time of acquisition, if known; and

(4) The manufacturer's aggregate, company-level research and development and other relevant capital expenditures, such as facility construction, for the most recent year for which final audited data are available."

SECTION 3. Section 431R-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

""Course of therapy" means:

(1) The recommended daily dosage units of a prescription drug for thirty days, pursuant to its prescribing label as approved by the federal Food and Drug Administration; or

(2) The recommended daily dosage units of a prescription drug pursuant to its prescribing label for a normal course of treatment that is less than thirty days, as approved by the federal Food and Drug Administration."

SECTION 4. Section 431R-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No later than March 31 of each calendar year, each prescription drug benefit plan, health benefits plan under chapter 87A, and pharmacy benefit manager shall file with the insurance commissioner, in [~~such~~] a form and detail as the insurance commissioner shall prescribe, a report for the preceding calendar year stating that the pharmacy benefit manager or prescription drug benefit plan is in compliance with this chapter. The report shall fully disclose the amount, terms, and conditions relating to copayments, reimbursement options, and other payments associated with a prescription drug benefit plan. Each report shall disclose an address that shall

be posted on a public website for purposes of receiving notifications pursuant to section 431R- ."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2020.

INTRODUCED BY: _____

JAN 16 2020

H.B. NO. 1805

Report Title:
Department of Commerce and Consumer Affairs; Prescription Drugs; Price Increases; Notification; Insurance Commissioner

Description:
Requires drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers if a proposed increase in the wholesale price of certain drugs would result in a sixteen per cent or more price increase over a two-year period. Requires the drug manufacturer to identify and report to the insurance commissioner information on certain drugs whose wholesale acquisition cost increases by a certain amount during a specified time frame.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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
House Committee on Consumer Protection and Commerce
Tuesday, February 25, 2020
2:00 p.m.
State Capitol, Conference Room 329

On the following measure:
H.B. 1805, RELATING TO PRESCRIPTION DRUGS

Chair Takumi 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 purposes of this bill are to: (1) require drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers if a proposed increase in the wholesale price of certain drugs would result in a sixteen per cent or more price increase over a two-year period; and (2) require the drug manufacturer to identify and report to the Insurance Commissioner information on certain drugs whose wholesale acquisition cost increases by a certain amount during a specified time frame.

The bill's amendments to Hawaii Revised Statutes chapter 431R would be difficult to enforce, as the Insurance Division has no regulatory oversight over drug manufacturers and lacks the requisite expertise to regulate wholesale prescription drugs. In addition, the Insurance Division would need sufficient funds and time to retain

an outside expert consultant on prescription drug wholesale pricing to assist with implementing and enforcing this bill.

Finally, the Department notes that similar legislation passed in California is currently the subject of litigation before the United States District Court, Eastern District of California, Case No. 2:17-cv-02573, on grounds that the law is unconstitutional.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR

STATE OF HAWAII
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TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
ON HOUSE BILL NO. 1805

February 25, 2020
2:00 p.m.
Room 329

RELATING TO PRESCRIPTION DRUGS

Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees has not taken a position on this bill. However, EUTF staff would like to provide comments.

We appreciate the intent to provide transparency in pricing of prescription drug by pharmaceutical manufacturers and possibly limit future price increases. Because of the complexity of the prescription drug industry it is very difficult to draft a bill that fulfills this intent. EUTF staff would like to mention the following parts of the bill to possibly address:

1. The bill includes a set increase of sixteen percent. However, in times of low inflation or deflation, even a ten percent increase over two years could be excessive. A threshold tied to the Consumer Price Index may be an alternative.
2. The bill does not address the impact of rebates on pricing. A manufacturer could maintain the same wholesale acquisition cost (WAC) but reduce rebates over

time resulting in higher net costs to health plans. For example, in year 1, the WAC for a 30-day supply is $100 with a $30 rebate to the plan. On Day 91, the WAC could still be $100 but with a lower rebate of $10. This equates to a 28.6% increase in 90-days to the net cost to the health plan despite the WAC remaining the same.

Thank you for the opportunity to testify.

An Independent Licensee of the Blue Cross and Blue Shield Association

February 19, 2020

The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
House Committee on Consumer Protection & Commerce

Re: HB 1805 – Relating to Prescription Drugs

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1805, which requires drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers if a proposed increase in the wholesale price of certain drugs would result in a sixteen per cent or more price increase over a two-year period. It also requires the drug manufacturer to identify and report to the insurance commissioner information on certain drugs whose wholesale acquisition cost increases by a certain amount during a specified time frame.

HMSA supports requiring prescription drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers of any planned price increases. We believe this measure may assist in our attempt to keep costs down for our members and is an important step towards reigning in the skyrocketing costs of prescription drugs.

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

Sincerely,

Jennifer Diesman
Senior Vice-President-Government Relations

Hawaii Association of Health Plans

February 19, 2020

The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
House Committee on Consumer Protection & Commerce

House Bill 1805 – Relating to Prescription Drugs

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to testify in support of HB 1805.

We agree that pharmaceutical drug prices are a threat to the affordability of health care coverage in Hawaii and we believe drug manufacturers should report price increases. This measure is an important step to helping to reign in the high cost of pharmaceutical drugs.

Thank you for allowing us to testify in support of HB 1805.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

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Government Relations

Testimony of
Jonathan Ching
Government Relations Manager

Before:
House Committee on Consumer Protection & Commerce
The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair

February 25, 2020
2:00 p.m.
Conference Room 329

Re: HB1805, Relating to Prescription Drugs

Chair Takumi, Vice Chair Ichiyama, and committee members, thank you for this opportunity to provide testimony on HB1805, which requires drug manufactures to notify prescription drug insurers and pharmacy benefit managers of a proposed increase in the wholesale price of certain drugs.

Kaiser Permanente Hawai‘i SUPPORTS HB1805.

Among the greatest threats to the affordability of health care coverage is the pharmaceutical industry's pricing of new and existing medications. New drugs are being approved and marketed with higher prices than their predecessor treatments, often with no difference in effectiveness or safety. Drugs that have been on the market for years are seeing double digit price increases each year without an explanation. In some cases, drugs that have long been available are going up in price even faster, with triple and quadruple digit price increases.

Kaiser Permanente's Specialty Pharmacy, which services Kaiser Permanente Hawai‘i members, focuses on high cost, high touch medication therapy for patients with complex disease states. As such, Kaiser Permanente Specialty Pharmacy's overall drug spending for Hawai‘i members increased 146% from 2015 to 2018. This problem is only going to get worse, with spending on specialty drugs expected to continue to rise at an alarming rate. Unchecked, this trend will bankrupt public and private payors alike. Even common drugs that have been around for many years are seeing unexplainable, staggering price increases. Manufacturers raise prices on existing drugs once, twice, or even three times per year − and yet, that new, higher price seldom brings any additional value or clinical benefit. This would never be acceptable in any other industry and is simply unsustainable.

Hospitals and health plans report pricing information. It's time for pharmaceutical manufacturers to do the same when they implement major price increases.

Because individuals are required to buy health care, and public and private purchasers are required to cover an FDA approved medication when one is available for a patient's condition, there is a compelling public interest for drug manufacturers to be required to provide a rationale as to how they arrived at a particular price. Price transparency is quickly becoming the norm in the health care industry in order to contain costs and encourage healthy competition.

Kaiser Permanente Hawai'i is appreciative of the innovation in pharmaceuticals that makes a profoundly better quality of life available to our patients. However, patients will not benefit if a medication is priced out of reach and does not provide additional value from a quality and/or safety perspective or if ultimately these price increases bankrupt the system.

HB1805 is a good first step toward shining a light on manufacturer pricing practices and will also help purchasers and policy makers better understand this large and growing expense.

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

February 24, 2020

TO: Chair Roy M. Takumi
Vice Chair Linda Ichiyama
Members of the House Committee on Consumer Protection & Commerce

FROM: Pharmaceutical Research and Manufacturers of America (PhRMA)
(William Goo)

RE: **HB 1805** - Relating to Prescription Drugs
HB 1805, Proposed HD1 - Relating to Prescription Drugs
Hearing Date: February 25, 2020
Time: 2:00 pm

PhRMA **opposes HB 1805** in its current form.

This bill requires the manufacturer of a prescription drug which has a wholesale acquisition cost (WAC) of more than $50 for a course of therapy to notify each drug plan and pharmacy benefit manager of any increase of 16% or more in the WAC over any 2-year period and the reason for the increase at least 60 days before it's effective date.

The mandatory advance notification of the WAC of a prescription drug is not information that will be very meaningful to patients who are primarily concerned about the affordability and accessibility of medications to them. Patients want to know about what a prescription drug will cost them regardless of what the WAC is. If anything, other factors such as rebates and discounts have a more direct impact on drug pricing.

Advance notification of an increase in pricing will also result in the unnecessary disclosure of proprietary information at the expense of drug manufacturers that would potentially be advantageous to drug plans or pharmacy benefit managers who may make bulk purchases prior to any price increase taking place and sell them at a higher price later. The constitutionality of mandatory advance price notification is also questionable and the subject of litigation in California and Oregon. A California state court has ruled that the California Correctional Health Care Services (CCHCS) could not release such information provided by a drug manufacturer and that the CCHCS could be liable for attorneys' fees as well.

Further, there will be startup and maintenance costs associated with implementing the advance notification requirement which again would not be of meaningful benefit to patients and hence, unnecessary and unneeded. Although not identical in content, the

California law (SB 17) upon which this legislation is based is estimated to cost $1.4 million in the first two years and $850,000 annually thereafter. Included would be the costs to enforce the manufacturer reporting requirements as well as to collect, coordinate and publish information to the entity collecting the information. Moreover, since California law requires that notice be given to entities that purchase drugs through national contracts, the advance notification would mean that the WAC is likely to be accessible to parties outside California which would make the current bill an unnecessary duplication of efforts.

Instead, PhRMA proposes that the Proposed HD1 attached hereto be used in place of the current language which creates more meaningful transparency in drug pricing.

The Proposed HD1 incorporates most of the language already set forth in sections (d) and (e) of the bill and provides for a manufacturer of a prescription drug to identify drugs in which the WAC increased by a total of fifty percent or more during the prior two years or by twenty percent or more during the prior year. For each prescription drug identified, the drug manufacturer would report increases in the WAC for the previous five years, and information including but not limited to the factors contributing to the price increases and the amount of expenditures for research and development of the drug. This information would be available to the patient wanting to know of why and how the price of a drug was arrived and is currently at without the disclosure of proprietary information.

Thank you for considering this testimony.

A BILL FOR AN ACT

RELATING TO PRESCRIPTION DRUGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that one of the greatest threats to the affordability of health care coverage is the pharmaceutical industry's pricing of new and existing medications. New drugs are being approved and marketed at higher prices than their predecessor treatments, often with no difference in effectiveness of safety. Because hospitals and health plans are already reporting pricing information, it is appropriate for pharmaceutical manufacturers to do the same when implementing major price increases.

The purpose of this Act is to:

[~~(1) Require drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers if a proposed increase in the wholesale price of certain drugs would result in a sixteen per cent or more price increase over a two-year period; and~~]

~~(2)~~(1) Require drug manufacturers to identify and report to the insurance commissioner information on certain

drugs whose wholesale acquisition cost increases by a certain amount during a specified time frame.

SECTION 2. Chapter 431R, Hawaii Revised Statutes, is amended [~~by adding a new section to be appropriately designated and to read~~]as follows:

"§431R- Mandatory notification of prescription drug price increases. [~~(a) A manufacturer of a prescription drug with a wholesale acquisition cost of more than $50 for a course of therapy shall notify each prescription drug benefit plan and pharmacy benefit manager of any planned price increase if that increase will result in a sixteen per cent or more increase in the wholesale acquisition cost of the prescription drug over any two-year period.~~

~~(b) The notice required by subsection (a) shall:~~

~~(1) Be provided in writing at least sixty days prior to the planned effective date of the price increase; and~~

~~(2) Include:~~

~~(A) The date the price increase shall take effect;~~

~~(B) The current wholesale acquisition cost of the prescription drug;~~

~~(C) The dollar amount of the future price increase in the wholesale acquisition cost of the prescription drug; and~~

~~(D) A statement regarding whether a change or improvement in the drug necessitates the price increase, and if so, a description of the change or improvement.~~

~~(c) The insurance commissioner shall post on the website of the department of commerce and consumer affairs the names and addresses of the prescription drug benefit plans and pharmacy benefit managers required to receive notice pursuant to this section.~~]

~~(d)~~(a) A manufacturer of a prescription drug shall identify annually ~~up to ten prescription~~ drugs ~~on which the State spends significant health care moneys and~~ for which the wholesale acquisition cost increased by a total of fifty per cent or more during the prior two calendar years or by twenty per cent or more during the prior calendar year. The drugs identified shall represent different drug classes and shall include generic drugs.

~~(e)~~(b) For each prescription drug identified pursuant to subsection ~~(d)~~(a), the insurance commissioner shall require the drug manufacturer to report the following information:

(1) A schedule of the drug's wholesale acquisition cost increases over the previous five calendar years;

(2) A written narrative description, suitable for public release, of the factors that have contributed to the drug's recent cost increase;

(3) The date and price of acquisition of the identified drug if it was not developed by the manufacturer, and the drug's wholesale acquisition cost at the time of acquisition, if known; and

(4) The manufacturer's aggregate, company-level research and development and other relevant capital expenditures, such as facility construction, for the most recent year for which final audited data are available."

[~~(f)~~](c) Information provided to the insurance commissioner is limited to the information pursuant to subsection ~~(e)~~(b), and is exempt from public inspection and copying under the Uniform Information Practices Act described in chapter 92F, and shall not be released in a manner that would

allow for the identification of an individual drug, therapeutic class of drugs, or manufacturer, or in a manner that is likely to compromise the financial, competitive, or proprietary nature of the information, including privileged and confidential information under 21 C.F.R. section 20.61."

(d) Information provided by a manufacturer under this section shall be generally consistent with the level and type of data made available in a manufacturer's 10-k filing or to other publicly available data sources. The insurance commissioner shall consult with representatives of manufacturers to establish a single, standard format for reporting information under this section that minimizes administrative burden for the State and manufacturers.

SECTION 3. Section 431R-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

""Course of therapy" means:

(1) The recommended daily dosage units of a prescription drug for thirty days, pursuant to its prescribing label as approved by the federal Food and Drug Administration; or

(2) The recommended daily dosage units of a prescription drug pursuant to its prescribing label for a normal course of treatment that is less than thirty days, as approved by the federal Food and Drug Administration."

SECTION 4. Section 431R-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No later than March 31 of each calendar year, each prescription drug benefit plan, health benefits plan under chapter 87A, and pharmacy benefit manager shall file with the insurance commissioner, in [~~such~~] a form and detail as the insurance commissioner shall prescribe, a report for the preceding calendar year stating that the pharmacy benefit manager or prescription drug benefit plan is in compliance with this chapter. The report shall fully disclose the amount, terms, and conditions relating to copayments, reimbursement options, and other payments associated with a prescription drug benefit plan. Each report shall disclose an address that shall be posted on a public website[~~ for purposes of receiving notifications pursuant to section 431R- ~~]."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2020.

HB-1805
Submitted on: 2/25/2020 10:20:35 AM
Testimony for CPC on 2/25/2020 2:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Rayne	Individual	Support	No

Comments: