

SB 1401

Measure Title:	RELATING TO PHARMACY BENEFIT MANAGERS.
Report Title:	Pharmacy Benefit Managers; Insurance Commissioner; Licensure; Reporting
Description:	Prohibits pharmacy benefit managers from engaging in self-serving business practices. Replaces registration requirement with license requirement for pharmacy benefit managers. Increases pharmacy benefit manager reporting requirements to the insurance commissioner.
Companion:	HB1361
Package:	None
Current Referral:	CPH, WAM
Introducer(s):	BAKER, 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. 1401, 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) 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.

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 and is preempted if it has either an impermissible connection with an ERISA plan or an impermissible reference to an ERISA plan. This bill may be preempted because of an arguably impermissible connection with an ERISA plan or impermissible reference to an ERISA plan.

¹ The subsection, in full, provides as follows:

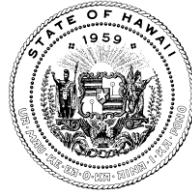
Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section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

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 this bill would prohibit pharmacy benefit managers from engaging in self-serving business practices, increase the pharmacy benefit managers' annual reporting requirements, and replace the registration requirement for pharmacy benefit managers with a licensure requirement. One or more of these mandates may be found to implicate areas central to plan administration.

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

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.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310
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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. 1401, 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 purposes of this bill are to: (1) prohibit pharmacy benefit managers (PBMs) from engaging in self-serving business practices; (2) replace a registration requirement with a license requirement; and (3) increase PBM reporting requirements to the Insurance Commissioner.

Implementation of this bill would be difficult, as the Insurance Division lacks the requisite expertise to assess qualifications of PBMs for licensure. This bill also lacks sufficient protections and guidelines for disclosure of materials that may contain trade secrets or other confidential information. Finally, this bill may present issues regarding the Employee Retirement Income Security Act (ERISA), given that some PBMs may be servicing ERISA-covered benefit plans.

Thank you for the opportunity to testify on this measure.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
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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 Housing

From: Cheryl Kakazu Park, Director

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

Re: Testimony on S.B. No. 1401
Relating to Pharmacy Benefit Managers

Thank you for the opportunity to submit testimony on this bill, which would add regulations for pharmacy benefit managers. The Office of Information Practices (OIP) takes no position on the substance of this bill, but **recommends an amendment to proposed subsection 431S-__ (b) regarding trade secrets.**

Proposed section 431S-__, at bill pages 2-3, requires each pharmacy benefit manager to annually submit to the Insurance Commissioner a transparency report including information about fees and rebates it received and retained over the past year. Subsection (b), at bill page 3, would allow a pharmacy benefit manager to designate information provided in that report as a trade secret (and implicitly confidential), with the possibility that a court could order disclosure for good cause. Rather than leaving it up to each individual pharmacy benefit manager to make the call as to how much of the information it provides to the Insurance Commissioner must be kept confidential (barring a court order), which would lead to uneven treatment, **OIP recommends that this Committee instead set out a confidentiality provision that would apply equally to all pharmacy benefit managers.** OIP recognizes that information about fees and rebates retained and

received by an individual pharmacy benefit manager is commercially sensitive and in fact would likely be considered confidential business information falling under the “frustration of a legitimate government function” exception to disclosure in the event of a public record request under the Uniform Information Practices Act (UIPA), chapter 92F, HRS. Thus, assuming the Insurance Division concurs that confidentiality for this information would be appropriate, **OIP would not object to a confidentiality statute as follows:**

(b) Information provided under this section and identifiable to an individual pharmacy benefit manager shall not be disclosable under chapter 92F, provided that the insurance commissioner may publicly report aggregated information of multiple pharmacy benefit managers that is not identifiable to any particular pharmacy benefit manager.

Thank you for the opportunity to testify.



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

SB1401 – 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 establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

PHONE: (808) 959-4575

50 EAST PUAINAKO STREET, HILO, HAWAI'I 96720

WWW.KTASUPERSTORES.COM



SB-1401

Submitted on: 2/4/2019 10:28:22 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-1401

Submitted on: 2/2/2019 8:56:50 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
jemaa	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-1401

Submitted on: 2/2/2019 10:39:44 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:

SB1401 – 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 that is locally owned and operated in the State of Hawaii, I am asking to you to support SB1401. I believe it would help to establish oversight over pharmacy benefit managers who operate in our state.

Currently, there is little to no oversight over pharmacy benefit managers and their business practices. The lack of transparency by the pharmacy benefit managers, coupled with the lack of oversight has been a detriment to locally owned independent pharmacies. My hope is that this bill will provide fair drug pricing for patients and healthcare providers.

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

Sincerely,

Allan Matsukado

SB-1401

Submitted on: 2/3/2019 4:05:39 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

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/2/2019 1:09:30 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

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager’s business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/2/2019 3:51:17 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Chikuma	Testifying for Times Pharmacy	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

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/2/2019 4:57:02 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 Commerce, Consumer Protection, and Health February 5, 2019
Magdi Latif
cal center NorthShore Pharamcy

Senate Committee on Tuesday,
By
Medi

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacist and pharmacy owner since 1988, in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager’s business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

With Aloha

Magdi Latif

SB-1401

Submitted on: 2/4/2019 12:50:21 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:

Senator Baker and Committee members: Thank you for authoring this legislation. Legislation is the only way for the State of Hawaii to prevent the elimination of competition in the pharmacy market place. Preserving patient choice and the access to care needs to be the number one goal. Please pass this out of committee intact.

Aloha,

Kevin Glick, R.Ph.

SB-1401

Submitted on: 2/4/2019 8:10:13 AM

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

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Chinen	Testifying for KTA Super Stores	Support	No

Comments:

We are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state. Personally I feel that it is a conflict of interest that CVS who is a major competitor in the Sate of Hawaii is also our pharmacy benefit manager.

This bill would be a step forward to promote fair drug pricing for patients and healthcare providers in the State of Hawaii.

SB-1401

Submitted on: 2/4/2019 9:30:03 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

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager’s business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/2/2019 6:01:55 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 establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/3/2019 3:01:50 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 Pharmacy

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager’s business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/3/2019 5:31:39 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

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/3/2019 7:26:05 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 establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

Dr Martha Harkey, PhD, RPh

NorthShore Pharmacy

Kilauea, HI

SB-1401

Submitted on: 2/3/2019 7:37:03 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 Gustna, PharmD

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacist in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager’s business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/3/2019 10:17:50 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:

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit managers business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/3/2019 10:28:53 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 establish oversight over pharmacy benefit managers who operate in our state. This bill will provide much needed oversight and transparency of pharmacy benefit managers business practices in the state to promote fair drug pricing for patients and healthcare providers. Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/3/2019 11:38:47 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

SB1401 RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit managers business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/4/2019 8:37:36 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:

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/4/2019 8:53:04 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

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager’s business practices in the state to promote fair drug pricing for patients and healthcare providers.

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
Keri Oyadomari

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

Keri Oyadomari, PharmD

SB-1401

Submitted on: 2/4/2019 11:54:42 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 establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/4/2019 12:14:54 PM

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

LATE

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 establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager's business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.

SB-1401

Submitted on: 2/4/2019 4:57:59 PM

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

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Rayanne Pascua	Testifying for Times Pharmacy	Support	No

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

As a Community Pharmacy in the State of Hawaii, we are seeking legislation to increase transparency over pharmacy benefit managers 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 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 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 5, 2019

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

Sent VIA Email

Re: S.B. 1401, 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. 1401, a bill relating to pharmacy benefit managers. 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.

Hawaii already requires PBMs to obtain a registration from the Department of Insurance in order to operate in this state. Additional regulation is unnecessary and the provisions of this bill will likely result in increased cost to consumers in Hawaii paying more for their prescription drug benefits.

Below are our specific concerns and recommendations for SB. 1401.

~~**§431S – Pharmacy benefit manager business practices.** A health carrier or Pharmacy Benefit Manager is prohibited from penalizing, requiring, or providing financial incentives, including variations in premiums, deductibles, copayments, or coinsurance, to covered persons as incentives to use specific retail, mail order pharmacy, or other network pharmacy provider in which a Pharmacy Benefit Manager has an ownership interest or that has an ownership interest in a Pharmacy Benefit Manager.~~

Rationale: These provisions are unnecessary and duplicative as Hawaii law already addresses this issue directly in [HRS §431R-3](#).

~~**§431S– Transparency Report.** (a) No later than January 1, 2020, and annually thereafter, each pharmacy benefit manager shall submit a transparency report containing data from the preceding calendar year to the insurance commissioner that shall include:~~

~~— (1) The aggregate amount of all rebates that the pharmacy benefit manager received from all pharmaceutical manufacturers for all covered entity clients and for each covered entity client;~~



~~—(2) The aggregate administrative fees that the pharmacy benefit manager received from all manufacturers for all covered entity clients and for each covered entity client;~~

~~—(3) The aggregate retained rebates that the pharmacy benefit manager received from all pharmaceutical manufacturers and did not pass through to covered entities;~~

~~—(4) The aggregate retained rebate percentage; and~~

~~—(5) The highest, lowest, and mean aggregate retained rebate percentage for all covered entity clients and for each covered entity client.~~

~~—(b) A pharmacy benefit manager providing information under this section may designate that material as a trade secret; provided that disclosure may be ordered by a court of this State for good cause shown or made in a court filing.~~

~~—(c) The insurance commissioner shall review the transparency report required under subsection (a) and, no later than sixty days after the receipt of the report, shall publish the transparency report on the insurance division's website in a manner that would not be considered an unauthorized disclosure of a pharmacy benefit manager's trade secrets.~~

Rationale: PCMA believes this entire section requiring the reporting to the state of aggregate pharmaceutical manufacturer rebates, whether and what percentage of the rebate the PBM passed through to the client or kept, and all administrative fees, should be stricken.

- Government agencies—including the Congressional Budget Office (CBO) and the Federal Trade Commission (FTC)—have long cautioned that PBM disclosure mandates could raise costs. And estimates from Visante specifically quantify these potential costs for Hawaii.¹
- CBO has noted that disclosure requirements could allow firms to “observe the prices charged by their rivals, which could lead to reduced competition.” According to CBO, the “disclosure of rebate data would probably cause the variation in rebates among purchasers to decline” leading to a “compression in rebates.”²
- The FTC has warned that “whenever competitors know the actual prices charged by other firms, tacit collusion—and thus higher prices—may be more likely.” FTC concluded that PBM disclosure mandates could “undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford.”³

¹ “Increased Costs Associated With Proposed State Legislation Impacting PBM Tools,” Visante, February 2018.

² Letter to Rep. Joe Barton and Rep. Jim McCrery, U.S. House of Representatives, Congressional Budget Office, Mar. 12, 2007.

³ Letter from FTC to Rep. Patrick T McHenry, U.S. Congress, July 15, 2005; Letter from FTC to Assemblyman Greg Aghazarian, California State Assembly, Sept. 3, 2004.



- PBM Disclosure Mandates: Proposed disclosure mandates include legislative and regulatory measures that would require PBMs to divulge the contractual price concessions they have negotiated with drug manufacturers and pharmacies. According to the FTC, disclosure mandates could result in tacit collusion and standardization of contract terms. We predict that disclosure mandates would increase projected drug expenditures by an estimated 4.3% over the next 10 years.⁴
- In the current marketplace, contract negotiations between PBMs, manufacturers, and pharmacies are like sealed-bid auctions: manufacturers and pharmacies are encouraged to offer aggressive price concessions since they don't know what's being offered by their competitors.
- Finally, any confidential, trade secret, or sensitive information provided to the state should be held confidential and not subject to public disclosure under the state's public records law. However, we believe the risk of any disclosure at all of proprietary competitive information is too great. If this information were to be in the public sphere, using basic enrollment and coverage market information, manufacturers could easily figure out what price concessions their competitors are providing which eliminates their incentive to lower the cost of their medications. This will lead to increased costs for plan sponsors and their members in the state of Hawaii.

SECTION 4. Section 431S-1

~~“Aggregate Retained Rebate Percentage — means the percentage of all rebates received from manufacturer to a Pharmacy Benefit Manger for prescription drug utilization which is not passed on to the Pharmacy Benefit Managers’ health carrier clients. The percentage shall be calculated for each health carrier for rebates in the prior calendar year as follows:~~

- ~~• the sum total dollar amount of rebates received from all pharmaceutical manufacturers for all utilization of covered persons of a health carrier that was not passed through to the health carrier; and~~
- ~~• divided by the sum total dollar amount of all rebates received from all pharmaceutical manufacturers for covered persons of a health carrier.”~~

~~“Rebates” means all price concessions paid by a manufacturer to a pharmacy benefit manager or covered entity, including rebates, discounts, and other price concessions that are based on actual or estimated utilization of a prescription drug. “Rebates” also includes price concessions based on the effectiveness of a drug as in a value-based or performance-based contract.~~

Rationale: For the same reason as given in the “Transparency Report” section, PCMA believes this section should be stricken. Additionally, the issue of pass through is determined in the client’s contract.

⁴ “Increased Costs Associated With Proposed State Legislation Impacting PBM Tools,” Visante, February 2018.



Rationale:

SECTION 5. Section 431S-3, ~~Registration License~~ Registration required.

(a) Notwithstanding any law to the contrary, no person shall act or operate as a pharmacy benefit manager without first obtaining a valid ~~[registration]~~ license registration issued by the commissioner pursuant to this chapter. The ~~license registration~~ shall not be transferrable.

Rationale:

PCMA recommends not changing the registration to licensure throughout the bill.

- PBMs are already required to be registered as PBMs in Hawaii at the department of insurance (DOI). The DOI has jurisdiction over the pharmacy benefits of insured plans and the ability to enforce those requirements on plans providing those benefits within the state. This new, separate regulatory structure is duplicative and unnecessary. PBMs, through their contracts with health plans, cannot do anything that would bring their clients out of compliance with state law. PBMs are required to comply with the same consumer protections governing utilization review, prior approval, and dispute resolution systems, among others and through market conduct the DOI examines the pharmacy benefit administered by the PBM for the plan for things such as compliance with network adequacy standards and coverage mandates.

(b) The commissioner may grant a ~~license registration~~ under this chapter if the commissioner is satisfied that the applicant possessed the necessary organization, ~~background expertise, and financial integrity~~ to supply the services sought to be offered pursuant to this chapter.

Rationale:

PCMA recommends striking the requirement for “background expertise, and financial integrity”.

- There are no industry standards on solvency or fiscal integrity. PBMs and their clients are in a business relationship that does not include the traditional accepting of insurance risk that necessitates an examination of financial solvency. Contracts between PBMs and carriers are developed and “priced” according to the services being performed, all within the boundaries/limits of insurance carrier responsibilities and solvency. “Background expertise” should be deleted because it is vague and subjective. No state in the country includes such an arbitrary standard in their registration requirements for PBMs.

(e) The commissioner may suspend, revoke, or place on probation a pharmacy benefit manager ~~licensee~~ registration if:

(2) The commissioner receives consumer complaints that justify an action under this subsection to protect the safety and interest of consumers;

Rationale:

- Subsection “2” is overly broad and sets forward no clear criteria to justify revocation of a PBM license. It also doesn’t set up any regulatory review or appeal of such a decision. If



PBM were to lose its ability to operate it could potentially disrupt the delivery of pharmacy benefits to tens of thousands of individuals.

We appreciate your consideration of concerns and look forward to working with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Rowley".

Lauren Rowley
Vice President, State Affairs

Cc: Senate Commerce, Consumer Protection and Health Committee

LATE

SB-1401

Submitted on: 2/5/2019 7:04:33 AM

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

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-1401

Submitted on: 2/5/2019 7:15:40 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

SB1401 – RELATING TO PHARMACY BENEFIT MANAGERS

The Hawaii Pharmacist Association is seeking legislation to establish oversight over pharmacy benefit managers who operate in our state.

This bill will provide much needed oversight and transparency of pharmacy benefit manager’s business practices in the state to promote fair drug pricing for patients and healthcare providers.

Thank you for the opportunity to submit testimony.