DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce, Consumer Protection, and Health
Tuesday, January 28, 2020
9:00 a.m.
State Capitol, Conference Room 229

On the following measure:
S.B. 2276, RELATING TO PRESCRIPTION DRUGS

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) 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; (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; and (3) impose fines.

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.

OFFICE OF INFORMATION PRACTICES

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EMAIL: oip@hawaii.gov

To: Senate Committee on Commerce, Consumer Protection, and Health

From: Cheryl Kakazu Park, Director

Date: January 28, 2020, 9:00 a.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 2276
Relating to Prescription Drugs

Thank you for the opportunity to submit testimony on this bill, which among other things would require drug manufacturers to identify and report to the insurance commissioner information on drugs whose wholesale acquisition cost increases by a certain amount during a specified time frame. The Office of Information Practices (OIP) takes no position on the substance of this bill, but seeks clarification of provisions requiring both public release and confidentiality for information reported by prescription drug manufacturers and provides a possible amendment.

Proposed subsection 431R-__(f), HRS, provides that information reported to the Insurance Commissioner under subsection (e) is "exempt from public inspection and copying" under chapter 92F, HRS, the Uniform Information Practices Act (Modified) (UIPA). However, the information required to be reported to the Insurance Commissioner under proposed subsection 431R-__(e) specifically includes a written description "suitable for public release" of factors contributing to a drug's cost increase. In other words, under this proposal a written description specifically intended for public release would be exempt from public disclosure

under the UIPA. Further, in addition the complete exemption from public disclosure already set out for information reported under subsection (e), Subsection (f) goes on to further prohibit release of that information "in a manner that would allow for the identification" of a drug or related information or "in a manner that is likely to compromise the financial competitive, or proprietary nature of the information[.]"

It is possible that these seemingly contradictory provisions were intended to mean that an individual member of the public cannot obtain any information reported under subsection (e) through a UIPA request but the Insurance Commissioner can nonetheless choose to disclose some portion of the information so long as the disclosure does not allow identification of a drug or reveal confidential business information. However, it is far from clear whether that or any other interpretation reflects the intent behind the confidentiality and disclosure provisions in this measure.

Given the measure's apparent intent that at some reported information be made public, specifically the written description "suitable for public release" that is required to be included in a drug manufacturer's report, OIP recommends that subsection (f) be amended to remove the complete exemption from disclosure under the UIPA and instead (1) specify that the written description "suitable for public release" is public and (2) affirmatively provide confidentiality for the remaining information to the extent that it would identify an individual drug or related information, or would cause competitive harm. **Specifically, OIP recommends replacing subsection (f) on bill page 5 with the following language:**

> (f) Information provided to the insurance commissioner is limited to the information listed in subsection (e). The written narrative description suitable for public release required by

subsection (e)(2) shall be made public upon request as provided in chapter 92F. Other information reported by a drug manufacturer under subsection (e) shall be confidential, shall be exempt from disclosure under chapter 92F, and shall not be subject to discovery; provided that the insurance commissioner may publicly release aggregated or deidentified information that does not allow identification of an individual drug, therapeutic class of drugs, or manufacturer and would not cause competitive harm to the drug manufacturer who submitted it.

Thank you for considering OIP's proposed amendment.

January 27, 2020

TO: Chair Rosalyn H. Baker
Vice Chair Stanley Chang
Members of the Senate Committee on Commerce, Consumer Protection, and Health

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

RE: **SB 2276** - Relating to Prescription Drugs
Hearing Date: January 28, 2020
Time: 9:00 am

PhRMA opposes the passage of **HB 2276** requires advance notice by drug manufacturers of proposed increases in the wholesale price of certain drugs. Attached is PhRMA's testimony in opposition.

Thank you for considering this testimony.

STATEMENT

PhRMA
RESEARCH • PROGRESS • HOPE

In Opposition to Hawaii Senate Bill 2276 (SB 2276)

January 27, 2020

Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) strongly opposes SB 2276, which would require prescription drug manufacturers to notify state purchasers and private payers about certain price increases and the price of new drugs. The bill would not help patients better afford their medicine and would create increased administrative and financial burdens on the state.

Discussions about the cost and affordability of medicines are important. No patient should have to worry about whether they can afford the health care they need. However, the notion that spending on medicines is the primary driver of health care cost growth is false - and ignores cost savings that medicines provide to the health care system overall. Medicines lead to fewer physician visits, hospitalizations, surgeries and other preventable procedures – all of which translate to lower health care costs. New medicines are making crucial contributions to medical advances and changing the direction of healthcare as we know it.

Advance notice of price increases raises constitutionality concerns, and could be harmful to consumers and interfere with market competition

SB 2276 mandates 60-day advance price notification of wholesale acquisition cost (WAC) for branded and generic drugs. The constitutionality of advance notification requirements is questionable and is currently the subject of litigation in California.

Advance price notification creates a new incentive for some distributors — especially those that do not enter into contractual agreements with manufacturers — to profit from purchasing medicine at the "old" price and selling them at the "new" price once the increase is made public. Such speculative purchasing could, in turn, lead to downstream effects such as product stockpiling and medicine shortages, while not reducing costs to patients in Hawaii.

Gray Market Incentives

Advance notification of WAC price increases creates financial incentives for secondary distributors to enter the pharmaceutical supply chain, thus creating a "gray" market. As the medicines are sold from one secondary distributor to another, the possibility of counterfeit medicines augmenting the supply of legitimate medicines increases, thereby threatening patient safety.

This type of purchasing has caused great difficulty for hospitals. During medicine shortages, hospitals are sometimes unable to buy medicines from their normal trading partners, usually one of the three large national

"primary" distributors, AmerisourceBergen, Cardinal Health, or McKesson. At the same time, hospitals are deluged by sales solicitations from gray market companies offering to sell the shortage medicines for prices that are often hundreds of times higher than the prices they normally pay.

The Hawaii advanced notice bill would create an increased administrative burden for the state.

The cost of SB 17, the advanced notice legislation passed in California, is estimated to be $1.4 million dollars in the first two years, and $850,00 annually thereafter. The costs are for California to enforce the manufacturer reporting requirements, and costs to collect, coordinate and publish information to the Office of Statewide Health Planning and Development (OSHPD), the entity collecting information in that state. Also, it is important to note that the California law requires that notice be given to entities that purchase drugs through national contracts, so information in the advance notification is likely to spread outside the state of California. Hawaii would be required to duplicate efforts already mandated in California, which has a fiscal note of approximately $1.4 million dollars. This is an unnecessary duplication for residents in Hawaii.

PhRMA recognizes the access challenges faced by patients in Hawaii with serious diseases. We stand ready to work with the Hawaii legislature to develop solutions that help patients. We believe this bill would not help patients' access to breakthrough innovations or better afford their medicines and accordingly strongly oppose the passage of Senate Bill 2276.

An Independent Licensee of the Blue Cross and Blue Shield Association

January 26, 2020

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

Re: SB 2276 – Relating to Prescription Drugs

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2276, 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.

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,

Pono Chong
Vice President, Government Relations

Hawaii Association of Health Plans

January 26, 2020

LATE

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

Senate Bill 2276 – Relating to Prescription Drugs

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

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to testify in support of SB 2276.

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 SB 2276.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

THE SENATE
Committee on Commerce, Consumer Protection and Health
Tuesday, January 28, 2020
9:00 a.m.
Conference Room 229

RE: SB 2276 RELATING TO PRESCRIPTION DRUGS

To: Senator Rosalyn Baker, Chair

AARP is a membership organization of people age fifty and over, with nearly 145,000 members in Hawaii. AARP advocates and provides information on issues that matter to our kūpuna and their families, including affordable, accessible, quality healthcare, financial resiliency, and livable communities.

SB 2276 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. Also, it requires them to report to the insurance commissioner information on certain drugs whose wholesale acquisition cost increases.

AARP Hawaii **supports SB 2276**. AARP believes that increased disclosure around pricing practices will result in more meaningful and actionable information for the state and accountability for manufacturers.

- Drug pricing transparency helps payers determine whether a drug price or price increase is justified. The increased transparency would provide the rationale for how drugs are priced.
- Moreover, the scrutiny could encourage drug manufacturers to reconsider their standard practice of setting high launch prices and then increasing them year after year.

AARP fully supports polices that will help reduce prescription drug prices and make them more affordable for consumers, especially older Americans who depend on life-saving and life-improving medications.

Thank you for the opportunity to testify and support SB 2276.

Keali'i Lopez, State Director
AARP Hawaii

DAVID Y. IGE
GOVERNOR

STATE OF HAWAII
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DEREK M. MIZUNO

ASSISTANT ADMINISTRATOR
DONNA A. TONAKI

TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
ON SENATE BILL NO. 2276

January 28, 2020
9:00 a.m.
Room 229

RELATING TO PRESCRIPTION DRUGS

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

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees has not been able to take a position on this bill. Their next meeting is scheduled for February 18, 2020. 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.

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To: Senate Committee on Commerce, Consumer Protection, and Health

From: Cheryl Kakazu Park, Director

Date: January 28, 2020, 9:00 a.m.
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under the UIPA. Further, in addition the complete exemption from public disclosure already set out for information reported under subsection (e), Subsection (f) goes on to further prohibit release of that information "in a manner that would allow for the identification" of a drug or related information or "in a manner that is likely to compromise the financial competitive, or proprietary nature of the information[.]"

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Thank you for considering OIP's proposed amendment.

SB-2276
Submitted on: 1/27/2020 4:08:43 PM
Testimony for CPH on 1/28/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lianne Malapit	Testifying for Lifeway Pharmacy	Support	No

Comments:

LATE

SB-2276
Submitted on: 1/27/2020 11:53:21 PM
Testimony for CPH on 1/28/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Patrick Uyemoto	Testifying for Times Pharmacy	Support	No

Comments:

SB-2276
Submitted on: 1/28/2020 5:38:23 PM
Testimony for CPH on 1/28/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cathy wilson	Individual	Support	No

Comments:

SB-2276
Submitted on: 1/27/2020 8:52:41 AM
Testimony for CPH on 1/28/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Elie Kato	Individual	Support	No

Comments:

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

Senate Committee on Commerce, Consumer Protection, and Health

Elie Kato

5 Minute Pharmacy

916 Gulick Ave. Suite A

Honolulu, HI 96819

Tuesday 1/28/2020

Support for SB2276 relating to prescription drugs.

The transparency created by this bill goes directly to the heart of unrestricted drug pricing by manufactures and PBM's. I believe in many free market practices, but if a manufacturer is allowed to indiscriminately increase prices on life improving and extending medications then there should be a requirement and avenue to report drastic changes in drug pricing.

By approving SB2276 you are improving the lives of Hawaii residents. We are aware that Hawaii's population is aging and with increased age comes need for more medical attention and medications. This bill will increase transparency in the drug pricing market and will help decrease the costs of medicines to Hawaii's residence. Please support the passage of SB2276.

Thank you.