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**STATE OF HAWAII
OFFICE OF THE DIRECTOR
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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. 2280, 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 from engaging in self-serving business practices; (2) replace the registration requirement with a license requirement for pharmacy benefit managers; (3) increase pharmacy benefit manager reporting requirements to the Insurance Commissioner; and (4) increase application and renewal fees and penalties for failure to renew a license.

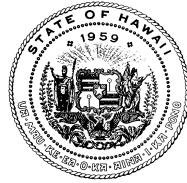
Significantly, section 5 of the bill changes the registration of pharmacy benefit managers to a licensure requirement. Implementation of licensure will be difficult, as the Insurance Division lacks staff expertise to assess the qualifications of pharmacy benefit managers for licensure. Page 8, lines 3 to 11 provides only broad criteria for the Insurance Commissioner to consider in determining whether to grant a license. This bill

also does not require applicants to provide proof that they possess the “necessary organization, background expertise, and financial integrity to supply the services sought to be offered pursuant to this chapter.” In addition, although the Insurance Division currently registers pharmacy benefit managers, it is unclear whether currently registered pharmacy benefit managers must become licensed if this bill is enacted.

Further, section 5 authorizes the issuance of a restricted or limited license (page 8, lines 8 to 11), but the penalty provisions on page 9, lines 8 to 18, page 10, lines 9 to 13, and page 10, lines 16 to 19 do not give the Insurance Commissioner those same remedies as disciplinary sanctions for HRS chapter 431S violations.

Lastly, the Department notes inconsistent provisions governing the publication of transparency reports. Page 3, lines 13 to 15 provides that information submitted in transparency reports that is “identifiable to an individual pharmacy benefit manager shall not be disclosable under chapter 92F[.]” However, page 3, line 19 to page 4, line 3 requires publication of transparency reports on the Insurance Division’s website.

Thank you for the opportunity to testify on this bill.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on SB2280
RELATING TO PHARMACY BENEFIT MANAGERS.

SENATOR ROSALYN H. BAKER,
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Hearing Date: January 28, 2020 Room Number: 229

1 **Fiscal Implications:** N/A.

2 **Department Testimony:** The Department of Health (DOH) takes no position on SB2280.

3 However, to improve consistency and conformity, the department recommends repeal of
4 amendments enacted by Act 175, Session Laws of Hawaii (SLH) 2015 (HB252 HD1 SD1 CD1
5 Relating to Pharmacy Benefit Managers) that may complicate or conflict with SB2280 as
6 currently drafted.

7 Act 175 SLH 2015 established requirements for a pharmacy benefit manager (PBM) that
8 reimburses a contracting pharmacy for a drug on a maximum allowable cost basis to have a
9 clearly defined process for a contracting pharmacy to appeal the maximum allowable cost for a
10 drug on a maximum allowable cost list.

11 The amendments of Act 175 SLH 2015 are inconsistent with the purpose of part VI, chapter 328
12 “Drug Product Selection,” which is to assure that less expensive generically equivalent
13 prescription pharmaceuticals are offered to the consumer. DOH believes that the department has
14 insufficient authority pursuant to part VI, chapter 328 to meaningfully enforce reimbursements
15 on a maximum allowable cost basis between a PBM and a retail pharmacy. Furthermore, since
16 complaints and remedies are based on a single transaction, i.e. one appeal for one drug for one
17 patient for one particular fill on one particular day, it is practically unenforceable.

18 Thank you for the opportunity to testify.

1 **Offered Amendments:**

2 SECTION . Section 329-91, Hawaii Revised Statutes, is
3 amended as follows:

4 By repealing the definition of "maximum allowable cost":

5 [~~"Maximum allowable cost" means the maximum amount that a
6 pharmacy benefit manager shall reimburse a pharmacy for the cost
7 of a drug."~~]

8 By repealing the definition of "maximum allowable cost
9 list":

10 [~~"Maximum allowable cost list" means a list of drugs for
11 which a maximum allowable cost has been established by a
12 pharmacy benefit manager."~~]

13 By repealing the definition of "obsolete":

14 [~~"Obsolete" means a drug that may be listed in a national
15 drug pricing compendia but cannot be dispensed based on the
16 expiration date of the last lot manufactured."~~]

17 SECTION . Section 328-106, Hawaii Revised Statutes, is
18 repealed.

19 "~~[\$328-106] Pharmacy benefit manager; maximum allowable
20 cost.~~ (a) A pharmacy benefit manager that reimburses a
21 contracting pharmacy for a drug on a maximum allowable cost
22 basis shall comply with the requirements of this section.

1 ~~(b) The pharmacy benefit manager shall include the~~
2 ~~following in the contract information with a contracting~~
3 ~~pharmacy:~~

4 ~~(1) Information identifying any national drug pricing~~
5 ~~compendia; or~~

6 ~~(2) Other data sources for the maximum allowable cost~~
7 ~~list.~~

8 ~~(c) The pharmacy benefit manager shall make available to a~~
9 ~~contracting pharmacy, upon request, the most up-to-date maximum~~
10 ~~allowable cost price or prices used by the pharmacy benefit~~
11 ~~manager for patients served by the pharmacy in a readily~~
12 ~~accessible, secure, and usable web-based or other comparable~~
13 ~~format.~~

14 ~~(d) A drug shall not be included on a maximum allowable~~
15 ~~cost list or reimbursed on a maximum allowable cost basis unless~~
16 ~~all of the following apply:~~

17 ~~(1) The drug is listed as "A" or "B" rated in the most~~
18 ~~recent version of the Orange Book or has a rating of~~
19 ~~"NR", "NA", or similar rating by a nationally~~
20 ~~recognized reference;~~

21 ~~(2) The drug is generally available for purchase in this~~
22 ~~State from a national or regional wholesaler; and~~

1 ~~(3) The drug is not obsolete.~~

2 ~~(c) The pharmacy benefit manager shall review and make~~
3 ~~necessary adjustments to the maximum allowable cost of each drug~~
4 ~~on a maximum allowable cost list at least once every seven days~~
5 ~~using the most recent data sources available, and shall apply~~
6 ~~the updated maximum allowable cost list beginning that same day~~
7 ~~to reimburse the contracted pharmacy until the pharmacy benefit~~
8 ~~manager next updates the maximum allowable cost list in~~
9 ~~accordance with this section.~~

10 ~~(f) The pharmacy benefit manager shall have a clearly~~
11 ~~defined process for a contracting pharmacy to appeal the maximum~~
12 ~~allowable cost for a drug on a maximum allowable cost list that~~
13 ~~complies with all of the following:~~

14 ~~(1) A contracting pharmacy may base its appeal on one or~~
15 ~~more of the following:~~

16 ~~(A) The maximum allowable cost for a drug is below~~
17 ~~the cost at which the drug is available for~~
18 ~~purchase by similarly situated pharmacies in this~~
19 ~~State from a national or regional wholesaler; or~~

20 ~~(B) The drug does not meet the requirements of~~
21 ~~subsection (d);~~

1 ~~(2) A contracting pharmacy shall be provided no less than~~
2 ~~fourteen business days following receipt of payment for a claim~~
3 ~~to file the appeal with the pharmacy benefit manager;~~

4 ~~(3) The pharmacy benefit manager shall make a final~~
5 ~~determination on the contracting pharmacy's appeal no later than~~
6 ~~fourteen business days after the pharmacy benefit manager's~~
7 ~~receipt of the appeal;~~

8 ~~(4) If the maximum allowable cost is upheld on appeal, the~~
9 ~~pharmacy benefit manager shall provide to the contracting~~
10 ~~pharmacy the reason therefor and the national drug code of an~~
11 ~~equivalent drug that may be purchased by a similarly situated~~
12 ~~pharmacy at a price that is equal to or less than the maximum~~
13 ~~allowable cost of the drug that is the subject of the appeal;~~
14 ~~and~~

15 ~~(5) If the maximum allowable cost is not upheld on appeal,~~
16 ~~the pharmacy benefit manager shall adjust, for the appealing~~
17 ~~contracting pharmacy, the maximum allowable cost of the drug~~
18 ~~that is the subject of the appeal, within one calendar day of~~
19 ~~the date of the decision on the appeal and allow the contracting~~
20 ~~pharmacy to reverse and rebill the appealed claim.~~

21 ~~(g) A contracting pharmacy shall not disclose to any third~~
22 ~~party the maximum allowable cost list and any related~~

1 ~~information it receives, either directly from a pharmacy benefit~~
2 ~~manager or through a pharmacy services administrative~~
3 ~~organization or similar entity with which the pharmacy has a~~
4 ~~contract to provide administrative services for that pharmacy.]"~~

5



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2280, RELATING TO PHARMACY BENEFIT MANAGERS.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Tuesday, January 28, 2020 **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 makes 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.

The portion of the bill that increases reporting requirements for pharmacy benefit managers 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 a prohibited connection with or reference to an ERISA plan. A state law has an impermissible connection with ERISA plans when it governs a central

¹ 29 U.S.C.A. § 1144(a), 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.

matter of plan administration or interferes with nationally uniform plan administration. *Egelhoff v. Egelhoff*, 532 U.S. 141, 148, 121 S.Ct. 1322, 149 L.Ed.2d 264 (2001).

With respect to the regulation of pharmacy benefit managers, there is a split among the circuits as to the extent of regulation that may be permissible. The United States Court of Appeals, Ninth Circuit has not issued a decision regarding the regulation of pharmacy benefit managers.

In *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294 (1st Cir. 2005), the United States Court of Appeals, First Circuit, held that Maine's Unfair Prescription Drug Practices Act was not preempted by ERISA. The Unfair Prescription Drug Practices Act imposed a number of requirements on pharmacy benefit managers that entered into contracts with covered entities. In the *Rowe* Court's analysis, although the regulation may prompt ERISA plans to re-evaluate their working relations with the pharmacy benefit managers, nothing in the Unfair Prescription Drug Practices Act compelled them to do so, and ERISA plans still had a free hand to structure the plans as they wish. 429 F.3d at 303.

In *Pharm. Care Mgmt. Ass'n v. D.C.*, 613 F.3d 179 (D.C. Cir. 2010), the United States Court of Appeals, District of Columbia, reviewed the District of Columbia's Access RX Act, which was similar to Maine's Unfair Prescription Drug Practices Act. The United States Courts of Appeal, D.C. Circuit reached an opposite conclusion, finding that D.C.'s Access RX Act was preempted due to an improper "connection to" an ERISA plan. Rejecting the holding in *Rowe*, that the regulation of pharmacy benefit managers left ERISA plans with a free hand to structure the plans as they wish, the *D.C.* Court found that the Access RX Act binds plan administrator because the economies of scale, purchasing leverage, and network of pharmacies could only be offered by a pharmacy benefit manager. 613 F.3d at 188.

In this case, similar to both Maine's Unfair Prescription Drug Practices Act and D.C.'s Access RX Act, the bill would compel pharmacy benefit managers to file "transparency reports" with the Insurance Commissioner. Accordingly, there is a split in

jurisdictions as to whether this mandate implicates an area central to plan administration and therefore be preempted.

Finally, we note two technical concerns. First, the current bill contains two different definitions of “pharmacy benefit manager.” See page 4, lines 13 through 20, and page 7, lines 5 through 16. Unless there is a purpose behind the different definitions, we recommend that the committee select a single definition.

Second, we recommend removing the words “or employment” from page 7, line 10, to avoid unintended consequences. As written, the bill would define an employee of a self insured plan as a pharmacy benefit manager. We do not believe that is the intent of this bill.

If the Committee wants to address the preemption concern we will be happy to work with the Committee.

Thank you for the opportunity to comment.

SB-2280

Submitted on: 1/27/2020 8:39:54 AM

Testimony for CPH on 1/28/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Elie Kato	Testifying for 5 Minute Pharmacy	Support	Yes

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 SB2280 relating to pharmacy benefit managers.

5 Minute Pharmacy is an independent pharmacy operating on Oahu. As an independent pharmacy we support these bills because they will increase transparency into pharmaceutical pricing and provide an avenue for bending the medical cost curve downward instead of its current trajectory which is unsustainable.

SB2280. The transparency in this bill is also beneficial to the patient. One of the requirements is for the PBM's to report "The aggregate amount of all rebates that the pharmacy benefit manager received from all pharmaceutical manufacturers." This bill can help affect cost by preventing PBM's from promoting medications based on the rebates the PBM gets from the manufacture. Especially when there are other, sometimes better alternative medications that are more cost effective to the patient. PBM's may say they do not follow this practice but with some transparency, the temptation is diminished. SB2280 will also show how much cost savings the PBM's receive from the drug manufactures so the insurance companies will know how much they can reinvest in their members.

By approving SB2280 Hawaii would be joining one of many states that see the need to improve transparency with PBM's because it improves the lives of patients. 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 SB2280.

Thank you.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
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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. 2280
Relating to Pharmacy Benefit Managers

Thank you for the opportunity to submit testimony on this bill, which would among other things set out transparency reporting requirements for pharmacy benefit managers. The Office of Information Practices (OIP) takes no position on the substance of this bill, but offers a comment on the online publication requirement.

Proposed subsection 431S-__(c), on bill pages 3-4, requires the Insurance Commissioner to publish a pharmacy benefit manager's transparency report online "in a manner that would not be considered an unauthorized disclosure of a pharmacy benefit manager's trade secrets." However, the information required to be reported by a pharmacy benefit manager is unlikely to qualify as a trade secret as defined by law: the definition of a "trade secret" in section 482B-2, HRS, encompasses information with its own economic value, such as a secret formula, recipe, or client list, whereas the information required to be reported under this proposal is financial or business information that would be more appropriately described as being confidential business information. Confidential business

information whose disclosure would frustrate a legitimate government function could be withheld from public disclosure under the UIPA.

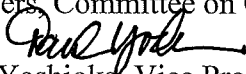
OIP therefore recommends that lines 2-3 on page 4 be replaced by the following language: “. . . manner that would not disclose a pharmacy benefit manager’s confidential business information that could otherwise be withheld from public disclosure under section 92F-13.”

Thank you for the opportunity to testify.



THE QUEEN'S HEALTH SYSTEMS

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

From:  Paula Yoshioka, Vice President, Government Relations & External Affairs, The Queen's Health Systems
Colette Masunaga, Manager, Government Relations & External Affairs, The Queen's Health Systems

Date: January 27, 2020

Hrg: Senate Committee on Commerce, Consumer Protection, and Health Hearing; Tuesday, January 28, 2020 at 9 AM in Room 229

Re: **Support the intent for S.B. 2280, Relating to Pharmacy Benefit Managers**

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

Queen's appreciates the opportunity to testify in support the intent for S.B. 2280, Relating to Pharmacy Benefit Managers. The measure prohibit Pharmacy Benefit Managers (PBM) from engaging in self-serving business practices, as well as replaces the registration requirement with a licensing requirement, and increases the annual reporting requirements. We appreciate moving oversight of PBMs to the Insurance Commissioner and focusing on transparency by requiring a report to the Commission on rebates and fees received by a PBM.

Queen's contracts with over 15 PBMs, with each PBM having their own way of doing business and some with little to no transparency. PBMs control the formularies for prices and have the ability create pricing uncertainty for pharmacies. Queen's outpatient pharmacies take on the responsibility of due diligence in working to find the lowest costs possible for our patients. However, when PBMs reimburse our pharmacies for half of what the costs are to acquire a drug, there is no process for us to know where that drug is being purchased, in what market, and/or if it is even available at that price in Hawaii.

In addition to price uncertainty, our pharmacies go through undue burdens when accessing PBM prices for any given drug and we currently do not receive data in a standard and comprehensive list format, and must obtain prices on an individual prescription basis. With no guideline or

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

standard approach when it comes to the disclosure of pricing, each PBM has been able develop their own burdensome process which puts pharmacies at a disadvantage.

Transparency and oversight of PBMs will greatly benefit our pharmacies, patients, and community. Thank you for the opportunity to testify on this measure.



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

RE: SENATE BILL NO. 2280, RELATING TO PHARMACY BENEFIT MANAGERS.

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

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **SUPPORTS THE INTENT** of Senate Bill No. 2280, RELATING TO PHARMACY BENEFIT MANAGERS., and offers **PROPOSED AMENDMENTS** for your consideration.

The bill, as received by your Committee, would:

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

We note that Senate Bill No. 2280 is substantively similar to Senate Bill No. 2226, a measure that was previously heard by this Committee on today's agenda.

By way of background, the HPCA represents Hawaii Federally-Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

The federal 340B Drug Pricing Program (340B Program) provides eligible health care providers, such as FQHCs, the ability to purchase outpatient drugs for patients at significantly reduced costs. By purchasing medications at a much lower cost, FQHCs are able to pass the savings on to their patients through reduced drug prices and the expansion of access and service to underserved populations. The discounts provided in the Program are financed by the drug manufacturers, not the government.

In recent years, a growing number of outside organizations called PBMs have determined how to access the 340B savings intended to accrue to FQHCs and other 340B providers. Among other things, PBMs have structured their contracts with FQHCs to retain part or all of the 340B savings. Examples of this include:

- A third party insurer determines that the FQHC is 340B eligible, but reduces reimbursement to the estimated 340B ceiling price;
- A retail pharmacy requests a sizeable percentage of the "spread" between the 340B purchase price and the insurance reimbursement of a higher dispensing fee than they charge for non-340B drugs; and
- A claims processor charges a higher fee for the 340B drugs (more than is justified by higher administrative costs) on the grounds that the health center is paying less for these drugs.

At this time, the federal 340B statute does not prohibit outside groups from accessing 340B savings intended for safety net providers and their patients. While the Congressional Record is clear that the 340B Program was intended to assist safety net providers to "stretch scarce federal resources", the statute does not explicitly prohibit the types of contracting arrangements described above. As such, FQHCs cannot reject these contracts on the grounds that they are illegal under law.

The practices of PBMs have had an enormous impact on limited State resources as well. In late 2018, the Ohio State Department of Medicaid required its five managed care plans to terminate contracts with PBMs after the State Auditor found that PBMs had been skimming hundreds of millions of dollars from the Ohio Medicaid Program through previously-hidden spread pricing tactics.

The HPCA notes that many of the concepts in this bill mirror laws enacted in Ohio). However, other states have specifically included statutory protections for the 340B Program, which this bill, in its current form, does not have. These states include Oregon, Montana, West Virginia, and South Dakota.

Because of this, the HPCA supports any and all legislative efforts to protect the 340B Program, including Senate Bill No. 2226. To further strengthen these protections, we recommend that the bill be amended to include language found in Ohio statutes to specifically reference the 340B Program.

On page 2, lines 4 through 12, we ask that the following language be added so that the proposed section entitled "pharmacy benefit manager business practices" will appear as follows:

§431S- Pharmacy benefit manager business practices. (a) A pharmacy benefit manager shall

be prohibited from penalizing, requiring, or providing financial incentives, including variations in premiums, deductibles, copayments, or coinsurance, to covered persons as incentives to use a specific retail pharmacy, specific mail service 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.

(b) In addition, a pharmacy benefit manager shall not reimburse a 340B pharmacy differently than any other network pharmacy based on its status as a 340B pharmacy; provided that for purposes of this section, 340B pharmacy means a pharmacy that is authorized to purchase drugs at a discount under 42 U.S.C. 256b. [New material is highlighted.]

Regarding the penalty provisions, one could argue that the spread-pricing tactics of PBMs constitute an unfair method of competition and unfair or deceptive acts or practices in the conduct of a trade or commerce. If it is the desire of this Committee to conform the penalty provisions with Chapter 480, HRS, we suggest that the following language be added to page 10, line 16 through 19, to establish a new subsection to Section 431S-5, HRS:

~~[§431S-5]~~ **Penalty.** (a) Any person who acts as a pharmacy benefit manager in this State without first being ~~[registered]~~ licensed pursuant to this chapter shall be subject to a fine of ~~[\$500]~~ \$5,000 for each violation.

(b) Notwithstanding section 480-11, or any other law to the contrary, in addition to any penalty authorized pursuant to this section, each violation of this chapter shall also be a violation of chapter 480 and subject to any penalty authorized thereunder.

[New material is highlighted.]

By cross-referencing Chapter 480, HRS, to Chapter 431S, HRS, this language would subject persons who violate this law with criminal and civil penalties, and allow injured persons to sue in tort and be eligible to receive, among other things, treble damages, and attorneys fees. Chapter 480, HRS, also allows for class actions by private persons.

Also, if this Committee is inclined to take a similar approach as did the Ohio Medicaid Program, we offer the following language to be added to page 11, line 1, for your consideration:

SECTION 8 (a) No contract for managed care entered into pursuant to Part II of Chapter 346, Hawaii Revised Statutes, after June 30, 2020, shall contain a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis in accordance with Section 328-106, Hawaii Revised Statutes, or Chapter 431S, Hawaii Revised Statutes.

(b) Any provision of a contract for managed care authorized pursuant to Part II of Chapter 346,

Hawaii Revised Statutes, to reimburse a contracting pharmacy for a drug on a maximum allowable cost basis in accordance with Section 328-106, Hawaii Revised Statutes, or Chapter 431S, Hawaii Revised Statutes, that was in effect on or before June 30, 2020, shall be null and void. [New material is highlighted.]

This provision would establish a moratorium to allow the Legislature (and the State Auditor if this Committee is so inclined) to investigate whether the spread-pricing tactics of PBMs had resulted in overpayments by the Department of Human Services in Hawaii's Medicaid Program. The length of the moratorium would be indicated by clarifying the effective date to require SECTION 8 be repealed on a date certain. For example, if the Legislature was inclined to make the moratorium last for five years, the effective date on page 14, line 5 would be amended to read:

SECTION . This Act shall take effect on July 1, 2020; provided that SECTION 8 shall be repealed on June 30, 2025. [New material is highlighted.]

Lastly, from a technical perspective, we note that Section 328-106, HRS, provides the Department of Health with regulatory authority over PBMs. If it is the desire of this Committee to transfer all regulatory authority to the Insurance Commissioner under Chapter 431S, HRS, the Committee may want to review that statute to determine whether there are any elements of that law that should be transferred to Chapter 431S, HRS, and repeal Section 328-106, HRS.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.



January 26, 2020

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

Senate Bill 2280 – Relating to Pharmacy Benefit Managers

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

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to testify on SB 2280.

Pharmacy Benefit Managers help health plans to control drug costs. We believe that this bill will create more administrative burden and increase costs for Pharmacy Benefit Managers and health plans, which in turn will affect premiums for consumers. As this bill will increase costs to our members, we ask that it be deferred.

Should this bill move forward, we respectfully request amendments be made to §431S-Transparency report (c) which prevents unauthorized disclosure of any Pharmacy Benefit Manager (PBM) “trade secrets.” We believe that the “trade secret” protections be broadened to include any “confidential or proprietary information” and that, to the extent the information a PBM must disclose belongs to a third party, that the third party be afforded an opportunity to object to the disclosure and show cause to the Insurance Commissioner as to why it should not be published.

Thank you for allowing us to testify expressing concerns on SB 2280.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

SB-2280

Submitted on: 1/27/2020 4:07:44 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:

Testimony in Support for SB 2280

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

My name is Keri Oyadomari and I am a community pharmacist here on the island of Oahu. I am writing to testify my support for SB 2280 relating to Pharmacy Benefit Mangers (PBMs).

PBMs are very important and crucial players in healthcare. However, the current lack of transparency allows them to operate in the state of Hawaii unregulated. As a single independent pharmacy, I realize we are a small part of this overall large operation. However, we are impacted to a huge extent, and in result so are our patients and consumers in these communities we serve. As a small community pharmacy, we are able to provide many personalized and free services to our patients that larger corporations may not be able to. What we ask for as independent pharmacies is transparency from these larger, billion dollar corporations who do business in the state of Hawaii.

SB 2280 will help protect independent pharmacies statewide and furthermore continue to provide valuable personalized services to our communities. Please protect our patients and communities who depend on our services by supporting SB 2280.

Thank you for the opportunity to submit testimony.

Testimony in Support for SB 2280

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

My name is Joo Kim and I am a Business Director and active member of the community here in Honolulu. I am testifying my support for SB 2280. Pharmacy Benefit Managers currently affect every aspect of a pharmacy's business operations. They work with both pharmacies and insurance providers in determining reimbursements for drugs that are dispensed. SB 2280 will provide transparency for these huge billion dollar corporations that operate in our state essentially unregulated.

SB 2280 will help protect independent pharmacies statewide and furthermore continue to provide valuable personalized services to our communities. Please protect our patients and communities who depend on our services by supporting SB 2280.

Thank you for the opportunity to submit testimony.

Testimony in Support for SB 2280

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

My name is Derek Tengan and I am a pharmacist and a pharmacy owner of an independent pharmacy with four locations here on the island of Oahu. I am writing to testify my support for SB 2280 relating to Pharmacy Benefit Mangers (PBMs).

PBMs are very important and crucial players in healthcare. However, the current lack of transparency allows them to operate in the state of Hawaii unregulated. As a single independent pharmacy, I realize we are a small part of this overall large operation. However, we are impacted to a huge extent, and in result so are our patients and consumers in these communities we serve. As a small community pharmacy, we are able to provide many personalized and free services to our patients that larger corporations may not be able to. What we ask for as independent pharmacies is transparency from these larger, billion dollar corporations who do business in the state of Hawaii.

SB 2280 will help protect independent pharmacies statewide and furthermore continue to provide valuable personalized services to our communities. Please protect our patients and communities who depend on our services by supporting SB 2280.

Thank you for the opportunity to submit testimony.



LATE

January 27, 2020

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

Re: SB 2280 – Relating to Pharmacy Benefit Managers

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify expressing our serious concerns on SB 2280, which prohibits pharmacy benefit managers from engaging in self-serving business practices. It also replaces registration requirement with license requirement for pharmacy benefit managers, increases pharmacy benefit manager reporting requirements to the insurance commissioner, and increases application and renewal fees and penalties for failure to renew a license.

HMSA utilizes a Pharmacy Benefit Manager (PBM) to manage our drug benefit plans, which helps us and our members to control escalating drug costs. We believe this bill increases administrative burden and costs for our PBM, which will lead to increased costs for our members.

We also believe that the “trade secret” protections should be strengthened in this bill to protect any confidential or proprietary information and that, to the extent the information a PBM must disclose belongs to a third party, that the third party be afforded an opportunity to object to the disclosure and show cause to the Insurance Commissioner as to why it should not be published.

Thank you for the opportunity to testify on this measure. Your consideration of our concerns is appreciated.

Sincerely,

Pono Chong
Vice President, Government Relations

LATE

Times Pharmacy Strongly Supports SB2280

Aloha Chair Baker, Vice Chair Chang, and Respected Members of the Committee,

A number of local independent pharmacies have been forced to close their doors or sell to large mainland corporations. The few local independent pharmacies that remain are struggling to survive due to predatory practices employed by pharmacy benefit managers (PBMs). Pharmacies are being reimbursed below the cost of acquiring certain medications, sometimes losing up to hundreds of dollars per prescription. PBMs determine how much a pharmacy is reimbursed through a very opaque and confusing system and are not willing to justify or adjust their reimbursement rates when questioned. Meeting with PBMs has not done anything to solve this problem and yet local independent pharmacies continue to do everything they can to provide the best care for patients in their communities including dispensing medications at a loss.

If the current pharmacy reimbursement model remains the same and PBMs are not regulated or held accountable, it will only be a matter of time until all local independent pharmacies are forced to close or sell. Local pharmacies are not the only victims, PBM's also contract with health plans, employers, and government entities to manage their prescription drug coverage. Nationally a number a states have found that PBMs have been overcharging health plans and underpaying pharmacies and keeping the difference also known as "spread pricing." They have also been found to keep manufacturer rebates instead of passing the savings onto consumers. PBMs could potentially be making hundreds of millions of dollars a year at Hawaii's expense.

I humbly request that as legislatures you consider the larger picture and how this affects our state as a whole. PBMs are profiting from local plans, pharmacies, and consumers, where does that revenue go? Does it stay in Hawaii? Do PBMs help our local economy, communities, or residents? Now think about local independent pharmacies that have been here for generations. Do they help our local economy? Our communities? Our residents?

Times Pharmacy strongly supports SB2280 because this bill will bring much needed transparency and accountability to PBMs in the State of Hawaii. Thank you for the opportunity to provide testimony.



January 28, 2020

LATE

Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice Chair
Committee on Commerce, Consumer Protection and Health

RE: S.B. 2280 Relating to Pharmacy Benefit Managers
January 28, 2020; 9:00 a.m., Conference Room 229
Submitted electronically

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

On behalf of the Pharmaceutical Care Management Association (PCMA), we greatly appreciate the opportunity to testify on S.B. 2280 relating to Pharmacy Benefit Managers. We respectfully request the committee to consider our comments in the interest of payers and patients.

PCMA is the national trade association representing America's Pharmacy Benefit Managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage provided through Fortune 500 employers, health insurance plans, labor unions, and Medicare Part D. PBMs are engaged by clients including health insurers, government agencies, unions, school districts, and large and small employers, to manage pharmacy benefits pursuant to health insurance benefits and contracts. PBMs are projected to save payers over \$30 billion through the next decade thanks to tools such as negotiating price discounts with drug manufacturers, establishing pharmacy networks and disease management and adherence programs.

Patient Cost Sharing

With regard to patient cost sharing, we support the objective but have concerns with the language and are happy to discuss and provide suggested amendments. In their contracts with network pharmacies, our PBM members ensure patients pay the lower of the pharmacy's cash price (i.e., the price the consumer would pay out of pocket without insurance coverage) and the plan's copayment. We believe the language in the bill should more closely reflect this practice.

We believe that the provision prohibiting a PBM from penalizing, requiring, or providing financial incentives to members to use a specific pharmacy is already extensively covered by existing law and is unnecessary. Please see Haw. Rev. Stat. § 431R-3 (2020).

Transparency

Government agencies—including the Congressional Budget Office (CBO) and the Federal Trade Commission (FTC)—have long cautioned that PBM disclosure mandates could raise costs.

Pharmaceutical Care Management Association
325 7th Street, NW, 9th Floor
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The Federal Trade Commission (FTC) has reviewed a number of state legislative proposals that would have required the public disclosure of competitive rebate information and opined that, “[i]f pharmaceutical manufacturers learn the exact amount of rebates offered by their competitors, then tacit collusion among them is more feasible” and that such knowledge of competitors’ pricing information would dilute incentives for manufacturers to bid aggressively “which leads to higher prices.”¹ The FTC also concluded that “[a]ny such cost increases are likely to undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford.”²

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.”

Disclosure of Rebate Data

As PCMA discussed previously, we do not support the disclosure of rebate data. However, we do note that the definition of “Aggregate Retained Rebate Percentage” and “Mail service pharmacy” have technical issues that need resolution as well as portions that are unclear.

Rebates are the only tool PBMs have to exert downward pressure on drug manufacturers to lower their prices. Allowing rebate data to be disclosed only benefits drug manufacturers, allowing them to avoid discounting their drug prices. Even the disclosure of aggregated rebate data could potentially be “reversed engineered” by drug manufacturers, enabling them to know which rebates were given to which PBM, resulting in a race to bottom as manufacturers would no longer have an incentive to offer deeper discounts than their competitors.

The definition of “rebates” includes “price concessions” related to value-based purchasing. Rebates are different than performance-based contracts. Rebates are connected to utilization and market growth for pharmaceuticals, while performance-based or value based arrangements are linked to the performance of the drug or other arrangements. These should not be considered “rebates.”

Licensing

PCMA has concerns that PBMs now be licensed rather than registered as they currently are by the Insurance Commissioner. Currently the Insurance Commissioner 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 change from registration to licensure of PBMs is 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. As a condition of licensure, the language states that a PBM demonstrate “background expertise” and “financial integrity” and it is unclear as to what these standards are.

¹ Letter from FTC to Rep. Patrick T McHenry, U.S. Congress, Jul. 15, 2005.

² Id.



Again, thank you for the opportunity to testify on S.B. 2280 and we look forward to working with the Committee to develop solutions that will demonstrably benefit Hawaii's residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Head", is written over the typed name.

Bill Head
Assistant Vice President
State Affairs

Pharmaceutical Care Management Association
325 7th Street, NW, 9th Floor
Washington, DC 20004
www.pcmnet.org

SB-2280

Submitted on: 1/28/2020 5:37:54 PM

Testimony for CPH on 1/28/2020 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cathy wilson	Individual	Support	Yes

Comments: