

STAND. COM. REP. NO. 655

Honolulu, Hawaii

MAR 04 2021

RE: S.B. No. 602
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Commerce and Consumer Protection, to which was referred S.B. No. 602, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PHARMACY BENEFIT MANAGERS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit certain contracts for managed care entered into after June 30, 2021, from containing a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis, and void any such provisions in existing managed care contracts;
- (2) Prohibit pharmacy benefit managers from engaging in unfair methods of competition or unfair practices;
- (3) Prohibit a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy;
- (4) Prohibit a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances;



- (5) Prohibit a pharmacy benefit manager from preventing a pharmacist from providing certain information to insureds;
- (6) Increase pharmacy benefit managers' annual reporting requirements;
- (7) Require the Insurance Commissioner to file annual reports with the Legislature;
- (8) Increase pharmacy benefit manager registration and renewal fees by an unspecified amount; and
- (9) Make certain violations of pharmacy benefit managers subject to the penalties provided in chapters 480 and 481, Hawaii Revised Statutes.

Your Committee received testimony in support of this measure from Hawai'i Primary Care Association and The Queen's Health Systems. Your Committee received testimony in opposition to this measure from Hawaii Medical Service Association, CVS Health, and Hawaii Association of Health Plans. Your Committee received comments on this measure from the Department of Commerce and Consumer Affairs, Kaiser Permanente Hawaii, and Pharmaceutical Care Management Association.

Your Committee finds that the federal 340B Drug Pricing Program (340B Program) provides eligible health care providers, such as Federally-Qualified Health Centers (FQHCs) in underserved areas, the ability to purchase outpatient drugs at significantly reduced costs, the savings for which can then be passed on to their patients. The discounts provided in the 340B Program are financed by drug manufacturers, not the government. In recent years, however, a growing number of outside organizations called pharmacy benefit managers (PBMs) have determined how to access the 340B Program savings intended to accrue to FQHCs and other program providers by structuring their contracts to retain all or part of the savings. There is no existing law that restricts PBMs from accessing the savings intended for the 340B Program, which can also have significant impacts on limited state resources. This measure increases fairness and transparency by prohibiting pharmacy benefit managers to, among other things, reimburse a 340B pharmacy differently than any other network pharmacy.



Your Committee has heard the concerns raised in testimony that this measure, as currently drafted, should be clarified to follow the language from the National Association of Insurance Commissioners' Draft PBM Model Law regarding certain prohibited practices. Furthermore, the purpose of this measure is to regulate third-party PBMs, not pharmacies internally owned and managed by health maintenance organizations. Accordingly, amendments to this measure are necessary to address these concerns.

Your Committee has amended this measure by:

- (1) Clarifying a pharmacy benefit manager shall not reimburse a 340B pharmacy differently than any other network pharmacy or mail service pharmacy based on its status as a 340B pharmacy;
- (2) Authorizing the Insurance Commissioner to determine the form and manner by which pharmacy benefit managers shall file a list of the rural rates for each prescription drug;
- (3) Inserting language prohibiting a contract between a pharmacy benefit manager and pharmacy or pharmacist from restricting or limiting the disclosure of information to the Insurance Commissioner, law enforcement, or governmental agencies, under certain circumstances;
- (4) Inserting language prohibiting a pharmacy benefit manager from terminating a contract or penalizing a pharmacy or pharmacist due to the disclosure of certain information or sharing any portion of a contract with the Insurance Commissioner;
- (5) Prohibiting pharmacy benefit managers from preventing pharmacies or pharmacists from disclosing information to covered persons regarding the nature of treatment, risks, alternative therapies, decisions of similar persons to authorize or deny services, processes used to authorize or deny services or benefits, and information on financial incentives;



- (6) Restoring existing statutory language that clarifies the term "covered entity" does not include a health maintenance organization regulated under chapter 432D, Hawaii Revised Statutes, that owns or manages its own pharmacies; and
- (7) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce and Consumer Protection that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 602, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 602, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Commerce and
Consumer Protection,



ROSALYN H. BAKER, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce and Consumer Protection
CPN

Bill / Resolution No.:*	Committee Referral:	Date:
SB 602 SD 1	HTH, CPN	02/24/2021

The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312 Pass, with amendments 2311 Hold 2310 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
CHANG, Stanley (VC)	/			
MISALUCHA, Bennette E.	/			
NISHIHARA, Clarence K.	/			
RIVIERE, Gil	/			
SAN BUENAVENTURA, Joy A.	/			
FEVELLA, Kurt	/			
TOTAL	7	—	—	—

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature:
Clarence K. Nishihara

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*Only one measure per Record of Votes