DAVID Y. IGE
GOVERNOR OF HAWAII

ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
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doh.testimony@doh.hawaii.gov

Testimony COMMENTING on SB602 SD2
RELATING TO PHARMACY BENEFIT MANAGERS.

REP. RYAN YAMANE, CHAIR
COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS

Hearing Date: March 18, 2021 Room Number: N/A

Department Testimony: The Department of Health (DOH) shares the Legislature's concerns about the viability of rural independent pharmacies because they are critical health care resources that often demonstrate commitment to their communities and residents. DOH takes no position on the role of pharmacy benefit managers in managed care contracts but strongly recommends the repeal of section 328-106, Hawaii Revised Statutes (HRS).

This section codifies a competing, confusing, and ineffective regulatory scheme to amendments in this measure. DOH is unable to meaningfully enforce its provisions given existing legal authority and also does not posess the expertise to do so. Lastly, the department asserts that it is inappropriate for the Department of Health to enforce contract provisions between private entities. For these reasons, DOH strongly recommends wholesale repeal of section 328-106, HRS.

Thank you for the opportunity to testify.

Offered Amendments:

SECTION 8. Section 328-106, Hawaii Revised Statutes, is repealed.

[Statute set forth and stricken.]

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Health, Human Services, and Homelessness
Thursday, March 18, 2021
10:00 a.m.
Via Videoconference

On the following measure:
S.B. 602, S.D. 2, RELATING TO PHARMACY BENEFIT MANAGERS

WRITTEN TESTIMONY ONLY

Chair Yamane and Members of the Committee:

My name is Colin M. 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 certain contracts for managed care entered into after June 30, 2021, from containing a provision that authorizes pharmacy benefit managers (PBMs) to reimburse a contracting pharmacy on a maximum allowable cost basis, and void any such provisions in exiting manage care contracts; (2) prohibit PBMs from engaging in unfair methods of competition or unfair practices; (3) prohibit PBMs from reimbursing a 340B pharmacy differently than any other network pharmacy; (4) prohibit PBMs from reimbursing an independent or rural pharmacy an amount less than the rural rate for each prescription drug, under certain circumstances; (5) prohibit PBMs from prohibiting a pharmacist or pharmacy to provide certain

information to insureds; (6) increase PBMs' annual reporting requirements; (7) require the insurance commissioner to file annual reports with the Legislature; (8) increase PBM registration and renewal fees by an unspecified amount; and (9) make certain violations of PBMs subject to the penalties provided in Hawaii Revised Statutes (HRS) chapter 480 and chapter 481.

Section 5 greatly increases the registration requirements of PBMs. Implementing this section will be difficult, as the Insurance Division lacks expertise to assess the qualifications of PBMs for licensure and to determine what documents would be sufficient or should even be requested. Page 16, lines 1 through 9, provides only broad criteria for the insurance commissioner to consider in determining whether to grant a registration. To prove that this criteria has been met, page 17, lines 7 through 11, provides that applicants shall include "[a]ny other information the commissioner deems necessary or helpful to determine whether the applicant has the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered pursuant to this chapter."

Further, while section 5 authorizes the issuance of a restricted or limited registration on page 16, lines 6 through 9, the penalty provisions neither give the insurance commissioner those same remedies as disciplinary sanctions for HRS chapter 431S violations, nor grant the commissioner enforcement authority for any violation of chapter 431S.

Finally, the issuance, renewal, and penalty fees on page 17, lines 5 and 6, and page 18, lines 11 and 14, are inconsistent with the terms and penalty amounts in S.B. 1096, S.D. 1, on page 41, lines 15 through 17, and page 42, lines 8 through 15, and in S.B. 1098, S.D. 1, on page 2, lines 11 and 12, page 5, lines 16 and 17, and page 8, lines 16 through 21. The Department respectfully requests that any changes to the terms and fees be consistent with S.B. 1096, S.D. 1 and S.B. 1098, S.D. 1.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR

STATE OF HAWAII
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TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES, & HOMELESSNESS
ON SENATE BILL NO. 602 S.D. 2

March 18, 2021
10:00 a.m.
Conference Room 329 & Via Videoconference

RELATING TO PHARMACY BENEFIT MANAGERS

Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees would like to raise concerns about Section 3, §431S(c) that provides independent pharmacies with rural pricing. The EUTF pharmacy benefit manager (PBM) reimburses rural network pharmacies at a higher rate (rural pricing) than other network pharmacies considering their limited volume of prescriptions and to maintain access in rural areas. Not all independent pharmacies are rural pharmacies. Providing rural pricing to all independent regardless of location will increase EUTF costs.

Under the EUTF's contract with its PBM, the EUTF receives "pass-through pricing", meaning the amount that the PBM reimburses a pharmacy for filling an EUTF member's prescription is the same amount that the EUTF reimburses the PBM. The PBM does not receive any "spread-pricing" when they fill a prescription for EUTF members. As a result, any increase in the reimbursement to the pharmacist will result

in an increase in EUTF costs which leads to higher premiums for the State and counties, employees and retirees. The EUTF's PBM has estimated additional annual claims for the EUTF employee plans of $1.09 million ($700,000 employee and $390,000 non-Medicare retiree plans). This increase in retiree plan costs will increase the State and counties unfunded actuarial accrued liability by approximately $12.2 million.

Thank you for the opportunity to testify.

HPCA
HAWAI'I PRIMARY CARE ASSOCIATION

Testimony to the House Committee on Health, Human Services, & Homelessness
Thursday, March 18, 2021; 10:00 a.m.
State Capitol, Conference Room 329
Via Videoconference

RE: SENATE BILL NO. 0602, SENATE DRAFT 2, RELATING TO PHARMACY BENEFIT MANAGERS.

Chair Yamane, Vice Chair Tam, 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** Senate Bill No. 0602, Senate Draft 2, RELATING TO PHARMACY BENEFIT MANAGERS.

The bill, as received by your Committee, would, protect the health, welfare, and safety of the consuming public by enhancing the regulation of pharmacy benefit managers.

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.

ADD 1003 BISHOP STREET PAUAHI TOWER SUITE 1810 HONOLULU, HI 96813 TEL 808.536.8442 WEB HAWAIIPCA.NET

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.

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@hawaiipca.net.

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March 16, 2021

Members of the Hawaii House
Committee Health on Health, Human Services & Homelessness
Delivered via Remote Testimony Portal

RE: SB 602

Dear Committee members:

Thank you for the opportunity to provide written testimony on SB 602. Mitchell International provides services to entities and claimants in the workers' compensation systems across the country. One of the services we provide relates to the provision of pharmacy care to injured workers. In the past, based on uncertainty on our part, and out of an abundance of caution, we have registered as a PBM in Hawaii, even though the PBM law seemed applicable to health insurance plans and not workers' compensation. We do provide some of the services listed in the definition of pharmacy benefit management in 431S-1 and since it was unclear if we were in or out, we registered. The services we provide, reimbursement levels and dispute processes are already regulated under Chapter 386, Workers' Compensation Law. Injured workers have access to all necessary medical care, including pharmacy care, with no out-of-pocket costs. Injured workers have access to the complete universe of medications and are entitled to receive any medication that is medically necessary, consequently, we do not use any type of restrictive formulary. Because access to care is vitally important to helping injured workers return to work, we try to include any willing pharmacy provider in our network. Finally, injured workers have choice in where they receive care, so they are welcome to use any pharmacy they choose, whether or not it falls into our network. For these reasons, most of the provisions of this bill are not applicable to workers' compensation or are already addressed by the workers' compensation law and rules. We are seeking your support to clarify that workers' compensation is not included in this legislation. The area of ambiguity that caused us to register was found in the definitions section of the existing law. Under the pharmacy benefit management definition items (2) and (3) were limited to covered entities or covered individuals. If we could add a similar qualifier, as noted below (changes in red), item (1) would provide clarity that workers' compensation pharmacy benefit management is not regulated under this law, would continue to be regulated by Chapter 386, and would avoid any potential conflicts in law for the services we provide. It would require pulling this definition into the bill and adding the suggested language. Of course, if you have a better way of excluding us, we are open to that as well. Our biggest concern is being subject to two laws with conflicting provisions and not being able to satisfy both. Thank you for your consideration of our request.

431S-1 Definitions

"Pharmacy benefit management" means:

(1) Any of the following services provided with regard to the administration of pharmacy benefits **for a covered entity**:

(A) Mail service pharmacy;
(B) Claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to covered persons;
(C) Clinical formulary development and management services;
(D) Rebate contracting and administration;
(E) Certain patient compliance, therapeutic intervention, and generic substitution programs; or
(F) Disease management programs involving prescription drug utilization;

(2) The procurement of prescription drugs by a pharmacy benefit manager at a negotiated rate for dispensation to covered persons in the State; or

(3) The administration or management of prescription drug benefits provided by a covered entity for the benefit of covered persons.

Sincerely,

Brian Allen
Mitchell International
Brian.Allen@mitchell.com
801-904-5754

SB-602-SD-2
Submitted on: 3/16/2021 2:14:31 PM
Testimony for HHH on 3/18/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
magdi latif	bb inc	Support	No

Comments:

To the Honorable Senators

My name is Magdi Latif, I'm a pharmacist at NorthShore Pharmacy in Kilauea Hawaii. We operate a community pharmacy, we opened our pharmacy in December 1988, and have served our community thru hurricane Iniki, the flood in 2018, and covid epidemic. My son graduated from The Daniel K. Inouye College of Pharmacy and hope to continue serving the community that he grew up in and work in the pharmacy. We are struggling to keep up with the frivolous audits we receive regularly from the PBMs (primarily Caremark handling HMSA and quest contracts in HI). We support audits for their intended purpose to seek out fraud, waste, and abuse. But PBM's seem to take advantage of their role, oftentimes targeting minor administrative typographical errors and recouping the entire costs of medications and some dispensing fees too.

We had an audit that recouped money paid to us 5 years ago, claiming that there wasn't a legitimate patient Doctor relationship. We had to spend countless hours digging thru our storage boxes, calling the Doctors and had them create chart notes showing that they had seen the patient, consulting a law firm and organizing the response (cost us over $10,000) and many weeks of worrying about how much money we were going to lose and whether we had to layoff our employees to cover our expenses. In the end the PBM decided that they didn't need any of that info and to forget about the whole audit. They initially recouped over $17,000.00 which we have not been reimbursed for yet. We were guilty till proven innocent and money was withheld without any ability to appeal.

We had no rights, their claims were frivolous and unwarranted, and we can't make any claims against them to recoup our expenses, time and strain on our company. PBMs are largely unregulated and rely on 'take it or leave it' contracts with independent pharmacy to permit abusive audit tactics such as the one I described above.

I wish we could say that's the only audit that has happened to us, we are currently fighting another huge audit that is recouping all the monies paid to us for clerical mistakes. (we believe that we should be able to correct the mistakes as we have dispensed the medicine to our patients and there was no fraud or extra monetary compensation due to our clerical mistake). We often think about limiting our exposure to these predatory tactics and stop taking insurance at our pharmacy all together as it consumes our time, creates bad patient services. We feel a responsibility to our

community to do our part, so we continue to take insurance even though it's bad for our busines. We feel obligated to do that for our patients, so we can provide them with the personal care that only a small neighborhood business can give as they are our ohana. There's a good reason that there's 30 states have PBM audit reform legislation on the books. We are long over due to leveling the playing field in Hawaii, it's the small businesses like ours that provide customer service unsurpassed by any big box store (owned by the PBM), employment and stimulate our local economy and provide a good tax base. Please support us and our community by supporting this bill.

With great respect

Magdi Latif

1275 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004

March 16, 2021

Representative Ryan Yamane, Chair
Representative Adrian Tam, Vice Chair
Committee on Health, Human Services & Homelessness
415 South Beretania Street
Honolulu, Hawaii 96813

RE: SB 602 SD 2 Relating to Pharmacy Benefit Managers – In Opposition
March 18, 2021; 10:00 a.m.; Via Videoconference

Aloha Chair Yamane, Vice Chair Tam, and members of the committee:

CVS Health has a number of concerns regarding Senate Bill 602 SD2 ("SB 602"), relating to pharmacy benefit managers (PBMs) as it is currently drafted and would be happy to continue working with legislators and stakeholders. SB 602 seeks to regulate private business contracts between PBMs, their clients, including employers and health plans, and pharmacies. We believe that provisions in this bill would interfere in private contracting and greatly increase costs for Hawaii employers and health plans.

CVS Health is a different kind of health care company. We are a diversified health services company with nearly 300,000 employees united around a common purpose of helping people on their path to better health. In an increasingly connected and digital world, we are meeting people wherever they are and changing health care to meet their needs. Built on a foundation of unmatched community presence, our diversified model engages one in three Americans each year. From our innovative new services at HealthHUB® locations, to transformative programs that help manage chronic conditions, we are making health care more accessible, more affordable, and simply better.

As noted above, we have a number of concerns with SB 602, including the rural reimbursement rate mandate and the disclosure of competitively sensitive information. We believe these provisions will take away contract flexibility for employers and plan sponsors and could lead to higher health care costs.

Rural Reimbursement Rate

SB 602 seeks to prohibit a PBM from reimbursing an independent or rural pharmacy an amount less than the rural rate for prescription drugs. It should be noted that typically, rural pharmacies get paid higher reimbursement rates because they have lesser patient volume but are important for patient access. Not all independent pharmacies are rural pharmacies and should not be reimbursed at the same rates as rural pharmacies – independent pharmacies in urban and suburban areas have greater volume and therefore their reimbursement rates account for this. If all independent pharmacies must be reimbursed at a rural rate, this rate is likely to be inflated and may create a windfall to those pharmacies at the expense of plan sponsors and consumers in Hawaii.

This bill also seeks to prohibit PBMs from making changes to the rate without providing 30 days' notice to pharmacies. Given the complex and dynamic nature of the generic drug marketplace, prices change throughout the year. This bill would cause reimbursement rates to be based on information from 30 days prior, no longer reflecting the actual market price of a drug product when it goes into effect. If there's a fluctuation in the marketplace that would entitle a pharmacy to a greater reimbursement, they

would not be able to receive such reimbursement because the rate would be frozen at the rural rate. For example, if the market price of a drug quickly increases (due to a drug shortage or if a manufacturer drastically increases its price), pharmacies would be under-reimbursed for that drug because the PBM would not be able to adjust the reimbursement rate for 30 days. We also believe the proposed provision may conflict with the existing maximum allowable cost (MAC) law that requires that MAC lists be updated every 7 days.

Additionally, this bill takes away incentives for pharmacies to purchase drugs cost effectively because they will always be guaranteed reimbursement at or above the rural rate. If the market price of a drug decreases, consumers would not get the benefit of the savings. Pharmacies could buy drugs at a cheaper price, but PBMs will be forced to reimburse pharmacies (and bill the health plan) at the higher rural rate since adjustments cannot be made for 30 days. Ultimately, if PBMs were to comply with this bill, prescription drug costs for Hawaii consumers and employers will increase.

Transparency Report

SB 602 would also require the disclosure of competitively sensitive information with no confidentiality protections. CVS Health believes that it is important to keep the competitive marketplace among drug manufacturers in place in order to drive down the cost of prescription medications. Any public disclosure of rebate information could allow manufacturers to learn what type of price concessions other manufacturers are giving and could disincentivize them from offering deeper discounts, which benefit plan sponsors and their beneficiaries.

The 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]

On behalf of CVS Health, thank you for allowing us to express our concerns and we welcome the opportunity to work with you on these important issues.

Respectfully,

Shannon Butler
Executive Director of Government Affairs
CVS Health

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

Crystal Jack
State Government Affairs

March 16, 2021

To: Representative Ryan I. Yamane, Chair
Representative Adrian K. Tam, Vice Chair
Members of the Committee on Health, Human Services & Homelessness

From: Crystal Jack, State Government Affairs

Re: SB 602 – Relating to Pharmacy Benefit Managers
Hearing Date – March 18, 2021 at 10:00 a.m.

Thank you for the opportunity to provide testimony in **OPPOSITION** to SB 602. Express Scripts, a Cigna company, is one of the leading pharmacy benefit managers ("PBM") in the nation. PBMs are an important part of the delivery of pharmaceuticals in addition to supporting healthcare broadly. Express Scripts is engaged by clients to manage pharmacy benefits pursuant to health insurance contracts. Unfortunately, the contract and pricing restrictions proposed in SB 602 limit a PBM's ability to provide flexibility to clients, price savings to our members, and are unworkable for Cigna's customer-focused operations.

SB 602 imposes stringent reporting requirements which includes quarterly reporting of proprietary and confidential information, compromising competition in the future. Public disclosure of rebate information, for example, would likely allow manufacturers to learn the pricing from other manufacturers' products, and allow them to limit pricing concessions, rather than reducing prices. As we have seen repeatedly in the drug pricing market, manufacturers do not "race to the bottom" when setting new pricing but rather it is often a "race to the top" where other drugs follow the newer and higher-priced drug in a particular class upon market entry. Not knowing the rebate information forces manufacturers to provide their best prices or risk losing product market share. In addition, although the bill seeks to protect confidential information under existing Hawaii law, if the information is somehow disclosed it is impossible to "unring" the bell. Contrary to the goals of this bill, the result will be increased costs to consumers. For these reasons we urge the committee to defer SB 602.

SB 602 also imposes several additional "registration" requirements more akin to "licensing" requirements. Under current law, the Insurance Commissioner has jurisdiction and enforcement ability over the pharmacy benefits of insured plans. PBMs are required to comply with the same consumer protections governing utilization review, prior approval, and dispute resolution systems, among others.

Over the past few years, Cigna been working with Hawaii's health insurance plans, PBMs and local pharmacies to address some issues raised about PBMs. We continue to be willing to work together with stakeholders to address these concerns. Thank you for your consideration.

Sincerely,

Crystal Jack
Director, State Government Affairs

Times Supermarket and Times Pharmacy Strongly Support SB602

Aloha Chair Yamane, Vice Chair Tam, and Members of the Committee on Health, Human Services, and Homelessness

The Pharmacy Benefit Manager (PBM) market has become a highly consolidated industry whose focus is not on serving consumers but on increasing company profits. Egregious and anti-competitive behavior on the part of the major PBMs has caused drug costs to skyrocket and harmed consumers and local community pharmacies.

Three PBMs-Optum Rx, Express Scripts, and CVS Caremark-control 85% of the PBM market according to the President's Council of Economic Advisors. The Council also observed "Over 20% of spending on prescription drugs was taken in as profit by the pharmaceutical distribution system. The size of manufacturer rebates and the percentage of the rebate passed on to health plans and patients are secret." There are also numerous conflicts of interest, the most significant are rebates - when PBMs can share in rebates they want higher not lower drug prices. PBMs have their own pharmacies and drive consumers from their community pharmacy to the PBM owned pharmacy.

PBM rebates are based on a percentage of the list price of drugs, therefore PBMs inflate the list price and steer patients to drugs where PBM's profit, not patients. PBM rebates - thanks to lack of competition and transparency - now exceed $150 billion per year, but that increase has not resulted in lower prices for patients.

PBMs overcharge states and fail to pass along discounts. Ohio State Auditor found that the PBM OptumRx earned over $223 million between April 2017 and March 2018. Kentucky found that hidden PBM fees accounted for $125 million in costs to taxpayers. And between April 2017 and April 2018, PBMs overcharged New York taxpayers by over $200 million. Innovative new therapies are also sent to the back of the line for consumer access.

PBMs use hidden fees (among other tactics) to increase their revenue. According to Pew Charitable Trust, PBMs nearly quadrupled fees they charged biopharmaceutical companies between 2014 and 2016. Growth in alternate PBM revenue streams, such as spread pricing and administrative fees, increased from $5.9 billion in 2012 to $16.6 billion in 2016.

PBMs aggressively fight transparency which is the main reason why there is no meaningful regulation of PBMs. There are at most 5-6 states that require PBMs to register, but there is no regulation of rebates, transparency, or conflicts of interest.

Local residents and local businesses, your constituents, are being ripped off due to these unethical business practices. I would not be surprised if the state's EUTF program is getting ripped off as well. Just look at the hundreds of millions of taxpayer dollars that other states have found going straight into the PBM's pocket. Please look into the PBM issues, get educated, and help protect Hawaii. Thank you for the opportunity to provide testimony on SB602.

An Independent Licensee of the Blue Cross and Blue Shield Association

March 18, 2021

The Honorable Ryan I. Yamane, Chair
The Honorable Adrian K. Tam, Vice Chair
House Committee on Health, Human Services, & Homelessness

Re: SB 602 SD2 – Relating to Pharmacy Benefit Managers

Dear Chair Yamane, Vice Chair Tam, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 602, SD2, which prohibits 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 voids any such provisions in existing managed care contracts. Prohibits pharmacy benefit managers from engaging in unfair methods of competition or unfair practices. Prohibits a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy. Prohibits a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances. Prohibits a pharmacy benefit manager from restricting a pharmacist's ability to provide certain information to insureds. Increases pharmacy benefit managers' annual reporting requirements. Requires the insurance commissioner to file annual reports with the legislature. Increases pharmacy benefit manager registration and renewal fees by an unspecified amount. Makes certain violations of pharmacy benefit managers subject to the penalties provided in chapters 480 and 481, Hawaii Revised Statutes. Effective 7/1/2050. Repeals certain provisions on 6/30/2026.

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.

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

Sincerely,

Matthew W. Sasaki
Director, Government Relations

Hawaii Association of Health Plans

March 18, 2021

The Honorable Ryan I. Yamane, Chair
The Honorable Adrian K. Tam, Vice Chair
House Committee on Health, Human Services, & Homelessness

Senate Bill 602 SD2 – Relating to Pharmacy Benefit Managers

Dear Chair Yamane, Vice Chair Tam, and Members of the Committee:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to testify on SB 602 SD2.

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 the costs to employers, unions, employees, other consumers, and government financed Medicaid and Medicare coverage. As this bill will increase costs, we ask that it be deferred.

Thank you for allowing us to testify expressing concerns on SB 602 SD2.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

LĀNA‘I COMMUNITY HEALTH CENTER

P. O. Box 630142
Lāna‘i City, HI 96763-0142

Phone: 808-565-6919
Fax: 808-565-9111
dshaw@lanaicommunityhealthcenter.org

The Community is our Patient -- men, women, children, uninsured, insured!

TESTIMONY TO THE HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND HOMELESSNESS
THURSDY, MARCH 18, 2021; 10:00 a.m.
STATE CAPITOL, CONFERENCE ROOM 329
VIA VIDEOCONFERENCE

RE: SENATE BILL NO 0602, SENATE DRAFT 1, RELATING TO PHARMACY BENEFIT MANAGERS—Amendment Requested

Chair Yamane, Vice Chair Tam and Members of the Committee:

Lāna`i Community Health Center (LCHC) is a federally qualified health center (FQHC) that provides primary medical care, dental and behavioral health services to the residents of Lāna`i. LCHC **SUPPORTS** Senate Bill No. 0602, RELATING TO PHARMACY BENEFIT MANAGERS.

LCHC depends heavily on the federal 340B Drug Pricing Program (340B Program) to provide affordable outpatient drugs for its patients.

Recently, the 340B Program has been under increasing attack by pharmaceutical manufacturers and pharmacy benefit managers who seek to obtain the saving afforded to FQHCs and their patients for themselves. LCHC appreciates the legislature’s willingness to join the other nine states that have enacted statutes to protect the 340B Program for the benefit of the individuals that it serves.

LCHC wishes to direct the Committee’s attention to a recent development in a PBM’s, Express Scripts, efforts to undermine the 340B Program.

On February 24, 2021, Express Scripts announced a new requirement that 340B pharmacies must identify all 340B claims within 10 days of the date of service.

This new requirement is problematic for several reasons.

The N1 mechanism that Express Scripts has designated for use in identifying 340B claims is largely untested.

It is questionable that notice of the change in ES’ claim requirements was adequate. Notice was allegedly given in the new provider manual issued in August 2020. However, it is not clear that the notice was sufficiently clear effectively to inform providers of the new requirement.

The ten-day requirement for identification post-sale is probably not feasible.

It is questionable whether the policy adopted in accordance with Express Scripts’ pharmacy network

participation agreements?

It is questionable whether the policy is enforceable under those agreements.

It is unclear whether all pharmacies software will be able to implement the N1 transaction without incurring substantial costs.

The policy imposes a substantial administrative burden on 340B pharmacies.

While the 340B Program statute and regulations permits collection of data relating to dispensing of program medications to Medicaid patients for the purpose of preventing duplicate discounts on such claims, there is no justification for the collection of data for non-Medicaid claims. Accordingly, Express Scripts' new policy invades the privacy of health centers, 340B pharmacies and their patients.

For the reasons discussed above, LCHC requests that SB 0602 be amended to prohibit any PBM from requiring a 340B claim to include a modifier to indicate that the drug is a 340B drug unless the claim is for payment, directly or indirectly, by the Medicaid program.

Thank you for the opportunity to testify. Should the Members of the Committee have any questions about the issues raised in this testimony, please do not hesitate LCHC's Executive Director, Diana Shaw at (808) 565-6919, or dshaw@lanaihealth.org.

Mahalo,

D M V Shaw, PhD, MPH, MBA., FACMPE

Executive Director

THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Ryan I. Yamane, Chair
The Honorable Adrian K. Tam, Vice Chair
Members, House Committee on Health, Human Services, & Homelessness

From: Colette Masunaga, Director, Government Relations & External Affairs, The Queen's Health Systems

Date: March 18, 2021

Re: Support for SB602, SD2: Relating to Pharmacy Benefits Managers

The Queen's Health Systems (Queen's) is a nonprofit 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, and more than 1,500 affiliated physicians and providers 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 provide testimony in support of SB602, SD2, relating to pharmacy benefits managers, which prohibits pharmacy benefit managers (PBM) from engaging in self-serving business practices, allow pharmacies to provide an insured individual with information about the amount of the insured's cost share for their prescription drug and if a more affordable alternative is available, increases annual reporting for PBMs, and provides the Insurance Commissioner with oversight of PBMs – including the ability to levy fines for violations.

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

SB602, SD2 will contribute significantly to needed transparency and oversight of PBMs that will benefit pharmacies and consumers alike. Furthermore, we support provisions and clarifications in this measure ensuring that PBM reimburse 340B pharmacies similar to any other network pharmacy.

Thank you for the opportunity to testify in support of this measure.

March 17, 2021

TO: Chair Ryan I. Yamane
Vice Chair Adrian K. Tam
Members of the House Committee on Health, Human Services & Homelessness

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

RE: **SB 602 SD2** - Relating to Pharmacy Benefit Managers
Hearing Date: March 18, 2021
Time: 10:00 am

PhRMA recognizes that rebates play a significant role in lowering drug prices and are an important component in the analysis of spending trends. PhRMA provides the following comments to **SB 602 SD2** with respect to transparency reporting as to rebates contained in Section 3. **§ 431S-_ Annual transparency report; commissioner report to the legislature**. Subsection (a)(7)(C). This subsection which provides for the reporting of information as to **"[t]he total rebates received prior to paying any rebates to a covered entity"** will result in the disclosure of confidential and proprietary pricing information because it requires the disclosure of pricing information for each prescription drug and each type of payor or put another way, per drug, per payor rebate data. Subsections (a)(2)-(6) already require that information regarding the impact of rebates in the aggregate be provided without the disclosure of confidential information and should be sufficient data for the Insurance Commissioner to utilize and include in its report. **It is therefore proposed that subsection (a)(7)(C) be deleted.**

Thank you for the opportunity to submit and for considering these comments.

LĀNA‘I COMMUNITY HEALTH CENTER

P. O. Box 630142
Lāna‘i City, HI 96763-0142

Phone: 808-565-6919
Fax: 808-565-9111
dshaw@lanaicommunityhealthcenter.org

The Community is our Patient -- men, women, children, uninsured, insured!

TESTIMONY TO THE HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND HOMELESSNESS
THURSDY, MARCH 18, 2021; 10:00 a.m.
STATE CAPITOL, CONFERENCE ROOM 329
VIA VIDEOCONFERENCE

RE: SENATE BILL NO 0602, SENATE DRAFT 1, RELATING TO PHARMACY BENEFIT MANAGERS—In SUPPORT with Amendment Requested

Chair Yamane, Vice Chair Tam and Members of the Committee:

Lāna`i Community Health Center (LCHC) is a federally qualified health center (FQHC) that provides primary medical care, dental and behavioral health services to the residents of Lāna`i. LCHC **SUPPORTS** Senate Bill No. 0602, RELATING TO PHARMACY BENEFIT MANAGERS.

LCHC depends heavily on the federal 340B Drug Pricing Program (340B Program) to provide affordable outpatient drugs for its patients.

Recently, the 340B Program has been under increasing attack by pharmaceutical manufacturers and pharmacy benefit managers who seek to obtain the saving afforded to FQHCs and their patients for themselves. LCHC appreciates the legislature’s willingness to join the other nine states that have enacted statutes to protect the 340B Program for the benefit of the individuals that it serves.

LCHC wishes to direct the Committee’s attention to a recent development in a PBM’s, Express Scripts, efforts to undermine the 340B Program.

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For the reasons discussed above, LCHC requests that SB 0602 be amended to prohibit any PBM from requiring a 340B claim to include a modifier to indicate that the drug is a 340B drug unless the claim is for payment, directly or indirectly, by the Medicaid program.

Thank you for the opportunity to testify. Should the Members of the Committee have any questions about the issues raised in this testimony, please do not hesitate LCHC's Executive Director, Diana Shaw at (808) 565-6919, or dshaw@lanaihealth.org.

Mahalo,

D M V Shaw, PhD, MPH, MBA., FACMPE

Executive Director

PCMA

March17, 2021

Representative Ryan Yamane, Chair
Representative Adrian Tam, Vice Chair
Committee on Health, Human Services & Homelessness
Hawaii State Capitol
Honolulu, HI 96813

RE: S.B. 602 Relating to Pharmacy Benefit Managers
Submitted electronically

Aloha Chair Yamane, Vice Chair Tam and members of the Committee on Health, Human Services & Homelessness:

On behalf of the Pharmaceutical Care Management Association (PCMA), we greatly appreciate the opportunity to testify on S.B. 602 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.

§346 - Pharmacy benefit managers; contracting pharmacies; reimbursements; maximum allowable cost basis; prohibition
The prohibition on using Maximum Allowable Costs for managed care contracts will create a perverse disincentive for pharmacies to shop for the lowest costs drugs available, resulting in higher costs for payers and patients.

The bill also prohibits a PBM from reimbursing an independent or rural pharmacy an amount less than the rural rate for prescription drugs. It's worth noting that more often than not, rural pharmacies are paid higher reimbursement rates because, while they have a smaller patient volume, they are important for patient access. It's important to remember that not all independent pharmacies are rural pharmacies and should not be reimbursed at the same rates as rural pharmacies – independent pharmacies in urban and suburban areas have greater volume and therefore their reimbursement rates reflect this fact. If all independent pharmacies must be reimbursed at a rural rate, this rate is likely to be inflated and may create a windfall to those pharmacies at the expense of local plan sponsors and consumers.

Additionally, this bill takes away incentives for pharmacies to purchase drugs cost effectively because they will always be guaranteed reimbursement at or above the rural rate. If the market price of a drug decreases, consumers would not get the benefit of the savings. Pharmacies

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

PCMA

could buy drugs at a cheaper price, but PBMs will be forced to reimburse pharmacies (and bill the health plan) at the higher rural rate since adjustments cannot be made for 30 days. Ultimately, if PBMs were to comply with this bill, prescription drug costs for Hawaiian consumers and employers will increase.

§431S- Gag clause prohibited
Although gag clauses are already prohibited in both the public and commercial markets under federal law, we support this provision. However, additional language added to this section could lead to tacit collusion among pharmacies, resulting in higher costs for patients. Allowing pharmacists from different pharmacies to discuss contract terms will lead undermine competition and promote collusion and, ultimately, higher costs for payers and patients.

§431S - Annual transparency report; commissioner report to the legislature
PCMA does do not support the disclosure of rebate data. Rebates are one of the only a few tools 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."

§431S3- Registration required
This section imposes several new PBM registration requirements. However, these provisions are much more akin to licensing requirements under the guise of the registration nomenclature. 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. 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 registration, the language states that a PBM demonstrate "background expertise" and "financial integrity" and it is unclear as to what these standards are. This enhanced registration to more of a licensing requirement is unnecessary.

Again, thank you for the opportunity to testify on S.B. 602 and we look forward to working with the Committee to develop solutions that will demonstrably benefit Hawaii's residents.

Sincerely,

Bill Head
Assistant Vice President
State Affairs

SB-602-SD-2
Submitted on: 3/15/2021 9:35:36 PM
Testimony for HHH on 3/18/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ronald Taniguchi, Pharm.D.	Individual	Support	No

Comments:

in support of all provisions of SB602 SD2. Mahalo

Testimony in Support for SB 602

Dear Chair Yamane, Vice Chair Tam, and Members of the Committee,

My name is Keri Oyadomari and I am a community pharmacist here in Honolulu. I am testifying my support for SB 602. 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. Many times, pharmacies are reimbursed below the cost of the drug. The pharmacy may appeal, but most of the time it is denied or ignored. This type of financial strain on pharmacies makes it very difficult to continue to provide free services to the community and in turn impacts access to care in the state of Hawaii. This bill will improve access to consumers, as well as allow retail pharmacies to better care for their patients.

We are asking for your support of SB 602 to create a fair business environment for all Hawaii pharmacies and to help keep our community healthy.

Thank you for the opportunity to testify.

Testimony in Support for SB 602

Dear Chair Yamane , Vice Chair Tam 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 602 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 602 will help protect independent pharmacies statewide and furthermore continue to provide valuable personalized services to our communities. Most recently, the independent pharmacies in Hawaii have provided COVID vaccinations to carehomes – vulnerable individuals who needed their vaccination in the safety of their home. This is just one example of many services that independent pharmacies are able to provide. Please protect our patients and communities who depend on our services by supporting SB 602.

Thank you for the opportunity to submit testimony.

SB-602-SD-2
Submitted on: 3/17/2021 4:54:39 PM
Testimony for HHH on 3/18/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Patrick Adams	Individual	Support	No

Comments:

To: Honorable Chair Ryan Yamane and members of the Health, Human Services and Homelessness committee

From: Patrick Adams, Rph

Re: Support for SB602

I stand in support for SB602. Passing this bill in the best interest of the citizens of Hawaii. The PBMs have not had the best interest in the citzens and have hurt the access to pharmacy services.

SB-602-SD-2
Submitted on: 3/17/2021 7:09:07 PM
Testimony for HHH on 3/18/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kevin Glick	Individual	Support	No

Comments:

Strong Support

This bill serves the health delivery for the entire state of Hawaii. The right of patients to choose their pharmacist is quickly becoming unattainable for a majority of Hawaii residents. The respomse of Pharmacy Benefit Managers is always the same when ever legislation threatens to cast light upon their business practices or create a model that serves patients and providers instead of mega corporations such as CVS, Express Scripts or Optum. Pleqse pass this bill out of committee in its strongest form.

Sincerely,

Kevin Glick, R.Ph.

SB-602-SD-2
Submitted on: 3/17/2021 7:11:46 PM
Testimony for HHH on 3/18/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
greg harmon	Individual	Support	No

Comments:

Aloha honorable senators and legislators, I strongly support SB602 since I am the only independent rural, critical access pharmacy on the Big Island in North Kohala. I am a survivor still in business operating under financial hardship due to PBM restrictive financial reimbursements. Professional responsibility by the PBM's is not currently in the best interest for our patients healthy outcomes being run by our Hawaii State Insurance Companys. HMSA, United Health Care, Ohana, Aloha Care, and Kaiser all have contracts that enable PBM's to currently take advantage of this practice knowing and willing to let it continue based on their guidance. I believe the state of Hawaii could save millions of dollars with audits in place and improve pharmacy support lowering costs keeping patients out of the ER and hospitals.
Please support SB602 to protect our rural community pharmacy access for patient protection.

Respecfully, Greg Harmon, Pharmacist Kamehameha Pharmacy, Kapaau, HI 96755