

February 20, 2021

Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice Chair
Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, Hawaii 96813

RE: SB 975 SD 1 Relating to Pharmacy Audits
February 23, 2021; 9:30 a.m.; Via Videoconference

Aloha Chair Baker, Vice Chair Chang, and members of the committee:

CVS Health has a number of concerns regarding Senate Bill 975 SD1 (“SB 975”), relating to pharmacy audits as it is currently drafted and would be happy to work with legislators and stakeholders as discussion on this bill continues. We want to ensure that this bill doesn’t result in any unintended consequences that would open the door to fraud, abuse, and wasteful spending in health care.

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.

Audits are an important tool used by PBMs to ensure that patients are receiving high-quality service from network pharmacies. Audits performed by PBMs also ensure that pharmacies are complying with board of pharmacy rules regarding the proper storage of drugs and posting of required signs. In addition to serving as a safeguard to patient safety, audits also prevent fraud, waste, and abuse. Health plans and employers that use PBMs to administer pharmacy benefit plans expect thorough audits of network pharmacies to recoup monies incorrectly paid for claims with improper quantity or days’ supply, duplicative claims, improper coding, and other irregularities. PBMs look for errors, irregularities, and suspicious patterns of claims over time to detect fraud. Substantial changes in the volume of claims or the dollar amount of claims from particular pharmacies can indicate fraudulent activity. Limiting PBMs’ ability to perform audits will interfere with this and lead to fraud, waste, and abuse.

Health plans and employers should have the right to ensure that the pharmacy claims they are paying for are legitimate. In a time of rising health care costs, it is more important than ever that fraudulent activity be prevented to keep these costs down. In 2019, a joint health care fraud prevention effort between the Department of Justice and the Department of Health and Human Services resulted in the recovery of more than \$2.6 billion – some of which came from uncovering pharmacy fraud schemes involving fraudulent billing and illegal dispensing of medications.¹

¹ The Department of Health and Human Services and The Department of Justice, *Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2019*, June 2020. Available at: <https://oig.hhs.gov/publications/docs/hcfac/FY2019-hcfac.pdf>



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,

A handwritten signature in black ink, appearing to read "Shannon B.", with a long horizontal flourish extending to the right.

Shannon Butler
Executive Director of Government Affairs
CVS Health

Testimony of
John M. Kirimitsu
Legal and Government Relations Consultant

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

February 23, 2021
9:30 am
Via Videoconference

SB 975, SD1 - Relating to Pharmacy Audits

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on this measure establishing procedures for pharmacy audits.

Kaiser Permanente Hawaii opposes this bill.

Kaiser opposes this bill because it would place unreasonable and arbitrary restrictions on insurance providers and payers' ability to audit pharmacies to recover for payments that were inappropriately made to pharmacies.

Despite this bill's intended purpose to implement regulations to prevent abusive and fraudulent audits, the overreaching restrictions on this bill will have the unintended consequence of promoting healthcare fraud, waste and abuse. Insurance providers and payers rely on audits to make quality care more affordable. These audits are necessary to ensure contract pharmacy compliance and allow recoupment for overpayment due to dispensing errors such as billing for improper quantity, improper days supply, improper coding, duplicative claims, and other irregularities. Insurance providers and payers should have the right to audit to prevent fraud, validate proper use and ensure adherence to contractual terms, and most importantly, measure outcome and performance. In a time of rising health care costs, preventing fraudulent activity is an important tool to keeping health care costs down. This legislation severely restricts the ability of health plans and payers to ensure that the billing practices are legitimate and accurate. Auditing is a necessary part of operations for many types of business – pharmacies should not be excluded.

Furthermore, this legislation interferes with the contractual relationship between pharmacies and health insurers or payers. For instance, this bill allows an extended time for pharmacies to withdraw and re-submit a claim beyond the contractual expiration period.

Thank you for your consideration.

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E-mail: John.M.Kirimitsu@kp.org

LATE

Times Supermarket and Times Pharmacy Strongly Support SB975

Aloha Chair Baker, Vice Chair Chang, and Members of the Committee on Commerce and Consumer Protection,

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.

PBMs routinely conduct audits, whether it be on-site or desk-top audits, on the member pharmacies. By and through such audits, PBMs are supposed to monitor pharmacies' performance and to capture improper payments made to the pharmacies. However, PBMs often go beyond the intent of the audit and utilize the audit as a source of revenue for themselves at the expense of independent pharmacies, plan sponsors, taxpayers, and most importantly, patients. PBMs clawback the entire amount of reimbursement on claims that were already dispensed by pharmacies. This not only causes significant financial harm, but also disrupts the pharmacy's day-to-day business. PBMs have increasingly hired third party companies to conduct pharmacy audits. Many times, these companies are compensated based on the amount of money they recoup on behalf of the PBM (thus, they are incentivized to find as many discrepancies as possible). They are given very little training and certainly are not made aware of applicable audit laws. Perhaps worst of all, these third party auditors can be exceedingly difficult to contact, creating challenges for pharmacies when responding to complex audits.

Local pharmacies do not have the resources to keep contesting audit discrepancies especially when the PBM refuses to overturn their decision even after the pharmacy has provided sufficient documentation. As mentioned above, PBMs simply use this as another means of siphoning money away from plan sponsors, pharmacies, and patients. Thank you for the opportunity to provide testimony on SB975.

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SB-975-SD-1

Submitted on: 2/22/2021 1:11:48 PM

Testimony for CPN on 2/23/2021 9:30:00 AM



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

Comments:

Strong Support

My name is Kevin Glick and I have been service Hawaii as a pharmacist since 1982. During that time I have seen pharmacy benefit managers, (PBM) grow in strength and abuse. In principle pharmacy audits should be used to educate pharmacists and prevent abuse of the system. Unfortunately PBM's now use audits to add to their bottom line. On a regular basis I receive audits for 120 prescriptions. I am paid nothing to pull copy and fax prescriptions to the PBM. However if a PBM decides that my days supply is off by 5 days I am assessed a FEE even though there was no increase in cost to the PBM or the patient. Note that for the remainder of the prescriptions I am paid ZERO for my efforts. There is NO time limit on audits and all of the rules are set by my competition, the PBM. I would like to see proof that they, PBM, audit their wholly owned pharmacies in the same manner. PLEASE support this legislation without amending it to another meaningless law.

Aloha,

Kevin Glick, R.Ph.

February 23, 2021

The Honorable Rosalyn H. Baker
Chair, Senate Committee on Commerce and Consumer Protection
415 South Beretania Street
Honolulu, HI 96813

LATE

RE: NATIONAL COMMUNITY PHARMACISTS ASSOCIATION SUPPORT OF SB 975

Dear Chair Baker and members of the Senate Commerce and Consumer Protection Committee:

I am writing to you today on behalf of the National Community Pharmacists Association (NCPA) in support of SB 975 in its introduced version. This bill would address abusive practices conducted in the course of a PBM audit of a pharmacy.

NCPA represents the interest of America's community pharmacists, including the owners of more than 21,000 independent community pharmacies across the United States and 61 independent community pharmacies in Hawaii. These Hawaii pharmacies filled over 3.5 million prescriptions last year, impacting the lives of thousands of patients in your state.

Pharmacists understand that audits are a necessary practice to identify fraud, abuse, and wasteful spending, and they are not opposed to appropriate audits to identify such issues. Current PBM audits of pharmacies, however, are often used as an additional revenue source for the PBM. PBMs routinely target community pharmacies and recoup vast sums of money for nothing more than harmless clerical errors where the correct medication was properly dispensed and no financial harm was incurred. In many instances, the PBM not only recoups the money paid to the pharmacy for the claim in question but also recoups for every refill of that claim, even if all other fills were dispensed without error. Such practices led the Centers for Medicare and Medicaid Services (CMS) to recognize the abusive audit practices occurring within the Part D program. CMS found that pharmacy audits in the Part D program were not focused on identifying fraud and financial harm but on targeting clerical errors that "may be related to the incentives in contingency reimbursement arrangements with claim audit vendors."

Although the bill's provisions are a step in the right direction, amendments in the Senate Health Committee have weakened the bill's protections. I ask that you restore the bill to its introduced version, which includes a two-week notice requirement before an initial audit, a prohibition against conducting audits during the first seven days of the month, and a one-year limit on audits of claims. These provisions protect a pharmacist's ability to continue caring for patients while complying with an audit, and they do not interfere with an auditor's ability to identify instances of fraud, waste, or abuse.

NCPA urges your support for the introduced version of SB 975 because it will establish reasonable standards to ensure that PBM audit abuses are curtailed without undermining the ability to identify fraud or legitimate errors. If you have any questions about the information contained in this letter or wish to discuss the issue in greater detail, please do not hesitate to contact me at matthew.magner@ncpa.org.

Senator Baker
February 23, 2021
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Sincerely,

A handwritten signature in cursive script that reads "Matthew Magner".

Matthew Magner
Director, State Government Affairs

SB-975-SD-1

Submitted on: 2/23/2021 9:34:03 AM

Testimony for CPN on 2/23/2021 9:30:00 AM

LATE

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| magdi latif | Individual | Support | No |

Comments:

Honorable Ronald D. Kouchi, President of the Senate,

Please pass this bill, pharmacies need a level playing field with the PBM to exist in HI. I would highly suggest to eliminate # (4) Inserting an effective date of July 1, 2050, to encourage further discussion; as that will cripple the bill and make it ineffective.

PBM are running independets out of buiness in HI. We are currently battling an audit that will take back money from us that we badly need to keep our doors open. All their grivences are clerical errors that are frivelous but they are taking back all the moneys paid to us and we have no ability to fight it.

Respectfully submitted on behalf of all Northshore Pharmacy employees and the north shore community of Kauai as they dependend on us for good medical care

Magdi Latif RPh

Northshore pharmacy , Kilauea, HI 96754

SB-975-SD-1

Submitted on: 2/23/2021 9:10:27 AM

Testimony for CPN on 2/23/2021 9:30:00 AM



| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|------------------------------------|---------------------------|---------------------------|
| David Mikami | Testifying for Molokai Drugs, Inc. | Support | No |

Comments:

Dear Senator Baker, Senator Chang, and Members of the Commerce and Consumer Protection committee:

We support SB975. Fair audit practices are now law in 45 out of 50 states. Hawaii is one of only five states without fair auditing laws. As a pharmacy, we provide ample documentation when we complete a prescription drug transaction. We are audited sometimes 1-2 years AFTER we filled the prescription so pharmacy benefit management companies (PBMs) can garner more money from plan sponsors, community and rural pharmacies, customers and patients. These "claw backs" are hurting pharmacies and patients, not only in Hawai'i but across the country. "Claw backs" also occur at a higher rate in states with no fair auditing laws. Mahalo for the opportunity to provide testimony on SB975.

With aloha,

David Mikami, Owner, Moloka'i Drugs, Inc.