



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
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Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony COMMENTING on SB975**  
**RELATING TO PHARMACY AUDITS.**

SENATOR JARRETT KEOHOKALOOLE, CHAIR  
SENATE COMMITTEE ON HEALTH

Hearing Date: February 9, 2021

Room Number: N/A

1 **Department Testimony:** The Department of Health (DOH) shares the concern of the  
2 Legislature regarding the benefits and impacts of pharmacy benefit managers (PBM). Periodic  
3 audits as proposed in this measure may provide the empirical data to more fully understand their  
4 value.

5 If enacted, this measure may conflict or create confusion with section 328-106, HRS, which was  
6 enacted in 2015 and authorizes DOH to enforce contract provisions between private, often for-  
7 profit entities, with regard to maximum allowable charge. Section 328-106 lacks clear authority  
8 to audit, request electronic information, require corrective action, and suspend chargebacks,  
9 recoupment, or penalties, all of which SB975 proposes.

10 Moreover, the mission of the Department of Health pursuant to section 321-1, HRS, is to “have  
11 general charge charge, oversight, and care of the health and lives of the people of the State.”  
12 Programs and activities, especially enforcement actions, are based on risks to human and  
13 environmental health and not the financial viability of the private sector. This is an inappropriate  
14 use of public health resources and ineffective public policy due to the lack of expertise in  
15 enforcing contracts, calculating insurance risk, etc.

16 The Department of Health is unable to implement section 328-106 and respectfully requests  
17 repeal via amendment to this measure.

18 Thank you for the opportunity to testify.

1 **Offered Amendments:**

2 Section 328-106, Hawaii Revised Statutes, is repealed.

3 **["§328-106] Pharmacy benefit manager; maximum**  
4 **allowable cost.** (a) A pharmacy benefit manager that  
5 reimburses a contracting pharmacy for a drug on a maximum  
6 allowable cost basis shall comply with the requirements  
7 of this section.

8 (b) The pharmacy benefit manager shall include the  
9 following in the contract information with a contracting  
10 pharmacy:

11 (1) Information identifying any national drug pricing compendia; or

12 (2) Other data sources for the maximum allowable cost list.

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

19 (d) A drug shall not be included on a maximum  
20 allowable cost list or reimbursed on a maximum allowable  
21 cost basis unless all of the following apply:

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

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

27 (3) The drug is not obsolete.

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

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

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

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

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

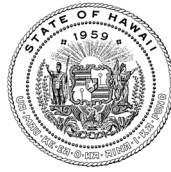
23 (2) A contracting pharmacy shall be provided no less than fourteen business days  
24 following receipt of payment for a claim to file the appeal with the pharmacy benefit  
25 manager;

26 (3) The pharmacy benefit manager shall make a final determination on the  
27 contracting pharmacy's appeal no later than fourteen business days after the pharmacy  
28 benefit manager's receipt of the appeal;

29 (4) If the maximum allowable cost is upheld on appeal, the pharmacy benefit  
30 manager shall provide to the contracting pharmacy the reason therefor and the  
31 national drug code of an equivalent drug that may be purchased by a similarly situated  
32 pharmacy at a price that is equal to or less than the maximum allowable cost of the  
33 drug that is the subject of the appeal; and

1       (5) If the maximum allowable cost is not upheld on appeal, the pharmacy benefit  
2 manager shall adjust, for the appealing contracting pharmacy, the maximum allowable  
3 cost of the drug that is the subject of the appeal, within one calendar day of the date of  
4 the decision on the appeal and allow the contracting pharmacy to reverse and rebill the  
5 appealed claim.

6       (g) A contracting pharmacy shall not disclose to  
7 any third party the maximum allowable cost list and any  
8 related information it receives, either directly from a  
9 pharmacy benefit manager or through a pharmacy services  
10 administrative organization or similar entity with which  
11 the pharmacy has a contract to provide administrative  
12 services for that pharmacy." ]  
13



**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 SENATE COMMITTEE ON HEALTH**  
**ON SENATE BILL NO. 975**

**February 12, 2021**  
**1:00 p.m.**  
**Via Videoconference**

**RELATING TO PHARMACY AUDITS**

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

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees has not taken a position on this bill. Their next meeting is scheduled for February 16, 2021. EUTF staff would like to raise concerns on this bill.

The EUTF contracts with a pharmacy benefit manager (PBM) to administer the EUTF's prescription drug benefit. The PBM pays the pharmacies for the prescriptions filled for EUTF members and the EUTF reimburses the PBM this same amount paid to the pharmacies (i.e. pass-through pricing). The EUTF's PBM does not earn a spread (i.e. spread pricing) between the reimbursement to the pharmacy and the amount charged to the EUTF.

In the situation of pharmacy audits, the PBM is working as an extension of the EUTF to ensure that the amounts charged to our members (i.e. copayments and coinsurance) and the amount paid by the PBM/EUTF are accurate, and the pharmacies

**EUTF's Mission:** We care for the health and well being of our beneficiaries by striving to provide quality benefit plans that are affordable, reliable, and meet their changing needs. We provide informed service that is excellent, courteous, and compassionate.

adhere to the terms of the contract with the PBM. Any overpayments to the pharmacy identified during a pharmacy audit are either returned to the member or the EUTF plan. Placing restrictions on the PBM's ability to conduct pharmacy audits would have the unintended effect of increasing member costs through higher copayments/coinsurance and premiums.

One item of great concern is the one-year limitation to conduct the pharmacy audit. EUTF hires a third-party expert to audit the PBM's processing of EUTF claims. Errors are refunded to the member or the EUTF plan. The EUTF vigorously protects its right to enforce its contract through audits of periods going back more than one-year. The passage of time should not protect the PBM or pharmacies from their processing errors that could be related to fraud, negligence or human error.

Thank you for the opportunity to testify.

February 11, 2021

Senator Jarrett Keohokalole, Chair  
Senator Rosalyn Baker, Vice Chair  
Senate Committee on Health  
415 South Beretania Street  
Honolulu, Hawaii 96813

RE: SB 975 Relating to Pharmacy Audits

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

CVS Health has a number of concerns regarding Senate Bill 975 (“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.<sup>1</sup>

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<sup>1</sup> 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 Health  
The Honorable Jarrett Keohokalole, Chair  
The Honorable Rosalyn H. Baker, Vice Chair

February 12, 2021  
1:00 pm  
Via Videoconference

### **SB 975 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.

Kaiser is concerned that many of the audit restrictions in this bill are one-sided and unilaterally favor the pharmacies. For example, the bill requires the agency or entity conducting the audit to provide pharmacies with two weeks advance notice before an audit. This gives bad actors ample time to conceal or alter evidence of fraudulent activities.

Similarly, this legislation interferes with the contractual relationship between pharmacies and health insurers or payers. For instance, this bill only allows audits to occur during certain periods of the month, i.e., not during the first seven days of the month, which may contradict pharmacy contractual terms. We also do not see the policy justification for prohibiting an insurance provider or payer from conducting such a review during the first seven days of the month. Furthermore, this bill allows an extended time for pharmacies to withdraw and re-submit a claim beyond the contractual expiration period.

Finally, this bill limits the audit period to only one year, even though insurance providers and payers may have multiple pharmacies in their networks for which they are obliged to conduct an audit. This could impede the ability of auditors to detect fraudulent prescriptions. Insurance providers and payers look for errors, irregularities, and suspicious patterns over time. Claims are compared with historical information as well as claims submitted by similarly situated pharmacies. Substantial changes in the volume of claims or the dollar amount of claims from particular pharmacies can indicate fraudulent activity. This overly restrictive time constraint on audits limits insurance providers and payers' ability to uncover fraudulent activity and recover payments that were inappropriately made to pharmacies.

Thank you for your consideration.

February 11, 2021

The Honorable Jarrett Keohokalole  
Chair, Senate Committee on Health  
415 South Beretania Street  
Honolulu, HI 96813

**RE: NATIONAL COMMUNITY PHARMACISTS ASSOCIATION SUPPORT OF SB 975**

Dear Chair Keohokalole and members Senate Health Committee:

I am writing to you today on behalf of the National Community Pharmacists Association (NCPA) in support of SB 975 and related amendments. 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.

Hawaii is not alone in recognizing the need to address abusive audit practices. In their 2014 Final Call Letter, the Centers for Medicare and Medicaid Services (CMS) indicated their recognition of 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."

NCPA urges your support for 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](mailto:matthew.magner@ncpa.org).

Sincerely,



Matthew Magner  
Director, State Government Affairs

**SB-975**

Submitted on: 2/11/2021 12:28:58 PM

Testimony for HTH on 2/12/2021 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Mikami	Testifying for Molokai Drugs, Inc.	Support	No

Comments:

For many years, our pharmacy has been audited by pharmacy benefit managers (PBMs) for reasons that did not affect our patient or his/her outcomes. Sometimes, it is showing proof of a co-payment receipt. If we don't show this proof, we have to return the entire reimbursement plus the cost of the drug back to the PBM.

We support SB 975, "Relating to Pharmacy Audits," which will provide fair auditing practices, which are in place in 42 states. Hawaii is one of the last states to enact a law.

Thank you,

David Mikami, Owner

Molokai Drugs, Inc.

**LATE**

Times Supermarket and Times Pharmacy Strongly Support SB975

Aloha Chair Keohokalole, Vice Chair Baker, and Members of the Committee on Health,

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.

**LATE**



**PAAS National LLC**

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11 February 2021

Dear Hawaii State Senate Committee on Health,

My name is Trent Thiede and I am a pharmacist and President of PAAS National®. Our business is based in Stoughton, WI. Since 1993, PAAS National® has been helping community pharmacies navigate their Pharmacy Benefit Manager (PBM) and insurance audits. Over the 28 years in business, we've analyzed 80,000 audits and have more than 20% of all independent community pharmacies in the nation as members of our services.

Today you will hear/have heard the impact and control PBMs have over community pharmacies and the passion that pharmacists have for their patients. I would like to file my support for Senate Bill 975 and share with you some statistical comparisons that PAAS has access to being nationwide.

From 2015 - 2019, PAAS has seen a 78% increase in the number of audits pharmacies are subjected to.

**2019 - 2020 PAAS Audit Statistics**

	HI	CA	OR	WA
Number of Audits (per pharmacy)*	9.1	6.6	6.1	6.1
Average Initial Audit Findings (per audit)*	\$34,236	\$22,162	\$665	\$8,412

\*Based on audits reported to PAAS by members

The main difference between Hawaii and California, Oregon, and Washington are the three latter have PBM Audit Integrity Statutes. It seems clear Hawaii pharmacies are being target for easier audit recoupments from community pharmacies due to lack of regulation. Audits are not random, and PBMs look for any technical discrepancies to deny claims, despite the patient getting their needed medication. PBMs focus on higher dollar items to increase recoupments, and these dollars are often not given back to Plan Sponsors/Employers that paid the claims. I urge you to move the PBM Audit Bill forward for the sake of community pharmacies and small business in Hawaii.

Respectfully submitted,

Trenton Thiede PharmD, MBA  
President  
[tthiede@paasnational.com](mailto:tthiede@paasnational.com)  
608-541-8904  
[www.paasnational.com](http://www.paasnational.com)

**LATE**

**SB-975**

Submitted on: 2/11/2021 2:56:34 PM

Testimony for HTH on 2/12/2021 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
greg harmon	Testifying for kAMEHAMEHA pHARMACY	Support	No

Comments:

Honorable Senators 2021, please accept my testimony for strong support for bill SB975.

My rural pharmacy on the Big Island has suffered financial hardship since 2016 with PBM abuse from CVS Caremark, Express Scripts, and Optum. All my complaints have been presented to the DCCA against CVS which are pending sanctions from the AG office. I strongly support the PBMs register with the Hawaii Insurance Commission and follow new regulations that are fair and transparent to allow pharmacies to receive reasonable compensation for professional services. Please note the Big Island has lost SIX independent pharmacies bought and closed by CVS Caremark beginning in 2017. We have needed help for quite some time, aloha

Greg Harmon, Pharmacist President Kamehameha Pharmacy, P.O. Box 610, Kapaau HI 96755

**LATE**

**SB-975**

Submitted on: 2/11/2021 9:08:05 PM

Testimony for HTH on 2/12/2021 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patrick Adams	Individual	Support	No

Comments:

Patrick L Adams, Rph

Dear Chair Keohokalole, Vice Chair Baker and members of the Committee on health.

I stand in SUPPORT of SB975

I have been testifying on this matter for over 10 years. The unfair audits and financial practices of the PBM managers has destroyed much of the access to pharmacies and rural areas. There were several pharmacies 10 miles or more from the small communities on the Big Island but most of those have been driven to selling out to the large chains after being targeted by audits and fees assessed by the PBM managers. There were two pharmacies south of Kona but now there are none. There was one pharmacy south of Kamuela and now there are none. The communities in these areas have the cost and burden of traveling to a pharmacy or resorting to mail order pharmacies that offer limited service and need over the counter meds they badly require. Hawaii has been caught off guard like so many of the other states by PBM managers acting as insurance company agents without any of the rules or statutes that protect the consumer. This has been a 20 year process because the definition of a PBM did not exist in the statutes and the PBM lobbied that they were not insurance companies and should not be regulated by the insurance commissioner. Pharmacy owners and patients have had no where to turn to appeal their unfair insurance practices. This bill does not go far enough to protect access to the general public of Hawaii. I would ask that the committee pass this bill and strengthen it by limiting audits to a maximum of one audit per year and a stronger appeal process that penalizes the PBM threefold when they are found acting unfairly. I believe it is important to reestablish a health care system that puts the patient first.

Sincerely,

Patrick L Adams