

STAND. COM. REP. NO.

493

Honolulu, Hawaii

FEB 19 2021

RE: S.B. No. 602  
S.D. 1

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

Sir:

Your Committee on Health, to which was referred S.B. No. 602  
entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Prohibit certain contracts for managed care, entered into after June 30, 2021, from containing a provision that authorizes pharmacy benefit managers to reimburse a contracting pharmacy on a maximum allowable cost basis, and voids any such provisions in existing managed care contracts;
- (2) Prohibit pharmacy benefit managers from engaging in self-serving or deceptive business practices;
- (3) Prohibit pharmacy benefit managers from engaging in unfair methods of competition or unfair practices;
- (4) Prohibit pharmacy benefit managers from retaining any portion of spread pricing;
- (5) Prohibit pharmacy benefit managers from reimbursing a 340B pharmacy differently than any other network pharmacy;



- (6) Prohibit pharmacy benefit managers from reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances;
- (7) Prohibit pharmacy benefit managers from prohibiting a pharmacist to provide certain information to insureds;
- (8) Increase pharmacy benefit managers' annual reporting requirements;
- (9) Require the insurance commissioner to file annual reports with the legislature;
- (10) Increase pharmacy benefit manager registration and renewal fees; and
- (11) Make certain violations by pharmacy benefit managers subject to the penalties provided in chapters 480 and 481, Hawaii Revised Statutes.

Your Committee received testimony in support of this measure from The Queen's Health Systems; Hawai'i Primary Care Association; Pharmicare Hawaii, Inc.; Times Supermarkets; National Community Pharmacists Association; and three individuals. Your Committee received testimony in opposition to this measure from Hawaii Association of Health Plans; Hawaii Medical Service Association; and Cigna Healthcare, Inc. Your Committee received comments on this measure from the Department of Commerce and Consumer Affairs; Department of Health; Hawaii Employer-Union Health Benefits Trust Fund; Kaiser Permanente Hawaii; CVS Health Solutions, LLC; and Pharmaceutical Care Management Association.

Your Committee finds that rural and independent pharmacies are critical healthcare infrastructure in areas that may not yield enough revenue potential for big box pharmacies. Moreover, rural and independent pharmacies have deep roots in their communities that enhance their value to kupuna and other vulnerable residents. Your Committee finds that pharmacy benefit managers are companies that manage prescription drug benefits on behalf of health insurers and other payors. Pharmacy benefits managers wield great negotiating power, and thus have a significant behind-the-scenes impact in determining total drug costs for insurers, shaping



patients' access to medications, and determining how much pharmacies are paid. While pharmacy benefit managers can provide value to the healthcare system, as third-party business entities, they also have economic interests that can add costs, or keep drug prices higher than they should be.

Your Committee further finds that rural and independent pharmacies across the United States are struggling financially due to the decreased reimbursement rates for prescription that are determined by pharmacy benefit managers. Additionally, more and more rural and independent pharmacies are closing, leaving residents in less populated areas without a pharmacist to fill prescriptions. This measure increases transparency and fairness in business dealings by pharmacy benefits managers.

Your Committee recognizes the testimony of the Insurance Commissioner of the Department of Commerce and Consumer Affairs' Insurance Division, who proposed amendments that clarify several areas of the measure. Your Committee also recognizes the testimony of several stakeholders in the healthcare community who testified that some of the proposed amendments would be untenable for pharmacy benefits managers. Therefore, your Committee has amended this measure by:

- (1) Removing the prohibitions against self-dealing and spread pricing;
- (2) Removing the annual examination requirement for the Insurance Commissioner;
- (3) Adding a definition of "rural" to have the same meaning as defined in section 1B-1(c), Hawaii Revised Statutes;
- (4) Removing the amendments to the definition of "pharmacy benefit manager";
- (5) Removing the deletion of health maintenance organizations from the definition of "covered entity";
- (6) Setting, at an undetermined amount, the:
  - (A) Pharmacy benefit manager license application fee;



- (B) Pharmacy benefit manager license renewal fee; and
- (C) Penalty for a pharmacy benefit manager for failing to renew its license;
- (7) Removing the amendment that would allow penalties for a person acting as a pharmacy benefit manager without first being registered to be cumulative;
- (8) Inserting an effective date of July 1, 2050, to encourage further discussion;
- (9) Amending section 1 to reflect its amended purpose; and
- (10) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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

Respectfully submitted on  
behalf of the members of the  
Committee on Health,



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JARRETT KEOHOKALOLE, Chair



