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**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Health
Wednesday, February 10, 2021
1:00 p.m.
Via Videoconference**

**On the following measure:
S.B. 605, RELATING TO PRESCRIPTION DRUGS**

Chair Keohokalole 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) require drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers if a proposed increase in the wholesale price of certain drugs would result in a sixteen per cent or more price increase over a two-year period; and (2) require the drug manufacturer to identify and report to the insurance commissioner information on certain drugs whose wholesale acquisition cost increases by a certain amount during a specified time frame.

The bill's amendments to Hawaii Revised Statutes chapter 431R would be difficult to enforce, as the Insurance Division has no regulatory oversight over drug manufacturers and lacks the requisite expertise to regulate wholesale prescription drugs. In addition, the Insurance Division would need sufficient funds and time to retain

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S.B. 605

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an outside expert consultant on prescription drug wholesale pricing and course of therapy to assist with implementing and enforcing this bill.

Thank you for the opportunity to testify on this bill.

February 9, 2021

TO: Chair Jarrett Keohokalole
Vice Chair Rosalyn H. Baker
Members of the Senate Committee on Health

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

RE: **SB 605** - Relating to Prescription Drugs
Hearing Date: February 10, 2021
Time: 1:00 pm

PhRMA opposes the passage of **SB 605** which in part requires advance notice by drug manufacturers of proposed increases in the wholesale acquisition cost of certain drugs. Attached is PhRMA's testimony in opposition.

Thank you for considering this testimony.



In Opposition to Hawaii Senate Bill 605 (SB 605)

February 5, 2021

Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) strongly opposes SB 605, which would require prescription drug manufacturers to notify state purchasers and private payers about certain price increases. The bill would not help patients better afford their medicine and would create increased administrative and financial burdens on the state.

Discussions about the cost and affordability of medicines are important. No patient should have to worry about whether they can afford the health care they need. However, the notion that spending on medicines is the primary driver of health care cost growth is false - and ignores cost savings that medicines provide to the health care system overall. Medicines lead to fewer physician visits, hospitalizations, surgeries and other preventable procedures – all of which translate to lower health care costs. New medicines are making crucial contributions to medical advances and changing the direction of healthcare as we know it.

Advance notice of price increases raises constitutionality concerns, and could be harmful to consumers and interfere with market competition.

SB 605 would require manufacturers to provide 60 days advance notification of WAC price increases. The mandatory advance notification of the WAC of a prescription drug is not information that will be very meaningful to patients who are primarily concerned about the affordability and accessibility of medications to them. Patients want to know about what a prescription drug will cost them regardless of what the WAC is. Also, providing notice of WAC increases or prices that do not account for rebates, discounts, and other price concessions provided for prescription medicines does not accurately reflect the true cost to an insurer or pharmacy benefit manager. According to the IQVIA Institute, in 2018, brand prescription medicine invoice prices (-WAC prices) increased by 5.5 percent, but the associated net prices only increased by 0.3 percent once rebates and discounts paid to insurers by biopharmaceutical manufacturers were removed. Patient premiums are only impacted by the discounted price paid by the insurer. Thus, the vast majority of the increases, balanced against the significant manufacturer discounts, when taken together, will not have any impact on a plan's overall costs. Such notification could also result in voluminous reporting that will in no way assist in making thoughtful changes to formulary design or budgeting decisions.

Advance notification of WAC price increases creates financial incentives for secondary distributors to enter the pharmaceutical supply chain thus creating a “gray” market. Gray market distribution networks consist of a number of different companies – some doing business as pharmacies and some as distributors – that buy and resell medicines to each other before one of them finally sells the drugs to a hospital or other health care facility. As the medicines are sold from one secondary distributor to another, the possibility of counterfeit medicines infiltrating the supply of legitimate medicines increases, thereby threatening patient safety. In the past, this type of purchasing has caused great difficulty for hospitals. For example, during medicine shortages, hospitals are sometimes unable to buy medicines from their normal trading partners, usually one of the three

large national “primary” distributors, AmerisourceBergen, Cardinal Health, or McKesson. At the same time, hospitals are deluged by sales solicitations from gray market companies offering to sell the shortage medicines for prices that are often hundreds of times higher than the prices normally paid.

PhRMA has challenged the constitutionality of laws requiring advanced notification of price increases in California and Oregon on a number of grounds, including under the First Amendment and the dormant Commerce Clause. The litigation is pending. If the laws are invalidated, a similar analysis would apply to similar legislation in other states. The U.S. Court of Appeals for the Fourth Circuit recently overturned a Maryland drug pricing law on dormant Commerce Clause grounds because it regulated the price of transactions that occurred outside of the state.¹

The Hawaii advanced notice bill would create an increased administrative burden for the state.

The cost of SB 17, the advanced notice legislation passed in California, is estimated to be \$1.4 million dollars in the first two years, and \$850.00 annually thereafter. The costs are for California to enforce the manufacturer reporting requirements, and costs to collect, coordinate and publish information to the Office of Statewide Health Planning and Development (OSHPD), the entity collecting information in that state. Also, it is important to note that the California law requires that notice be given to entities that purchase drugs through national contracts, so information in the advance notification is likely to spread outside the state of California. Hawaii would be required to duplicate efforts already mandated in California, which has a fiscal note of approximately \$1.4 million dollars. This is an unnecessary duplication for residents in Hawaii.

PhRMA recognizes the access challenges faced by patients in Hawaii with serious diseases. PhRMA stands ready to work with the Hawaii legislature to develop solutions that help patients. PhRMA believes this bill would not help patients’ access to breakthrough innovations or better afford their medicines and accordingly strongly opposes the passage of Senate Bill 605.

¹ *Ass’n for Accessible Medicines v. Frosh* (“AAM”), 887 F.3d 664 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 1168 (2019).



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**The State Legislature
The Senate
Committee on Health
Wednesday, February 10, 2021
1:00 p.m.**

TO: The Honorable Jarrett Keohokalole, Chair

RE: S.B. 605 Relating to Prescription Drugs

Aloha Chair Keohokalole and Members of the Committees:

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a membership organization of people age fifty and over, with nearly 145,000 members in Hawai'i.

AARP Hawaii supports S.B. 605 which requires drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers if a proposed increase in the wholesale price of certain drugs would result in a sixteen per cent or more price increase over a two-year period. Also, it requires them to report to the insurance commissioner information on certain drugs whose wholesale acquisition cost increases.

AARP believes that increased disclosure around pricing practices will result in more meaningful and actionable information for the state and accountability for manufacturers.

- Drug pricing transparency helps payers determine whether a drug price or price increase is justified. The increased transparency would provide the rationale for how drugs are priced.
- Moreover, the scrutiny could encourage drug manufacturers to reconsider their standard practice of setting high launch prices and then increasing them year after year.

AARP fully supports policies that will help reduce prescription drug prices and make them more affordable for consumers, especially older Americans who depend on life-saving and life-improving medications. Thank you very much for the opportunity to support S.B. 605.

Sincerely,

A handwritten signature in black ink, appearing to read "Keali'i Lopez".

Keali'i Lopez, AARP Hawai'i



**Testimony to the Senate Committee on Health
Wednesday, February 10, 2020; 1:00 p.m.
Via Videoconference**

RE: SENATE BILL NO. 0605, RELATING TO PRESCRIPTION DRUGS.

Chair Keohokalole, Vice Chair Baker, 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 THE INTENT** of Senate Bill No. 0605, RELATING TO PRESCRIPTION DRUGS., and **offer an AMENDMENT for your consideration.**

The bill, as received by your Committee, would, among other things:

- (1) Require all prescription drug manufacturers to notify each benefit plan and pharmacy benefit manager of any planned price increase of 16% or more of any drug having a wholesale cost of more than \$40 at least 60 days prior to the planned effective date of the price increase; and
- (2) Mandate all prescription drug manufacturers to annually identify up to 10 prescription drugs which the State spends significant health care moneys and for which the wholesale acquisition cost increased by 50% or more during the prior two calendar years or by 20% or more during the prior calendar year.

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 HPCA supports any and all efforts to ensure that the cost of essential medications for patients are reasonable and affordable. Transparency and prior notification of large price increases help not only regulators to monitor the actions of pharmaceutical manufacturers, but also the health plans and pharmacy benefit managers.

Testimony on Senate Bill No. 0602
Wednesday, February 10, 2021; 1:00 p.m.
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To ensure that future committees and the House examine these issues in a comprehensive manner, we suggest inserting the provisions of Senate Bill No. 602, which this Committee has also heard on this agenda, into Senate Bill No. 0605. It would appear that the title, RELATING TO PRESCRIPTION DRUGS., is broad enough to incorporate the substance of both measures.

With this amendment, we urge your favorable consideration of this measure.

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@hawaiiipca.net.

SB-605

Submitted on: 2/8/2021 12:36:39 PM

Testimony for HTH on 2/10/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members,

Please support SB609.

Thank you,

Andrea Quinn

SB-605

Submitted on: 2/9/2021 11:15:55 PM

Testimony for HTH on 2/10/2021 1:00:00 PM

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

Comments:

This bill is long overdue, thank you

Sincerely,

Magdi Latif

NorthShore Pharmacy

2460 Oka st #100, Kilauea, HI 96754

808-828-1844

LATE

SB-605

Submitted on: 2/9/2021 6:21:20 PM
Testimony for HTH on 2/10/2021 1:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Mikami	Individual	Support	No

Comments:

Dear Chair Keohokalole, Vice Chair Baker, and Health Committee Members:

Thank you for your support of SB605.

Sincerely,

David Mikami, Owner

Moloka'i Drugs, Inc.

P.O. Box 558

Kaunakakai, Moloka'i, HI 96748

Phone 808-553-5790