

A Bill for an Act Relating to the Repeal of Section 328-106, Hawaii Revised Statutes.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the department of health has historically regulated the safety and integrity of food, drugs, and cosmetics to protect the health of Hawaii's residents and visitors pursuant to the authority provided in chapter 328, Hawaii Revised Statutes (chapter 328). The department's regulatory purview with respect to pharmaceuticals under chapter 328 is analogous to that of the federal Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act. The federal Food and Drug Administration exercises its regulatory authority to ensure the efficacy and overall safety of prescription drugs, but not to control their cost or the business practices of the insurance companies and independent pharmacies that supply them.

Section 328-106, Hawaii Revised Statutes, requires the department of health to police the insurance industry, a task for which it is not well-suited. Section 328-106, Hawaii Revised Statutes, requires pharmacy benefit managers to maintain certain information related to the cost of prescription drugs and provide a process for a contracting pharmacy to appeal the maximum allowable cost for reimbursement. Regulatory oversight of what was intended as a price control function, however, is not within the department of health's area of expertise. Additionally, section 328-106, Hawaii Revised Statutes, does not provide an adequate remedy for violations; rather, it prescribes certain aspects of an appeal process to be utilized by the pharmacy benefit managers who nonetheless retain exclusive control over both the administration of the appeal process itself and of any decision ultimately rendered.

Therefore, the legislature finds that section 328-106, Hawaii Revised Statutes, is inconsistent with the purpose of chapter 328 generally and does not achieve a meaningful balance in the contractual relationship between pharmacy benefit managers and pharmacies. The regulatory burden this section places on the department of health is outside the scope of the department of health's mission to protect public health. Regulation of the insurance industry's process for reimbursement to pharmacies of prescription drug costs, and of the contractual relationship between them, is likely more effectively achieved by other means. As a result, the legislature finds that repealing section 328-106, Hawaii Revised Statutes, is appropriate.

Accordingly, the purpose of this Act is to repeal section 328-106, Hawaii Revised Statutes, which requires the department of health to regulate business practices between private entities engaged in the selling, billing, and reimbursement of pharmaceuticals.

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

SECTION 3. Statutory material to be repealed is bracketed and stricken.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 2023.)

**Note**

1. Edited pursuant to HRS §23G-16.5.