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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Health
Tuesday, February 12, 2019
9:00 a.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 267, RELATING TO PRESCRIPTION DRUGS**

Chair Mizuno and Members of the Committee:

My name is Colin 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.

This bill requires that if a proposed increase in the wholesale price of certain drugs would result in a 16% or more price increase over a two-year period, the drug manufacturer shall provide notice to various drug insurance providers. The Department is concerned the Insurance Division will be unable to enforce the measure's proposed amendments to Hawaii Revised Statutes chapter 431R, as the Insurance Division does not have regulatory oversight over drug manufacturers.

Thank you for the opportunity to testify on this measure.

February 11, 2019

TO: Chair John M. Mizuno
Vice Chair Bertrand Kobayashi
Members of the House Committee on Health

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

RE: **HB 267** - Relating to Prescription Drugs
Hearing Date: February 12, 2019
Time: 9:00 am

My name is William Goo. I represent the Pharmaceutical Research and Manufacturers of America (PhRMA).

PhRMA opposes the passage of **HB 267**. Attached is PhRMA's testimony in opposition.

Thank you for considering this testimony.



In Opposition to House Bill 267 (HB 267)

February 8, 2019

Position: The Pharmaceutical Research and Manufacturers of America (PhRMA) strongly opposes HB 267, which would require prescription drug manufacturers to notify state purchasers and private payers about certain price increases and the price of new drugs. 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.

The information disclosed by this legislation would not help patients and ignores all other players in the prescription drug supply chain.

There are a variety of stakeholders involved in determining what consumers ultimately pay for a medicine, including insurers, pharmacy benefit managers (PBMs), wholesalers, and government agencies like Medicaid. For example, pharmacy benefit managers and payers which dictate the terms of coverage for medicines use their control over which medicines patients can access as leverage to negotiate substantial rebates and discounts. The role these entities play and the impact they have on patient cost and access is not acknowledged in this legislation. By not addressing these entities, this bill does not help patients with improved access or change practices that impact patient out-of-pocket costs.

Contrary to common belief, the growth rate of prescription drug costs has slowed in recent years: Net spending, or costs after accounting for discounts and rebates, on medicines grew by 0.6% in 2017, according to the IQVIA Institute. Express Scripts, a major PBM, announced drug spending increased only 1.5% in 2017, down from 3.8% in 2016, CVS Health reported growth in drug spending was only 1.9% in 2017, down from 3.2% in 2016, Prime Therapeutics reported negative growth in drug spending, at -0.2% in 2017, down from 2.5% in 2016, and CMS reported that retail prescription drug spending growth was only 0.4% in 2017, down from 2.3% in 2016. Prescription drug spending is at a historic low. And prescription drug costs are expected to remain a relatively small and stable share of total health care costs into the future. This, of course, does not necessarily reconcile with what patients are feeling at the pharmacy counter, which is why looking at the whole system is so important.

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

HB 267 mandates 60-day advance price notification of wholesale acquisition cost (WAC) for branded and generic drugs. The constitutionality of advance notification requirements is questionable and is currently the subject of litigation in California.

Advance price notification creates a new incentive for some distributors — especially those that do not enter into contractual agreements with manufacturers — to profit from purchasing medicine at the “old” price and selling them at the “new” price once the increase is made public. Such speculative purchasing could, in turn, lead to downstream effects such as product stockpiling and medicine shortages, while not reducing costs to patients in Hawaii.

Gray Market Incentives

Advance notification of WAC price increases creates financial incentives for secondary distributors to enter the pharmaceutical supply chain, thus creating a “gray” market. As the medicines are sold from one secondary distributor to another, the possibility of counterfeit medicines augmenting the supply of legitimate medicines increases, thereby threatening patient safety.

This type of purchasing has caused great difficulty for hospitals. 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 they normally pay.

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 \$850,000 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. We stand ready to work with the Hawaii legislature to develop solutions that help patients. We believe this bill would not help patients’ access to breakthrough innovations or better afford their medicines and accordingly strongly oppose the passage of House Bill 267.



LATE

February 11, 2019

The Honorable John M. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair
House Committee on Health

Re: HB 267 – Relating to Prescription Drugs

Dear Chair Mizuno, Vice Chair Kobayashi, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 267, which requires that if a proposed increase in the wholesale price of certain drugs would result in a 16% or more price increase over a 2-year period, the drug manufacturer shall notify various drug insurance providers.

HMSA supports requiring prescription drug manufacturers to notify prescription drug benefit plans and pharmacy benefit managers of any planned price increases. We believe this measure will assist in our attempt to keep costs down for our members and is an important step towards reigning in the skyrocketing costs of prescription drugs.

Thank you for the opportunity to provide testimony on this measure.

Sincerely,

Pono Chong
Vice President, Government Relations

Testimony of
Jonathan Ching
Government Relations Specialist

LATE

Before:
House Committee on Health
The Honorable John H. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair

LATE

February 12, 2019
9:00 a.m.
Conference Room 329

Re: HB267, Relating to Prescription Drugs

Chair Mizuno, Vice-Chair Kobayashi, and committee members, thank you for this opportunity to provide testimony on HB267, which requires drug manufactures to notify prescription drug insurers and pharmacy benefit managers of a proposed increase in the wholesale price of certain drugs.

Kaiser Permanente Hawai'i SUPPORTS HB267.

Among the greatest threats to the affordability of health care coverage is the pharmaceutical industry's pricing of new and existing medications. New drugs are being approved and marketed with higher prices than their predecessor treatments, often with no difference in effectiveness or safety. Drugs that have been on the market for years are seeing double digit price increases each year without an explanation. In some cases, drugs that have long been available are going up in price even faster, with triple and quadruple digit price increases.

Kaiser Permanente's Specialty Pharmacy, which services Kaiser Permanente Hawai'i members, focuses on high cost, high touch medication therapy for patients with complex disease states. As such, Kaiser Permanente Specialty Pharmacy's overall drug spending for Hawai'i members increased 146% from 2015 to 2018. This problem is only going to get worse, with spending on specialty drugs expected to continue to rise at an alarming rate. Unchecked, this trend will bankrupt public and private payors alike. Even common drugs that have been around for many years are seeing unexplainable, staggering price increases. Manufacturers raise prices on existing drugs once, twice, or even three times per year – and yet, that new, higher price seldom brings any additional value or clinical benefit. This would never be acceptable in any other industry and is simply unsustainable.

Hospitals and health plans report pricing information. It's time for pharmaceutical manufacturers to do the same when they implement major price increases.

Because individuals are required to buy health care, and public and private purchasers are required to cover an FDA approved medication when one is available for a patient's condition, there is a compelling public interest for drug manufacturers to be required to provide a rationale as to how they arrived at a particular price. Price transparency is quickly becoming the norm in the health care industry in order to contain costs and encourage healthy competition.

Kaiser Permanente Hawai'i is appreciative of the innovation in pharmaceuticals that makes a profoundly better quality of life available to our patients. However, patients will not benefit if a medication is priced out of reach and does not provide additional value from a quality and/or safety perspective or if ultimately these price increases bankrupt the system.

HB267 is a good first step toward shining a light on manufacturer pricing practices and will also help purchasers and policy makers better understand this large and growing expense.

Thank you for the opportunity to provide testimony on this important measure.