DAVID Y. IGE
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce, Consumer Protection, and Health
Friday, February 7, 2020
8:30 a.m.
State Capitol, Conference Room 229

On the following measure:
S.B. 3045, RELATING TO PRESCRIPTION DRUG RATE SETTING

Chair Baker and Members of the Committee:

My name is Catherine Awakuni Colón, and I am the Director of the Department of Commerce and Consumer Affairs (DCCA or Department). The Department appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) establish a prescription affordability commission within the Department to review prescription drug costs and establish levels of reimbursement; and (2) appropriate moneys to be expended by the DCCA for the purposes of this bill.

The Department appreciates the bill's intent to protect consumers within the health care system from high prescription drug prices. However, the Department has concerns about the exorbitant costs to implement the commission. Although the bill provides a blank general fund appropriation for the proposed prescription affordability special fund, the commission would likely incur the following costs:

- At least $700,000 annually for salary, fringe benefits, and office space to accommodate an executive director, legal counsel, and potential other staff;
- Between $200,000 to $250,000 annually to enter into professional services contracts with independent third parties to carry out the commission's powers and duties; and
- At least $100,000 annually for the actual and necessary expenses that the 11 members of the prescription affordability advisory committee would incur in the performance of their committee duties. Actual and necessary costs would cover travel expenses (i.e., airfare and ground transportation and accommodations) to and from Oahu or the island where public hearings are held.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR

PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 5, 2020

TO: The Honorable Senator Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection, and Health

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 3045 – RELATING TO PRESCRIPTION DRUG RATE SETTING**

Hearing: February 7, 2020, 8:30 a.m.
Conference Room 229, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) offers comments on the bill.

PURPOSE: The purpose of this bill is to establish a prescription affordability commission to review prescription drug costs and establish levels of reimbursement and rates.

DHS notes that the Medicaid spending on prescription drugs is likely covered under this bill as the Med-QUEST Division's managed care program may be a "state-sponsored … health plan" as defined in § -12 on page 14.

Medicaid spending on prescription drugs is governed not only by state law, but also by federal law and regulation. These overlapping laws and regulations are complex. DHS is currently reviewing this bill to see how it would impact the Medicaid program. DHS may need to seek flexibility from the federal government to be able to comply with the provisions of this bill while still receiving federal matching dollars.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR

CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAI'I EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAI'I
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAI'I 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY

TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
ON
SENATE BILL NO. 3045

February 7, 2020
8:30 a.m.
Room 229

RELATING TO PRESCRIPTION DRUG RATE SETTING

The Department of Budget and Finance offers comments on Senate Bill (S.B.) No. 3045.

S.B. No. 3045 establishes the Prescription Affordability Commission (PAC) within the Department of Commerce and Consumer Affairs (DCCA); requires the PAC to hire an Executive Director and legal counsel without regard to Chapter 76, HRS; authorizes the Executive Director to hire staff, subject to Chapter 76, HRS, without providing position counts; establishes the duties, authority, and reporting requirements of the PAC; establishes reporting requirements for drug manufacturers to the PAC; requires the PAC to conduct affordability reviews of prescription drugs and authorizes the PAC to set levels of reimbursement upon findings of excess costs to consumers; establishes the Prescription Affordability Advisory Committee to provide advisory assistance to the PAC; establishes the Prescription Affordability Special Fund (PASF) under the administration of DCCA; appropriates an unspecified amount of general funds for

deposit into the PASF for FY 21; and appropriates an unspecified amount from the PASF for FY 21 for the purposes of this measure.

As a matter of general policy, the department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. In regard to S.B. No. 3045, it is difficult to determine whether the proposed special fund would be self-sustaining.

Thank you for your consideration of our comments.

OFFICE OF INFORMATION PRACTICES

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TELEPHONE: 808-586-1400 FAX: 808-586-1412
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To: Senate Committee on Commerce, Consumer Protection, and Health

From: Cheryl Kakazu Park, Director

Date: February 7, 2020, 9:30 a.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 3045
Relating to Prescription Drug Rate Setting

Thank you for the opportunity to submit testimony on this bill, which would establish a Prescription Affordability Commission to review prescription drug costs and establish levels of reimbursement. The bill would also establish a Prescription Affordability Advisory Committee which, like the Commission, would meet the definition of a "board" subject to part I of chapter 92, the Sunshine Law. The Office of Information Practices (OIP) takes no position on the substance of this bill, but offers comments and recommendations on the alternative meeting notice and board packet requirements proposed for the Commission's meetings and on a proposed executive meeting purpose. As the Commission would already be subject to the Sunshine Law, it is unclear why these additional requirements are necessary and one proposal may even limit the public's access to information that is disclosable under the UIPA.

The Sunshine Law's notice requirement, section 92-7, HRS, normally requires a State board to provide notice six calendar days before a meeting through several methods, including posting it to the State's electronic calendar and

providing a copy to the Lieutenant Governor's office as well as posting it at the meeting site and sending postal or email copies to persons on the board's mailing list. In proposed subsection __-4(b), on bill page 6, this bill would replace one subsection of the Sunshine Law's notice requirements, section 92-7(b) (requiring posting to the electronic calendar and providing a copy to the Lieutenant Governor), with a requirement that the Commission instead "file written public notice of a public meeting with the office of the lieutenant governor at least two weeks before the meeting." Thus, this proposal would not only change the filing date from six days to two weeks before the meeting but would also change the usual Sunshine Law filing method from electronic posting with a copy sent to the Lieutenant Governor's office to filing with the Lieutenant Governor's office only. Even if this Committee feels an earlier filing deadline is necessary for the Commission, it is not clear why an alternative process for filing notice would be appropriate for the Commission.

The bill would also require the Commission to make meeting materials available to the public at least one week before the meeting. This requirement would apparently be in addition to the Sunshine Law's existing requirement that a board make its board packet available to the public at the same time it is provided to the board. HRS § 92-7.5. It is not clear whether "meeting materials" are intended to mean something different from a board packet as defined by the existing law, or if they are the same thing. Either way, it appears the Commission would have to follow both the requirement to have meeting materials available a week in advance of a meeting as well as the slightly different board packet requirements set out in section 92-7.5, HRS. Here, too, even if this Committee finds it appropriate to require the Commission to have its board packet completed and

sent out by a week before its meeting, it is not clear what purpose would be served by having it follow two somewhat different processes for making the board packet available to the public.

Finally, in proposed subsections -4(c) and (e), this bill proposes a special executive session purpose allowing the Commission to go into a closed meeting to discuss "proprietary data and information." Information thus discussed would also automatically be exempt from public disclosure under chapter 92F, the Uniform Information Practices Act (UIPA). By itself, the description of what is covered by the proposed executive session purpose is somewhat vague and could be applied in an overly broad way, and because the Commission's application of the "proprietary data and information" executive session purpose would determine what information may be withheld under the UIPA rather than the other way around, the vague description could also have the effect of limiting the public's access to information that would otherwise be disclosable under the UIPA.

OIP has suggested amendments to address these issues. First, OIP recommends that this Committee **either (1) delete proposed subsection §__-4(b)** (at bill page 6), **or** if this Committee specifically wants to require the Commission to provide notice of its meetings two weeks ahead of time and send its board packet out one week ahead of time, **(2) replace proposed subsection §__-4(b) with the following:**

> The deadline for the Commission to give written public notice of its meetings as required by section 92-7 shall be two weeks before its meeting, and the Commission shall make its board

packet available as provided in section 92-7.5 at least one week before its meeting.

Second, also on bill page 6, OIP recommends that this Committee **delete proposed subsection §__-4(e) and replace proposed subsection §__-4(c) with the following:**

The commission may hold an executive meeting as provided in section 92-4 to discuss confidential commercial or financial information that it would be authorized to withhold from the public under section 92F-13(3). Protection of such information shall be a considered an authorized purpose for holding a meeting closed to the public.

Thank you for considering OIP's comments and recommendations.

HDA
Healthcare Distribution Alliance

PATIENTS MOVE US.

Hawaii State Senate
415 South Beretania St.
Honolulu, HI 96813

Dear Chairwoman Baker, Vice Chair Chang and Honorable Members of the Senate Committee on Commerce Consumer Protection & Health,

On behalf of the Healthcare Distribution Alliance (HDA), representing 35 primary pharmaceutical wholesale distributors, I am writing in opposition to Senate Bill 3045 and the inclusion of pharmaceutical wholesale distributors within the legislation. The stated intent behind the bill is to review prescription drug costs and establish levels of reimbursement with the ultimate goal of containing drug costs, but inclusion of wholesale distributors will do nothing to achieve the stated goal of the legislation.

Wholesale distributors serve as the critical, logistics provider within the healthcare supply chain. As a patient entering a pharmacy, there's a level of expectation that your prescription, or any number of over-the-counter medications and medical supplies, will be readily available when you arrive. Wholesale distributors are the reason patients can take that process for granted. HDA members work 24 hours a day, 365 days a year to ensure over 15 million healthcare products are delivered to more than 200,000 pharmacies, hospitals, nursing homes and other healthcare settings nationwide, including over 1,000 locations across Hawaii.

Distributors are unlike any other supply chain participants – their core business does not involve manufacturing, marketing, prescribing or dispensing medicines, nor do they set the list price of prescription drugs, influence prescribing patterns or determine patient-benefit design. Their key role is to serve as a conduit for medicines to travel from manufacturer to provider while making sure the supply chain is fully secure, fully functional, and as efficient as possible. Due to these efficiencies, HDA member companies generate an estimated *$42 billion in cost savings each year* to our nation's healthcare system.

Wholesale distributors operate on a fee-for-service business model, with revenues almost entirely and immediately offset by the costs of purchasing the medicines they distribute, resulting in razor thin *profit margins of roughly 1 percent on average*. Typically, pharmaceutical wholesale distributors purchase pharmaceuticals from manufacturers at the original marketplace price of a drug, known as the Wholesale Acquisition Cost (WAC), and sell pharmaceuticals to downstream customers based on WAC. Wholesale distributors are not privy to how WAC is established as this is solely the responsibility of the pharmaceutical manufacturer. Distributors then charge manufacturers distribution fees related to their services. These service fees, which are not passed down to the subsequent purchaser, underwrite the cost of warehousing, ordering, special product handling services (e.g. refrigerated products) and transporting products to the thousands of ship-to points each distributor serves every day. This fee-for-service model reduces demand volatility – aligning order patterns more closely to actual patient demand and, eliminating artificial demand spikes, allowing for a supply chain that operates more smoothly and predictably.

Furthermore, wholesale distributors are already licensed entities within the state of Hawaii, paying an annual fee to the Board of Pharmacy in order to provide warehousing, delivery and efficient access to the medications Hawaii residents need. Adding an additional fee onto pharmaceutical wholesale distributors concerning an issue the industry has no insight or purview over would be unduly burdensome.

The services provided by the pharmaceutical wholesale distribution industry result in benefits to healthcare providers, patients and consumers while also making the U.S. pharmaceutical supply chain one of the safest and most efficient in the world. The industry has accomplished these objectives without impacting the overall cost of prescription drugs. Due to the reasons stated above, HDA opposes SB 3045. Pharmaceutical wholesale distributors have minimal impact on the cost of prescription drugs and should not be included within the legislation.

Thank you,

Leah Lindahl
Sr. Director, State Government Affairs
Healthcare Distribution Alliance
LLindahl@hda.org
(303) 829-4121

February 6, 2020

TO: Chair Rosalyn H. Baker
Vice Chair Stanley Chang
Members of the Senate Committee on Commerce, Consumer Protection, and Health

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

RE: **SB 3045** - Relating to Prescription Drug Rate Setting
Hearing Date: February 7, 2020
Time: 8:30 am

PhRMA opposes the passage of **SB 3045** which seeks to establish a prescription affordability commission within the Department of Commerce and Consumer Affairs to review prescription drug costs and establish levels of reimbursement. Attached is PhRMA's testimony in opposition.

Thank you for considering this testimony.

STATEMENT

PhRMA
RESEARCH • PROGRESS • HOPE

In Opposition to SB 3045
February 6, 2020

Position: PhRMA respectfully opposes SB 3045. PhRMA believes that discussions about the affordability of drugs are important but, the intention of this bill is to cap drug prices which could limit the availability of prescription options to patients in Hawaii. SB 3045 shortsightedly targets drug spending in ways that will likely have long-term, harmful effects on innovation and the development of new, life-saving therapies.

Specifically, SB 3045 implements a Board to review prescription drug costs and value with the goal of setting price controls by way of an "upper payment limit" for the entire drug supply system. Regulating drug prices in-state could lead to a shortage of medicines for patients who may need a medicine yet cannot access it if the drug cannot be distributed into the state at the price set by the Board. Further, the legislation also requires onerous disclosure of pricing information which will not benefit patients and can jeopardize the competitive market that works to drive down drug prices.

This legislation does not account for insurance benefit design issues that prevent discounts from flowing to patients and assumes incorrectly that the price of a drug is determined solely by drug manufacturers.

Biopharmaceutical manufacturers are already subject to such penalties today in form of "price protection rebates" negotiated by Pharmacy Benefit Managers (PBMs). These rebates effectively establish a private sector ceiling or cap on the amount by which the cost of a medication can increase.[1] However, PBMs and insurers do not always pass these savings to patients at the pharmacy counter. This legislation singles out the biopharmaceutical industry and ignores the variety of stakeholders involved in determining what consumers ultimately pay for a medicine, including insurers, PBMs, wholesalers, and government agencies like Medicaid. The important role that these entities play in setting drug prices and in drug coverage is overlooked by the requirements of this legislation. For example, pharmacy benefit managers and payers—which dictate the terms of coverage for medicines and the amount a patient ultimately pays—use their control over which medicines patients can access as leverage to negotiate substantial rebates and discounts. PhRMA is increasingly concerned that the substantial rebates and discounts paid by pharmaceutical manufacturers, approximately $166 billion in 2018[2], do not make their way to offsetting patient costs at the pharmacy counter.

According to new research from the Berkeley Research Group (BRG), rebates, discounts, and fees account for an increasing share of spending for brand medicines each year, while the share received by manufacturers has decreased over time. In 2018 manufacturers retained only 54% of brand medicine spending while members of the supply chain retained 46%.[3] Increased rebates and discounts have largely offset the modest increases in list prices and reflect the competitive market for brand medicines.

[1] Drug Channels Institute. The 2019 Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers. March 2019.
[2] Drug Channels Institute. "The Gross-to-Net Bubble Reached a Record $166 Billion in 2018." April 2019
[3] BRG: Revisiting the Pharmaceutical Supply Chain 2013-2018. January 2020.

Prescription drug spending growth 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. According to the IQVIA Institute (formerly the IMS Institute), net spending on medicines grew only 0.3% in 2018. The Centers for Medicare and Medicaid Services reported that retail prescription drug spending growth was only 2.5% in 2018 and overall prescription drug prices declined by 1%. This does not reconcile with what patients are feeling at the pharmacy counter, which is why looking at the whole system is important.

Price controls on patented products are unconstitutional and run counter to patent law.

This legislation seeks to implement a price control for certain medicines by way of an "upper payment limit" across all stakeholders in the supply chain. This proposed policy would raise constitutional concerns because it would restrict the goal of federal patent law, which is to provide pharmaceutical patent holders with the economic value of exclusivity during the life of a patent. Congress determined that this economic reward provides appropriate incentive for invention and Hawaii is not free to diminish the value of that economic reward.

Specifically, in the case of *BIO v. District of Columbia*, 496 F.3d 1362 (Fed. Cir. 1997), the court overturned a District of Columbia law imposing price controls on branded drugs, reasoning that the D.C. law at issue conflicted with the underlying objectives of the federal patent framework by undercutting a company's ability to set prices for its patented products. In addition, this legislation raises other constitutional concerns, such as under the Dormant Commerce Clause. Recently, the 4th Circuit overturned a law in Maryland on Dormant Commerce Clause grounds because it directly regulated the price of transactions that occurred outside of the state.

The biopharmaceutical industry is heavily regulated and discloses significant information to the public.

Much of the information that SB 3045 requires to be disclosed is considered protected, confidential corporate information; and this information falls under federal protections for trade secrets and includes substantial competitive information. The Federal Trade Commission has acknowledged that disclosure of competitively sensitive information could undermine beneficial market forces within the pharmaceutical industry. Blanket authority to collect any information relative to pricing could have the opposite of the intended effect by undermining the competitive market.[4] Further in a letter to the New York legislature in 2009, the FTC's Office of Policy and Planning, Bureau of Competition and Bureau of Economics cautioned that disclosure of similar information would jeopardize the competitive market and remove incentives to provide discounts and additional rebates and "…may increase pharmaceutical prices." Simply put, revealing competitors' pricing and discount information removes incentives to provide discounts in the marketplace.

According to a Congressional Budget Office (CBO) report on the importance of protecting confidential negotiations between payers and manufacturers, publishing product-level information could reduce manufacturer rebates, increasing costs to the government and patients.[5] The CBO has estimated such disclosure would cost Medicare prescription drug plans up to $10 billion over 10 years.

PhRMA recognizes the access challenges faced by patients in Hawaii with serious diseases. PhRMA stands ready to work with the Hawaii legislature to develop market-based solutions that help patients better afford their medicines at the pharmacy counter. PhRMA believes this bill would not help patients better access breakthrough innovations and respectfully oppose the passage of SB 3045.

[4] FTC Letter to Terry G. Kilgore, Member, Virginia House of Delegates, re: H.B. 945 (Oct. 2, 2006); FTC Letter to Representative Patrick McHenry, re: North Carolina Bill 1374 (July 15, 2005); FTC Letter to California Assembly Member Greg Aghazarian, re: AB 1960 (Sept. 7, 2004). FTC Letter to The Honorable Mark Formby, Mississippi House of Representatives, re: SB 2445 (March 22, 2011).

[5] Orzag P. Letter to Joe Barton and Jim McCrery. March 12, 2007.

An Independent Licensee of the Blue Cross and Blue Shield Association

February 5, 2020

The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health

Re: SB 3045 – Relating to Prescription Drug Rate Setting

Dear Chair Baker, Vice Chair Chang, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 3045, which establishes a prescription affordability commission within the Department of Commerce and Consumer Affairs to review prescription drug costs and establish levels of reimbursement.

HMSA supports the intent of SB 3045, to regulate the price of prescription drugs and make it more affordable for all consumers. Allowing the prescription drug market to go unmanaged, with portions being controlled by monopolies and oligopolies, will only allow prescription drugs to continue to become increasingly unaffordable. We do have concerns that this measure assesses a fee on pharmacy benefit managers and health insurance carriers. Also, please keep in mind that there are other entities that also buy and sell drugs, such as hospitals and physician offices. Therefore, perhaps such an assessment fee could simply be imposed at the manufacturer or wholesale level.

Thank you for allowing us to testify on SB 3045. Your consideration of our comments is appreciated.

Sincerely,

Pono Chong
Vice President, Government Relations

AARP Real Possibilities in Hawaii

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THE SENATE
Committee on Commerce, Consumer Protection and Health
Friday, February 7, 2020
8:30 a.m.
Conference Room 229

To: Senator Rosalyn Baker, Chair
Re: S.B.3045, Relating to Prescription Drug Rate Setting

Dear Chair Baker, Vice-Chair Chang, and Members of the Committee on Health,

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 advocates for issues that matter to Hawai'i families, including the high cost of long-term care; access to affordable, quality health care for all generations; and serving as a reliable information source on issues critical to people over the age of fifty.

AARP Hawai'i **strongly supports S.B.3045**, which establishes a prescription affordability commission within the Department of Commerce and Consumer Affairs to review prescription drug costs and establish levels of reimbursement.

AARP knows the cost of prescription drugs is critically important to all consumers, but especially to the many people over 50 who depend on prescription drugs to keep them healthy, and who've been devastated by the price increases we've seen in recent years.

- **Drug prices are out of control.** Prices of brand-name prescription drugs increased almost 130 times faster than inflation did in 2015 alone.
- **Americans depend on their prescription.** A recent AARP survey found that 3 of 4 adults age 50+ regularly take at least one prescription medication, and over 8 in 10 take at least two drugs. More than half of seniors take four or more drugs.
- **High drug prices raise costs for everyone**. High drug costs increase health insurance premiums and cost sharing for all people with health coverage. High drug spending also increases the cost for programs such as Medicare and Medicaid, which translates into higher taxes to the general public.

AARP Hawai'i doesn't think Hawai'i residents should have to continue choosing between paying for their medications versus food or shelter. Astronomically priced drugs are making everyone sick, but Hawai'i seniors are vulnerable to endless escalations in their prescription drug costs. AARP believes the establishment a prescription affordability commission within the Department of Commerce and Consumer Affairs to review prescription drug costs and establish levels of reimbursement will significantly help lower the high cost of prescription to consumers. For these reasons, AARP **strongly supports S.B. 3045**, and we respectfully urge the House Committee on Health to pass S.B.3045. Thank you for the opportunity to testify in strong support of this bill.

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Government Relations

Testimony of
Jonathan Ching
Government Relations Manager

Before:
Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair

February 7, 2020
8:30 a.m.
Conference Room 229

Re: SB3045, Relating to Prescription Drug Rate Setting

Chair Baker, Vice Chair Chang, and committee members, thank you for this opportunity to provide testimony on SB3045, which establishes a prescription affordability commission within the Department of Commerce and Consumer Affairs to review prescription drug costs and establish levels of reimbursement.

Kaiser Permanente Hawai‘i offers the following COMMENTS on SB3045

Prescription drug prices present unique affordability challenges to the health care system because decades of government policies such as patent laws and various coverage and payment rules have empowered manufacturers to price with impunity. As a result, the U.S. market for prescription drugs is highly dysfunctional, and prices are often devoid of economic reason. For example, 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 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. The problem of high drug prices is growing increasingly unsustainable, and we commend legislators for advancing bold and thoughtful solutions to address this crisis.

Kaiser Permanente Hawai‘i therefore supports SB3045’s focus on the source of the drug pricing problem: manufacturers’ virtually unfettered pricing power. SB3045 would help shine a light on manufacturer pricing practices and assess whether drug prices are reasonable. **Imposing upper payment limits on drug prices, however, is a significant departure from current practices that warrants rigorous evaluation.**

Kaiser Permanente is continuing to evaluate the potential impact of SB3045 on our members and overall drug costs. We also defer to the Department of Commerce and Consumer Affairs on their expertise and the feasibility of being able to implement the Prescription Affordability Commission.

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

Biotechnology Innovation Organization

February 5, 2020

The Rosalyn Baker, Chair
Senate Commerce, Consumer Protection, and Health Committee
State Capitol
415 S Beretania St
Honolulu, HI 96813

Dear Senator Cleveland:

The Biotechnology Innovation Organization (BIO) respectfully opposes SB 3045, which would create a Prescription Drug Affordability Commission tasked with reviewing prescription drug costs and setting upper payment limits for specified prescription drugs. Government price controls like those proposed by this bill are an especially drastic action with unpredictable consequences. While the intent of this bill is to lower drug prices, we fear SB 3045 will fail to bring down costs for consumers or institutions and instead disincentivize development of new therapeutic breakthroughs.

This bill will not lower prescription drug costs for patients because it does not address out-of-pocket costs. Patients pay a given price when they visit a pharmacy based on what their health insurer determines—it is for this reason why two patients will pay a different price for the same drug. Out-of-pocket costs have been rising for patients as a result of decisions made by health insurers. SB 3045 does not address the price patients pay out-of-pocket and will therefore not directly impact patient affordability for prescription medications.

This bill also provides no clear path for lowering prescription drug costs for public or private payers or the healthcare system overall. While it tasks the commission with establishing a process for setting upper payment limits for certain medications, the bill utilizes arbitrary measures for the selection of such medications and prescribes no process for setting this "limit." The price control scheme in SB 3045 is designed around the premise that prescription drug costs have ballooned out of control or are increasing at an unsustainable rate. Yet prescription drugs, including inpatient medicines, have and continue to make up about 14% of national health expenditures—both in the past and projected for the next decade.[1] And medicine spending on a per-patient-per-year basis, adjusted for inflation, grew by less than 1% between 2009 and 2018.[2]

Unfortunately, artificial price controls only serve to disincentivize biopharmaceutical companies from developing new, more effective therapies. Economists have estimated that government price controls can have a significant, damaging effect on the development pipeline. For example, one study found that an artificial 50% decrease in prices could reduce the number of drugs in the development pipeline by as much as 24%,[3] while another

[1] Roehrig, Charles. *Projections of the Prescription Drug Share of National Health Expenditures Including Non-Retail*. June 2019.
[2] IVQIA Institute for Human Data Science. *Medicine Use and Spending in the U.S.: A Review of 2018 and Outlook to 2023*. May 2019.
[3] Maloney, Michael T. and Civan, Abdulkadir. *The Effect of Price on Pharmaceutical R&D* (June 1, 2007). Available at SSRN: https://ssrn.com/abstract=995175 or http://dx.doi.org/10.2139/ssrn.995175

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study found investment in new Phase I research would fall by nearly 60%,[4] decreasing the hopes of patients who are seeking new cures and treatments.

Price controls will dampen investment and would not allow companies to adequately establish prices that will provide a return on investment. The average biopharmaceutical costs $2.6 billion to bring from research and development to market.[5] Small and mid-sized innovative, therapeutic biotechnology companies who make up most of BIO's membership are responsible for more than 72% of all "late-stage" pipeline activity.[6] They sacrifice millions of dollars, often for decades before ever turning a profit, if at all. In fact, 92% of publicly traded therapeutic biotechnology companies, and 97% of private firms, operate with no profit.[7] Out of thousands of compounds only one will receive approval. The overall probability that a drug or compound that enters clinical testing will be approved is estimated to be less than 12%.[8] Only five out of 5,000 compounds become viable marketed products. Pricing must also account for the 4,995 failures before the company discovers that successful drug compound.

Proposals such as these target the most innovative medicines, disproportionately impacting patients with diseases where there is high unmet need and where low-cost treatment options are not available (e.g. rare diseases), running counter to the aims of personalized medicine, and availability of new treatments. Further troubling, the arbitrary nature of upper payment limits ignores the value that an innovative therapy can have to an individual patient—especially one who may have no other recourse—or the societal impact innovative technologies can have, including increased productivity and decreased overall healthcare costs (e.g., due to fewer hospitalizations, surgical interventions, and physicians' office visits).

For these reasons, we respectfully urge your no vote on SB 3045. If you have any questions, please do not hesitate to contact me to discuss this further.

Sincerely,

Brian Warren
Director, State Government Affairs

cc: Members, Senate Commerce, Consumer Protection, and Health Committee

[4] Vernon, John A., and Thomas A. Abbott, "The Cost of US Pharmaceutical Price Reductions: A financial simulation model of R&D Decisions," *NBER Working Paper*. NBER, February 2005. https://www.nber.org/papers/w11114.pdf Accessed: April 18, 2019.
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[6] "The Changing Landscape of Research and Development: Innovation, Drivers of Change, and Evolution of Clinical Trial Productivity," IQVIA Report, April 2019.
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THE CIVIL BEAT
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Senate Committee on Commerce, Consumer Protection, and Health
Honorable Rosalyn H. Baker, Chair
Honorable Stanley Chang, Vice Chair

RE: Testimony Commenting on S.B. 3045,
Relating to Prescription Drug Rate Setting
Hearing: February 7, 2020 at 9:30 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit comments on S.B. 3045.

This bill permits the newly created Prescription Affordability Commission to hold closed sessions under the Sunshine Law to discuss "proprietary data and information." Proposed § -4(c). It also exempts "proprietary data and information discussed in an executive meeting closed to the public pursuant to subsection (c)" from the public records law. *Id.* § -4(e).

"Proprietary" information is a term of art with a clear meaning under the public records law. *See, e.g.*, OIP Op. No. 90-02 at 9. That meaning may be narrower than the Legislature's intent with this bill. Also, such records already are not required to be disclosed under the public records law.

The Law Center suggests an amendment to 4(c) as follows:

> Pursuant to sections 92-4 and 92-5(8), the commission may hold an executive meeting closed to the public to discuss ~~proprietary data and information~~ proprietary, trade secret, or confidential business information that is exempt from disclosure under chapter 92F.

Subsection (e) can be eliminated as redundant of the public record exceptions. The Law Center would note, moreover, that, as currently worded, subsection (e) creates an ambiguity that would expose proprietary data to public disclosure *if not discussed in a Commission's executive session*, which may not be the Legislature's intent.

Thank you again for the opportunity to provide comments on S.B. 3045.

Hawaii Association of Health Plans

February 5, 2020

Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair

Senate Bill 3045 – Relating to Prescription Drug Rate Setting

Dear Chair Baker, Vice Chair Chang, and Members of the Committee:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to testify on SB 3045.

HAHP supports the intent of this bill, to manage the prescription drug market by regulating how drug rates are set. As prescription drugs have become increasingly unaffordable, there needs to be an effort to address this national issue. However, we do have some concerns with the prescription affordability fee that will be assessed to pharmacy benefit managers and health insurance carriers. Many health care entities purchase prescription drugs and therefore the prescription affordability fee should be paid only by manufacturers and wholesale distributors.

Thank you for allowing us to respectfully express our opposition to SB 3045.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

Senate Committee on Commerce, Consumer Protection and Health
Chair: Senator Rosalyn Baker
Date: Feb 7, 2020m, 9:30 am, Room: 229

RE: SB 3045 – Relating to Prescription Drug Rate Setting

Aloha Chair Baker and Members of the Committee,

My name is Linda Dorset, an aging citizen of Wailuku, and I thank you for the opportunity to submit written testimony in support of SB3045 Relating to Prescription Drug Rate Setting. I am stoked that the State is taking action on this because as Americans we pay the highest brand name drug prices in the world. Many of us older adults depend on our prescriptions to maintain our health. The increasing prices on life-saving medications are becoming out of reach for many, whether or not we have insurance.

In 2017, the average annual cost for one brand-name medication used on a chronic basis was almost $6,800. For the average older American taking 4.5 prescription drugs per month, the average annual cost of therapy would have been more than $30,000. In 2017, 19% of Hawaii residents stopped taking prescribed medications due to cost.

No American should be forced to choose between paying for the medicines they need and paying for food, rent, or other necessities. We urge Hawai'i lawmakers to work together with all members of Congress now to protect older Americans and pass bipartisan, commonsense legislation to lower prescription drug prices.

As aptly stated in the bill itself, "The difference between the affordability of traditional utilities and the costs of prescription drugs is due in part to the active role that the State plays in directing what consumers will pay for utilities and the corresponding inactive role that the State plays in not directing what consumers will pay for drugs.

So I urge you to pass this bill out of committee