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Friday, February 8, 2013

House Committee on Health

Re: HB 62, Relating to Pharmacy Benefits Managers

Dear Chair Belatti, Vice Chair Morikawa and members of the Committee,

We appreciate the opportunity to testify on House Bill 62 and respectfully submit the following written testimony in support of the bill. Times Supermarket is based on Oahu and operates 26 stores with locations in Maui, Kauai and Oahu.

HB 62 prohibits a pharmacy benefits manager from using a patient's prescription drug benefits claim information to market to that patient the services of a preferred pharmacy network that is owned by the pharmacy benefits manager.

Times and Big Save Supermarkets support this measure and respectfully request that it move forward.

Thank you for the opportunity to testify.

Respectfully,

Bob Gutierrez
Director of Government Affairs, Times Supermarket



Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair

House Committee on Health

Friday, February 8, 2013, 8:00am
State Capitol Conference Room 329

RE: HB 62 – Relating to Pharmacy Benefits Managers – In Opposition

Chair Belatti, Vice Chair Morikawa, and Members of the Committee:

My name is Todd Inafuku, testifying on behalf of CVS Caremark Corporation (“CVS Caremark”) in opposition to HB 62, Relating to Pharmacy Benefits Managers. It is the plan sponsors, including self-insured employer plans, commercial health plans, Medicare Part D plans, state government employee plans such as the Employer Union Trust Fund (EUTF), union plans, and the Federal Employees Health Benefits Program (FEHBP) that determine the pharmacy benefit plan for their beneficiaries and employees.

PBM’s plan sponsors are sophisticated purchasers of health care. Based on a plan sponsor’s Request for Proposals, a PBM may offer the plan sponsor multiple variations of models from the more basic plan to the most comprehensive plan relying on multi-tiered co-payments, formularies developed with physicians and pharmacists, pharmacy networks, mail-service pharmacy, and other similar tools that make drugs more affordable and accessible.

- Plan sponsors contract with the PBM that best meets their goal, budget, and philosophy to administer their desired pharmacy benefit plan for their beneficiaries and employees.

While retail pharmacies in their pharmacy network are used for new therapy starts and acute care prescriptions, plan sponsors sometimes choose to provide their beneficiaries and employees with the option of a lower co-payment on a 90-day supply of their chronic medications through the use of mail-service pharmacies. This provides significant cost savings for the plan sponsors.

- Oftentimes, when plan sponsors want to provide their beneficiaries and employees with notification of changes to their pharmacy benefit plan, plan sponsors may communicate those changes through their PBM. Plan sponsors through their contracts with their PBMs determine, direct, and approve all communication by the PBMs to their beneficiaries and employees.

In August of 2005 the FTC conducted a comprehensive study on the effects that PBM ownership of a mail service pharmacy can have on the overall prescription drug costs.¹ The FTC determined that PBM ownership does not result in higher cost to the consumer.

This legislation would impose unwarranted restrictions on the plan sponsors in their selection of the most cost effective and convenient mail-service for chronic medications and takes away the ability of plan sponsors to design a cost effective pharmacy benefit plan that best suits their needs and the needs of their beneficiaries and employees. For the reasons stated above CVS Caremark respectfully requests this bill be held.

Thank you for the opportunity to testify on this matter of importance,

Todd K. Inafuku

Cell – (808) 620-2288

¹Federal Trade Commission, Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies, August 2005.

To: Committee on Health
From: Patrick Adams
Re: HB 62 PBM testimony

2/6/2013

In Support:

HB 62 would make the some marketing practices used by Pharmacy Benefits Managers illegal. Pharmacy Benefits Managers contract to process pharmacy claims for insurance companies. These contracts give PBMs medical information and personal information about patients. Many of these PBMs own their own pharmacies and the information they receive as a processor is being used to solicit patients from the patients they process claims for. This practice violates HIPPA laws with regard to privacy and gives the PBMs pharmacies information about the cost and profit of other pharmacies. This practice could result in price fixing and may eliminate competition. Since PBMs are not licensed or registered in the state these practices are not controlled by the insurance commission or board of pharmacy. I support the enactment of HB 62 to make these practices illegal.

Sincerely,

Patrick Adams



EXPRESS SCRIPTS®

Cynthia M. Laubacher
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February 7, 2013

To: Representative Della Au Belatti , Chair
Members of the House Health Committee

Fr: Cynthia Laubacher, Senior Director, State Government Affairs
Express Scripts Holding Company

Re: House Bill 62
Hearing: February 8, 2013 8:00am

On behalf of Express Scripts I am writing to express our opposition to House Bill 62. Express Scripts administers prescription drug benefits on behalf of our clients – employers, health plans, unions and government health programs — for approximately 109 million Americans. We provide integrated pharmacy benefit management services including pharmacy claims processing, home delivery, specialty benefit management, benefit-design consultation, drug-utilization review, formulary management, medical and drug data analysis services, as well as extensive cost-management and patient-care services.

Our clients, the plan sponsors, design their pharmacy benefit to meet their needs and then contract with a pharmacy benefits manager to administer that benefit. HB 62 proposes two things: first, it would require PBMs to contract with all pharmacies in the state and, second, would prohibit our clients from designing a benefit that includes only the mail service pharmacy owned and operated by the contracting PBM.

On the first issue, the Federal Trade Commission has written extensively about the anti-competitive effects of any willing provider legislation, stating it will lead to reduced competition and higher prices. PBMs lower costs and encourage quality care by developing a network of retail pharmacies willing to accept discounted pricing in exchange for access to a plan's members. A PBM must establish a network of retail pharmacies so that consumers with prescription drug insurance can fill their prescriptions. Plan sponsors want members to have convenient access to pharmacies providing high quality service. A consumer with a prescription drug benefit plan must utilize a pharmacy that accepts payment for that plan. Therefore, retail pharmacies must compete to be part of the retail pharmacy network for a particular PBM or risk losing access to the consumer. Store-based retail pharmacies enter into contracts with a PBM to participate in the PBM's retail network and provide prescriptions to a plan's beneficiaries. A GAO study confirmed that PBMs reimburse pharmacies at levels below cash-paying customers, but above the pharmacies' estimated drug acquisition costs. A consumer's out-of-

pocket costs and co-payments are typically identical regardless of which pharmacy in the network dispenses the prescription. Therefore, network pharmacies compete on service, convenience, and quality to attract consumers within a particular plan. This is good for our plan sponsors and for their members/employees.

Regarding this issue of mail service pharmacies addressed in HB 62, during the debate leading up to the passage of the Medicare Modernization Act of 2003, the retail pharmacy lobby sought to convince Congress that the use of PBM-owned mail-order pharmacies could result in higher costs. In response to these allegations, the Federal Trade Commission (FTC) was charged with answering a number of very specific questions about the effects that PBM ownership of a mail-order pharmacy can have on overall prescription drug costs. The results of the FTC report were released in August 2005. In short, the FTC determined that allegations of PBMs' conflict of interest were "without merit," and that PBM-owned mail-order pharmacies:

- o Offer lower prices on prescription drugs than retail pharmacies and non-PBM owned mail pharmacies;*
- o Are very effective at capitalizing on opportunities to dispense generic medications; and*
- o Have incentives closely aligned with their customers: the third-party payors who fund prescription drug care*

In short, enactment of HB 62 will serve only to increase prescription drug costs for our Hawaii-based clients and patients. For these reasons we must respectfully oppose HB 62.

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



HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
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DATE: Feb 8, 2013 TIME: 8:00 AM PLACE: CR 329

TO: COMMITTEE ON HEALTH

Representative Della Au Belatti, Chair
Representative Daynette "Dee" Morikawa, Vice Chair

FROM: Hawaii Food Industry Association - Lauren Zirbel, Executive Director

Re: HB 62- Relating to Pharmacy Benefit Managers **Strong Support**

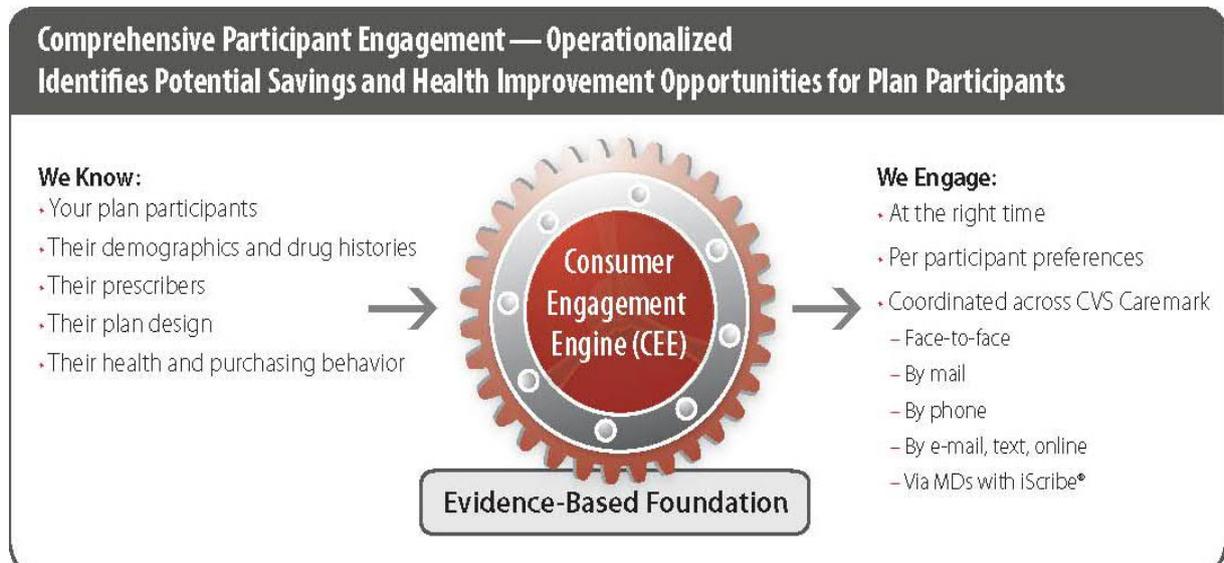
The Hawaii Food Industry Association is comprised of two hundred member companies representing retailers, suppliers, producers and distributors of food and beverage related products in the State of Hawaii.

Dear Chair Belatti, Vice Chair Morikawa and members of the committees:

I am writing on behalf of HFIA members across the State of Hawaii regarding Pharmacy Benefit Managers, (PBM's) and the importance of increasing oversight as it relates to their use of prescription claims information to directly market the services of an affiliated of wholly owned pharmacy provider.

CVS/Caremark as of January 2013 has become the dominate PBM/Pharmacy/Mail order business in the State of Hawaii. HFIA has calculated that CVS/Caremark either fills, or adjudicates over 80% of the pharmacy claims in the state. Across the United States CVS Caremark fills or manages more than 1.2 billion prescriptions annually. The information from these prescriptions is not simply used to process prescription claims. It is compiled by CVS Caremark to form a complete medical picture of the patient. As described in a CVS Caremark publication, CVS Caremark then utilizes these complete medical pictures for its own financial gain to market products and services to (or "engage") the patients. The engagement engine shown below is a graphic example of

how this information is processed.



CVS Caremark collects proprietary patient information it receives from non-CVS pharmacies and transfers that same information to its own CVS pharmacies and other business

segments and otherwise uses the information for CVS Caremark's own financial benefit. CVS

Caremark accepts payments from drug companies for directly marketing to those patients who are likely candidates for a drug because of their prescription history. CVS Caremark also directly targets non-CVS patients and solicits their business to CVS-owned retail stores and their purchase of CVS-branded over-the-counter products.

The importance of this act HB62 can not be over stated. By preventing CVS from using patients claims information to manipulate their choice of pharmacy provider we protect the most vulnerable in our society. This act would prevent call centers from repeatedly calling patients with offers of 20% discounts on other goods if they will only fill their prescriptions at a CVS/Longs store. By implying that the member must purchase their pharmacy services from a CVS store during a series of calls is not in the best interest of our patients and is oriented toward bigger profits not better care. For these reason

HFIA respectfully asks that HB-62 be passed intact from this committee with the blessings of its members.

Thank you for the opportunity to provide this testimony.

To whom it may concern

I would like to start by explaining what a local pharmacy/retail pharmacist does.

- o We counsel patients on proper use of their medicines
- o We build face to face relationships patient to pharmacist
- o We build relationships pharmacist to doctor.
- o This builds triage--patient--doctor--pharmacist
- o This allows us to individualize the correct and most beneficial therapy rather than based on a formulary from an insurance company.
- o We are easily accessible, our advice is free.
- o We are members of our community(create jobs locally, including jobs that support our industry)
- o We are immunizers--flu shots, tetanus, shingles
- o We are health care screeners--blood pressure, osteoporosis, medication reviews
- o We organize and are part of health fairs--women's health, falls prevention program.
- o We are there for routine over-the-counter questions. "My baby has a fever", "I have a cold", "and I don't understand the label on this medicine."
- o We are the last line of defense between potential medication errors--some that could be fatal!
- o We are CPR certified--"nice to have in every community"
We help MD's get insurance companies to pay for medications not on formulary--also known as Prior Authorization.
- o We are the most trusted face of health care.

If mail order and exclusive contracts are forced on to our patients all the above is gone. Local pharmacies, even chain pharmacies cannot survive on acute (emergency) meds. All those services, all those convenient locations are lost to the community forever. Including jobs lost, wages lost, tax revenues lost.

It has come to my attention that Longs/CVS/Caremark has forced state

employees to mandatory mail order. Furthermore HMSA has made a special deal with Longs/CVS/Caremark for both its mail order and retail settings. Having worked for Longs/CVS/Caremark I am concerned about the following patient safety issues.

Temperature control—how long do items sit in a P.O. Box or mail room. Can mail order guarantee these temperatures follow Hawaii guidelines for storage such as controlled room temperature? On that subject how about refrigerated items such as xalatan, insulin, and other temperature sensitive meds. How long are these sitting in a mailbox, store room, etc. Do the patients have the knowledge to know not to use these if they are not stored properly? Do we depend on UPS, DHL, and the Post Office to safely monitor this?

Diversion---mail order typically allows the patient 21 days or more to refill meds. This includes controls. This means excess narcotics, sedatives, and amphetamines are being stockpiled in patient's homes and possibly hitting the streets. How are we identifying who is actually receiving these meds. DPS requires we check ID on all controls. Do we again depend on UPS, DHL, and the Post office to check ID's? Will Longs/CVS/Caremark send a pharmacist to each and every home to check ID? Is this not a violation of Hawaii control laws?

Accuracy--- The average retail pharmacist verifies 150-200 prescriptions daily. Mail order pharmacists are required to check 1000's of prescriptions daily. . However mail order is not referred to as a pharmacy in industry speak. It is referred as production or production line. Their pay is based on numbers, numbers, and numbers. They are allowed so many Class I errors per 1000 prescriptions verified. A class I error is defined as wrong drug, drug strength, patient, or directions. Again if they verify more correctly than they mess up it is acceptable. ---IS THIS SAFE???

High doses are often allowed to be filled and shipped. Many with just a courtesy call to a medical receptionist to verify what was written in the chart. Other times no call at all; the pharmacist just uses "judgment". "Judgment is encouraged it gets work/prescriptions out the door. Again not a pharmacy a production line... Do you think effexor 300mg/day does not need a call to MD? How about 600mg/day, 900mg/day? I have seen it, and yes this happens. No call to MD no contact to patient. Just judgment. IS THIS SAFE???

Red vs. Blue—No this is not a political statement. Caremark uses a computer program that uses several different colors for its verification process. Pt name,

drug, drug strength, directions in blue (class I errors). All other info such as refills, MD, date written in red (class II or III) errors. There are Pharmacists who ignore the info in red. Why you ask? "You can't get fired for class II errors only class I errors. Again not a pharmacy a production line. It's simply Herd mentality. I have seen many of good pharmacist start out trying to do the right thing but in order to keep up with the high rates of production must join the herd in order to survive. Their pay, their job depends on their numbers.
IS THIS SAFE???

Denying access to health care and access to choice is not good for anyone. Punishing patients with higher copays that use their local neighborhood pharmacies, and talk to their local pharmacist. With whom they have a pharmacist/patient relationship. We know their disease states, preferences, and needs this is built up over time and handwork.

This begs the question "is Hawaii becoming a one pharmacy state?" Currently 90% of the island uses HMSA. Add this to state and County and it's looking like one big CVS/Longs/Caremark production line. If CVS/Longs/Caremark is the Pharmacy benefits manager (insurance), mail order, and local pharmacy then Hawaiian's are being denied choice. If one operation has all the control is this not Socialized medicine?

Additionally we are accessible where mail order is not. We have counseled many of CVS/Longs/Caremark's patients on proper use of their medications because they cannot reach anyone at mail order. They just sit on hold for hours being bounced around to different departments. This is a BARRIER to good health care!

This will probably anger you even more. Hawaii may not be the priority of mail order. You see companies like Caremark have several contracts. Many of those contracts are much bigger than this current contract. Those bigger contracts take priority over Hawaii. Sorry it's a money thing. Ask CALPERS (California teachers association). They became a back seat for customer service when Caremark/CVS/Longs landed the FEP contract (Federal employees). Again not a pharmacy a production line.

There is some precedence in reviewing and changing course. The state of New York passed S3510B/A5502 which prevents health insurances from mandating that customers purchase prescriptions from mail order pharmacies. It was the

state of New York's opinion that mail order pharmacies present unreliable service, barriers to traditional health care, and the diversion of prescription drugs to the streets.

I implore you to sponsor legislation similar to that of New York bill S3510B/A5502 to stop mandatory mail order and exclusive behind the door contracts

I thank you for your time and consideration: feel free to contact me on this email or at 808-895-2201 cell phone or at work 808-885-2075

Aloha and Mahalo

PS see additional info for New York legislation on following page.

S3510B/A5502--bill

Nicole Malliotakis

New York State Assembly member Nicole Malliotakis 718-987-0197 or 518-455-5716 district 60
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