WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020

ON THE FOLLOWING MEASURE:
S.B. NO. 2280, S.D. 1, RELATING TO PHARMACY BENEFIT MANAGERS.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY

LATE

DATE: Tuesday, February 25, 2020 **TIME:** 12:30 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Daniel K. Jacob,
Deputy Attorney General, at 586-1190)

Chair Rhoads and Members of the Committee:

The Department of the Attorney General makes the following comments about the bill.

The purposes of this bill are to: (1) prohibit certain contracts for managed care entered into after June 30, 2020, from containing a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis, and voiding any such provisions in existing managed care; (2) prohibit pharmacy benefit managers from engaging in self-serving business practices; (3) prohibit pharmacy benefit managers from engaging in unfair methods of competition or unfair practices; (4) prohibit pharmacy benefit managers from retaining any portion of spread pricing; (5) prohibit a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy; (6) prohibit a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each prescription drug, under certain circumstances; (7) prohibit a pharmacy benefit manager from prohibiting a pharmacist or pharmacy from providing certain information to insureds regarding cost sharing or more affordable alternative drugs; (8) require any information provided in response to a data call from the Insurance Commissioner or designee to be treated as confidential and privileged; (9) increase the pharmacy benefit managers' annual reporting requirements; (10) require the insurance commissioner to make annual reports to the legislature; (11) increase pharmacy benefit

manager registration and renewal fees; and (12) make certain violation of pharmacy benefit mangers subject to the penalties provided in chapters 480 and 481, Hawaii Revised Statutes.

The portion of the bill on page 5, lines 1 through 5, that voids any provision in an existing contract for managed care that authorizes a pharmacy benefit manager to reimburse a contract pharmacy on a maximum allowable cost basis may be considered an unlawful impairment of contract pursuant to the U.S. Constitution, art. I, § 10, cl. 1. In deciding whether a state law has violated the federal constitution prohibition against impairment of contracts, the court will asses the following three criteria: (1) whether the state law operated as a substantial impairment of a contractual relationship; (2) whether the state law was designed to promote a significant and legitimate public purpose; and (3) whether the state law was a reasonable and narrowly drawn means of promoting the significant and legitimate public purpose. *Applications of Herrick*, 82 Hawaii 329, 340, 922 P.2d 942, 953 (1996). The Legislature should consider deleting this portion of the bill. If the Legislature elects to keep this provision, it should add a severability clause to help preserve the remainder of the bill.

Various portions of the bill may also be subject to an Employee Retirement Income Security Act (ERISA) preemption challenge, including the provisions that: (1) prohibit certain contracts from authorizing a pharmacy benefit manger to reimburse a contracting pharmacy on a maximum allowable cost basis; (2) prohibit pharmacy benefit managers from retaining any portion of spread pricing; (3) prohibit a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy; (4) prohibit a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each prescription drug; (5) prohibit a pharmacy benefit manager from prohibiting a pharmacist or pharmacy to provide certain information to insureds regarding cost sharing or more affordable alternative drugs; and (6) increase the pharmacy benefit managers' annual reporting requirements.

ERISA is a comprehensive federal legislative scheme that "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C.A. § 1144(a). A state law relates to an ERISA plan and is preempted if it has

a prohibited connection with or reference to an ERISA plan. A state law has an impermissible connection with ERISA plans when it governs a central matter of plan administration or interferes with nationally uniform plan administration. *Egelhoff v. Egelhoff*, 532 U.S. 141, 148, 121 S. Ct. 1322, 149 L. Ed. 2d 264 (2001).

With respect to the regulation of pharmacy benefit managers, there is a split among the circuits as to the extent of regulation that may be permissible. The United States Court of Appeals for the Ninth Circuit has not issued a decision regarding the regulation of pharmacy benefit managers.

In *Pharm. Care Mgmt. Ass'n v. Rowe*, 429 F.3d 294 (1st Cir. 2005), the United States Court of Appeals for the First Circuit held that Maine's Unfair Prescription Drug Practices Act was not preempted by ERISA. The Unfair Prescription Drug Practices Act imposed a number of requirements on pharmacy benefit managers that entered into contracts with covered entities. In the *Rowe* Court's analysis, although the regulation may prompt ERISA plans to re-evaluate their working relations with the pharmacy benefit managers, nothing in the Unfair Prescription Drug Practices Act compelled them to do so, and ERISA plans still had a free hand to structure the plans as they wish. *Id.* at 303.

In *Pharm. Care Mgmt. Ass'n v. D.C.*, 613 F.3d 179 (D.C. Cir. 2010), the United States Court of Appeals for the District of Columbia Circuit reviewed the District of Columbia's Access RX Act, which was similar to Maine's Unfair Prescription Drug Practices Act. The United States Courts of Appeal for the D.C. Circuit reached an opposite conclusion, finding that D.C.'s Access RX Act was preempted due to an improper "connection to" an ERISA plan. Rejecting the holding in *Rowe*, that the regulation of pharmacy benefit managers left ERISA plans with a free hand to structure the plans as they wish, the D.C. Circuit Court found that the Access RX Act binds plan administrator because the economies of scale, purchasing leverage, and network of pharmacies could only be offered by a pharmacy benefit manager. *Id.* at 188.

In this case, similar to both Maine's Unfair Prescription Drug Practices Act and D.C.'s Access RX Act, the bill would regulate pharmacy benefit managers in various ways. Because the United States Court of Appeals for the Ninth Circuit has not issued

a decision regarding the regulation of pharmacy benefit managers, it is unclear whether or not the Court would find any of the provisions of this bill subject to ERISA preemption.

If the Committee wants to address the preemption concern, we will be happy to work with the Committee.

Thank you for the opportunity to comment.

DAVID Y. IGE
GOVERNOR OF HAWAII

BRUCE S. ANDERSON, PHD
DIRECTOR OF HEALTH

STATE OF HAWAII
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Testimony COMMENTING on SB2280 SD1
RELATING TO PHARMACY BENEFIT MANAGERS.

SENATOR KARL RHOADS,
SENATE COMMITTEE ON JUDICIARY

Hearing Date: February 25, 2020 Room Number: 016

Fiscal Implications: N/A.

Department Testimony: The Department of Health (DOH) takes no position on the merits of SB2280 SD1 but recommends repeal of section 328-106, which created a parallel but ineffective and unenforceable regulatory mechanism for pharmacy benefit managers.

Act 175 SLH 2015 established requirements for a pharmacy benefit manager (PBM) that reimburses a contracting pharmacy for a drug on a maximum allowable cost basis to have a clearly defined process for a contracting pharmacy to appeal the maximum allowable cost for a drug on a maximum allowable cost list. DOH does not have the expertise to enforce buseinss practices, contracts, and reimbursement levels between private sector businesses

Furthermore, section 328-106 is inconsistent with the purpose of part VI, chapter 328 "Drug Prodcut Selection," which is to assure that less expensive generically equivalent prescription pharmaceuticals are offered to the consumer. Chapter 328 does not authorize DOH to inspect or compel businesses to cooperate with an enforcement action if they are not part of the physical custody of drug products, such as pharmacy benefit managers. Thank you for the opportunity to testify.

Offered Amendments:

SECTION . Section 329-91, Hawaii Revised Statutes, is amended as follows:

By repealing the definition of "maximum allowable cost":

["~~"Maximum allowable cost" means the maximum amount that a pharmacy benefit manager shall reimburse a pharmacy for the cost of a drug.~~"]

By repealing the definition of "maximum allowable cost list":

["~~"Maximum allowable cost list" means a list of drugs for which a maximum allowable cost has been established by a pharmacy benefit manager.~~"]

By repealing the definition of "obsolete":

["~~"Obsolete" means a drug that may be listed in a national drug pricing compendia but cannot be dispensed based on the expiration date of the last lot manufactured.~~"]

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

"[~~**[§328-106] Pharmacy benefit manager; maximum allowable cost.** (a) A pharmacy benefit manager that reimburses a contracting pharmacy for a drug on a maximum allowable cost basis shall comply with the requirements of this section.~~

~~(b) The pharmacy benefit manager shall include the following in the contract information with a contracting pharmacy:~~

~~(1) Information identifying any national drug pricing compendia; or~~

~~(2) Other data sources for the maximum allowable cost list.~~

~~(c) The pharmacy benefit manager shall make available to a contracting pharmacy, upon request, the most up-to-date maximum allowable cost price or prices used by the pharmacy benefit manager for patients served by the pharmacy in a readily accessible, secure, and usable web-based or other comparable format.~~

~~(d) A drug shall not be included on a maximum allowable cost list or reimbursed on a maximum allowable cost basis unless all of the following apply:~~

~~(1) The drug is listed as "A" or "B" rated in the most recent version of the Orange Book or has a rating of "NR", "NA", or similar rating by a nationally recognized reference;~~

~~(2) The drug is generally available for purchase in this State from a national or regional wholesaler; and~~

~~(3) The drug is not obsolete.~~

~~(e) The pharmacy benefit manager shall review and make necessary adjustments to the maximum allowable cost of each drug~~

~~on a maximum allowable cost list at least once every seven days using the most recent data sources available, and shall apply the updated maximum allowable cost list beginning that same day to reimburse the contracted pharmacy until the pharmacy benefit manager next updates the maximum allowable cost list in accordance with this section.~~

~~(f) The pharmacy benefit manager shall have a clearly defined process for a contracting pharmacy to appeal the maximum allowable cost for a drug on a maximum allowable cost list that complies with all of the following:~~

~~(1) A contracting pharmacy may base its appeal on one or more of the following:~~

~~(A) The maximum allowable cost for a drug is below the cost at which the drug is available for purchase by similarly situated pharmacies in this State from a national or regional wholesaler; or~~

~~(B) The drug does not meet the requirements of subsection (d);~~

~~(2) A contracting pharmacy shall be provided no less than fourteen business days following receipt of payment for a claim to file the appeal with the pharmacy benefit manager;~~

~~(3) The pharmacy benefit manager shall make a final determination on the contracting pharmacy's appeal no later than fourteen business days after the pharmacy benefit manager's receipt of the appeal;~~

~~(4) If the maximum allowable cost is upheld on appeal, the pharmacy benefit manager shall provide to the contracting pharmacy the reason therefor and the national drug code of an equivalent drug that may be purchased by a similarly situated pharmacy at a price that is equal to or less than the maximum allowable cost of the drug that is the subject of the appeal;~~ ~~and~~

~~(5) If the maximum allowable cost is not upheld on appeal, the pharmacy benefit manager shall adjust, for the appealing contracting pharmacy, the maximum allowable cost of the drug that is the subject of the appeal, within one calendar day of the date of the decision on the appeal and allow the contracting pharmacy to reverse and rebill the appealed claim.~~

~~(g) A contracting pharmacy shall not disclose to any third party the maximum allowable cost list and any related information it receives, either directly from a pharmacy benefit manager or through a pharmacy services administrative~~

~~organization or similar entity with which the pharmacy has a contract to provide administrative services for that pharmacy.~~]"

SB-2280-SD-1
Submitted on: 2/21/2020 9:20:21 PM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ashok Kota	Testifying for Foodland Pharmacies	Support	No

Comments:

Dear Chair and members of the committee,

I am writing in support of SB2280, which would help control drug costs in Hawaii, provide greater protections for patients regarding their prescription drug benefits programs, and provide greater oversight over the pharmacy benefit managers (PBMs) that administer those benefits.

Community pharmacies have long been concerned with PBMs operating as largely unregulated middlemen in the drug supply chain. While PBMs claim to keep drug costs low, we believe PBM practices are often anti-competitive and ultimately drive up healthcare costs for consumers and plan sponsors while reducing payments to pharmacies. PBMs determine which pharmacies patients may choose by creating provider networks, determine which drugs patients can be prescribed by creating drug formularies, and determine how much patients pay at the pharmacy counter for their medications. The patient's choice of pharmacy should be left to the patient and is informed by what's in the patient's best interest, instead of what's in the PBM's best interest. Despite their authority over patients' health care options, PBMs enjoy little regulatory oversight by the state.

There is little to no standardization in the industry for the criteria or the methodology used by PBMs to determine prescription drug reimbursement rates. This gives PBMs the ability to gain significant revenues through questionable business practices at the expense of patients, pharmacies, and plan sponsors.

To protect local businesses and patient access to vital Pharmacy services, we respectfully request your support SB2280.

Thank you,

Ashok Kota

Director of Pharmacy

Foodland

HPCA
HAWAI'I PRIMARY CARE ASSOCIATION

Testimony to the Senate Committee on Judiciary
Tuesday, February 25, 2020; 12:30 p.m.
State Capitol, Conference Room 016

RE: SENATE BILL NO. 2280, SENATE DRAFT 1, RELATING TO PHARMACY BENEFIT MANAGERS.

Chair Rhoads, Vice Chair Keohokalole, 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. 2280, Senate Draft 1, RELATING TO PHARMACY BENEFIT MANAGERS.

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

(1) Establish a five-year moratorium on the use of contract Pharmacy Benefit Managers (PBMs) in managed care programs overseen by the Hawaii State Department of Human Services, including Medicaid;

(2) Prohibit PBMs from engaging in unfair methods of competition in the conduct of pharmacy benefit management;

(3) Ensures that PBMs reimburse independent or rural pharmacies an amount not less than the rural rate for each prescription drug;

(4) Prohibit PBMs from stopping a pharmacist or pharmacy from providing an insured with information on the amount of the insured's cost share for the prescription drug, and the clinical efficacy of a more affordable alternative drug if one is available;

(5) Establish annual reporting requirements to the Insurance Commissioner, and clarifying the confidentiality of such information and data;

(6) Increase the registration fees for PBMs with the Insurance Division;

(7) Empower the insurance Commissioner to suspend, revoke, or place a probation on a PBMs registration under certain circumstances; and

(8) Take effect on July 1, 2020.

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 federal 340B Drug Pricing Program (340B Program) provides eligible health care providers, such as FQHCs, the ability to purchase outpatient drugs for patients at significantly reduced costs. By purchasing medications at a much lower cost, FQHCs are able to pass the savings on to their patients through reduced drug prices and the expansion of access and service to underserved populations. The discounts provided in the Program are financed by the drug manufacturers, not the government.

In recent years, a growing number of outside organizations called PBMs have determined how to access the 340B savings intended to accrue to FQHCs and other 340B providers. Among other things, PBMs have structured their contracts with FQHCs to retain part or all of the 340B savings. Examples of this include:

- A third party insurer determines that the FQHC is 340B eligible, but reduces reimbursement to the estimated 340B ceiling price;

- A retail pharmacy requests a sizeable percentage of the "spread" between the 340B purchase price and the insurance reimbursement of a higher dispensing fee than they charge for non-340B drugs; and

- A claims processor charges a higher fee for the 340B drugs (more than is justified by higher administrative costs) on the grounds that the health center is paying less for these drugs.

At this time, the federal 340B statute does not prohibit outside groups from accessing 340B savings intended for safety net providers and their patients. While the Congressional Record is clear that the 340B Program was intended to assist safety net providers to "stretch scarce federal resources", the statute does not explicitly prohibit the types of contracting arrangements described above. As such, FQHCs cannot reject these contracts on the grounds that they are illegal under law.

The practices of PBMs have had an enormous impact on limited State resources as well. In late 2018, the Ohio State Department of Medicaid required its five managed care plans to terminate contracts with PBMs after the State Auditor found that PBMs had been skimming hundreds of millions of dollars from the Ohio Medicaid Program through previously-hidden spread pricing tactics.

The HPCA notes that many of the concepts in this bill mirror laws enacted in Ohio). However, other states have specifically included statutory protections for the 340B Program, which this bill, in its current form, does not have. These states include Oregon, Montana, West Virginia, and South Dakota.

Because of this, the HPCA supports any and all legislative efforts to protect the 340B Program, including Senate Bill No. 2226, Senate Draft 1.

We wish to acknowledge and thank the Committee on Commerce, Consumer Protection, and Health for incorporating all of our previous suggestions into the draft before you. From a policy standpoint, however, our Board of Directors was not able to reach consensus on what it deems to be the best approach other than the provision specifically referencing the 340B Program. It is for that reason alone that our position is SUPPORT THE INTENT and not SUPPORT for Senate Bill No. 2289, Senate Draft 1. For the record, we will continue to SUPPORT THE INTENT of all measures that would protect FQHCs and our patients from the unscrupulous actions of PBMs, and it is our desire to continue to serve as a resource to the Legislature. We greatly appreciate the opportunity to be a part of the discussion.

Lastly, from a technical perspective, we note that Section 328-106, HRS, provides the Department of Health with regulatory authority over PBMs. If it is the desire of this Committee to transfer all regulatory authority to the Insurance Commissioner under Chapter 431S, HRS, the Committee may want to review that statute to determine whether there are any elements of that law that should be transferred to Chapter 431S, HRS, and repeal Section 328-106, HRS.

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@hawaiipca.net.

SB-2280-SD-1
Submitted on: 2/22/2020 10:32:07 AM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Aaron Chun	Individual	Support	No

Comments:

I am writing in support of SB2280, which would help control drug costs in Hawaii, provide greater protections for patients regarding their prescription drug benefits programs, and provide greater oversight over the pharmacy benefit managers (PBMs) that administer those benefits.

Community pharmacies have long been concerned with PBMs operating as largely unregulated middlemen in the drug supply chain. While PBMs claim to keep drug costs low, we believe PBM practices are often anti-competitive and ultimately drive up healthcare costs for consumers and plan sponsors while reducing payments to pharmacies. PBMs determine which pharmacies patients may choose by creating provider networks, determine which drugs patients can be prescribed by creating drug formularies, and determine how much patients pay at the pharmacy counter for their medications. The patient's choice of pharmacy should be left to the patient and is informed by what's in the patient's best interest, instead of what's in the PBM's best interest. Despite their authority over patients' health care options, PBMs enjoy little regulatory oversight by the state.

There is little to no standardization in the industry for the criteria or the the methodology used by PBMs to determine prescription drug reimbursement rates. This gives PBMs the ability to gain significant revenues through questionable business practices at the expense of patients, pharmacies, and plan sponsors.

To protect local businesses and patient access to vital Pharmacy services, we respectfully request your support SB2280

SB-2280-SD-1
Submitted on: 2/23/2020 8:19:19 AM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Derek Tengan	Individual	Support	No

Comments:

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Senate Committee on Judiciary

Derek Tengan

5 Minute Pharmacy

916 Gulick Ave. Suite A

Honolulu, HI 96819

Sunday 2/23/2020

Support for SB2280, SD1 relating to pharmacy benefit managers.

5 Minute Pharmacy is an independent pharmacy operating on Oahu. As an independent pharmacy we support these bills because this legislation helps control prescription drug costs, protect patients, and establish greater oversight of pharmacy benefit managers (PBMs).

SB2280, SD1 can have an immediate impact on patients by controlling “spread pricing”. Currently, pharmacists are not allowed to proactively discuss purchasing medications without going through their insurance (using the PBM’s). Often times, not using their insurance can result in cost savings to the patient. This cost savings currently goes to

the PBM. An increase in transparency and the lifting of this gag order would make an immediate impact in reducing the cost burden on patients. It is unfortunate that we cannot discuss these alternatives with our patients because we see these patients, we know many of them by name and want to help them but because of the practices of PBM's our hands are tied.

This bill can help affect cost by reducing premiums. PBM's promote medications based on the rebates the PBM receives from the manufacture. Especially when there are other, sometimes better alternative medications that are more cost effective to the patient. SB2280, SD1 will lift the veil of secrecy from the true costs of the medications and show the total cost savings the PBM's receive from the drug manufactures. This way the insurance companies will know how much they can reinvest in their members and potentially reduce premiums.

Pharmacies bring value to patients by providing services and locations that large chain pharmacies are unable, unwilling or find unprofitable to do. Therefore, independent pharmacies play a critical role in the maintenance of health of Hawaii's people. This bill contains many provisions that will level the playing field between the independent pharmacies and the large chain retail pharmacies that are owned by the PBMs themselves. This level playing field is critical to the maintenance of the independent pharmacy industry in Hawaii.

By approving SB2280, SD1 you are improving the lives of Hawaii residents. We are aware that Hawaii's population is aging and with increased age comes need for more medical attention and medications. These bills will increase transparency in the drug pricing market, will help decrease the costs of medicines to Hawaii's residence and maintain the independent pharmacies' role in keeping Hawaii healthy. Please support the passage of SB2280, SD1.

Thank you.

SB-2280-SD-1
Submitted on: 2/23/2020 9:23:04 AM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Joo Kim	Individual	Support	Yes

Comments:

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Senate Committee on Judiciary

Joo Kim

5 Minute Pharmacy

916 Gulick Ave. Suite A

Honolulu, HI 96819

Sunday 2/23/2020

Support for SB2280, SD1 relating to pharmacy benefit managers.

I am writing to you today to voice my support for SB2280, SD1, legislation to help control prescription drug costs, protect patients, and establish greater oversight of pharmacy benefit managers (PBMs). I've worked at an independent pharmacy for over a decade and independent pharmacies do not see each other as competition, rather the large chain pharmacies that are owned by the PBMs are the biggest threat to the independent pharmacy.

At the independent pharmacy we fight our biggest competitor with better service to our customers. We help our customers with coupons and delivery of the medications are some of the extra value services we provide to help the customer. These extra services come with a cost but overall it is worth it to keep the customer happy and healthy. Operating an independent business in Hawaii comes at a cost as well and that is why we support SB2280, SD1. It will prevent PBMs, our biggest payor and competitor from developing practices that work against the independent pharmacy. The transparency measures in the bill will ultimately benefit the patient by eliminating spread pricing and potentially revealing the true costs of the medications, thus helping to reduce insurance premiums. In addition, the rural rate reimbursement level will help offset the costs we incur operating a small niche business in Hawaii.

Please support the passage of SB2280, SD1.

Thank you.

SB-2280-SD-1
Submitted on: 2/22/2020 9:31:22 AM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Paige Kurosawa	Individual	Support	No

Comments:

I am writing in support of SB2280, which would help control drug costs in Hawaii, provide greater protections for patients regarding their prescription drug benefits programs, and provide greater oversight over the pharmacy benefit managers (PBMs) that administer those benefits.

Community pharmacies have long been concerned with PBMs operating as largely unregulated middlemen in the drug supply chain. While PBMs claim to keep drug costs low, we believe PBM practices are often anti-competitive and ultimately drive up healthcare costs for consumers and plan sponsors while reducing payments to pharmacies. PBMs determine which pharmacies patients may choose by creating provider networks, determine which drugs patients can be prescribed by creating drug formularies, and determine how much patients pay at the pharmacy counter for their medications. The patient's choice of pharmacy should be left to the patient and is informed by what's in the patient's best interest, instead of what's in the PBM's best interest. Despite their authority over patients' health care options, PBMs enjoy little regulatory oversight by the state.

There is little to no standardization in the industry for the criteria or the the methodology used by PBMs to determine prescription drug reimbursement rates. This gives PBMs the ability to gain significant revenues through questionable business practices at the expense of patients, pharmacies, and plan sponsors.

To protect local businesses and patient access to vital Pharmacy services, we respectfully request your support SB2280.

SB-2280-SD-1
Submitted on: 2/23/2020 9:24:37 AM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Elie Kato	Individual	Support	Yes

Comments:

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Senate Committee on Judiciary

Elie Kato

5 Minute Pharmacy

916 Gulick Ave. Suite A

Honolulu, HI 96819

2/23/2020

Support for SB2280, SD1 relating to pharmacy benefit managers.

For too long independent pharmacies have been subject to the mercurial pricing and regulations of the PBMs that threaten to put independent pharmacies out of business. I've seen a shrinking number of independent pharmacies over the years. In fact, just last year Lifeway Pharmacy on Kauai sold to CVS. I visited the community of Waimea on Kauai and saw the Lifeway pharmacy closed. The sign read "Lifeway Pharmacy + Longs Drugs We're Merging". The sign then stated the two Longs locations. One in Lihue and the other in Eleele. And there goes another community that lost their independent pharmacy. Purchased by the PBM owned chain pharmacy

that decided they no longer want to or not find it feasible to operate. The losers in this shrinking industry are the patients of Waimea.

Please support the passage of SB2280, SD1.

Thank you.

SB-2280-SD-1
Submitted on: 2/23/2020 11:26:11 PM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Seul Ki Villoria	Individual	Support	No

Comments:

I am writing in support of SB2280 to testify on the concern in pharmacy benefit management (“PBM”) market.

The lack of regulation, transparency and conflicts of interest in the PBM market has created environment for PBMs to engage in anticompetitive and deceptive conduct. Retail pharmacies are suffering on very minimal margins and forced to operate with minimal possible pharmacy staff. In the end, this will likely result in harm to our patients who rely on their health on these community pharmacies.

Patients lose their choices and services they desire to receive and are forced to use mail-order pharmacies which are also owned by PBMs. Drug costs are rapidly rising which lead to higher rebate for the PBMs.

Attention to PBM regulation is extremely timely, and patients and pharmacies need greater protection against from destructive practice of PBMs.

In support of SB 2280

February 24, 2020

Senator Karl Rhodes
Senator Jarrett Keohokalole

Committee Members: Mike Gabbard, Donna Mercado Kim, Kurt Fevella

My name is Brian Carter and I have been a Community Pharmacist on Kauai for 23 years and own two Community Pharmacies. This bill would protect and help secure the future of our healthcare delivery system. Our Community pharmacy delivers direct to patients, routine oral medication, vaccinations, injectable therapies, antipsychotics, and prescribes birth control. Many of the patients we serve cannot access other pharmacies and have no means of transportation. Our Pharmacies depend on fair reimbursement for our services. This Bill will help to provide transparency and allow us a chance to stay in business, without this bill we will have little or no chance to continue to serve. It is urgently needed, we cannot wait even a few months this legislation needs to go into effect now or there will not be a community pharmacy open to provide these resources.

Thank you for the opportunity to provide testimony for this bill.

Brian Carter RPh.
Westside and Kalaheo Pharmacy

SB-2280-SD-1
Submitted on: 2/24/2020 9:42:04 AM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Reyna Nakamura	Individual	Support	No

Comments:

I am writing in support of SB2280, which would help control drug costs in Hawaii, provide greater protections for patients regarding their prescription drug benefits programs, and provide greater oversight over the pharmacy benefit managers (PBMs) that administer those benefits.

Community pharmacies have long been concerned with PBMs operating as largely unregulated middlemen in the drug supply chain. While PBMs claim to keep drug costs low, we believe PBM practices are often anti-competitive and ultimately drive up healthcare costs for consumers and plan sponsors while reducing payments to pharmacies. PBMs determine which pharmacies patients may choose by creating provider networks, determine which drugs patients can be prescribed by creating drug formularies, and determine how much patients pay at the pharmacy counter for their medications. The patient's choice of pharmacy should be left to the patient and is informed by what's in the patient's best interest, instead of what's in the PBM's best interest. Despite their authority over patients' health care options, PBMs enjoy little regulatory oversight by the state.

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To protect local businesses and patient access to vital Pharmacy services, we respectfully request your support SB2280.

DAVID Y. IGE
GOVERNOR

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AUDREY HIDANO
OSA TUI
CLIFFORD UWAINE
RYKER WADA

ADMINISTRATOR
DEREK M. MIZUNO

ASSISTANT ADMINISTRATOR
DONNA A. TONAKI

TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON JUDICIARY
ON SENATE BILL NO. 2280 S.D. 1

February 25, 2020
12:30 p.m.
Room 016

RELATING TO PHARMACY BENEFIT MANAGERS

Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees opposes the section entitled "Pharmacy benefit manager business practices; prohibitions; independent or rural pharmacy reimbursement rate" that prohibits financial copayment incentives to use mail order or pharmacies with an ownership relationship to the pharmacy benefit manager. In addition, EUTF would like to raise concerns on the prohibition on the use of maximum allowable costs by the pharmacy benefit manager.

The section entitled "Pharmacy benefit manager business practices; prohibitions; independent or rural pharmacy reimbursement rate" would have negative financial impact on the EUTF prescription drug plan by prohibiting financial copayment incentives to use mail order or pharmacies with an ownership relationship to the pharmacy benefit manager. For the EUTF prescription drug plans, if a 90-day prescription is filled at a CVS Retail 90 network pharmacy or through mail order the member's copayment is two times

the 30-day copayment. If the 90-day prescription is filled at a non-Retail 90 network pharmacy the copayment is three times the 30-day copayment. The CVS Retail 90 network is a sub-network of the CVS national network which includes major chains such as CVS (Longs), Walgreens, Safeway, and Costco as well as local pharmacies. The CVS national network is open to all pharmacies that meet the requirements (e.g. proper licensing) and the CVS Retail 90 network is open to all CVS national network pharmacies. Over 90% of CVS national network Hawaii based pharmacies are also members of the CVS Retail 90 network.

The prescription drug costs charged under pass-through pricing to the EUTF plan are lower for prescriptions filled at Retail 90 pharmacies and mail order than at non-Retail 90 pharmacies. The Retail 90 pharmacies benefit through higher volume as copayments for members are less, in some cases by $50 per prescription. It's estimated that the EUTF active employee and non-Medicare plans will experience higher annual drug costs of $2.5 million and $2.4 million, respectively, which will be passed on to the State and counties, employees and retirees through higher premiums. The increase in retiree prescription drug costs is estimated to increase the OPEB unfunded liability by $67 million.

The EUTF staff would like to propose the following change to language in the bill:

"§431S- Pharmacy benefit manager business practices; prohibitions; independent or rural pharmacy reimbursement rate. (a) A pharmacy benefit manager shall be prohibited from penalizing, requiring, or providing financial incentives, including variations in premiums, deductibles, copayments, or coinsurance, to covered persons as incentives to use a specific retail pharmacy~~, specific mail service pharmacy,~~ or other

network pharmacy provider in which a pharmacy benefit manager has an ownership interest or that has an ownership interest in a pharmacy benefit manager. However, financial incentives are allowed if such financial incentives are also available to other network pharmacies."

The EUTF is also concerned about prohibiting pharmacy benefit managers use of maximum allowable costs in reimbursing pharmacies for common prescription drugs (e.g. generics). This practice helps to limit EUTF plan costs as actual amounts paid to the pharmacies by the pharmacy benefit managers are paid by the EUTF, pass-through pricing. The EUTF's pharmacy benefit manager does not earn a spread (i.e. spread pricing) between the reimbursement to the pharmacy and the amount charged to the EUTF. Since 2012, the EUTF has hired a third-party auditor to ensure that the pharmacy benefit manager is adhering to EUTF's contract pass-through pricing provisions. Therefore, any increase in pharmacy reimbursement will correlate to a dollar for dollar increase in EUTF plan costs resulting in higher premiums for the State and counties, employees and retirees.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR

STATE OF HAWAII
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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ASSISTANT ADMINISTRATOR
DONNA A. TONAKI

TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
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Thank you for the opportunity to testify.

February 24, 2020

I am writing to you today to voice my **support** for **SB2280 SD1**, legislation to help control prescription drug costs, protect patients, and establish greater oversight of pharmacy benefit managers (PBMs).

KTA Super Stores operates 4 pharmacies on the Island of Hawaii. Our pharmacies are located in Hilo, Waimea, Waikoloa and Keauhou.

Our pharmacies have been negatively impacted by PBM practices which threaten to put independent, community pharmacies, out of business. PBMs have engaged in aggressive anti-competitive tactics that have reduced payments to pharmacies and significantly affected patient care. Because PBMs enjoy near monopolistic power over pharmacy reimbursement, PBMs are able to determine which pharmacies patients may choose by creating provider networks. In addition, PBMs determine which drugs patients can be prescribed by creating drug formularies and determining how much patients pay at the pharmacy counter for their medications. Yet, despite their broad authority over patients' healthcare options, PBMs enjoy little regulatory oversight by the state.

PBMs claim to keep drug costs low, however, experience and evidence shows that PBM practices increase healthcare costs for patients and health plans while reducing payments to pharmacies. The New York Senate Committee on Investigations & Government Operations recently found that "PBMs often employ controversial utilization and management tools to generate revenue for themselves in a way that is detrimental to health plan sponsors patients, and pharmacies. CMS Administrator Seema Verma echoed these concerns when she said "I am concerned that spread pricing is inflating prescription drug costs that are borne by beneficiaries and by taxpayers."

To date, at least 40 states have enacted legislation with provisions similar to those contained in SB2280 SD1. Passing SB2280 SD1 will help put an end to the lack of transparency, oversight, and accountability that has allowed PBMs "to engage in anticompetitive practices at the detriment of consumers and pharmacists." To protect patient access, and ensure that independent community pharmacies are able to continue operating in the state of Hawaii, I respectfully ask that you support SB2280 SD1.

Sincerely,
/s/ Kerri Okamura, R.Ph.
Director of Pharmacy Operations

PHONE: (808) 959-4575
50 EAST PUAINAKO STREET, HILO, HAWAI'I 96720
WWW.KTASUPERSTORES.COM

CVSHealth

1275 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004

February 24, 2020

Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary
415 South Beretania Street
Honolulu, Hawaii 96813

RE: SB 2280 SD1 Relating to Pharmacy Benefit Managers
February 25, 2020, 12:30 p.m., conference room 016

Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the committee:

CVS Health has a number of concerns regarding Senate Bill 2280 SD1 ("SB 2280"), relating to pharmacy benefit managers (PBMs) as it is currently drafted and would be happy to work with legislators and stakeholders as discussion on this bill continues. SB 2280 seeks to regulate private business contracts between PBMs, their clients, including employers and health plans, and pharmacies. We believe that provisions in this bill would interfere in private contracting and greatly increase costs for Hawaii employers and health plans.

CVS Health is the nation's premier health innovation company helping people on their path to better health. Whether in one of its pharmacies or through its health services and plans, CVS Health is pioneering a bold new approach to total health by making quality care more affordable, accessible, simple, and seamless. CVS Health is community-based and locally focused, engaging consumers with the care they need when and where they need it. The Company has more than 9,800 retail locations, approximately 1,100 walk-in medical clinics, a leading pharmacy benefits manager with approximately 93 million plan members, a dedicated senior pharmacy care business serving more than one million patients per year, expanding specialty pharmacy services, and a leading stand-alone Medicare Part D prescription drug plan. CVS Health also serves an estimated 39 million people through traditional, voluntary, and consumer-directed health insurance products and related services, including a rapidly expanding Medicare Advantage offering. This innovative health care model increases access to quality care, delivers better health outcomes and lowers overall health care costs.

As noted above, we have a number of concerns with SB 2280, including the ban on spread pricing arrangements, the rural reimbursement rate mandate, and the disclosure of competitively sensitive information. We believe these provisions will take away contract flexibility for employers and plan sponsors and could lead to higher health care costs.

Spread Pricing Ban

SB 2280 seeks to prohibit the use of spread pricing arrangements. CVS Health offers PBM clients a variety of contractual options to pay for our PBM services and they choose the one that is best for them based on the services they need and their plan membership. Each employer and plan sponsor evaluates and determines the financial arrangement that meets its needs for PBM services.

Many clients choose a spread pricing arrangement because it provides clients with more certainty in their pharmacy costs and allows them to budget in a more predictable manner. Reducing options in the

marketplace that employer and plan sponsors are currently choosing takes away flexibility in contracting that may lower health care costs for them and their employees and members.

Rural Reimbursement Rate

SB 2280 seeks to prohibit a PBM from reimbursing an independent or rural pharmacy an amount less than the rural rate for prescription drugs. It should be noted that typically, rural pharmacies get paid higher reimbursement rates because they have lesser patient volume but are important for patient access. Not all independent pharmacies are rural pharmacies and should not be reimbursed at the same rates as rural pharmacies – independent pharmacies in urban and suburban areas have greater volume and therefore their reimbursement rates account for this. If all independent pharmacies must be reimbursed at a rural rate, this rate is likely to be inflated and may create a windfall to those pharmacies at the expense of Hawaii plan sponsors and consumers.

This bill also seeks to prohibit PBMs from making changes to the rate without providing 30 days' notice to pharmacies. Given the complex and dynamic nature of the generic drug marketplace, prices change throughout the year. This bill would cause reimbursement rates to be based on information from 30 days prior, no longer reflecting the actual market price of a drug product when it goes into effect. If there's a fluctuation in the marketplace that would entitle a pharmacy to a greater reimbursement, they would not be able to receive such reimbursement because the rate would be frozen at the rural rate. For example, if the market price of a drug quickly increases (due to a drug shortage or if a manufacturer drastically increases its price), pharmacies would be under-reimbursed for that drug because the PBM would not be able to adjust the reimbursement rate for 30 days. We also believe the proposed provision may conflict with the existing maximum allowable cost (MAC) law that requires that MAC lists be updated every 7 days.

Additionally, this bill takes away incentives for pharmacies to purchase drugs cost effectively because they will always be guaranteed reimbursement at or above the rural rate. If the market price of a drug decreases, consumers would not get the benefit of the savings. Pharmacies could buy drugs at a cheaper price, but PBMs will be forced to reimburse pharmacies (and bill the health plan) at the higher rural rate since adjustments cannot be made for 30 days. Ultimately, if PBMs were to comply with this bill, prescription drug costs for Hawaiian consumers and employers will increase.

Transparency Report

SB 2280 would also require the disclosure of competitively sensitive information with no confidentiality protections. CVS Health believes that it is important to keep the competitive marketplace among drug manufacturers in place in order to drive down the cost of prescription medications. Any public disclosure of rebate information could allow manufacturers to learn what type of price concessions other manufacturers are giving and could disincentivize them from offering deeper discounts, which benefit plan sponsors and their beneficiaries.

The FTC has reviewed a number of state legislative proposals that would have required the public disclosure of competitive rebate information and opined that, "[i]f pharmaceutical manufacturers learn the exact amount of rebates offered by their competitors, then tacit collusion among them is more feasible" and that such knowledge of competitors' pricing information would dilute incentives for

manufacturers to bid aggressively "which leads to higher prices."[1] The FTC also concluded that "[a]ny such cost increases are likely to undermine the ability of some consumers to obtain the pharmaceuticals and health insurance they need at a price they can afford." [2]

On behalf of CVS Health, thank you for allowing us to express our concerns and we welcome the opportunity to work with you on these important issues.

Respectfully,

Shannon Butler
Senior Director of Government Affairs
CVS Health

[1] Letter from FTC to Rep. Patrick T McHenry, U.S. Congress, Jul. 15, 2005.
[2] Id.

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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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 Judiciary
Tuesday, February 25, 2020
12:30 p.m.
State Capitol, Conference Room 016

On the following measure:
S.B. 2280, S.D. 1, RELATING TO PHARMACY BENEFIT MANAGERS

WRITTEN TESTIMONY ONLY

Chair Rhoads 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 supports the intent of and offers comments on this bill.

The purposes of this bill are to: (1) prohibit certain contracts for managed care entered into after June 30, 2020, from containing a provision that authorizes a pharmacy benefit manager (PBM) to reimburse a contracting pharmacy on a maximum allowable cost basis, and void any such provisions in existing managed care contracts; (2) prohibit a PBM from engaging in self-serving or deceptive business practices; (3) prohibit a PBM from engaging in unfair methods of competition or unfair practices; (4) prohibit a PBM from retaining any portion of spread pricing; (5) prohibit a PBM from reimbursing a 340B pharmacy differently than any other network pharmacy; (6) prohibit a PBM from reimbursing an independent or rural pharmacy an amount less than the

rural rate for each drug under certain circumstances; (7) prohibit a PBM from prohibiting a pharmacist to provide certain information to insureds; (8) increase a PBM's annual reporting requirements; (9) require the Insurance Commissioner to file annual reports with the Legislature; (10) increase PBM registration and renewal fees; and (11) make certain PBM violations subject to the penalties provided in Hawaii Revised Statutes (HRS) chapters 480 and 481.

The absence of a definition for "rural," which is used throughout S.D. 1, creates vagueness and potential enforcement difficulties. Although S.D. 1 defines "independent or rural pharmacy" on page 12, lines 12 to 20, that definition itself includes the undefined term "rural."

S.D. 1 deletes the phrase "or health maintenance organization regulated under chapter 432D[;]" from the definition of "covered entity" on page 14, lines 4 to 21. This will remove health maintenance organizations from the scope of "covered entity," and the Department is unclear whether this exclusion was intentional.

S.D. 1 amends the definition of "pharmacy benefit manager" on page 15, lines 1 to 16 to read similarly to the definition in HRS chapter 431R, including omitting the term "covered entity," which is defined in HRS section 431S-1, and adding terms such as "managed care company," which are not defined in either HRS chapters 431R or 431S. This will lead to unnecessary confusion, as "covered entity" is used throughout HRS chapter 431S. If the intent is to create similar definitions of "pharmacy benefit manager" in both chapters, the Department prefers the less vague definition in HRS chapter 431S and respectfully suggests striking the amendments to the definition of "pharmacy benefit manager" in section 4 of this bill.

On page 10, lines 16 to 20, the Insurance Commissioner is tasked with performing an annual examination covering "[t]he negative impacts on independent or rural pharmacies caused by [PBMs]; and . . . [t]he effects of transactions between health plan insurers and [PBMs] on health plan premiums." The Insurance Division does not have the staff expertise to perform these analyses and would need to hire a consultant to fulfill these tasks.

Significantly, section 5 of S.D. 1 greatly increases the registration requirements of PBMs. As these increased requirements are similar to the licensure requirements in the original S.B. 2280, the Department has the same concerns as it did with PBM licensure. Implementation of section 5 will be difficult, as the Insurance Division lacks staff expertise to assess the qualifications of PBMs for licensure. Page 16, lines 3 to 11 provide only broad criteria for the Insurance Commissioner to consider in determining whether to grant a registration. To prove that this criteria has been met, the bill provides on page 17, lines 8 to 12 that applicants provide "[a]ny other information the commissioner deems necessary or helpful to determine whether the applicant has the necessary organization, background, expertise, and financial integrity to supply the services sought to be offered pursuant to this chapter." However, the Insurance Division lacks staff with expertise to determine what documents would be sufficient or should be requested.

Further, section 5 authorizes the issuance of a restricted or limited registration (page 16, lines 8 to 11), but the penalty provisions in S.D. 1 do not give the Insurance Commissioner those same remedies as disciplinary sanctions for HRS chapter 431S violations.

Thank you for the opportunity to testify on this bill.

SB-2280-SD-1
Submitted on: 2/24/2020 12:09:23 PM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Shantelle	Individual	Support	No

Comments:

Senator Karl Rhoads, Chair

Senator Jarrett Keohokalole, Vice Chair

Senate Committee on Judiciary

Shantelle Robinion

5 Minute Pharmacy

916 Gulick Ave. Suite A

Honolulu, HI 96819

2/24/2020

Support for SB2280, SD1 relating to pharmacy benefit managers.

Throughout my years working in an independent pharmacy, I've learned that the independent pharmacies rarely are in competition with each other but more so in competition with the large chain pharmacies that are owned by the PBMs. Supporting SB2280, SD1 will help prevent PBMs from creating practices that work against independent pharmacies. Transparency in the bill will help patients with the control of medication costs and protect patients. We take pride in helping our patients receive the best healthcare they can and discussing alternatives would allow independent pharmacies to go above and beyond on what we currently are allowed to do due to PBMs.

Testimony to Senate Committee on Judiciary
Tuesday, February 25, 2020; 12:30 PM
State Capitol, Conference Room 016
On the Following Measure:

Re: Senate Bill No. 2280, SD1, RELATING TO PHARMACY BENEFIT MANAGERS.

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the Committee

My name is Richard Bettini, Chief Executive Officer of the Waianae Coast Comprehensive Health Center (WCCHC). WCCHC **SUPPORTS** SB No. 2280, SD1, RELATING TO PHARMACY BENEFIT MANAGERS, and offers **PROPOSED AMENDMENTS** for your consideration.

The bill, as received by your Committee, would:

(1) Prohibit certain contracts for managed care entered into after June 30, 2020, from containing a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis, and void any such provisions in existing managed care contracts;

(2) Prohibit pharmacy benefit managers from engaging in self-serving or deceptive business practices;

(3) Prohibit pharmacy benefit managers from engaging in unfair methods of competition or unfair practices;

(4) Prohibit pharmacy benefit managers from retaining any portion of spread pricing;

(5) Prohibit a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy;

(6) Establish a class of eligible community health care providers as “340B covered entity:”

(7) Prohibit a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances;

(8) Prohibit a pharmacy benefit manager from prohibiting a pharmacist to provide certain information to insureds. Increases pharmacy benefit managers' annual reporting requirements. Requires the insurance commissioner to file annual reports with the legislature. Increases pharmacy benefit manager registration and renewal fees; and

(9) Make certain violations of pharmacy benefit managers subject to the penalties provided in chapter 480 and chapter 481, Hawaii Revised Statutes.

By way of background, WCCHC is a 501(c)(3) organization and a federally qualified health center (FQHC) established to provide comprehensive primary care, specialty care, emergency care, other health and wellness services to the residents of the Waianae Coast and West Oahu. As a FQHC, WCCHC serves a disproportionate share of Medicaid, uninsured and underserved patients regardless of a particular patient's insurance status or inability to pay. In 2019, WCCHC served more than 38,000 patients through 220,000 clinical visits.

The federal 340B Drug Pricing Program (the "Program") enables health care settings like FQHCs that serve a disproportionate share of underserved patient populations to stretch scarce resources as far as possible, reaching more patients and providing more comprehensive services than without such program discounts.

WCCHC owns and operates two outpatient pharmacies that contract with a number of pharmacy benefit managers (PBMs), with each PBM having multiple rate schedules. Because PBMs control the formularies and determine how much a pharmacy is reimbursed through rate schedules, they have the ability to create pricing uncertainty for pharmacies.

As of late, a growing number of PBMs have determined how to access the Program discounts that are intended to accrue to the benefit of FQHCs and other 340B covered entities. Among other things, PBMs have structured their contracts with FQHCs to retain part or all of the spread pricing inclusive of the 340B Program discounts.

WCCHC's outpatient pharmacies take on the responsibility of due diligence in working to find the lowest costs possible for our patients. However, when PBMs reimburse our pharmacies for a drug at a reimbursement rate that is lower than the cost of acquiring the drug under the 340B Program, there is no process for us to know where that drug could be purchased at such price, in what market, and/or if it is even available at that price in Hawaii. These PMBs' business practices directly affect 340B covered entities like WCCHC and their abilities to reach more eligible patients and provide more comprehensive services.

By establishing pricing transparency reporting requirements and additional oversight of PBMs, this measure preserves community resources for rural and independent pharmacies, 340B

covered entities, community health and wellness in our island state, especially in those rural communities that are underserved.

Because of this, WCCHC supports any and all legislative efforts to protect the Program, including SB No. 2280, SD1. To further strengthen these protections, we recommend that the bill be amended as follows:

On page 4, lines 9 through 11, and Page 7, lines 6 through 11, replace the term "340B pharmacy" with "340B covered entity or its 340B contract pharmacy."

On page 11, between line 14 and 15, add the following sub-paragraph:

(c) The report required under subsection (a) is:

(1) Proprietary and confidential under chapter 431:2-209(e)(3); and

(2) Not subject to disclosure under chapter 92F; provided that the commissioner may publicly release aggregated or deidentified information from such reports that does not allow identification of any individual pharmacy benefit manager and would not cause competitive harm to the pharmacy benefit manager who submitted it.

On page 11, under Section 4, paragraph 1, add the following paragraphs to be appropriately designated and to read as follows:

"340B covered entity" shall have the meaning as in section 256b(a)(4) of title 42 of the United States Code.

"340B contract pharmacy' means a pharmacy operating under contract with a 340B covered entity to provide dispensing services to the 340B covered entity as described in 75 Federal Register 10,272 published on March 5, 2010.

Thank you for the opportunity to testify and your consideration of the amendments.

An Independent Licensee of the Blue Cross and Blue Shield Association

LATE

February 24, 2020

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary

Re: SB 2280 SD1 – Relating to Pharmacy Benefit Managers

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify expressing our serious concerns on SB 2280, SD1. This bill prohibits certain contracts for managed care entered into after June 30, 2020, from containing a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis, and voids any such provisions in existing managed care contracts. Prohibits pharmacy benefit managers from engaging in self-serving or deceptive business practices. Prohibits pharmacy benefit managers from engaging in unfair methods of competition or unfair practices. Prohibits pharmacy benefit managers from retaining any portion of spread pricing. Prohibits a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy. Prohibits a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances. Prohibits a pharmacy benefit manager from prohibiting a pharmacist to provide certain information to insureds. Increases pharmacy benefit managers' annual reporting requirements. Requires the insurance commissioner to file annual reports with the legislature. Increases pharmacy benefit manager registration and renewal fees. Makes certain violations of pharmacy benefit managers subject to the penalties provided in chapter 480 and chapter 481, Hawaii Revised Statutes.

HMSA utilizes a Pharmacy Benefit Manager (PBM) to manage our drug benefit plans, which helps us and our members to control escalating drug costs. We believe this bill increases administrative burden and costs for our PBM, which will lead to increased costs for our members.

Thank you for the opportunity to testify on this measure. Your consideration of our concerns is appreciated.

Sincerely,

Pono Chong
Vice President, Government Relations

LATE

SB-2280-SD-1
Submitted on: 2/24/2020 1:34:54 PM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
DANICA	Individual	Support	No

Comments:

I am writing in support of SB2280, which would help control drug costs in Hawaii, provide greater protections for patients regarding their prescription drug benefits programs, and provide greater oversight over the pharmacy benefit managers (PBMs) that administer those benefits.

Community pharmacies have long been concerned with PBMs operating as largely unregulated middlemen in the drug supply chain. While PBMs claim to keep drug costs low, we believe PBM practices are often anti-competitive and ultimately drive up healthcare costs for consumers and plan sponsors while reducing payments to pharmacies. PBMs determine which pharmacies patients may choose by creating provider networks, determine which drugs patients can be prescribed by creating drug formularies, and determine how much patients pay at the pharmacy counter for their medications. The patient's choice of pharmacy should be left to the patient and is informed by what's in the patient's best interest, instead of what's in the PBM's best interest. Despite their authority over patients' health care options, PBMs enjoy little regulatory oversight by the state.

There is little to no standardization in the industry for the criteria or the the methodology used by PBMs to determine prescription drug reimbursement rates. This gives PBMs the ability to gain significant revenues through questionable business practices at the expense of patients, pharmacies, and plan sponsors.

To protect local businesses and patient access to vital Pharmacy services, we respectfully request your support SB2280.

THE QUEEN'S HEALTH SYSTEMS

LATE

To: The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members, Committee on Judiciary

From: Rowena Buffett Timms, Executive Vice President & Chief Administrative Officer, The Queen's Health Systems
Colette Masunaga, Manager, Government Relations & External Affairs, The Queen's Health Systems

Date: February 22, 2020

Hrg: Senate Committee on Judiciary Decision Making; Tuesday, February 25, 2020 at 12:30 p.m. in Room 016

Re: **Support for SB 2280 Sd1, Relating to Pharmacy Benefit Managers**

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to testify in support the intent for SB 2280 SD1, Relating to Pharmacy Benefit Managers. Among other things, the measure prohibit Pharmacy Benefit Managers (PBM) from; engaging in self-serving business practices, retaining any portion of spread pricing, reimbursing a 340B pharmacy differently than any other network pharmacy, and reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances. We appreciate moving oversight of PBMs to the Insurance Commissioner, focusing on transparency, and restricting PBMs from continuing to engage in unfair business practices.

Queen's contracts with over 15 PBMs, with each PBM having their own way of doing business and some with little to no transparency. PBMs control the formularies for prices and have the ability create pricing uncertainty for pharmacies. Queen's outpatient pharmacies take on the responsibility of due diligence in working to find the lowest costs possible for our patients. However, when PBMs reimburse our pharmacies for half of what the costs are to acquire a drug, there is no process for us to know where that drug is being purchased, in what market, and/or if it is even available at that price in Hawaii.

We appreciate the provisions of the bill that protects 340B entities. Our flagship hospital, The Queen's Medical Center, qualifies as a 340B drug provider because it is a disproportionate share hospital, serving a large low-income uninsured, underinsured, and Medicaid patient populations.

Transparency and oversight of PBMs will greatly benefit our pharmacies, patients, and community. Thank you for the opportunity to testify on this measure.

Hawaii Association of Health Plans

LATE

February 24, 2020

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Senate Committee on Judiciary

Senate Bill 2280 SD1 – Relating to Pharmacy Benefit Managers

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to testify on SB 2280 SD1.

Pharmacy Benefit Managers help health plans to control drug costs. We believe that this bill will create more administrative burden and increase costs for Pharmacy Benefit Managers and health plans, which in turn will affect premiums for consumers. As this bill will increase costs to our members, we ask that it be deferred.

Thank you for allowing us to testify expressing concerns on SB 2280 SD1.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members

KAISER PERMANENTE®

LATE

Testimony of
John M. Kirimitsu
Legal and Government Relations Consultant

Before:
Senate Committee on Judiciary
The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair

February 25, 2020
12:30 pm
Conference Room 016

Re: SB 2280, SD1, Relating to Pharmacy Benefit Managers

Chair, Vice Chair, and committee members thank you for this opportunity to provide testimony on SB 2280, SD1, regulating pharmacy benefit managers in Hawaii.

Kaiser Permanente Hawaii has some concerns about this bill and requests an amendment.

Kaiser Permanente appreciates this bill's intent to regulate pharmacy benefit managers to protect consumers. PBMs can provide value to the health care system, but as third-party business entities, may also have economic interests that can add costs, or keep drug prices higher than they should be. As a fully integrated patient care system, Kaiser Permanente performs many of the value added functions that a PBM performs as a third-party administrator for other entities; but Kaiser Permanente performs these functions for itself, and for the benefit of its members, not for other unaffiliated parties. Accordingly, we do not believe it would be accurate or appropriate to capture Kaiser Permanente under the definition of a PBM and it would not serve any of the bill's purposes.

As Hawaii's largest HMO, Kaiser Permanente owns and manages its own pharmacies for the delivery of pharmacy benefits directly to its enrollees. In administering its in-house pharmacy benefits, Kaiser Permanente performs some of those pharmacy services identified as "pharmacy benefits management" in this bill. We have developed each of these functions – mail service, claims processing, disease management, formulary development and aggressive negotiations with manufacturers for the best prices -- over many years of experience to work in concert within Kaiser Permanente's system for the benefit of our members. All of these functions help us to provide the best quality outcomes for our members at an affordable price, thereby managing the ever-increasing costs that pharmaceutical manufacturers impose.

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Because the costs of these services are already minimized and built into our system, Kaiser Permanente has no need to engage others to perform its in-house pharmacy services. More important, any relevant information about these functions is already available to the Insurance Commissioner. This is not the case for industry standard third-party PBMs who are the subject of this bill. Therefore, since we believe the purpose of this bill is to regulate third-party PBMs, and not internally owned in-house pharmacies, we ask for the following exemption excluding an HMO that owns and/or manages its own pharmacies. Therefore, Page 15, Lines 3-4, should read as follows:

""Pharmacy benefit manager" means any person, business, or entity that performs pharmacy benefit management,[provided that a "Pharmacy benefit manager" shall not include an HMO regulated under chapter 432D that owns and/or manages its own pharmacies], including but not limited to a person or entity [in ___ a contractual or employment relationship with] under contract with a pharmacy benefit manager to perform pharmacy benefit management [for ___ a covered entity.] as defined in this section, on behalf of a managed care company, nonprofit hospital or medical service organization, insurance company, third-party payor, or health program administered by the State and that is duly licensed pursuant to this chapter. "Pharmacy benefit manager" shall not include any health care facility licensed in this State, a health care provider licensed in this State, or a consultant who only provides advice as to the selection or performance of a pharmacy benefit manager."

[red bracketed language is added]

Thank you for the opportunity to comment.

LATE

SB-2280-SD-1
Submitted on: 2/24/2020 4:17:16 PM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
david derauf	Testifying for Kokua Kalihi Valley	Support	No

Comments:

This measure is a great step to ensuring pricing transparency reporting requirements and additional oversight of PBMs, as well as preserving community resources for rural and independent pharmacies, 340B covered entities, community health and wellness in our island state, especially in those rural communities that are underserved.

Kokua Kalihi Valley supports any and all legislative efforts to protect the 340B Program, including SB No. 2280, SD1. To further strengthen these protections, we recommend that the bill be amended as follows:

Please consider replacing the term “340B pharmacy” with “340B covered entity or its 340B contract pharmacy.” on page 4, lines 9 through 11, and Page 7, lines 6 through 11,

Thank you.

David D Derauf MD

KKV

LATE

SB-2280-SD-1
Submitted on: 2/24/2020 6:03:58 PM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tamara Lindsey	Individual	Support	No

Comments:

I am writing in support of SB2280, which would help control drug costs in Hawaii, provide greater protections for patients regarding their prescription drug benefits programs, and provide greater oversight over the pharmacy benefit managers (PBMs) that administer those benefits.

Community pharmacies have long been concerned with PBMs operating as largely unregulated middlemen in the drug supply chain. While PBMs claim to keep drug costs low, we believe PBM practices are often anti-competitive and ultimately drive up healthcare costs for consumers and plan sponsors while reducing payments to pharmacies. PBMs determine which pharmacies patients may choose by creating provider networks, determine which drugs patients can be prescribed by creating drug formularies, and determine how much patients pay at the pharmacy counter for their medications. The patient's choice of pharmacy should be left to the patient and is informed by what's in the patient's best interest, instead of what's in the PBM's best interest. Despite their authority over patients' health care options, PBMs enjoy little regulatory oversight by the state.

There is little to no standardization in the industry for the criteria or the methodology used by PBMs to determine prescription drug reimbursement rates. This gives PBMs the ability to gain significant revenues through questionable business practices at the expense of patients, pharmacies, and plan sponsors.

To protect local businesses and patient access to vital Pharmacy services, I respectfully request your support SB2280.

WAIMĀNALO
HEALTH CENTER

LATE

Testimony to Senate Committee on Judiciary
Tuesday, February 25, 2020; 12:30 PM
State Capitol, Conference Room 016
On the Following Measure:

Re: Senate Bill No. 2280, SD1, RELATING TO PHARMACY BENEFIT MANAGERS.

The Honorable Karl Rhoads, Chair
The Honorable Jarrett Keohokalole, Vice Chair
Members of the Committee

My name is Kevin Lei, PharmD, Pharmacist of the Waimanalo Health Center (WHC). WHC **SUPPORTS** SB No. 2280, SD1, RELATING TO PHARMACY BENEFIT MANAGERS, and offers **PROPOSED AMENDMENTS** for your consideration.

The bill, as received by your Committee, would:

(1) Prohibit certain contracts for managed care entered into after June 30, 2020, from containing a provision that authorizes a pharmacy benefit manager to reimburse a contracting pharmacy on a maximum allowable cost basis, and void any such provisions in existing managed care contracts;

(2) Prohibit pharmacy benefit managers from engaging in self-serving or deceptive business practices;

(3) Prohibit pharmacy benefit managers from engaging in unfair methods of competition or unfair practices;

(4) Prohibit pharmacy benefit managers from retaining any portion of spread pricing;

(5) Prohibit a pharmacy benefit manager from reimbursing a 340B pharmacy differently than any other network pharmacy;

(6) Establish a class of eligible community health care providers as “340B covered entity:”

(7) Prohibit a pharmacy benefit manager from reimbursing an independent or rural pharmacy an amount less than the rural rate for each drug under certain circumstances

(8) Prohibit a pharmacy benefit manager from prohibiting a pharmacist to provide certain information to insureds. Increases pharmacy benefit managers' annual reporting requirements. Requires the insurance commissioner to file annual reports with the legislature. Increases pharmacy benefit manager registration and renewal fees; and

(9) Make certain violations of pharmacy benefit managers subject to the penalties provided in chapter 480 and chapter 481, Hawaii Revised Statutes.

By way of background, WHC is a 501(c)(3) organization and a federally qualified health center (FQHC) established to provide comprehensive primary care, WHC services to the residents of Waimanalo. As a FQHC, WHC serves a disproportionate share of Medicaid, uninsured and underserved patients regardless of a particular patient's insurance status or inability to pay. In 2019, WHC served more than 4000 patients through clinical visits.

The federal 340B Drug Pricing Program (the "Program") enables health care settings like FQHCs that serve a disproportionate share of underserved patient populations to stretch scarce resources as far as possible, reaching more patients and providing more comprehensive services than without such program discounts.

WHC owns and operates two outpatient pharmacies that contract with a number of pharmacy benefit managers (PBMs), with each PBM having multiple rate schedules. Because PBMs control the formularies and determine how much a pharmacy is reimbursed through rate schedules, they have the ability to create pricing uncertainty for pharmacies.

As of late, a growing number of PBMs have determined how to access the Program discounts that are intended to accrue to the benefit of FQHCs and other 340B covered entities. Among other things, PBMs have structured their contracts with FQHCs to retain part or all of the spread pricing inclusive of the 340B Program discounts.

WHC's outpatient pharmacies take on the responsibility of due diligence in working to find the lowest costs possible for our patients. However, when PBMs reimburse our pharmacies for a drug at a reimbursement rate that is lower than the cost of acquiring the drug under the 340B Program, there is no process for us to know where that drug could be purchased at such price, in what market, and/or if it is even available at that price in Hawaii. These PBMs' business practices directly affect 340B covered entities like WHC and their abilities to reach more eligible patients and provide more comprehensive services.

By establishing pricing transparency reporting requirements and additional oversight of PBMs, this measure preserves community resources for rural and independent pharmacies, 340B covered entities, community health and wellness in our island state, especially in those rural communities that are underserved.

Because of this, Waimanalo Health Center supports any and all legislative efforts to protect the Program, including SB No. 2280, SD1. To further strengthen these protections, we recommend that the bill be amended as follows:

On page 4, lines 9 through 11, and Page 7, lines 6 through 11, replace the term "340B pharmacy" with "340B covered entity or its 340B contract pharmacy."

On page 11, between line 14 and 15, add the following sub-paragraph:

(c) The report required under subsection (a) is:

(1)Proprietary and confidential under chapter 43l:2-209(e)(3); and (2)Not subject to disclosure under chapter 92F; provided that the commissioner may publicly release aggregated or deidentified information from such reports that does not allow identification of any individual pharmacy benefit manager and would not cause competitive harm to the pharmacy benefit manager who submitted it.

On page 11, under Section 4, paragraph 1, add the following paragraphs to be appropriately designated and to read as follows:

"340B covered entity" shall have the meaning as in section 256b(a)(4) of title 42 of the United States Code.

"340B contract pharmacy' means a pharmacy operating under contract with a 340B covered entity to provide dispensing services to the 340B covered entity as described in 75 Federal Register 10,272 published on March 5, 2010.

Thank you for the opportunity to testify and your consideration of the amendments.

LATE

SB-2280-SD-1
Submitted on: 2/24/2020 9:41:52 PM
Testimony for JDC on 2/25/2020 12:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Russ Awana	Individual	Support	No

Comments:

Aloha,

I am writing in support of SB2280, which would help control drug costs in Hawaii, provide greater protections for patients regarding their prescription drug benefits programs, and provide greater oversight over the pharmacy benefit managers (PBMs) that administer those benefits.

Community pharmacies have long been concerned with PBMs operating as largely unregulated middlemen in the drug supply chain. While PBMs claim to keep drug costs low, we believe PBM practices are often anti-competitive and ultimately drive up healthcare costs for consumers and plan sponsors while reducing payments to pharmacies. PBMs determine which pharmacies patients may choose by creating provider networks, determine which drugs patients can be prescribed by creating drug formularies, and determine how much patients pay at the pharmacy counter for their medications. The patient's choice of pharmacy should be left to the patient and is informed by what's in the patient's best interest, instead of what's in the PBM's best interest. Despite their authority over patients' health care options, PBMs enjoy little regulatory oversight by the state.

There is little to no standardization in the industry for the criteria or the the methodology used by PBMs to determine prescription drug reimbursement rates. This gives PBMs the ability to gain significant revenues through questionable business practices at the expense of patients, pharmacies, and plan sponsors.

To protect local businesses and patient access to vital Pharmacy services, I respectfully request your support SB2280.

Mahalo!