



**STATE OF HAWAII  
DEPARTMENT OF HEALTH**

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**Testimony COMMENTING on SB2443 SD1  
RELATING TO PHARMACY BENEFIT MANAGERS.**

SENATOR ROSALYN H. BAKER, CHAIR  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Hearing Date: February 22, 2022

Room Number: Videoconference

1 **Fiscal Implications:** N/A.

2 **Department Testimony:** The Department of Health (DOH) defers to the Department of  
3 Commerce and Consumer Affairs regarding the merits of the proposed regulatory authority.

4 DOH strongly supports the propose repeal of section 328-106, Hawaii Revised Statutes, that  
5 requires the department to enforce the terms of contracts between private entities and serves no  
6 public health purpose.

7 Thank you for the opportunity to testify.

8



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN  
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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce and Consumer Protection  
Tuesday, February 22, 2022  
10:00 a.m.  
Room 229 and Via Videoconference**

**On the following measure:  
S.B. 2443, S.D. 1, RELATING TO PHARMACY BENEFIT MANAGERS**

**WRITTEN TESTIMONY ONLY**

Chair Baker and Members of the Committee:

My name is Colin Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill, which it supports subject to the amendments below being incorporated into an S.D. 2.

The purpose of this bill is to address and define pharmacy benefit manager (PBM) practices; create enforcement authority by the Insurance Commissioner to suspend or revoke a PBM's registration; impose fines; and repeal section 328-106, Hawaii Revised Statutes (HRS).

The proposed new sections in HRS chapter 431S addressing PBM practices would prohibit contracts between PBMs and pharmacies from including: "gag clauses"; prohibitions on pharmacists selling a more affordable alternative to a consumer when one is available; and prohibitions on pharmacists sharing information with government

officials in certain circumstances. The new sections in HRS chapter 431S would also prohibit a PBM from requiring a covered person to pay more than the lesser of a covered person's cost-sharing for a drug or the amount the covered person would pay for the drug if the covered person were paying the cash price.

We respectfully request the following amendments to S.D. 1:

1. Section 2, p. 3, line 18: delete "for the purposes of filing a complaint".  
Because this language narrowly specifies complaint filing, it may prevent information sharing during the course of the investigation that may follow a complaint filing and prevent information sharing in investigations initiated by the Insurance Division.
2. Section 2, p. 4, lines 7-8, delete paragraph (3): This vague relevancy standard may discourage complainants from sharing information with the Insurance Division in the course of investigations.
3. Section 5, p. 11, lines 7-10, substitute the term "applicant" with "pharmacy benefit manager" and strike the phrase "is not competent, trustworthy, financially responsible, of good personal and business reputation, or".
4. Section 5, p. 11, line 14, insert a subsection (d) that reads as follows:  
"(d) Before the commissioner may suspend or revoke the registration of a pharmacy benefit manager, the commissioner shall conduct a hearing in accordance with chapter 91."
5. Section 7, p. 12, line 12, amend the blank fine amount to read "\$1,000".

Thank you for the opportunity to testify on this bill.



**Testimony to the Senate Committee on Commerce and Consumer Protection  
Tuesday, February 22, 2022; 10:00 a.m.  
State Capitol, Conference Room 229  
Via Videoconference**

**RE: SENATE BILL NO. 2443, SENATE DRAFT 1, RELATING TO PHARMACY BENEFIT MANAGERS.**

Chair Baker, Vice Chair Chang, 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** Senate Bill No. 2443, Senate Draft 1, RELATING TO PHARMACY BENEFIT MANAGERS.

By way of background, the HPCA represents Hawaii's 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 bill, as received by your Committee, would protect the consuming public from unscrupulous business practices conducted by pharmacy benefit managers (PBMs). Among other things, this bill would:

- (1) Prohibit a pharmacy benefit manager (PBM) from limiting a pharmacist's ability to disclose certain information to consumers;
- (2) Provide additional enforcement authority to the Insurance Commissioner (Commissioner); and
- (3) Clarify statutes that reference PBMs.

By way of background, 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

**Testimony on Senate Bill No. 2443, Senate Draft 1**  
**Tuesday, February 22, 2022; 10:00 a.m.**  
**Page 2**

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.

**Because of this, the HPCA supports any and all legislative efforts to protect the 340B Program.**

**For your reference, we proposed amendments for the Senate's consideration in our testimony to the Senate Committee on Health on this bill dated February 14, 2022.**

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.



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**SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION**

Senator Rosalyn H. Baker, Chair

Senator Stanley Chang, Vice Chair

Date: February 22, 2022

From: Hawaii Medical Association

Elizabeth Ann Ignacio MD, Chair, HMA Legislative Committee

**Re: SB 2443 SD 1 Pharmacy Benefit Managers; Enforcement; Registration**

**Position: Support**

Hawaii patients struggle to afford the medications that they need. Our patients encounter challenges at the pharmacy point-of-sale, and often are unaware that a drug co-pay is higher than the drug's cash price. HMA supports this bill which will improve drug price and cost transparency and create enforcement authority by the Insurance Commissioner.

Thank you for allowing the Hawaii Medical Association to testify in support of this measure.

**REFERENCES**

Improving Prescription Drug Price and Cost Transparency. [TruthInRx.org](http://TruthInRx.org) 2019.

Price of Medicine H-110.991. [AMA-assn.org](http://AMA-assn.org). 2019.

Transparency, regulation needed to rein in pharmacy benefit. [AMA-assn.org](http://AMA-assn.org). June 10, 2019.

**HMA OFFICERS**

President – Angela Pratt, MD President-Elect – Elizabeth Ann Ignacio, MD  
Immediate Past President – Michael Champion, MD Treasurer – Nadine Tenn Salle, MD  
Secretary – Thomas Kosasa, MD Executive Director – Marc Alexander



American Cancer Society  
Cancer Action Network  
2370 Nu'uuanu Avenue  
Honolulu, Hi 96817  
808.460.6109  
[www.fightcancer.org](http://www.fightcancer.org)

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

Hearing: February 22, 2022

**ACS CAN COMMENTS SB 2443 SD1 – RELATING TO PHARMACY BENEFIT MANAGERS**

Cynthia Au, Government Relations Director– Hawaii Guam  
American Cancer Society Cancer Action Network

Thank you for the opportunity to provide **COMMENTS** on SB2443 SD1: RELATING TO PHARMACY BENEFIT MANAGERS specifically to section (d) of "§431S— Business practices." on page 4 only.

The American Cancer Society Cancer Action Network (ACS CAN) is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem.

Many cancer patients have difficulty affording the cost of their prescription drugs, regardless of whether they are insured. This is especially true for newer drugs – including cancer drugs – that do not yet have a generic equivalent. To help temper high prescription costs, many individuals living with cancer receives copay assistance offered through manufacturer programs and charitable patient assistance programs.

Manufacturer programs and charitable patient assistance programs help many cancer patients afford their medications. In many cases a cancer patient needs a drug that does not yet have a modestly priced generic or other alternative to drug treatment. A patient assistance program's financial support can give patients access to a life-saving drug that they otherwise could not afford. And many of the programs exist for drugs without generic alternatives.

It is a matter of public interest that health insurers and pharmacy benefit managers must count any amount paid by the patient or on behalf of the patient by another person towards a patient's annual out-of-pocket limit and any cost sharing requirement, such as deductibles.

When calculating an enrollee's overall contribution to any out-of-pocket maximum or any cost-sharing requirement under a health plan or pharmacy benefit manager should include any amounts paid by the enrollee or paid on behalf of the enrollee by another person.

Thank you for the opportunity to comment on this matter.

**SB-2443-SD-1**

Submitted on: 2/18/2022 5:04:26 PM

Testimony for CPN on 2/22/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Gerard Silva	Individual	Oppose	No

Comments:

They are not Qualified to do this and should not be allow to do this.



**SB-2443-SD-1**

Submitted on: 2/18/2022 9:16:45 PM

Testimony for CPN on 2/22/2022 10:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Remote Testimony Requested</b>
Ronald Taniguchi, Pharm.D.	Individual	Support	No

Comments:

In support of SB2443 SD1 as written. Mahalo



1275 Pennsylvania Avenue, NW  
Suite 700  
Washington, DC 20004

Senator Rosalyn Baker, Chair  
Senator Stanley Chang, Vice Chair  
Committee on Commerce and Consumer Protection

**RE: SB 2443 SD1 Relating to Pharmacy Benefit Managers - Comments**  
February 22, 2022; 10:00 A.M.; Via Videoconference

Aloha Chair Baker, Vice Chair Chang and members of the committee:

CVS Health would like to offer comments on SB 2443 SD1, which addresses and defines pharmacy benefit manager practices; and creates enforcement authority by the Insurance Commissioner to suspend or revoke a pharmacy benefit manager's registration and impose fines.

We appreciate the technical and clarifying amendments in the SD1, and welcome continued collaboration with legislators, the Insurance Commissioner and stakeholders on this measure.

CVS Health serves millions of people through our local presence, digital channels, and our nearly 300,000 dedicated colleagues – including more than 40,000 physicians, pharmacists, nurses and nurse practitioners. Our unique health care model gives us an unparalleled perspective on how systems can be better designed to help consumers navigate the health care system – and their personal health care – by improving access, lowering costs, and being a trusted partner for every meaningful moment of health. And we do it all with heart, each and every day.

Thank you for your work on this important issue.

Respectfully,

A handwritten signature in black ink, appearing to read "Shannon Butler".

Shannon Butler  
Executive Director of Government Affairs  
CVS Health