



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of SB1381**  
**RELATING TO THE REPEAL OF SECTION 328-106, HAWAII REVISED**  
**STATUTES.**

SENATOR JARRETT KEOHOKALOOLE, CHAIR  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Hearing Date: February 3, 2023

Room Number: 329

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

2 **Department Testimony:** The Department of Health (DOH) supports the repeal of section 328-  
3 106, Hawaii Revised Statutes (HRS), which created a parallel but ineffective and unenforceable  
4 regulatory mechanism for pharmacy benefit managers.

5 Section 328-106, HRS, established an appeals process for pharmacies that dispense prescription  
6 medications pursuant to a contract with a health plan based on the “maximum allowable charge”  
7 payment model. If the pharmacy can demonstrate a financial loss for a specific transaction due  
8 to an untimely cost list adjustment by the health plan, and the health plan concurs, the health plan  
9 is obligated to refund the loss. If the health plan does not concur, the plan shall permit the  
10 pharmacy to rebill the claim and the current cost, though not necessarily guaranteeing higher  
11 reimbursement.

12 Concerns with this approach are as follows:

13 Competing Regulatory Systems

14 Chapter 431S, HRS, established a regulatory framework including clear definitions and rule-  
15 making authority specific to pharmacy benefit managers.

16 By contrast, chapter 328, HRS, to which section 106 is appended, is the Hawaii Food, Drug, and  
17 Cosmetics Act, which is a supplement to Federal Food, Drug, and Cosmetic Act (USC, Title 21)

1 that oversees the safety of food, drugs, medical devices, and cosmetics. Assuring an appeals  
2 process between private entities is not within scope nor expertise of DOH, and was not the  
3 intention of the Legislature when enacting this chapter.

4 Inappropriate Oversight of Private Contracts

5 Section 328-106, HRS, applies only to pharmacy benefit managers and pharmacies, both of  
6 which are private entities, in contractual relationships with each other to provide health care.  
7 The Department of Health's regulatory powers to enforce an appeals mechanism between private  
8 contracted parties for financial transactions is inappropriate, particularly when there are no  
9 threats to public health. Disputes over contractually obligated reimbursement should be enforced  
10 by the courts.

11 Ineffective Appeals Mechanism

12 The regulatory feature of section 328-106, HRS, is that the pharmacy benefit manager "shall  
13 have a clearly defined process for a contracting pharmacy to appeal the maximum allowable  
14 costs" in a timely manner. The pharmacy benefit manager, typically a business incorporated in  
15 another state that is transacting business across state lines, has sole authority under this section to  
16 uphold or deny an appeal, where denials incur a financial cost to the pharmacy benefit manager.

17 Insufficient Enforcement Capacity

18 DOH staff lack expertise in healthcare financing, risk management, retail pharmacy operations,  
19 and forensic accounting to meaningfully administer this section. Moreover, chapter 328 does not  
20 authorize DOH to compel cooperation with an investigation if they are not part of the physical  
21 custody of drug products, such as pharmacy benefit managers. Although a DOH inspector may  
22 enter a retail premises inspect the condition in which pharmaceuticals are stored for purposes of  
23 patient and product safety, pursuant to the intent of chapter 328, HRS, the department can not  
24 compel a pharmacy benefit manager to turn over data from claims management systems.

1 The public policy debate on regulation of pharmacy benefit managers is the prerogative of the  
2 Legislature. However, there is no value to section 328-106 because it is unenforceable at a  
3 practical level to the pharmacy making an appeal. Compliance is achieved by a pharmacy  
4 benefit manager having a clear appeals process that lasts no more than 14 days, regardless of the  
5 outcome to the pharmacy.

6 Thank you for the opportunity to testify.

7 **Offered Amendments:** N/A.

**LATE**

**SB-1381**

Submitted on: 2/2/2023 6:32:26 PM

Testimony for CPN on 2/3/2023 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kerri Okamura	Individual	Oppose	Written Testimony Only

Comments:

PBMs need to be regulated in Hawaii. Without regulation, independent pharmacies will continue to struggle and eventually be forced to closed. This will ultimately affect access to care and quality of healthcare in Hawaii