



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310

P.O. BOX 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Consumer Protection and Commerce  
and  
House Committee on Judiciary**

**Wednesday, March 20, 2019  
2:00 p.m.  
State Capitol, Conference Room 329**

**On the following measure:  
S.B. 1401, S.D. 2, H.D. 1, RELATING TO PHARMACY BENEFIT MANAGERS**

Chair Takumi, Chair Lee, and Members of the Committees:

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.

The purposes of H.D. 1 are to: (1) provide that a pharmacy benefit manager may not prohibit a pharmacist or pharmacy from sharing with an insured the insured's cost share for a prescription drug and the clinical efficacy of an available and more affordable alternative drug; and (2) prevent penalization of a pharmacy or pharmacist for sharing such information.

Should the Committees pass this measure, they may wish to consider adding enforcement language to allow the Insurance Commissioner to address violations of this section. Thank you for the opportunity to testify on this bill.

**SB-1401-HD-1**

Submitted on: 3/18/2019 6:29:19 PM

Testimony for CPC on 3/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Catalina Cross	Times Pharmacy	Support	No

Comments:

To: Honorable Roy M Takumi, Chair

Honorable Linda Ichiyama, Vice Chair

Members, Committee on Consumer Protection & Commerce

Honorable Chris Lee, Chair

Honorable Joy A. San Buenaventura, Vice Chair

Members, Committee on Judiciary

Fr: Catalina Cross, PhD., Director of Pharmacy at Times Supermarket

**Re: Support, SB1401 SD1 HD2 – RELATING TO PHARMACY BENEFIT MANAGERS**

**(Original intent of bill)**

Since 1984, Times Pharmacy has had the privilege of caring for people within our communities in Hawaii. We are seeking support from our legislatures to establish oversight and transparency over pharmacy benefit managers who operate in our state to help protect our pharmacies and all other community pharmacies across the state from unfair business practices imposed from pharmacy benefit managers.

We have found business practices put forth by the various pharmacy benefit managers who operate in our state to be inconsistent and unfair. For example, the reimbursement established by the pharmacy benefit manager may not even cover the cost of the medication. (Unfortunately we have hundreds of such situations each month.) We are required to submit a maximum allowable cost appeals for EACH claim. As you can imagine, the mandate to submit claims individually is administratively taxing and to top it off, in our experience, over 90% of the appeals submitted to the various pharmacy benefit managers are denied. In this example the reimbursement does not cover labor

costs to dispense the medication, the cost of the medication, or the additional administrative labor cost to manage and monitor the appeal process on our end. This business practice is not sustainable for community pharmacies. It should be noted that community pharmacies do not have the volume of scripts enjoyed by the national chains. In this regard, community pharmacies in Hawaii are not able to compensate for losses with volume, like the national chains.

I strongly urge you to read about issues related to the lack of oversight and transparency over pharmacy benefit managers and its negative impact on the wellbeing of community pharmacies across the nation. Community pharmacies in Hawaii are counting on our legislators to take the time to understand this situation and ensure community pharmacies are able to continue to provide services to people in our communities.

Thank you for the opportunity to submit testimony.

**SB-1401-HD-1**

Submitted on: 3/19/2019 9:51:41 AM

Testimony for CPC on 3/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Richard S. Mejia	Times Supermarket Pharmacy	Support	No

Comments:

To: Honorable Roy M Takumi, Chair

Honorable Linda Ichiyama, Vice Chair

Members, Committee on Consumer Protection & Commerce

Honorable Chris Lee, Chair

Honorable Joy A. San Buenaventura, Vice Chair

Members, Committee on Judiciary

Fr: Richard S. Mejia RPh., Pharmacy Operations Manager at Times Supermarket

**Re: Support, SB1401 SD2 HD1 – RELATING TO PHARMACY BENEFIT MANAGERS**

**(Original intent of bill)**

Since 1984, Times Pharmacy has had the privilege of caring for people within our communities in Hawaii. We are seeking support from our legislatures to establish oversight and transparency over pharmacy benefit managers who operate in our state to help protect our pharmacies and all other community pharmacies across the state from unfair business practices imposed from pharmacy benefit managers.

We have found business practices put forth by the various pharmacy benefit managers who operate in our state to be inconsistent and unfair. For example, the reimbursement established by the pharmacy benefit manager may not even cover the cost of the medication. (Unfortunately we have hundreds of such situations each month.) We are required to submit a maximum allowable cost appeals for EACH claim. As you can imagine, the mandate to submit claims individually is administratively taxing and to top it off, in our experience, over 90% of the appeals submitted to the various pharmacy benefit managers are denied. In this example the reimbursement does not cover labor costs to dispense the medication, the cost of the medication, or the additional administrative labor cost to manage and monitor the appeal process on our end. This business practice is not sustainable for community pharmacies. It should be noted that community pharmacies do not have the volume of scripts enjoyed by the national chains. In this regard, community pharmacies in Hawaii are not able to compensate for losses with volume, like the national chains.

I strongly urge you to read about issues related to the lack of oversight and transparency over pharmacy benefit managers and its negative impact on the wellbeing of community pharmacies across the nation. Community pharmacies in Hawaii are counting on our legislators to take the time to understand this situation and ensure community pharmacies are able to continue to provide services to people in our communities.

Thank you for the opportunity to submit testimony.

**SB-1401-HD-1**

Submitted on: 3/19/2019 9:58:05 AM

Testimony for CPC on 3/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Patrick Uyemoto	The Hawaii Pharmacists Association	Support	No

Comments:

The Hawaii Pharmacists Association Strongly Supports SB1401 SD2 HD1 WITH AMENDMENTS

Aloha Chair Takumi, Chair Lee, and Respected Members of the Committees

A number of local independent pharmacies have been forced to close down or sell to large mainland corporations. The few local independent pharmacies that remain are struggling to survive due to the predatory practices employed by pharmacy benefit managers (PBMs). Pharmacies are being reimbursed below the cost of acquiring certain medications, sometimes losing up to hundreds of dollars per prescription. PBMs determine how much a pharmacy is reimbursed through a Maximum Allowable Cost (MAC) formula and claim that local pharmacies are being reimbursed at a fair price yet they have no way or are not willing to justify the reimbursement rate when questioned. The only recourse a pharmacy has when met with a below cost reimbursement is to submit a MAC appeal to the PBM to request a higher reimbursement or for them to inform us where the medication can be purchased so that a profit can be made. Hundreds of MAC appeals have been submitted with no response from the PBMs or them stating that the reimbursement rate is fair and no adjustments need to be made. Meeting with the PBMs has not done anything to solve this problem and yet local independent pharmacies continue to do everything they can to do the right thing for patients in their communities including dispensing medications at a loss. If the current pharmacy reimbursement model remains the same and the PBMs are not regulated or held accountable, it will only be a matter of time until all local independent pharmacies are forced to close or sell.

I hope the legislature recognizes that independent pharmacy owners and employees are residents of the State of Hawaii and that an independent pharmacy is a local business. By not supporting some form of regulation or accountability for PBMs, you are letting billion dollar national corporations take advantage and shut down local businesses. I humbly request that as legislatures you consider the larger picture and how this affects our state as a whole. PBMs are profiting from local plans, pharmacies, and consumers, where does that revenue go? Does it stay in Hawaii? Do PBMs help

our local economy? Or communities? Or residents? Now think about local independent pharmacies that have been here for generations. Do they help our local economy? Our communities? Our residents?

Thank you for the opportunity to provide testimony on SB1401 SD2 HD1.



March 18, 2019

The Honorable Roy M. Takumi, Chair  
The Honorable Linda Ichiyama, Vice Chair  
House Committee on Consumer Protection & Commerce

The Honorable Chris Lee, Chair  
The Honorable Joy A. San Buenaventura, Vice Chair  
House Committee on Judiciary

**Senate Bill 1401 SD2 HD1 – Relating to Pharmacy Benefit Managers**

Dear Chair Takumi, Chair Lee, Vice Chair Ichiyama, Vice Chair San Buenaventura and Members of the Committees:

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to testify in opposition to SB 1401, SD2, HD1.

We believe that this measure could pose an administrative burden and increase costs for our members. Pharmacy benefit managers help health plans to control drug costs. As this bill will increase costs to our members, we respectfully ask that this bill be deferred.

Thank you for allowing us to testify expressing concerns on SB 1401, SD2, HD1.

Sincerely,

HAHP Public Policy Committee

cc: HAHP Board Members



**SB-1401-HD-1**

Submitted on: 3/19/2019 12:18:10 PM

Testimony for CPC on 3/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Alyssa Pang	Times Pharmacy	Support	No

Comments:

Times Pharmacy Strongly Supports SB1521 SD1 HD1 WITH AMENDMENTS

Aloha Chair Takumi, Chair Lee, and Respected Members of the Committees

A number of local independent pharmacies have been forced to close down or sell to large mainland corporations. The few local independent pharmacies that remain are struggling to survive due to the predatory practices employed by pharmacy benefit managers (PBMs). Pharmacies are being reimbursed below the cost of acquiring certain medications, sometimes losing up to hundreds of dollars per prescription. PBMs determine how much a pharmacy is reimbursed through a Maximum Allowable Cost (MAC) formula and claim that local pharmacies are being reimbursed at a fair price yet they have no way or are not willing to justify the reimbursement rate when questioned. The only recourse a pharmacy has when met with a below cost reimbursement is to submit a MAC appeal to the PBM to request a higher reimbursement or for them to inform us where the medication can be purchased so that a profit can be made. Hundreds of MAC appeals have been submitted with no response from the PBMs or them stating that the reimbursement rate is fair and no adjustments need to be made. Meeting with the PBMs has not done anything to solve this problem and yet local independent pharmacies continue to do everything they can to do the right thing for patients in their communities including dispensing medications at a loss. If the current pharmacy reimbursement model remains the same and the PBMs are not regulated or held accountable, it will only be a matter of time until all local independent pharmacies are forced to close or sell.

We request that the definition of "Contracting Pharmacy" be removed from the bill.

"Contracting pharmacy" means an independent pharmacy that is not part of a regional or national chain, or part of a pharmacy services administration organization, and is separated from any other pharmacy by at least a ten mile radius.

The intent of this bill was and still is, to increase transparency and regulation of PBMs for all pharmacies in the State of Hawaii. This new definition that was added by the Committee on Health would exclude at least 90% of pharmacies in this state which blatantly contradicts the intent of this bill.

I hope the legislature recognizes that independent pharmacy owners and employees are residents of the State of Hawaii and that an independent pharmacy is a local business. By not supporting some form of regulation or accountability for PBMs, you are letting billion dollar national corporations take advantage and shut down local businesses. I humbly request that as legislatures you consider the larger picture and how this affects our state as a whole. PBMs are profiting from local plans, pharmacies, and consumers, where does that revenue go? Does it stay in Hawaii? Do PBMs help our local economy? Or communities? Or residents? Now think about local independent pharmacies that have been here for generations. Do they help our local economy? Our communities? Our residents?

Thank you for the opportunity to provide testimony on SB1521 SD1 HD1.

March 20, 2019

Representative Roy Takumi, Chair  
Representative Linda Ichiyama, Vice Chair  
Committee on Consumer Protection & Commerce  
415 South Beretania Street  
Honolulu, Hawaii 96813

Representative Chris Lee, Chair  
Representative Joy San Buenaventura, Vice Chair  
Committee on Judiciary  
415 South Beretania Street  
Honolulu, Hawaii 96813

RE: SB 1401 SD2 HD1-- Relating to Pharmacy Benefit Managers  
March 20, 2019, 2:00 p.m., conference room 329

Aloha Chairs Takumi and Lee, Vice Chairs Ichiyama and San Buenaventura and members of the committees:

CVS Health is appreciative of the Committee on Health adopting our requested amendments and are requesting this Joint Committee maintain the adopted amendments as they are drafted in Senate Bill 1401 SD2 HD1 (“SB 1401 SD2 HD1”), relating to pharmacy benefit managers (PBMs). 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.

For reference, our suggested adopted amendments were as follows:

**Delete Section 2, Page 2, lines 4-12.**

- **Rationale:** Existing law already addresses this issue. See Haw. Rev. Stat. § 431R-3:

*“(a) If a retail community pharmacy enters into a contractual retail pharmacy network agreement pursuant to [section 431R-2](#), a prescription drug benefit plan, health benefits plan under chapter 87A, or pharmacy benefit manager shall permit each beneficiary, at the beneficiary's option, to fill any covered prescription that may be obtained by mail order at any retail community pharmacy of the beneficiary's choice within the pharmacy benefit manager's retail pharmacy network.*

*(b) A prescription drug benefit plan, health benefits plan under chapter 87A, or pharmacy benefit manager who has entered into a contractual retail pharmacy network agreement with a retail community pharmacy shall not:*

*(1) Require a beneficiary to exclusively obtain any prescription from a mail order pharmacy;*

- (2) *Impose upon a beneficiary utilizing the retail community pharmacy a copayment, fee, or other condition not imposed upon beneficiaries electing to utilize a mail order pharmacy;*
- (3) *Subject any prescription dispensed by a retail community pharmacy to a beneficiary to a minimum or maximum quantity limit, length of script, restriction on refills, or requirement to obtain refills not imposed upon a mail order pharmacy;*
- (4) *Require a beneficiary in whole or in part to pay for any prescription dispensed by a retail community pharmacy and seek reimbursement if the beneficiary is not required to pay for and seek reimbursement in the same manner for a prescription dispensed by a mail order pharmacy;*
- (5) *Subject a beneficiary to any administrative requirement to use a retail community pharmacy that is not imposed upon the use of a mail order pharmacy; or*
- (6) *Impose any other term, condition, or requirement pertaining to the use of the services of a retail community pharmacy that materially and unreasonably interferes with or impairs the right of a beneficiary to obtain prescriptions from a retail community pharmacy of the beneficiary's choice.”*

**Delete Section 2, Page 2, lines 13-21, Page 3, Page 4, lines 1-9, and Section 4:**

**Rationale:** 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. Mandating the disclosure of competitive pricing information will not lead to better health care or lower health care costs.

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.”<sup>1</sup> 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.”<sup>2</sup>

While the bill includes provisions to attempt to protect confidential, trade secret, or sensitive information provided to the state, we believe the risk of any disclosure at all of proprietary competitive information is too great. If this information were to be in the public sphere, using basic enrollment and coverage market information, manufacturers could easily figure out what price concessions their competitors are providing which eliminates their incentive to lower the cost of their medications. This will lead to increased costs for plan sponsors and their members in Hawaii.

**Replace Deleted language with new “Section 2”:**

**SECTION 2. Chapter 431S, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:**

**§431S – Gag clause prohibited: A pharmacy benefits manager may not prohibit a pharmacist or pharmacy from providing an insured individual information on the amount of the insured’s cost share for such insured’s prescription drug and the clinical efficacy of a more affordable alternative drug if one is available. Neither a pharmacy nor a pharmacist shall be penalized by a pharmacy benefits manager for**

<sup>1</sup> Letter from FTC to Rep. Patrick T McHenry, U.S. Congress, Jul. 15, 2005.

<sup>2</sup> Id.



*disclosing such information to an insured or for selling to an insured a more affordable alternative if one is available*

**Rationale:** Our pharmacists are committed to helping patients find the most affordable options, and we ensure that pharmacists in our Caremark networks do the same. Accordingly, CVS Health does not engage in gag clauses, and we support efforts to ban them.

**Delete Sections 3, 5-7:**

**Rationale:** All of these sections relate to amending existing code which already requires PBMs to register with the Insurance Commissioner. We are currently registered and regulated by the Insurance Commissioner and do not see a justification for amending existing law as is proposed in this legislation.

On behalf of CVS Health, I thank you for allowing us to provide our comments for consideration.

Respectfully,

A handwritten signature in black ink that reads "Melissa Schulman". The signature is written in a cursive style.

Melissa Schulman  
Senior Vice President, Government and Public Affairs  
CVS Health

**SB-1401-HD-1**

Submitted on: 3/15/2019 10:38:03 PM

Testimony for CPC on 3/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ronald Taniguchi, Pharm.D.	Individual	Support	No

Comments:

**SB-1401-HD-1**

Submitted on: 3/19/2019 10:19:36 AM

Testimony for CPC on 3/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Keri Oyadomari	Individual	Support	No

Comments:

**Testimony in Support of SB1401 SD2 HD1**

Aloha Chair Takumi, Chair Lee, and Respected Members of the Committees

A number of local independent pharmacies have been forced to close down or sell to large mainland corporations. The few local independent pharmacies that remain are struggling to survive due to the predatory practices employed by pharmacy benefit managers (PBMs). Pharmacies are being reimbursed below the cost of acquiring certain medications, sometimes losing up to hundreds of dollars per prescription. Pharmacy Benefit Managers currently affect every aspect of a pharmacy's business operations; they serve as the middlemen between health plans, pharmacies and drug manufacturers.

PBMs are very important and crucial players in healthcare. However, the current lack of transparency allows them to operate in the state of Hawaii unregulated. As a single independent pharmacy, I realize we are a small part of this overall large operation. However we are impacted to a huge extent, and in result so are our patients and consumers in these communities we serve. As a small community pharmacy, we are able to provide many personalized and free services to our patients that larger corporations may not be able to.

For example, we have a traveling healthcare provider that administers patients' long acting anti-psychotic injections on mostly monthly basis. She meets them at their homes or sometimes even at the park in order to keep them compliant, and in some cases, off the streets. This is just one example of many, of how we, as a group of dedicated independent pharmacies here today, are able to work with our patients and customize their care quickly.

The intent of this bill is to increase transparency and regulation of PBMs for all pharmacies in the State of Hawaii. Without this legislation, these communities we all serve will be impacted when we can no longer stay in business. Please support SB1401 and help us protect our independent pharmacies and in result the communities that each of us serve.

Thank you for the opportunity to provide testimony on SB1401 SD2 HD1.

Sincerely,

Keri Oyadomari, Pharm.D.



**SB-1401-HD-1**

Submitted on: 3/19/2019 10:23:52 AM

Testimony for CPC on 3/20/2019 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Joo Kim	Individual	Support	No

Comments:

**Testimony in Support for SB1401 SD2 HD1**

Dear Chair Takumi, Chair Lee and Respected Members of the Committee,

My name is Joo Kim and I am a Business Director and active member of the community here in Honolulu. I am testifying my support for SB1401. Pharmacy Benefit Managers currently affect every aspect of a pharmacy's business operations. They work with both pharmacies and insurance providers in determining reimbursements for drugs that are dispensed. SB1401 will provide transparency for these huge billion dollar corporations that operate in our state.

I believe SB1401 will promote better transparency of prescription drug pricing for patients, healthcare providers, and independent pharmacies statewide.

Thank you for the opportunity to submit testimony.

Sincerely,

Joo Kim