

Honolulu, Hawaii

MAR 24 2017

RE: H.B. No. 1444
H.D. 2
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health, to which was referred H.B. No. 1444, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO PHARMACY BENEFIT MANAGERS,"

begs leave to report as follows:

The purpose and intent of this measure is to require pharmacy benefit managers to register with the Insurance Commissioner.

Your Committee received testimony in support of this measure from the Hawaii Pharmacists Association and ten individuals. Your Committee received comments on this measure from the Department of Commerce and Consumer Affairs, Kaiser Permanente Hawaii, and CVS Health.

Your Committee finds that pharmacy benefit managers are administrators of prescription drug programs that are responsible for developing and maintaining formularies and other clinical management programs, processing prescription drug claims for insurance companies or corporations, and negotiating contracts with pharmaceutical manufacturers. Pharmacy benefit managers also perform utilization reviews, manage clinical programs targeted to specific disease states, and operate pharmacies, including mail order and specialty pharmacies. Over the past decade, the role of pharmacy benefit managers in the delivery of health care has increased due to a variety of factors, including coverage



expansions under the Medicare Part D prescription drug benefit and the federal Affordable Care Act and an increase in prescription drug spending, that has motivated commercial health plans and self-insured employers to outsource the management of their spending on outpatient prescription drugs.

Your Committee further finds that pharmacy benefit managers operate inside integrated health care pharmacies, as part of retail pharmacies, and as part of insurance companies. As more and more pharmacies merge with pharmacy benefit managers, questions have been raised regarding the need for transparency and oversight over these entities. For example, a 2014 report by the ERISA Advisory Council to the United States Secretary of Labor, titled "PBM Compensation and Fee Disclosure", noted that vertically integrated pharmacy benefit managers may pose conflicts of interest related to compensation. The report also noted that pharmacy benefit managers' plan sponsors "face considerable obstacles. . . to determine compliance with [pharmacy benefit managers] contracts including direct and indirect [pharmacy benefit managers] compensation contract terms".

Your Committee additionally finds that this measure proposes registration and oversight of pharmacy benefit managers, similar to what is required for health insurance companies or health plans. Your Committee notes that while pharmacy benefit managers may already register with the Business Registration Division, such registration does not provide sufficient regulation or oversight of this industry.

Your Committee has heard testimony that this measure does not distinguish between third-party pharmacy benefit managers and internally owned in-house pharmacies, such as the kind operated and managed by a health maintenance organization. Unlike third-party pharmacy benefit managers, health maintenance organizations who perform in-house pharmacy benefit services are already under the authority of the Insurance Commissioner. An amendment to address this concern is therefore needed. Although your Committee has also heard testimony expressing concern that any sort of oversight of pharmacy benefit managers by the Board of Pharmacy would be inappropriate, your Committee believes these concerns are misplaced. This measure adds a new chapter within title 24, Hawaii Revised Statutes, relating to insurance, and clearly places oversight of pharmacy benefit managers with the Insurance



Commissioner. The Board of Pharmacy has no regulatory or oversight responsibilities over pharmacy benefit managers under this measure.

Finally, your Committee notes that prescription drugs are a major factor of the spiraling increase in health care costs, of which pharmacy benefit managers are a contributing factor. This measure gives clear authority to the Insurance Commissioner to regulate pharmacy benefit managers, is an important first step toward regulating this industry, and is necessary to provide transparency and ensure adequate consumer protection.

Your Committee has amended this measure by:

- (1) Updating the purpose section;
- (2) Clarifying that the definition of "covered entity" only includes those entities that contract with a third-party pharmacy benefit manager to perform pharmacy benefit management;
- (3) Specifying that notwithstanding any law to the contrary, pharmacy benefit managers must still register with the Insurance Commissioner; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1444, H.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1444, H.D. 2, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,

Rosalyn H. Baker

ROSALYN H. BAKER, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

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|---|---|---------------------------------------|---------------------|----------|
| Bill / Resolution No.:* | Committee Referral: | Date: | | |
| HB 1444, HD2 | CPH, WAM | 3/17/17 | | |
| <input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____ | | | | |
| The Recommendation is: | | | | |
| <input type="checkbox"/> Pass, unamended 2312 | <input checked="" type="checkbox"/> Pass, with amendments 2311 | <input type="checkbox"/> Hold 2310 | | |
| <input type="checkbox"/> Recommit 2313 | | | | |
| Members | Aye | Aye (WR) | Nay | Excused |
| BAKER, Rosalyn H. (C) | / | | | |
| NISHIHARA, Clarence K. (VC) | / | | | |
| CHANG, Stanley | | | | / |
| ESPERO, Will | / | | | |
| IHARA, Jr., Les | | | | / |
| KIDANI, Michelle N. | | | | / |
| RUDERMAN, Russell E. | / | | | |
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| TOTAL | 4 | | | 3 |
| Recommendation: | | | | |
| <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted | | | | |
| Chair's or Designee's Signature: | | | | |
| <i>Clarence K. Nishihara</i> | | | | |
| Distribution: | | | | |
| Original | Yellow | Pink | Goldenrod | |
| File with Committee Report | Clerk's Office | Drafting Agency | Committee File Copy | |

*Only one measure per Record of Votes