

STAND. COM. REP. NO.

2484

Honolulu, Hawaii

FEB 16 2018

RE: S.B. No. 3104
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 3104 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:

- (1) Establish requirements for pharmacy benefit managers and maximum allowable cost, including the ability of pharmacies to receive comprehensive maximum allowable cost lists and bring complaints within the purview of the Department of Commerce and Consumer Affairs, rather than the Department of Health;
- (2) Clarify the available penalties for violations of maximum allowable cost requirements; and
- (3) Repeal statutory language that prohibits a contracting pharmacy from disclosing the maximum allowable cost list and related information to any third party.

Your Committee received testimony in support of this measure from The Queen's Health Systems; Hawaii Pharmacists Association; Weinstein Pharmacy; KTA Super Stores; Times Supermarket Pharmacy; Molokai Drugs, Inc.; Shiigi Drug Co., Inc.; North Shore Pharmacy and Health Emporium; Kamehameha Pharmacy; and twenty-five



individuals. Your Committee received comments on this measure from the Department of Commerce and Consumer Affairs, CVS Health, and Pharmaceutical Care Management Association.

Your Committee finds that a drug's maximum allowable cost is the top limit that a pharmacy benefit manager will pay a pharmacy for multi-source generic drugs, while a maximum allowable cost list is a list of the maximum allowable reimbursement costs of multi-source generic drugs established by a pharmacy benefit manager. In general, no two maximum allowable cost lists are alike and will vary according to drug, pharmacy benefit manager, and health plan sponsor. However, the lack of transparency surrounding maximum allowable cost pricing has enabled pharmacy benefit managers to pay aggressively low reimbursements to pharmacies, while charging significantly higher amounts for the same drug to plan sponsors. Furthermore, because pharmacy benefit managers control the formularies for prices, like those through a maximum allowable cost list, a pharmacy benefit manager has the ability to create pricing uncertainty for pharmacies.

Your Committee further finds that a pharmacy will often fill a prescription without knowing how much the pharmacy will be paid, because the maximum allowable cost list can change at any time without warning. Many small independent pharmacies have seen a drastic reduction in the amount of reimbursement they receive from pharmacy benefit managers, with pharmacies being reimbursed below the cost of acquiring certain medications, sometimes losing up to hundreds of dollars per prescription. According to testimony received by your Committee, although existing law permits a pharmacy to appeal this reimbursement if it is below cost, almost all of these appeals are denied.

Your Committee additionally finds that independent pharmacies provide many beneficial and free services to their patients. However, the lack of transparency from pharmacy benefit managers and the pattern of below-cost reimbursement have made it increasingly difficult for the few remaining independent pharmacies in Hawaii to continue to provide these free services or even stay in business. This measure therefore promotes transparency associated with pharmacy benefit managers and prescription drug pricing, which will better protect the State's independent pharmacies and Hawaii consumers.



Your Committee has amended this measure by:

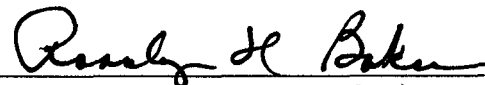
- (1) Clarifying that a pharmacy benefit manager shall review and make necessary adjustments to the maximum allowable cost of each drug on a maximum allowable cost list only once every fourteen days;
- (2) Specifying that a pharmacy benefit manager shall reimburse a contracting pharmacy for a drug based on the maximum allowable cost of that drug on the day the drug is dispensed;
- (3) Clarifying that a pharmacy benefit manager shall notify all contracting pharmacies of a change to the maximum allowable cost for any drug, identified by its national drug code, at least seven days prior to initiating the change and permitting this notification to be provided electronically;
- (4) Requiring a pharmacy benefit manager to disclose where an equivalent drug can be obtained at or below the maximum allowable cost, when a maximum allowable cost is upheld on appeal;
- (5) Clarifying that a contracting pharmacy is permitted to reverse and rebill claims if a pharmacy benefit manager establishes a maximum allowable cost that is denied on appeal and requiring the pharmacy benefit manager to pay to the contracting pharmacy the difference between the maximum allowable cost on the day of the claim and the maximum allowable cost being appealed;
- (6) Specifying that any pharmacy benefit manager that refuses a maximum allowable cost reimbursement for a properly documented claim by a contracting pharmacy shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of trade or commerce;
- (7) Clarifying that the insurance commissioner shall adopt rules to establish a process to subject complaints concerning violations of maximum allowable cost to an external review process and resolve disputed claims;



- (8) Amending the definition of "maximum allowable cost list";
- (9) Changing its effective date to July 1, 2018; and
- (10) 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 S.B. No. 3104, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 3104, 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, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

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

Bill / Resolution No.:* SB3104	Committee Referral: CPH, WAM	Date: 2/6/18		
<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)	✓			
TOKUDA, Jill N. (VC)				✓
CHANG, Stanley	✓			
ESPERO, Will	✓			
IHARA, Jr., Les	✓			
NISHIHARA, Clarence K.				✓
RUDERMAN, Russell E.	✓			
TOTAL	5			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes