

Honolulu, Hawaii

MAR 15 , 2019

RE: S.B. No. 1401  
S.D. 2  
H.D. 1

Honorable Scott K. Saiki  
Speaker, House of Representatives  
Thirtieth State Legislature  
Regular Session of 2019  
State of Hawaii

Sir:

Your Committee on Health, to which was referred S.B. No. 1401, S.D. 2, entitled:

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

begs leave to report as follows:

The purpose of this measure is to strengthen the laws regulating pharmacy benefit managers by:

- (1) Prohibiting pharmacy benefit managers from engaging in self-serving business practices;
- (2) Increasing the pharmacy benefit managers' annual reporting requirements;
- (3) Replacing the registration requirement for pharmacy benefit managers with a licensure requirement; and
- (4) Increasing the application and renewal fees and penalties for failure to renew a license.

The Weinstein Pharmacy, Times Pharmacies, Hawaii Pharmacist Association, Work Injury Medical Association of Hawaii, O'ahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i, Hawaii Pharmacy Association, and several individuals



supported this measure. The Hawaii Association of Health Plans opposed this measure. The Department of Commerce and Consumer Affairs, Department of the Attorney General, Hawaii Employer-Union Health Benefits Trust Fund Board of Trustees (EUTF), CVS Health, Pharmaceutical Care Management Association, and Cigna provided comments.

Your Committee has amended this measure by:

- (1) Deleting its substantive contents and inserting language which:
  - (A) Provides that a pharmacy benefit manager may not prohibit a pharmacist or pharmacy from sharing with an insured individual the insured's cost share for a prescription drug and the clinical efficacy of an available and more affordable alternative drug; and
  - (B) Prevents penalization of a pharmacy or pharmacist for sharing such information; and
- (2) Making technical, nonsubstantive amendments for clarity, consistency, and style.

Your Committee on Health notes that several concerns were raised by testifiers. The Department of Commerce and Consumer Affairs states that implementation of this bill would be difficult, as its Insurance Division lacks the requisite expertise to assess qualifications of pharmacy benefit managers for licensure. The publication of transparency reports on the Insurance Division's website as required by this measure may be difficult, as the contents of those reports are protected from disclosure under chapter 92F, Hawaii Revised Statutes. The Department also notes that the measure may present issues regarding the Employee Retirement Income Security Act (ERISA), given that some pharmacy benefit managers may be servicing ERISA-covered benefit plans.

The Department of the Attorney General raises a concern that this measure may be subject to an ERISA preemption challenge. ERISA is a comprehensive federal legislative scheme that supersedes any and all state laws. This measure may be preempted because of an arguably impermissible connection with an ERISA plan or an impermissible reference to an ERISA plan.

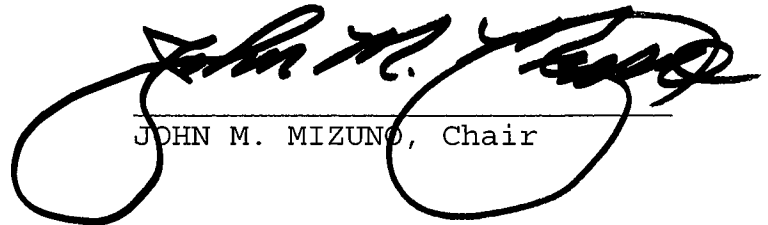


EUTF notes that if this measure becomes law and EUTF is no longer able to incentivize the Retail 90 network and mail order pharmacies, annual claims are estimated to increase \$3,200,000 and \$1,100,000 for the employee and retiree plans, respectively. Such an increase in annual retiree claims is estimated to increase the State and counties unfunded liability by \$22,100,000.

The Hawaii Pharmacy Association notes that local pharmacies are not receiving a full reimbursement from pharmacy benefit managers and that there is not a level playing field between local pharmacies and other competitors.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1401, S.D. 2, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1401, S.D. 2, H.D. 1, and be referred to your Committees on Consumer Protection & Commerce and Judiciary.

Respectfully submitted on  
behalf of the members of the  
Committee on Health,



JOHN M. MIZUNO, Chair



**Record of Votes of the Committee on Health**

Bill/Resolution No.: <b>SB 1A01, SD2</b>	Committee Referral: <b>HLT, CRC/JUD, FIN</b>	Date: <b>3-12-19</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input type="checkbox"/> Pass, unamended (as is) <input checked="checked" type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
HLT Members	Ayes	Ayes (WR)	Nays	Excused
1. MIZUNO, John M. (C)	/			
2. KOBAYASHI, Bertrand (VC)	/			
3. BELATTI, Della Au	/			
4. NAKAMURA, Nadine K.	/			
5. SAN BUENAVENTURA, Joy A.	/			
6. SAY, Calvin K.Y.		✓		
7. TOKIOKA, James Kunane	/			
8. WARD, Gene	/			
<b>TOTAL (8)</b>	<b>7</b>	<b>1</b>		
The recommendation is: <input checked="checked" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: small;">committee acronym(s)</div>				
Vice Chair's or designee's signature: _____ <div style="text-align: center; font-size: 1.5em; font-family: cursive;">B. K. Ward</div>				
<b>Distribution:</b> Original (White) – Committee      Duplicate (Yellow) – Chief Clerk's Office      Duplicate (Pink) – HMSO				