

May 17, 2013

The Honorable Neil Abercrombie
Governor, State of Hawaii
Executive Chambers
Hawaii State Capitol
Honolulu, HI 96813

RE: Request for VETO of HB 65 HD2 SD2 CD1 RELATING TO PRESCRIPTION DRUGS

Dear Governor Abercrombie;

I am writing to you to request that you veto House Bill 65 HD2 SD2 CD1 Relating to Prescription Drugs. This bill is not in the best interest of Hawaii's consumers and patients and we believe that this bill has several unintended consequences that were not apparent to the legislature.

This bill has numerous specific problems:

- Page 5 beginning line 3 This page of the bill sets up a requirement that health plans must contract with any and all pharmacies that want a contract. The bill says that if the retail pharmacy agrees to accept the standard terms then the plans must contract with them but there is no "standard terms" and no definition in the bill. Community pharmacies will be able to demand any terms they want and the health plans will have to accept them in order to not violate the law. This will increase costs to plans and ultimately to the consumers. This "any willing provider" clause requires plans to contract with an "otherwise qualified retail community pharmacy." Because "otherwise qualified" is not spelled out in the bill, plans will have to contract with a pharmacy even if it engages in fraudulent practices, has poor customer service, or makes medication errors. In the case of Kaiser Permanente, it will require us to contract with pharmacies that may be next door to an existing Kaiser pharmacy.
- Page 6 line 8 attempts to address this problem by requiring the insurance commissioner to determine what is "otherwise qualified" even though pharmacies are not regulated by the insurance commissioner and it is not clear if he is able to competently make this determination.
- Page 7 of the bill requires that prescriptions filled at a retail community pharmacy be treated no differently by the health plans than prescriptions filled by mail order pharmacies. **This is going to directly cost patients more money while increasing the risks to their health.**
 - Prescriptions filled via mail order are less expensive than those filled by a pharmacy. At Kaiser Permanente we use these savings to create an incentive program for patients who use maintenance drugs for chronic conditions. All patients with drug coverage pay a copay for each 30 day supply of their

prescription drugs. However patients refilling a prescription for maintenance drugs via mail order can fill a prescription for 90 days while paying a copay for only 60 days.

- Getting the maintenance drugs into the patient's hands is the first step to getting them to take their medication regularly which preserves their health. The bill suggests that patient's health is improved by using a retail community pharmacy; however research does not support this theory. The following two studies determined that there were better clinical outcomes and better medication adherence by patients in the study using mail order prescription refills.
 - NIH study done by Kaiser NCA research re: better clinical outcomes for patients using mail order pharmacies
<http://www.ncbi.nlm.nih.gov/pubmed/21773848>
 - NIH study that shows better medication adherence rates for diabetes drugs for mail order pharmacy users
<http://www.ncbi.nlm.nih.gov/pubmed/20148603>
 - Without this incentive program for the use of the mail order pharmacy we estimate that Kaiser Permanente patients will pay **\$3,000,000** per year in additional copayment cost. This is money that comes directly out of the patient's pocket.
- Page 8 line 7 The report to the insurance commissioner requires plans to release confidential and proprietary information that will then become public information. Unlike information given to the insurance commissioner for rate regulation of health plans there is no means of limiting public release of proprietary information.
 - Page 3 Line 17 The definition of Pharmacy Benefit Manager is not limited to businesses, but also refers to persons which means it will also include any Registered Pharmacist (RPh) who performs the following:
 - assist patients in managing their drug benefit by offering alternatives such as over the counter versus prescription drugs;
 - suggesting other therapeutic options (drugs within same therapeutic class that have slightly different side effects);
 - advising on brand versus generic drugs;
 - monitoring efficacy and safety of the drug, medication adherence calls;
 - post-hospitalization calls by a RPh to a patient to ensure that the patient understands how to take his or her drugs;
 - RPhs working under an MD-approved protocol to adjust drugs, dosages and schedules.

These are all pharmacy benefit management activities and they are also normal activities performed by pharmacist within their scope of practice. When the bill is read with this in mind, the requirements on contracting, reporting and rules could affect the ability of pharmacist to perform their duties.
 - Page 10-11 requires health plans to submit a report to the legislature. The lack of clarity will make doing this report very difficult. For example: since mail order is available to all Kaiser Permanente members would our total membership be "the number of beneficiaries affected by the provisions of this measure"?

- Page 11 line13 It is unclear from the bill what is meant by “rural pharmacy designation pursuant to federal law.” We are not aware of any designation for pharmacies, only for health centers.

We think that these problems with the bill are primarily caused by having nearly all of the language in this bill inserted during conference committee. There was no opportunity for public input on the new concepts and the new language is very different from what was in the previous drafts. A copy of the bill with the new language highlighted is included with this letter.

The action of passing this almost entirely new bill with language that had no hearing by the house and senate prior to it being decked for final reading is, at minimum, not in keeping with the spirit of the Hawaii State Constitution Article III Section 15.

Section 15. *No bill shall become law unless it shall pass three readings in each house on separate days.*

The passage of this conference draft is in violation of the rules of the house and senate for conference committees which requires that the scope and amendments be limited to resolving differences between the house and senate versions.

The authority of the Conference Committee shall be limited to resolving differences between the Senate and House drafts of a measure. Accordingly:
a. With the exception of the Executive Budget, the Judiciary Budget, and the Budget of the Office of Hawaiian Affairs, a Conference Committee shall not amend a measure by inserting any unrelated or new subject matter.

Because of this highly unusual action of creating in essence a new bill in conference committee, the public and affected parties had no ability to voice their concerns. Kaiser Permanente is eager to work with the legislature on crafting a law that will permit an opt out for mandatory mail order, which is what the bill was at the beginning of session; however, we must respectfully ask that you veto HB 65 for all the reasons outlined in the letter.

Thank you for your consideration and, as always, I am eager to answer any questions you may have or provide you any additional information you request.

Sincerely,

Phyllis J. Baumwell Dendle