



February 6, 2018

The Honorable Rosalyn Baker  
Chair, Senate Commerce, Consumer Protection and Health Committee  
415 S. Beretania St,  
Honolulu, Oahu, HI, 96813-2425

Sent VIA Email

**Re: Opposed to S.B. 3072, a bill relating to pharmacy benefit managers**

Dear Senator Baker:

On behalf of the Pharmaceutical Care Management Association (PCMA) we are respectfully opposed to S.B. 3072, a bill relating to pharmacy benefit managers and generic reimbursement using maximum allowable cost (MAC). Provisions in this bill will result in delays in patients receiving their medications and make compliance by a PBM impossible. Also, the ability for the immediate revocation of a PBM registration by the Commissioner is overly punitive and could create massive disruption in the delivery of prescription drug benefits.

PCMA is the national trade association for America's Pharmacy Benefit Managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage through independent businesses, health insurers, labor unions, and federal and state-sponsored health programs.

**Specific Concerns**

15 day Notification Requirements – Page 4, lines 12-15

Compliance with this provision would be impossible and conflicts with other sections of the bill.

- A PBM is not able to both review and adjust a MAC list once every seven days and immediately implement those adjustments (as required by sub-section (e)); and, also give 15 days-notice of MAC changes (as required by proposed sub-section (f)).
- This requirement will also make it operationally impossible for a PBM to immediately adjust the MAC price on a successful MAC appeal (as required by sub-section (g)(5)).
- PBMs cannot foresee market events or predict with certainty whether the purchase price of a drug will increase or decrease over a given period of time. MAC prices are largely dictated by marketplace dynamics, so requiring PBMs to provide 15 days-notice for any changes effectively means that all MAC Prices will be stale and will no longer reflect the actual market price of a drug product. This may result in pharmacies being under reimbursed should the price of a drug increases, or a patient paying more if the price decreases.

Reimbursement Requirements on Approved MAC Appeals - Page 6, lines 10-16



It is unclear what the intent of this provision is or how it strengthens the existing provision on reversing and rebilling the claim when an appeal is upheld.

Pharmacy Right to Refuse Service if Paid Less than Acquisition Cost – Page 7, lines 3 - 14

This could lead to patients going without important medications and not adhering to the drug therapy regimens for serious illnesses. This provision puts pharmacy profits before patients. Overall pharmacy profits are measured on the dispensing of all drugs, brand and generic. There are already statutory protections in place that give a pharmacy the ability to appeal for a higher reimbursement on generic drugs on a MAC list.

Immediate revocation of PBM registration - Page 7, lines 15-17

This provision is overly punitive and likely in violation of due process rights under the Hawaii Administrative Procedures Act. The result of an immediate revocation of a PBM registration could leave millions of Hawaiians without access to important prescription drug coverage and would be disruptive to the entire healthcare delivery system in Hawaii.

Report to the legislature – Page 7, lines 20-21 and Page 8 lines 1-3)

The market information included in the appeals is proprietary, competitive information that could lead to collusion and price increases. As the Federal Trade Commission stated in its letter to Representative Mark Formby in Mississippi on legislation that allowed disclosure of a PBM's proprietary information, "These provisions could result in sharing competitively sensitive cost information among competing pharmacies and pharmaceutical manufacturers. In particular, such information sharing could undermine competition between pharmacies to be included in PBM networks and between pharmaceutical manufacturers to offer discounts to PBMs. Both outcomes could raise prescription drug prices for consumers."<sup>1</sup>

For the reasons stated in this letter, we oppose S.B. 3072 and request it not pass. We appreciate your consideration of our comments.

Sincerely,

Lauren Rowley  
VP, State Affairs

cc: Senate Commerce, Consumer Protection and Health Committee Members

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<sup>1</sup> FTC Staff letter to Rep. Mark Formby (MS) March 2011; <https://www.ftc.gov/policy/advocacy/advocacy-filings/2011/03/ftc-staff-letter-honorable-mark-formby-mississippi-house>

