



February 22, 2021

Senator Rosalyn Baker, Chair  
Senator Stanley Chang, Vice Chair  
Committee on Commerce and Consumer Protection

RE: S.B. 602 Relating to Pharmacy Benefit Managers  
Submitted electronically

Aloha Chair Baker, Vice Chair Chang and Members of the Committee:

On behalf of the Pharmaceutical Care Management Association (PCMA), we greatly appreciate the opportunity to testify on S.B. 602 relating to Pharmacy Benefit Managers. We respectfully request the committee to consider our comments in the interest of payers and patients.

PCMA is the national trade association representing America's Pharmacy Benefit Managers (PBMs), which administer prescription drug plans for more than 266 million Americans with health coverage provided through Fortune 500 employers, health insurance plans, labor unions, and Medicare Part D. PBMs are engaged by clients including health insurers, government agencies, unions, school districts, and large and small employers, to manage pharmacy benefits pursuant to health insurance benefits and contracts. PBMs are projected to save payers over \$30 billion through the next decade thanks to tools such as negotiating price discounts with drug manufacturers, establishing pharmacy networks and disease management and adherence programs.

**§346 - Pharmacy benefit managers; contracting pharmacies; reimbursements; maximum allowable cost basis; prohibition**

The prohibition on using Maximum Allowable Costs for managed care contracts will create a perverse disincentive for pharmacies to shop for the lowest costs drugs available, resulting in higher costs for payers and patients.

The bill also prohibits a PBM from reimbursing an independent or rural pharmacy an amount less than the rural rate for prescription drugs. It's worth noting that more often than not, rural pharmacies are paid higher reimbursement rates because, while they have a smaller patient volume, they are important for patient access. It's important to remember that not all independent pharmacies are rural pharmacies and should not be reimbursed at the same rates as rural pharmacies – independent pharmacies in urban and suburban areas have greater volume and therefore their reimbursement rates reflect this fact. If all independent pharmacies must be reimbursed at a rural rate, this rate is likely to be inflated and may create a windfall to those pharmacies at the expense of Hawaii plan sponsors and consumers.

Additionally, this bill takes away incentives for pharmacies to purchase drugs cost effectively because they will always be guaranteed reimbursement at or above the rural rate. If the market



price of a drug decreases, consumers would not get the benefit of the savings. Pharmacies could buy drugs at a cheaper price, but PBMs will be forced to reimburse pharmacies (and bill the health plan) at the higher rural rate since adjustments cannot be made for 30 days. Ultimately, if PBMs were to comply with this bill, prescription drug costs for Hawaiian consumers and employers will increase.

**§431S- Gag clause prohibited**

Although gag clauses are already prohibited in both the public and commercial markets under federal law, we support this provision.

**§431S - Annual transparency report; commissioner report to the legislature**

PCMA does not support the disclosure of rebate data. Rebates are one of the only a few tools PBMs have to exert downward pressure on drug manufacturers to lower their prices. Allowing rebate data to be disclosed only benefits drug manufacturers, allowing them to avoid discounting their drug prices. Even the disclosure of aggregated rebate data could potentially be “reversed engineered” by drug manufacturers, enabling them to know which rebates were given to which PBM, resulting in a race to bottom as manufacturers would no longer have an incentive to offer deeper discounts than their competitors.

The definition of “rebates” includes “price concessions” related to value-based purchasing. Rebates are different than performance-based contracts. Rebates are connected to utilization and market growth for pharmaceuticals, while performance-based or value-based arrangements are linked to the performance of the drug or other arrangements. These should not be considered “rebates.”

**§431S3- Registration required**

This section imposes several new PBM registration requirements. However, these provisions are much more akin to licensing requirements under the guise of the registration nomenclature. The Insurance Commissioner has jurisdiction over the pharmacy benefits of insured plans and the ability to enforce those requirements on plans providing those benefits within the state. PBMs, through their contracts with health plans, cannot do anything that would bring their clients out of compliance with state law. PBMs are required to comply with the same consumer protections governing utilization review, prior approval, and dispute resolution systems, among others. As a condition of registration, the language states that a PBM demonstrate “background expertise” and “financial integrity” and it is unclear as to what these standards are. This enhanced registration to more of a licensing requirement is unnecessary.

Again, thank you for the opportunity to testify on S.B. 602 and we look forward to working with the Committee to develop solutions that will demonstrably benefit Hawaii’s residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Head", is written over a white background.

Bill Head  
Assistant Vice President  
State Affairs