

LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Health

HB2414, Relating to Health

Testimony of Chiyome Leinaala Fukino, M.D. Director of Health

February 1, 2008
8:00 am

1 **Department's Position:** The Department of Health provides comments on Section 1 of the bill, and
2 defers to the Department of Commerce and Consumer Affairs on Section 2.

3 **Fiscal Implications:** There is an unspecified appropriation of general funds, and the department cannot
4 support an appropriation outside the Executive Supplemental Budget.

5 **Purpose and Justification:** The Department of Health appreciates this measure's attempts to offer
6 creative ideas to address health professional shortages throughout the state. The department has been
7 has been actively involved in health professional recruitment and retention efforts.

8 The bill mandates the department to pay a percentage of professional liability insurance for
9 physicians practicing in health professional shortage areas (HPSA) "whose services are compensated by
10 receipts from Medicaid". Although the Department of Health's Primary Care Office submits
11 applications to the US Department of Health and Human Services (DHHS), Health Resources Services
12 Administration (HRSA), Shortage Designation Branch for Hawaii's HPSA designations, the department
13 does not support asking the State to pay medical malpractice insurance premiums for private physicians

1 practicing in these areas. We believe that enactment of meaningful tort reform is a much more
2 comprehensive solution as proposed in the Administration's bill HB 3102.

3 Although we appreciate the opportunity to discuss different ways in which the State might
4 effectively address the health professional shortages, we cannot support Section 1 of this measure.

5 Thank you for the opportunity to testify.



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Hawaii Medical Association
1360 S. Beretania St.
Suite 200
Honolulu, HI 96814
(808) 536-7702
(808) 528-2376 fax
www.hmaonline.net

February 1, 2008

LATE
Testimony

To: Rep. Josh Green, M.D., Chair
Rep. John Mizuno, Vice Chair
House Health Committee

PLEASE DELIVER
Health Committee
Friday
2-1-08
8:00am
Room 329

From: Cynthia J. Goto, M.D., President
Linda Rasmussen, M.D., Legislative Co-Chair
Philip Hellreich, M.D., Legislative Co-Chair
Paula Arcena, Executive Director
Dick Botti, Government Affairs Liaison

Re: HB2414 Relating to Health (Provides a good Samaritan exemption from civil damages for physicians practicing medicine in health professional shortage areas and rural areas of the state)

The Hawaii Medical Association support the intent of HB2414.

However, the provision of tax credits for medical liability insurance premiums falls short of addressing the cost driver behind high premiums and shifts costs from private practice physicians to government. This essentially makes government the deep pocket and increases the incentive for filing medical malpractice lawsuits.

In addition, the bill is intended to reward physicians who treat Medicaid patients, which does not address the fact that patients with private insurance are having difficulty finding a physician.

Unlimited and unpredictable jury awards have led to unlimited and unpredictable risk for liability insurers. In Hawaii, malpractice insurance is no longer a profitable business and Hawaii is no longer home to any for-profit malpractice insurers.

Medical Insurance Exchange of California (MIEC), The Doctors Company and Hawaii Physicians Indemnity Plan (HAPI) are the remaining malpractice insurers in Hawaii. All are not-for-profit organizations owned and operated by physicians.

Hawaii's average annual medical malpractice insurance premium increased 90% from \$33,000 to \$63,000 between 2002 and 2006 for physician specialists who provide high risk, life-saving treatment, due to the cost of defending malpractice cases filed in Hawaii. Specialists, such as Orthopedic Surgeons, Neurosurgeons, General Surgeons and Obstetricians have been hit the hardest.

According to the Medical Insurance Exchange of California, Hawaii's major medical malpractice insurer, 86% of claims filed against its insured Hawaii physicians are found to be without merit and result in no payment to the claimant.

The State of Hawaii Medical Claims Conciliation Panel reviews all medical malpractice claims filed in Hawaii. In 2006, the M CCP found no negligence in 82% of the cases it reviewed.

As a result, Hawaii has a shortage of physicians in both primary care and specialty care. Patients do not have access to the medical care they need.

The Hawaii legislature needs to pass laws that stabilize now volatile medical malpractice insurance premiums, which is a major cause of Hawaii's patient access to care crisis.

The HMA recommends the following as meaningful ways to stabilize medical malpractice insurance premiums, proven successful by other states:

1. Establish a \$250,000 cap on non-economic damages

- Non-economic damages are compensation for pain and suffering, loss of consortium and loss of enjoyment. These are difficult damages to quantify and a cap would establish a much needed standard.
- The HMA proposes no cap on economic damages, which are compensation for past and future medical expenses, rehabilitative expenses, living expenses and lost income or income-equivalents (in the case of a homemaker, for instance). These damages can be quantified.
- The HMA proposes no cap on punitive damages, which is compensation intended to punish the defendant.

2. Abolish Joint and Several Liability

- Hold defendants responsible only for the portion of fault attributable to them.

Formerly in crisis, the state of Texas has successfully overcome its patient access to care crisis in large part due to establishing caps on non-economic damages and correcting the inequity of its law on joint and several liability. Improvements include:

- Licensing 3324 new doctors in 2007, including a net gain of 186 obstetricians
- Bringing specialty care to underserved areas, including the addition of 189 physicians in Rio Grande Valley and other rural areas
- Stabilized and reduced medical malpractice insurance premiums
- Four new admitted, rate-regulated malpractice insurance carriers (Advocate MD of the Southwest, Medical Liability Insurance Company of America, Medicus Insurance Company and the Physicians Insurance Company).

Hawaii could reap similar benefits with the passage of meaningful medical liability reform.

Thank you for the opportunity to testify on this matter.