



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.C.R. NO. 146, URGING THE ATTORNEY GENERAL TO INITIATE AN INVESTIGATION AND CORPORATE AUDIT OF THE HAWAII MEDICAL SERVICES ASSOCIATION'S PRACTICE OF MAINTAINING AN EXCESSIVE SURPLUS, PROVIDING LARGE BONUSES TO STAFF, AND REIMBURSEMENT PATTERNS OVER THE PAST TEN YEARS TO DETERMINE IF THE CHARITABLE RETURN TO THE COMMUNITY JUSTIFIES ITS NONPROFIT STATUS.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Friday, March 14, 2008 **TIME:** 10:00 AM

LOCATION: State Capitol Room 329
Deliver to: State Capitol, Room 436, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or James F. Nagle, Deputy Attorney General

Chair Green and Members of the Committee:

The Attorney General opposes this resolution, which would require the Attorney General to initiate an investigation into certain practices by Hawaii Medical Services Association ("HMSA").

HMSA is a mutual benefit society regulated by the Commissioner of Insurance, not the Attorney General. HMSA has been issued a certificate of authority to conduct business under section 432:1-301, Hawaii Revised Statutes, by the Insurance Commissioner. Upon request by the Insurance Commissioner, HMSA must provide the Insurance Commissioner with an audit by an independent certified public accountant. See section 432-1:405, Hawaii Revised Statutes. HMSA must provide annual reports to the Insurance Commissioner. See section 432:1-404, Hawaii Revised Statutes.

HMSA is not a charitable organization, in that it does not operate for charitable, religious, educational, or other eleemosynary purposes. Rather, HMSA derives its federal tax exempt status from the issuance of insurance to its members.

Although HMSA is a Hawaii nonprofit corporation, the only express regulatory authority the Attorney General has over HMSA

would be to seek the dissolution of HMSA's corporate status under section 414D-252, Hawaii Revised Statutes, which would not apply on these facts.¹

Thus, it would appear to be more appropriate to have the Insurance Commissioner investigate policy issues regarding tax exemptions for mutual benefit societies.

¹§414D-252 Grounds for judicial dissolution. (a) The court may dissolve a corporation in a proceeding by the attorney general if it is established that:

- (1) The corporation obtained its articles of incorporation through fraud;
- (2) The corporation has continued to exceed or abuse the authority conferred upon it by law

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**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008**

ON THE FOLLOWING MEASURE:

H.R. NO. 125, URGING THE ATTORNEY GENERAL TO INITIATE AN INVESTIGATION AND CORPORATE AUDIT OF THE HAWAII MEDICAL SERVICES ASSOCIATION'S PRACTICE OF MAINTAINING AN EXCESSIVE SURPLUS, PROVIDING LARGE BONUSES TO STAFF, AND REIMBURSEMENT PATTERNS OVER THE PAST TEN YEARS TO DETERMINE IF THE CHARITABLE RETURN TO THE COMMUNITY JUSTIFIES ITS NONPROFIT STATUS.

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TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-FOURTH LEGISLATURE
Regular Session of 2008

Friday, March 14, 2008
10:00 a.m.

TESTIMONY ON HOUSE CONCURRENT RESOLUTION NO. 146/HOUSE RESOLUTION NO. 125 – URGING THE ATTORNEY GENERAL TO INITIATE AN INVESTIGATION AND CORPORATE AUDIT OF THE HAWAII MEDICAL SERVICES ASSOCIATION’S PRACTICE OF MAINTAINING AN EXCESSIVE SURPLUS, PROVIDING LARGE BONUSES TO STAFF, AND REIMBURSEMENT PATTERNS OVER THE PAST TEN YEARS TO DETERMINE IF THE CHARITABLE RETURN TO THE COMMUNITY JUSTIFIES ITS NONPROFIT STATUS.

TO THE HONORABLE JOSH GREEN, M.D., CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department takes no position on House Concurrent Resolution 146 and House Resolution 125. However, we wish to make the following observations.

If the Legislature is contemplating removing the tax exemption for mutual benefit societies found in Hawaii Revised Statutes (“HRS”) section 432:1-403, it would affect not only HMSA, but other mutual benefit societies like UHA and HMAA. There is also the question of what would happen to the tax exempt status of HMOs. Whatever the outcome, the Commissioner would be concerned about maintaining a level playing field for market participants. This Committee should also note that many companies pass on

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the cost of their tax to their customers. If HMSA loses its tax exemption and they end up passing the cost on to consumers, it may not be in the best interests of the public.

We should point out that the tax exemption found in HRS section 432:1-402 is based on the entity being "a nonprofit medical indemnity or hospital service association or society or both". In other words, it is deemed to be a charitable purpose to provide health insurance and no other charitable activities appear to be contemplated by the statute. We are therefore not sure what the resolution means by a "charitable return to the community."

We thank the Committee for this opportunity to testify.