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TO THE HOUSE COMMITTEES ON
CONSUMER PROTECTION AND COMMERCE
AND JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Monday, March 23, 2009
2:00 p.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 1676, S.D. 2 – RELATING TO HEALTH.

TO THE HONORABLE ROBERT N. HERKES AND JOHN RIKI KARAMATSU, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Insurance Division (“Insurance Division”) of the Department of Commerce and Consumer Affairs. The Insurance Division supports this bill and concurs with the suggestions made by the Regulated Industries and Complaints Office (“RICO”).

The purpose of this bill is to support the expanded use of telemedicine services and technology in the state by adding a new section to Hawaii Revised Statutes (“HRS”) chapter 453 and by amending HRS §§ 431:10A-116.3, 432:1-601.5, and 432D-23.5.

This bill is intended to address the State’s shortage of physicians and to improve access to health care services and certain medical specialists, particularly in rural areas.

Although it may not be appropriate for all medical situations, telemedicine provides a cost-effective and convenient alternative in certain circumstances. This is especially important in rural areas where access to any medical care is difficult.

Medical reports from telemedicine services include a documented patient evaluation, which will become part of the patient's health record and be made available to the patient. The Insurance Division has been encouraging implementation of electronic medical records to reduce costs and errors.

This bill is also consistent with the Legislature and Administration's efforts to enhance broadband capability, as reflected in House Bill Nos. 1077 and 984.

We thank the Committees for the opportunity to present testimony on this matter and ask for your favorable consideration.



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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION, 2009

MONDAY, MARCH 23, 2009
2:00 P.M.

TESTIMONY ON SENATE BILL NO. 1676 S.D.2—RELATING TO HEALTH

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND TO THE HONORABLE GLENN WAKAI, VICE-CHAIR,
AND TO THE HONORABLE KEN ITO, VICE-CHAIR,
AND TO MEMBERS OF THE COMMITTEES:

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs appreciates the opportunity to testify on Senate Bill No. 1676 S.D.2, Relating to Health. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer. RICO offers the following comments.

Senate Bill No. 1676 S.D.2 clarifies that telemedicine is within a physician's scope of practice and is authorized when practiced by a licensed physician. The bill provides that "telemedicine" means telecommunication services, which includes real-time video or web conferencing communication, or secure web-based communication used to establish a physician-patient relationship, evaluate a patient, or treat a patient. The bill further provides that "telemedicine" is included in "telehealth" as that term is used in Chapters 431, 432, and 432D, Hawaii Revised Statutes ("HRS").

Senate Bill No. 1676 S.D.2 also clarifies that the standards of medical practice that are applicable when treatment recommendations are made via telemedicine, including issuing a prescription via electronic means, are the same standards of practice as those in traditional physician-patient settings. The Senate Draft 2 indicates that these traditional physician-patient settings include those that do not include a face-to-face visit, but in which prescribing is appropriate, including on-call telephone encounters and encounters for which a follow-up visit is arranged.

RICO recognizes that treatment rendered under the control of a health care service association by a network of credentialed participating physicians has certain built-in checks and balances that make "cutting-edge" medicine feasible and beneficial. However, not all licensees are credentialed, participating physicians who are providing covered treatment. The bill as drafted would mean that a

licensee who, for example, advertises and prescribes a non-controlled substance like Viagra, would be able to do so through a telephone encounter.

RICO notes that the current definition of "telehealth" in §§432:1-601.5(e)(coverage for telehealth), 431:10A-116.3(e)(coverage for telehealth), and 432D-23.5(e)(coverage for telehealth), HRS, states that "telecommunications" is as defined in §269-1, HRS, but excludes standard telephone contacts, facsimile transmissions or email text, in combination or by itself. To promote consistency with these other statutory provisions, as well as more effective enforcement, the same language specifying what does not constitute telecommunications services is needed in Chapter 453, HRS. As such, RICO respectfully requests replacing the definition of telemedicine on page 4 lines 8-14 in this draft with the following language that mirrors existing law:

(b) For purposes of this section, "telemedicine" means the use of telecommunication services, as defined in section 269-1, including real-time video or web conferencing communication, or secure interactive or non-interactive web-based communication, for the purposes of establishing a physician-patient relationship, or evaluating or treating a patient. Standard telephone contacts, facsimile transmissions, or email text, in combination or by itself, does not constitute a telemedicine service for purposes of this chapter.

There are already two different existing versions of "telemedicine" in Chapter 453, HRS, (§453-2(b)(3) and §453-2(b)(6)), as well as a definition of "telehealth" in §§432:1-601.5(e), 431:10A-116.3(e), and 432D-23.5(e), HRS. If the language in S.B. No. 1676 S.D.2 is adopted as is, there will be no fewer than **four** different definitions that the Board and RICO must reconcile. This will contribute to

confusion among the public, health care practitioners, and affiliated organizations as to which definitions apply.

RICO believes that the current definitions of telehealth permit a measured level of "cutting edge" medicine to occur in the participating provider context and suggests that this level be maintained and not expanded as proposed on page 5 of the bill.

Thank you for the opportunity to submit testimony on Senate Bill No. 1676 S.D.2. I will be happy to answer any questions that the members of the Committees may have.

**PRESENTATION OF THE
HAWAII MEDICAL BOARD**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Monday, March 23, 2009
2:00 p.m.

TESTIMONY ON SENATE BILL NO. 1676, S.D. 2, RELATING TO HEALTH.

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR, AND
AND MEMBERS OF THE COMMITTEES:

My name is Constance Cabral, and I am the executive officer for the Hawaii Medical Board. On behalf of the Board, I thank you for the opportunity to provide testimony on S.B. No. 1676, S.D. 2, Relating to Health.

The purpose of this bill is to clarify the support and expansion of new technology in the use of telemedicine, to clarify that telehealth is within the scope of a physician's practice, and to clarify that a provider-patient relationship may be established through telehealth where the provider is licensed to practice in this State.

The companion bill, H.B. No. 808, was heard by the House Committee on Health on January 30, 2009 and passed out unamended. Subsequently, it was

heard jointly by the House committees on Consumer Protection and Commerce and Judiciary on February 23, 2009 and passed out unamended.

On March 3, 2009, the Board testified on S.B. No. 1676, S.D. 1 before the Senate committees on Commerce and Consumer Protection and Judiciary that it had not taken a position on the bill. Subsequently, the Board met on March 13, 2009, reviewed the Senate Draft 2 and agreed, with our Deputy Attorney General's advice, on amendments we would like to suggest. With these amendments, the Board can support the bill:

Of the following amendments requested to the bill, the first three were not incorporated in H.B. No. 808.

The Board requests these changes be made to this bill, for the reasons provided:

- The Board requests that "patient or" on page 5, line 18, be deleted. The Board believes that consultation should occur between a patient's physician and a physician licensed in another state;
- The Board also requests that the word "any" be deleted from page 5, line 19 as it is too broad. In its place, the Board recommends the phrase "a legitimate medical" be inserted. Line 19 would then read as follows:
"physician licensed in this State may use telemedicine for a legitimate medical"; and

- The Board requests that the new subsections (a) and (b) be combined and revised to read as follows:

“(a) Nothing in this chapter shall preclude any physician, within the scope of the physician’s license to practice, from practicing telemedicine or telehealth as defined in sections 431:10A-116.3(b), 432:1-601.5(b), and 432D-23.5(b), for the purposes of establishing a physician-patient relationship, or evaluating or treating a patient.”

This revision is for the purposes of clarity and consistency. It would alleviate any confusion that could result with the use of the different terms “telemedicine” and “telehealth”. With this revision, the newly created subsections (c) and (d) would then be redesignated as (b) and (c).
- Lastly, the Board requests that an amendment be made to this bill to insert the term “community” on page 5, line 3, to read as follows:

“held to the same **community** standards of appropriate practice as those in”. This amendment will bring it in line with the laws on the insurance code, mutual benefit societies and fraternal benefit societies as they relate to coverage for telehealth. The pertinent parts of those laws are:

Insurance Code:

"§431:10A-116.3 Coverage for telehealth. (b) No accident and health or sickness insurance plan that is issued, amended, or renewed shall require face-to-face contact between a health care provider and a patient as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional **community** at the time the services were provided. The coverage required in this section may be subject to all terms and conditions of the plan agreed upon among the enrollee or subscriber, the insurer, and the provider."

(emphasis added)

Mutual Benefit Societies:

"§432:1-601.5 Coverage for telehealth. (b) No mutual benefit society plan that is issued, amended, or renewed shall require face-to-face contact between a health care provider and a patient as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional **community** at the time the services were provided. The coverage required in this section may be subject to all terms and conditions of the plan agreed upon among the

enrollee or subscriber, the mutual benefit society, and the provider.”

(emphasis added)

Fraternal Benefit Societies:

“432D-23.5 Coverage for telehealth. (b) No health maintenance organization plan that is issued, amended, or renewed shall require face-to-face contact between a health care provider and a patient as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional **community** at the time the services were provided. The coverage required in this section may be subject to all terms and conditions of the plan agreed upon among the enrollee or subscriber, the health maintenance organization, and the provider.” (emphasis added)

With these amendments, the Board supports the bill. Thank you for the opportunity to provide testimony on this bill.

**Testimony to the Senate Committees on Consumer Protection and Commerce
and Judiciary**

**Monday, March 23, 2009 at 2:00 p.m.
Conference Room 325, State Capitol**

RE: SENATE BILL NO. 1676 SD2 RELATING TO HEALTH

Chairs Herkes and Karamatsu, Vice Chairs Wakai and Ito , and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber supports Senate Bill 1676 SD2 relating to Health.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure makes amendments to clarify the support and expansion of new technology in the use of telemedicine and clarifies that telehealth is within the scope of a physician's practice.

Quality health care is critical to the people and economy of Hawaii. However, the quality that Hawaii has enjoyed for years is now in jeopardy. Some of the prevalent problems include the lack of access to healthcare, especially on the neighbor islands, and the shortage of acute beds.

The Chamber believes this measure will help alleviate some of these problems by allowing residents, especially in rural areas, to gain access to a physician for less than serious ailments, thus freeing up acute beds for more serious and dire situations.

Therefore, The Chamber supports improvements which can assist in promoting the quality of our health care system This includes legislation that will clarify that physicians have the ability to engage in telemedicine.

In light of the above, The Chamber of Commerce of Hawaii supports SB 1676 SD2. Thank you for the opportunity to testify.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 23, 2009

The Honorable Robert N. Herkes, Chair
The Honorable Jon Riki Karamatsu, Chair

House Committees on Consumer Protection and Commerce and Judiciary

Re: SB 1676 SD2 – Relating to Health

Dear Chair Herkes, Chair Karamatsu and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in support of SB 1676 SD2 which would ensure that Hawaii is able to remain a leader in the realm of telemedicine by adding statutory language that clarifies a physician's scope of practice in relation to the provision of telehealth services.

Hawaii is on its way to becoming a national leader in the field of health care technology. Our unique geographic location necessitates that cutting edge ideas and technologies are fostered to help overcome issues regarding access to medical care especially in rural areas.

Earlier this year, HMSA launched its Online Care program, aimed at improving access to care throughout the Islands. Residents can speak with a local physician from HMSA's network of credentialed participating physicians 24 hours-a-day, 7 days-a-week. We believe that this program will benefit all the people of Hawaii and can serve as a model as we look for solutions to improve the health care system across the nation.

The language contained in SB 1676 SD2 is meant to clarify existing state law that allows physicians to engage in telemedicine. We would respectfully urge the Committee to support SB 1676 SD2 in its current form and pass the measure unamended. Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read "JD".

Jennifer Diesman
Assistant Vice President
Government Relations



March 23, 2009

The Honorable Robert N. Herkes, Chair
The Honorable Jon Riki Karamatsu, Chair

House Committees on Consumer Protection and Commerce and Judiciary

Re: SB 1676 SD2 – Relating to Health

Dear Chair Herkes, Chair Karamatsu and Members of the Committees:

My name is Rick Jackson and I am Chief Operating Officer of MDX Hawai'i, a third party administrator of Hawai'i health benefit plans since 1985. Our health care clients include The Queen's Health Systems, Longs Drug, Aetna, Cigna, Deseret Mutual, United Healthcare and Wellpoint.

MDX Hawai'i appreciates the opportunity to testify in support of SB 1676 SD2 which would broaden access to physicians for patients in rural areas, potentially impact unnecessary emergency room visits and utilize proven internet and telecommunications technology familiar to Hawai'i residents in a patient-friendly fashion. We agree that it is important to clarify the definition of the practice of medicine in Hawai'i statute in order to accomplish this. Many Hawai'i physicians are unwilling to participate in the HMSA pilot program because of the issues dealt with in this bill and their effect on medical malpractice risk.

HMSA decided early on in its service delivery design for telemedicine services that it should not matter which Health Plan the patient belonged to...that their new service was open to patients from any insurer. Several local health plans, MDX Hawai'i included, have discussed with HMSA the idea of incorporating telemedicine services proposed in this bill into various of their own health plan benefit designs. We believe HMSA is taking a critical, correct step on behalf of the entire community.

Thank you for the opportunity to offer comments today.

Sincerely,

Rick Jackson
President

Sharon Sagayadoro

From: Lindsey, Jana [JLindsey@shrinenet.org]
Sent: Sunday, March 22, 2009 10:12 PM
To: CPCtestimony
Subject: Hawaii State Senate Committee on Commerce and Consumer Protection Re: SB 1676 SD2

To: Hawaii State Senate Committee on Commerce and Consumer Protection

Sen. Rosalyn H. Baker, Chair
Sen. David Y. Ige, Vice Chair

DATE/TIME: Monday, March 23, 2009 at 2:00 p.m.
PLACE: State Capitol Conference Room 325

Public Decision Making on: STATE OF HAWAII SB1676 SD2

POSITION: Amend SB1676 SD2 by amending sentence on Page 5 section 2 (f) that states “*A physician shall not practice telemedicine in this State without a license to practice medicine in Hawaii*” to state “*A physician shall not practice telemedicine in this State without a license to practice medicine in the United States.*”

From my experience as the Telemedicine Program Manager at Shriners Hospitals for Children, Honolulu, I am aware that Hawaii has lost its only Pediatric Hand Surgeon specialist a few years ago. Since his departure, Shriners has been consulting with a pediatric hand surgeon from another Shriners Hospital in Northern California through telemedicine. If it were not for the ability to consult with the out-of-state physician by telemedicine, the patient and the family member (children requires an escort) would have to fly over to Northern California for consultation, surgery, and follow-up. This is at least 3 round trip visits, two of which was avoided by telemedicine.

Being forced to seek care out of the State results in a longer length of time in lost of school/work time for the child/parent, and incurrence of expenses for airfare and accommodations on the mainland. Although the care we provide at Shriners is at no cost to the family, obtaining consultation and follow-up via telemedicine is financially beneficial and cost effective for the patient/family, Shriners, and the State of Hawaii. When patients leave the State to seek care, money also leaves that State. In addition, since most of these kids have Medicaid/Quest, the State of Hawaii is burdened with the cost of off-island/out-of-state transportation if care isn't available in their community.

According to the Medicaid Non-emergency Transportation: National Survey 2002-2003, the “State Medicaid programs are required to provide necessary transportation to and from medical providers. Hawaii had paid \$1 million on NEMT for fiscal year 2002. This expense represents about 4,000 one-way and 30,000 two-way NEMT trips.”

Having a sentence in SB1676 SD2 limiting telemedicine to physicians only licensed in the State of Hawaii would restrict healthcare access and be detrimental to the people of Hawaii. Therefore, I am requesting that the sentence on page 5 section 2 (f) be amended to state “*A physician shall not practice telemedicine in this State without a license to practice medicine in the United States.*”

Thank you for this opportunity to provide my testimony and intense request to amend SB1676 SD2.

Sincerely,

Jana L.C. Lindsey, RN, BSN, MBA, CMC

Telemedicine Program Manager, Shriners Hospital for Children – Honolulu
Founder/Past Chair, Pacific Islands Chapter of the American Telemedicine Association
American Telemedicine Association Board of Director and Policy Committee Member
Hawaii State Rural Health Association Board of Director and Secretary
Hawaii Pacific Chapter for Health Information Management System Society Board of Director
Hawaii Telehealth Collaborative and Hawaii State Telehealth Task Force Member

Jana Lindsey, RN, BSN, MBA

Telemedicine Coordinator


Shriners Hospitals for Children, Honolulu

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"People are lonely because they build walls instead of bridges" ~ Joseph Fort Newton

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