HB 2087

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March 9, 2010

MEMORANDUM

TO: Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce and Consumer Protection

FROM: Lillian B. Koller, Director

SUBJECT: **H.B. 2087, H.D. 1, Proposed S.D. 1– RELATING TO HEALTH**

Hearing: Tuesday, March 9, 2010, 3:00 P.M.
Conference Room 016, State Capitol

PURPOSE: The purpose of this bill is to exempt government-contracted health plans from paying interest under the Clean Claims Law when delays are due to non-payment by government payers to the plans. This bill also requires the State to pay interest on late payments to health care plans related to QUEST and appropriates funds from the Hurricane Reserve Trust Fund to pay for Medicaid coverage for Compact of Free Association migrants and authorizes the expenditure of matching federal funds.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) strongly opposes this bill.

The addition of the requirement that DHS shall pay the health plans interest on any unpaid amounts will place an economic strain on the State budget, both now and in the future. We estimate that this will increase next year's shortfall by approximately $7.5 million due to interest payments from a three-month delay in health plan capitation payments.

As the Med-QUEST Division faces a biennium budget shortfall of nearly $150 million in State general funds at the end of State Fiscal Year 2011, not including the $7.5 million described above, difficult decisions will need to be made to close this budget gap. Adding a payment of 15% per year to health plans, when payments are already overdue, further compounds this problem.

This bill also provides a financial incentive for health plans to delay execution of contract modifications to increase interest liability to the State. A health plan could intentionally choose to delay accepting revised capitation rates. Without the health plans signing of the new contracts, DHS cannot obtain the required federal Centers for Medicare & Medicaid Services (CMS) approval and would be unable to access federal funds to make capitation payments. When the health plans finally sign the contracts and CMS approval is obtained, DHS could then make the payments to the health plans which will receive not only their capitation payments but also a rate of return of 15% in interest payment. DHS should not be required to pay interest for delays for which it is not responsible.

As an entitlement, the Medicaid program is probably the most difficult budget in the State to predict for a biennium. Predictions can be made about growth and actuarially sound rate increases, but it is often factors beyond the State's ability to control, including the state of the economy and unemployment rate as well as the percentage of funds that the Federal government will contribute, that ultimately impact this budget the most.

If this bill passes with this amendment, it will have long-lasting adverse cost impacts that exceed and compound our current budget crisis.

While we understand the intent of this bill and support providers who care for our clients, this bill could have an unintended bad consequence. Instead of health plans working to resolve claims, they might deny them. Increasing the denial rate merely increases the burden on providers.

DHS believes that health care providers, with whom the health plans contract to create the plans' provider networks, should receive prompt payment for their services. For that reason, DHS included prompt payment requirements in its contracts with the health plans. The health plans contracted by DHS are required to pay 90% of clean claims in thirty days and 99% in ninety days. This is the same prompt payment requirement that the Federal government imposed on Medicaid fee-for-service under

the American Recovery and Reinvestment Act (ARRA). Health plans that do not meet these requirements are subject to sanctions.

No health plan has failed to meet this prompt provider payment contractual requirement. In other words, all our health plans have been complying with our contractual prompt provider payment requirement, even last year when DHS had to defer to July the payments to health plans for the two months of May and June.

Typically DHS pays capitation payments in a month for services provided during that month. Because providers frequently do not bill the health plans immediately when they provide services, DHS is, in effect, currently giving the health plans an advance on the amount needed to pay their providers. Therefore, **DHS may need to adjust the capitation rates downward** for advance payment based on the interest rate in this bill.

This bill would also result in DHS needing to impose new reporting requirements upon the contracted health plans. DHS will need to begin tracking when each claim is received and paid relative to the date of service. DHS would also likely need to institute prompt pay reporting requirements of the health plans consistent with the guidance issued by the federal Centers for Medicare and Medicaid Services for the ARRA provisions. This is a daily analysis of the percentage of clean claims received within the prior thirty days and the prior ninety days. Presently we review only aggregate monthly reports.

This bill would require DHS to know that a health plan payment to a provider was delayed because of a delay in payment from DHS to the health plan. This means that DHS would need to receive the date of service and the date of claim receipt for each individual clean claim for a service provided in a month with a payment deferred from the payment schedule in the contract. Because the health plans have thirty days to pay a clean claim, a delay in payment to the provider could not be considered to result from a delay in payment to the health plans unless DHS payment to the health plan was not made within thirty days of receipt of a claim by the health plan for a service provided during the month during which the capitation payment was not made in accordance with the contract.

We also recognize that a health plan new to a program or an existing health plan adding new services would be potentially contracting with a new array of provider types. Testing claims processing systems is difficult until providers actually begin submitting claims. Therefore, if this bill is passed, it should be amended to include a period of six

months after beginning a new contract or a new service in a program during which a health plan should remain exempt from the proposed State prompt pay requirement.

DHS understands the implications to a contracted health plan if monthly capitated payments by DHS to the health plan are delayed. Health plans may need to access their reserve. In order to be licensed, a health plan is required to have funds in reserve in the unexpected event of a period in which expenditures exceed revenue so that it can continue to pay providers and medical care can continue without interruption to its Medicaid members. The DHS contracted health plans are facing such a situation now.

While a health plan might decide not to utilize its reserve and stop payments to providers in its network, this could have a negative impact on Medicaid patients. It is the responsibility of the health plans to ensure timely access to quality health care for Medicaid recipients. And it is the responsibility of DHS to ensure that the health plans meet this responsibility.

DHS defers to the Department of Budget and Finance on the use of the Hurricane Relief Fund to address the Medicaid shortfall and pay for Medicaid coverage for COFA citizens.

However, DHS would like to provide the following information on medical assistance benefits for COFA citizens and the delay in QUEST health plan payments.

The bill proposes to appropriate funding to provide Medicaid coverage to citizens of nations with a Compact of Free Association with the United States (COFAs). COFA residents are currently eligible for State-only funded medical assistance if they are currently uninsured and meet other eligibility requirements. They are ineligible for federal Medicaid medical assistance.

In Federal Medicaid programs, the Federal government provides matching Federal funds to the State funds for services to federal Medicaid-eligible recipients. Currently, for every dollar the State spends in a Federal Medicaid program, the Federal government pays approximately two dollars for services for federal Medicaid-eligible recipients. So for each State dollar spent on non-Medicaid eligible recipients, three dollars worth of services are lost for Medicaid recipients.

In SFY 2009, State general fund expenditures for COFAs for medical assistance alone were almost $51 million. In Hawai'i, more than $120 million in State funds are spent each year on health care, education and other services for COFA migrants, yet

the U.S. Department of the Interior only provides the State with about $10.6 million to partially cover the costs.

In addition, DHS provides the following information regarding payments to its contracted health care plans for the rest of the State fiscal year.

DHS pays its five contracted health plans in the QUEST and QUEST Expanded Access (QExA) Medicaid programs a capitated per member per month (PMPM) payment each month in the third week of the month for that month. The QUEST health plans were paid for December using 100% State general funds because the Federal government had not yet approved the new contracts for us to draw down the matching federal funds.

In the third week of January, when the January payments would be due, the Federal government still had not approved the new contracts. Therefore, we had to lag the January payments because we did not have the State funds to cover the payments without the federal funds like we did in December. Because we strive to treat all our health plans equally and will pay none if we cannot pay one, we delayed the QExA health plans payments as well.

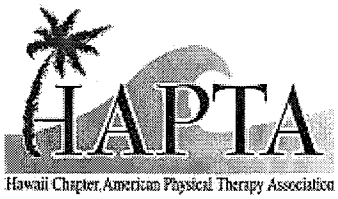
The good news is that the Federal government recently approved the new contracts and we are currently processing the payments for January and getting ready to make the February payments too. Also, we will be able to make March payments to all the health plans.

However, just as we had to do last year, DHS will need to defer the May and June payments to the health plans to July. This means the May payment will be deferred for six weeks (from the third week of May) to July and the June payment will be delayed for two weeks (third week in June) to July. Timely payments will resume in July for July as well.

Therefore, our primary challenge for this fiscal year is the April health plan payments. We are actively working on strategies to be able to make the April payments or at least partial payments or provide cash flow offsets.

DHS is currently working on options to <u>not</u> have to defer health plan payments starting April.

Thank you for the opportunity to provide testimony on this bill.



Written Testimony by:
Patti Taira-Tokuuke, PT
HB 2087,hd1, proposed sd1, Relating to Health
Sen HMS/CPN, Tues. March 9, 2010
Room 016, 3:00 pm **Position: Comments**

Chair Chun Oakland and Baker, and Members of the Sen HMS/CPN Committees:

I am Patti Taira-Tokuuke, P.T., Co-Chair of the Reimbursement Issues Committee and member of HAPTA's Legislative Committee. HAPTA represents 250-300 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments.

HAPTA is comprised of members who work in facilities and small, private practice businesses, many of which wait 30 days on clean motor vehicle accident claims and 60 days on Worker Compensation Claims. **We whole-heartedly agree** with the Sen HMS/CPN Committee report for SB 2030 sd1 that "...it is not good business practice to delay payments for such a long period of time with no consequences as the delays have a negative ripple effect on the provision and accessibility of health care." Support is expressed for this proposed SD1 language that allows for the state to pay interest on delayed payments, unless certain circumstances apply. We also note that the state charges businesses interest on late income tax and GET payments, no matter what the economic situation.

We disagree with the transfer of $70,000,000 from the Hurricane Relief Fund, particularly in reference to providing Medicaid coverage to Compact of Free Association immigrants. Federal reimbursement for that must be aggressively pursued with the Federal government.

I can be reached at 808-969-3811 if you have any questions. Thank you for the opportunity to testify.

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March 9, 2010

To: The Honorable Suzanne N.J. Chun Oakland
Chair, Senate Committee on Human Services

The Honorable Rosalyn H. Baker
Chair, Senate Committee on Commerce and Consumer Protection

From: 'Ohana Health Plan

Re: House Bill 2087, House Draft 1, Proposed Senate Draft 1-Relating to Health

Hearing: Tuesday, March 9, 2010, 3:00 p.m.
Hawai'i State Capitol, Room 016

Since February 2009, 'Ohana Health Plan has provided services under the Hawai'i QUEST Expanded Access (QExA) program. 'Ohana is managed by a local team of experienced care professionals who embrace cultural diversity, advocate preventative care and facilitate communications between members and providers. Our philosophy is to place members and their families at the center of the health care continuum.

'Ohana Health Plan is offered by WellCare Health Insurance of Arizona, Inc. WellCare provides managed care services exclusively for government-sponsored health care programs serving approximately 2.3 million Medicaid and Medicare members nationwide. 'Ohana is able to take the national experience in providing an 'Ohana care model that addresses local members' healthcare and health coordination needs.

We appreciate this opportunity to submit our comments in support of House Bill 2087, House Draft 1, proposed Senate Draft 1-Relating to Health.

'Ohana Health Plan (OHP) is one of the five health care plans contract under the QUEST program through the Department of Human Services (DHS). As a new plan, operating largely with the support of government funding from the State of Hawai'i, we are deeply concerned about the potential for a three to four month payment deferral. This deferral may impact our ability to pay our contracted providers in a timely manner and could cause a disruption in services to our members, which are low-income, aged, blind and disabled residents of our State. As a contracted provider of services for the State of Hawai'i, we take out federally mandated responsibility to make covered services available and accessible through a sufficient delivery network very seriously.

We greatly appreciate this measure that would exempt QUEST plans from paying interest under the clean claims act when delays are due to non-payment by government payers to QUEST plans. This legislation would alleviate us from the additional financial burden of late interest payments, as well as appropriate funds out of the Hurricane Reserve Trust Fund to address the Medicaid shortfall and authorize the DHS to expend up to $140,000,000 in federal matching funds for purposes of this section. This bill will help to address our concern with the larger issue regarding our ability to compensate our direct service providers in a timely manner, thus ensuring our ability to serve our most vulnerable members' health needs.

Mahalo Nui Loa for making the needs of our State's most vulnerable population one of your top priorities. Thank you for the opportunity to provide testimony in support of House Bill 2087, House Draft 1, proposed Senate Draft 1.

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Government Relations

Testimony of
John M. Kirimitsu
Legal and Government Relations Consultant

Before:
Senate Committee on Human Services
The Honorable Suzanne Chun Oakland, Chair
The Honorable Les Ihara, Jr., Vice Chair

and

Senate Committee on Commerce and Consumer Protection
The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair

March 9, 2010
3:00 pm
Conference Room 016

Re: HB 2087 Relating to Health

Chairs, Vice Chairs and committee members, thank you for this opportunity to provide testimony on this bill relating to Fair Access to Medical Care Act.

Kaiser Permanente would like to offer comments on this bill.

Kaiser Permanente supports the intent of this bill exempting health plans from paying interest under the Clean Claims Law when delays are due to the non-payment by the State, but Kaiser Permanente believes that SB2030 Relating to Health is a better representation of this bill.

Both HB2087 and SB2030 include identical language amending §431:13-108 to allow for the automatic suspension of accruing interest if the entity's failure to timely pay a claim is the result of late payment to the entity by the State. However, SB2030, pg. 2, line 18, also provides a more equitable outcome by amending §346 to allow for interest against the State for failing to pay health plans under the contract. Since there is already pending legislation (under SB2598 and HB2208) requiring health plans to promptly pay Medicaid claims under the clean claims act, or face interest penalties, it naturally follows that the State should also be penalized with interest penalties for its delay in payments.

Finally, SB2030, pg. 5, line 14, and not HB2087, includes a request to appropriate funds from the hurricane relief fund, to partially remedy the Medicaid shortfall and offer short-term relief to help reduce the health plan's financial hardship arising from the anticipated delay in payments by the State.

Thank you for your consideration.

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Healthcare Association
of Hawaii

SENATE COMMITTEE ON HUMAN SERVICES
Senator Suzanne Chun Oakland, Chair

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn Baker, Chair

Conference Room 016
March 9, 2010 at 3:00 p.m.

Supporting HB 2087 HD 1 Proposed SD 1 with amendments.

The Healthcare Association of Hawaii represents its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. Thank you for this opportunity to comment on HB 2087 HD 1 Proposed SD 1, which: (1) Requires the State to pay Medicaid health plans 15% interest on delayed payments; (2) Suspends interest paid by Medicaid health plans to providers when the State has delayed payments to the plans; and (3) Appropriates funds to reduce the expected delay in payments by the State to Medicaid health plans.

The bill is noteworthy because of the appropriation, and we appreciate the efforts of the joint committee to address the problem. Delays in Medicaid payments to health plans, if prolonged, would ultimately affect providers and their ability to deliver services to their patients. Extended delays in payments would have a disastrous effect on Hawaii's health care system.

The bill also makes amendments to Hawaii Revised Statutes. These statutory changes are understandable, but represent only half a solution to a problem. Although the bill prevents the Medicaid plans from being shortchanged, it does not prevent the same from happening to providers. When providers are finally paid, they would not be compensated for any delays in payment by the health plans. Currently, tens of millions of dollars in unpaid claims have been reported by members of the Healthcare Association. The lack of payment reduces working capital, which impacts the ability of the provider to pay salaries and purchase supplies and equipment. Fortunately, there is another approach to the problem.

A complete solution is contained in the statutory provisions of SB 2598 SD 2, which has already passed the Senate. SB 2598 SD 2 imposes 15% interest on delays in payments by the State to Medicaid health plans, as does the bill under consideration. However, SB 2598 SD 2 goes one step further by repealing the exemption from the clean claims act for Medicaid plans, thereby requiring Medicaid plans to pay 15% interest on delayed payments to providers. Thus, there are links from payments from the State to the plans, and from the plans to the providers. The bill also contains an exemption for the health plans from paying interest on delayed payments if for some reason the State delays payments to the health plans and reneges on paying the interest.

The Healthcare Association has discussed SB 2598 SD 2 with Medicaid health plans, and we agree with it in principle. However, we continue to address one minor issue. We are working to develop statutory language that exempts claims that must be processed manually from the clean claims act.

We urge the committee to amend HB 2087 HD 1 Proposed SD 1 so that it includes the amendments to Hawaii Revised Statutes contained in SB 2598 SD 2 in addition to the appropriation in Section 4. Meanwhile, we urge the bill to continue in the legislative process as the exemption for manual claims is developed.

Thank you for the opportunity to support HB 2087 HD 1 Proposed SD 1 with amendments.

AlohaCare
Aloha is the difference

March 9, 2010
3:00pm
Conference room 016

To: Sen. Suzanne Chun Oakland, Chair
Sen. Les Ihara, Vice-Chair
Senate Committee on Human Services

Sen. Rosalyn Baker, Chair
Sen. David Ige, Vice Chair
Senate Committee on Commerce & Consumer Protection

From: Paula Arcena
Director of Public Policy

Re: HB2087, HD1, SD1 Proposed Relating to Health
(Exempts government-contracted health plans from paying interest under the Clean Claims Law when delays are due to non-payment by government payers to the plans. Clarifies the exemption for Medicaid and Medigap claims. Effective January 1, 2050. (HB2087 HD1))

Thank you for the opportunity to offer our comments on HB2087, HD1, SD1.

AlohaCare is a non-profit, Hawaii based health plan founded in 1994 by Hawaii's community health centers to serve low-income families and medically vulnerable members of our community through government sponsored health insurance programs. We serve beneficiaries of Medicaid and Medicare on all islands.

AlohaCare has been contracted by the Hawaii Department of Human Services since the QUEST program started in 1994 to provide insurance coverage for Medicaid eligible beneficiaries through the QUEST program. We serve approximately 70,000 QUEST enrollees statewide.

AlohaCare continues to participate in stakeholder discussions about clean claims legislation and DHS' plan to delay payments to Hawaii's Medicaid health plans for two to four months, which will remove $200 – $400 million in State and Federal dollars from Hawaii's health care industry, in order to prevent a deficit at the end of this fiscal year. We are hopeful discussions will result in consensus on both these issues.

Thank you for this opportunity to testify.

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