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LT. GOVERNOR

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RONALD BOYER  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Wednesday, February 17, 2010  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2461, HD1 – RELATING TO INSURANCE.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department opposes this bill which requires any insurer issuing a prescription drug policy to conform the benefits to the coverage offered under the insured’s previous health plan.

The long term effect of this bill will be to require a uniform benefits package for prescription drugs in Hawaii. Uniformity in coverage may not be a good thing in that it reduces choices for consumers. In addition, even if uniform coverage were a good goal, the transition period in which an insurer will have to conform to various non-conforming policies issued by different insurers could be rocky, particularly since a given insurer may have policies under various drug regimes. It could also complicate premium rating for prescription drugs, particularly if it results in segmentation of the risk pool.

It would also be prudent to research the question of whether this amendment is a de facto amendment of the Prepaid Health Care Act that would jeopardize the Act’s exemption from ERISA.

We thank this Committee for the opportunity to present testimony on this matter and ask that this bill be held.

LINDA LINGLE  
GOVERNOR



LILLIAN B. KOLLER, ESQ.  
DIRECTOR

HENRY OLIVA  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 17, 2010

**MEMORANDUM**

TO: Honorable Robert N. Herkes, Chair  
House Committee on Consumer Protection & Commerce

FROM: Lillian B. Koller, Director

SUBJECT: **H.B. 2461, H.D. 1 – RELATING TO INSURANCE**

Hearing: Wednesday, February 17, 2010, 2:00 P.M.  
Conference Room 325, State Capitol

**PURPOSE:** The purpose of this bill is to require health insurers and like entities to offer at least the same drug coverage to the insured that the insured had under the insured's previous policy with a different insurer or like entity.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) opposes this bill because of its impact on increasing health care expenditures and requiring a new appropriation at a time the State faces a substantial budget deficit. Additionally, for some of our programs, implementation of the bill's provisions would be subject to federal approval.

Prescription drugs are the fastest growing healthcare expenditure. Formularies are a widely used approach to control those expenditures. A formulary works to control costs by increasing use of certain preferred medications that have a lower cost and/or

higher rebate. Requiring a health plan to cover medications not on its formulary will increase that health plan's costs.

Drug coverage, not defined in the bill, might extend beyond a formulary and include criteria for prior-authorization and step therapy, for example. A health plan's being required to know and provide potentially numerous other health plans' criteria will add tremendous complexity and cost.

In the private sector, these increased health plan expenditures would be expected to be passed on through increased premiums, further taxing businesses trying to survive the current economic crisis. In the public sector, DHS would require a substantial new appropriation which is unrealistic given the State's revenue shortfall.

Because prescription drug coverage is included as a benefit in our QUEST and QUEST Expanded Access programs, this expansion of drug coverage would have to be done by each health plan contracted with DHS. Having the drug coverage expansion be excluded from the health plans could be done, but only if 100% State funded. Otherwise, the risk of duplicate billing of the federal government would prevent federal approval. And if State-only funded, it would be very difficult to ensure that each claim was for a medication not covered by the individual's new DHS contracted health plan.

Other DHS programs, namely QUEST-ACE and QUEST-Net, have a limited drug benefit defined in the 1115 waiver approved by the Federal government. This bill would substantially expand that benefit, at yet another substantial additional cost, and would require an 1115 waiver amendment approved by the Federal government.

Thank you for this opportunity to provide testimony.



# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 17, 2010

The Honorable Robert Herkes, Chair  
The Honorable Glenn Wakai, Vice Chair  
House Committee on Consumer Protection and Commerce

**Re: HB 2461 HD1 – Relating to Insurance**

Dear Chair Herkes, Vice Chair Wakai and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2461 HD1 which would require a health plan to provide prescription drug coverage to a member which is identical to the prescription drug coverage the member had been offered by their previous health plan. We oppose this measure.

The language contained within HB 2461 HD1 could end up being extremely burdensome for plans to implement, employers to manage and consumers to figure out. Some concerns we have include:

- There is no timeframe under which a consumer has to make a decision regarding the maintenance of prescription drug benefits from their previous plan. Plans could be left in limbo if consumers do not make their choice in a timely fashion. Also, there is no mechanism for the new plan to obtain all the information necessary from the previous plan
- Administering prescription drug benefits on a member-by-member basis may be impossible to manage
- Plans determine premiums based on a known set of benefits. When members choose their prior plans' prescription drug benefit, which will differ from that being offered by their HMSA plan, rates may not be adequate to cover costs
- Employers will be left to figure out how to manage employees under the same medical plan receiving differing prescription drug benefits. Issues of equity may arise
- Consumers are not adequately versed in their benefits and don't have a full understanding about which prescription drug plan would be best for them. They may make a poor choice and end up with coverage that does not suit their needs

Despite the good intentions of this measure, we believe that it raises more issues than it answers and could end up contributing to increased health care cost, consumer confusion and employer frustration. Due to these issues, we would respectfully request the Committee see fit to hold HB 2461 HD1. Thank you for the opportunity to testify today.

Sincerely,

Jennifer Diesman  
Vice President  
Government Relations

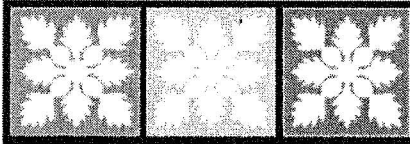
Hawaii Medical Service Association

818 Keeaumoku St. • P.O. Box 860  
Honolulu, HI 96808-0860

(808) 948-5110

Branch offices located on  
Hawaii, Kauai and Maui

Internet address  
[www.HMSA.com](http://www.HMSA.com)



## Hawaii Association of Health Plans

February 17, 2010

The Honorable Robert N. Herkes, Chair  
The Honorable Glenn Wakai, Vice Chair  
House Committee on Consumer Protection and Commerce

**Re: HB 2461 HD1 – Relating to Insurance**

Dear Chair Herkes, Vice Chair Wakai and Members of the Committee:

My name is Howard Lee and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare  
Hawaii Medical Assurance Association  
HMSA  
Hawaii-Western Management Group, Inc.

MDX Hawai‘i  
University Health Alliance  
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in opposition to HB 2461 HD1 which would require health plans allow members to receive prescription drug benefits which are identical to those offered by their previous plan.

This bill would put a tremendous burden on employers and union groups since they will end up with multiple drug plans, different premium rates, and different benefit coverage for their employees. We believe that this level of administrative burden could altogether discourage employers and unions from continuing to provide prescription drug benefits to their employees.

We also feel that this would put a tremendous cost burden on health plans to determine the benefits offered by the member’s previous plan (which is often not readily available) and to provide a timely premium quote to the group. These delays will make it difficult for health plans to market to employers and to enroll members in a timely fashion. The accounting for the different coverage being offered would also be a tremendous administrative burden, ultimately causing premium rates to increase.

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HAHP c/o Howard Lee, UHA, 700 Bishop Street, Suite 300 Honolulu 96813  
[www.hahp.org](http://www.hahp.org)

For the reasons above we would respectfully request the Committee see fit to hold this measure. Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink that reads "Howard Lee". The signature is written in a cursive style with a large, stylized initial "H".

Howard Lee  
President

Testimony of  
Phyllis Dendle  
Director of Government Relations

Before:  
House Committee on Consumer Protection and Commerce  
The Honorable Robert N. Herkes, Chair  
The Honorable Glenn Wakai, Vice Chair

February 17, 2010  
2:00 pm  
Conference Room 325

**HB 2461 HD1      RELATING TO INSURANCE**

Chair Herkes and committee members, thank you for this opportunity to provide testimony on HB 2461HD1 which would require the continuation of identical drug coverage when an employee changes health plans.

**Kaiser Permanente Hawaii opposes this bill.**

In reviewing this bill we can appreciate the desire of individuals to keep their drug coverage from changing when they change plans. However, the difficulty with this bill is two-fold.

First, it is important to understand that for group health coverage the health plan does not have contact directly with the individual employee but rather with the employer who purchases the coverage.

Second, drug coverage is not required as part of the plan that employers must purchase for employees under the prepaid health care act. Drug coverage is provided when the employer purchases a , optional rider. While almost all employers choose to purchase drug coverage they are not required to. Drug riders are only offered to employers—not to individual employees.

When an employee changes plans, such as when they change jobs, they are offered whatever the new employer provides. If the drug coverage is different, then the employer would need to purchase a different coverage for that individual employee. Over time it is possible that all of the employees could have different drug coverage. This creates a real burden for an employer. For example, what if there is a difference in costs for the riders—does the employer have to pay for more expensive coverage because the employee had it before?

The complexity of doing what this bill proposes would have the effect of discouraging employers from buying this optional coverage. We are concerned that we will see a reduction in drug coverage rather than assuring continued coverage.

We urge the committee to hold this bill. Thank you for your consideration.



## HAWAII MEDICAL ASSOCIATION

1360 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814  
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

**Wednesday, February 17, 2010, 2:00 pm, Conference Room 325**

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Robert N. Herkes, Chair  
Rep. Glenn Wakai, Vice Chair

From: Hawaii Medical Association  
Gary A. Okamoto, MD, Legislative Co-Chair  
Linda Rasmussen, MD, Legislative Co-Chair  
April Donahue, Executive Director  
Lauren Zirbel, Government Affairs  
Dick Botti, Government Affairs

Re: HB2461 RELATING TO INSURANCE

Support Intent.

### Chairs & Committee Members:

Hawaii Medical Association appreciates the intent of HB2461 as a measure to protect patients, particularly those with chronic conditions. Currently, however, the language of the measure is too broad and we recommend amendments.

It may be more appropriate to state that in no case shall a continuously enrolled subscriber of a specific carrier be required by the carrier to change benefits, services or copayments. Each carrier shall only be permitted to require newly enrolled members to be subject to changes in coverage and rates for any given enrollment period.

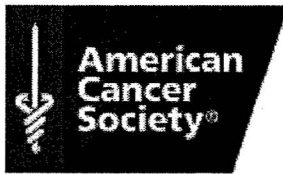
Ideally, only when the insured individual personally elects to change plans should a health insurer or like entity not be required to offer the same prescription drug benefits to that individual.

It is worth noting that it may be helpful to insert language reflecting the intent of this measure into HB2096 Relating to Prescription Drugs, creating one effective measure that can improve the quality and efficiency of health care delivery in Hawaii and the health of Hawaii's citizens.

Thank you for the opportunity to testify.

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February 16, 2010

Committee on Consumer Protection & Commerce  
Representative Robert Herkes, Chair  
Representative Glenn Wakai, Vice Chair

**Hearing:**

2:00 P.M. Wednesday, February 17, 2010  
Hawaii State Capitol, Room 325

**RE: HB2461 HD1 – Relating to Insurance**

**Testimony in Strong Support**

Chair Herkes, Vice Chair Wakai, and members of the Committee on Consumer Protection & Commerce. Thank you for the opportunity to testify in strong support of HB2461, HD1, which requires health insurance companies and entities to offer the same drug coverage to an insured that, was offered by a previous health insurer.

We have previously testified in strong support of this measure in the Health Committee as well as for its Senate companion measure SB2494. One of the primary reasons we strongly endorse this measure is that it would provide continuity of care for prescribed medications should patients change health plans. This is critical in cases in which an individual is currently undergoing active chemotherapy which, depending upon the type of cancer, requires a cocktail of anticancer drugs which could include both brand name and generic drugs. To change a patients anticancer drugs, to adhere to the prescription formulary of the new carrier could be life-threatening.

There could also be the unintended consequence of forcing cancer patients to pay full price for medications they require at a time when their financial resources are limited. We would also point out that in 2007, 62.1% of the 1.5 millions bankruptcy filings were a result of medical bills. Of the 62.1% slightly over three-quarters of them had health insurance, but were bankrupted anyway because there were gaps in their coverage like co-payments, deductibles, out-of-pocket prescription drug cost, and other uncovered services.

We believe that it is this measure is extremely beneficial for patients undergoing active chemotherapy and will offer assurance that they could expect no changes in their drug regimen. We urge you to pass HB2461, HD1.

Thank you for your consideration.

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

George Massengale, J.D.  
Director of Government Relations

February 12, 2010

The Honorable Robert N. Herkes  
5th Representative District  
Hawaii State Capitol, Room 320  
Honolulu, HI 96813  
E-mail: [repherkes@Capitol.hawaii.gov](mailto:repherkes@Capitol.hawaii.gov)

RE: H.B. 2461 - SUPPORT

Dear Representative Herkes,

The Neuropathy Action Foundation (NAF), which is dedicated to ensuring neuropathy patients obtain the necessary resources and tools to access individualized treatment to improve their quality of life, strongly supports HB 2461. HB 2461 requires health insurers to offer at least the same drug coverage to the insured that the insured had under the insured's previous policy with a different insurer or like entity. In other words, the bill will provide for continuity of drug coverage when a patient either switches health plans or renews their existing plans.

HB 2461 is very important for the thousands of Hawaiians who suffer from neuropathy. Many Hawaiians affected by neuropathic pain are oftentimes high users of the health care system as they search for relief from persistent pain. However, once a medication or treatment that actually works is discovered many patients are able to live normal lives. Patients and providers alike expect to be protected by having continuity of medically necessary drugs when they switch from one health plan to another or when they renew plans during open enrollment periods.

The NAF receives a lot of calls from Hawaiian residents informing us that they are not allowed to continue to use their prescribed medications after they switch or re-enroll in their health plans. Oftentimes these treatments are limb saving like plasma derived IVIG. Many patients have been successfully taking these drugs and/or treatments for years and depend on them to function and take care of their families. HB 2461 would allow Hawaiians to continue using medically necessary medications and treatments prescribed prior to enrollment in their plan, whether or not the drug is covered by the plan, until the prescribed therapy is no longer prescribed by the patient's provider.

Please help neuropathy patients and others who suffer from chronic illnesses by supporting this patient protection bill that directly strengthens the doctor patient relationship. Should you have any questions please contact me at 877-512-7262.

Aloha,



James D. Lee

cc: Consumer Protection & Commerce Committee





# **GBS/CIDP** Foundation International

Serving patients of GBS, CIDP and Variants with support, education and research

## **Guillain-Barré Syndrome • Chronic Inflammatory Demyelinating Polyneuropathy**

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\*Deceased

Non-profit 501(c)(3)

February 15, 2010

The Honorable Robert N. Herkes  
5<sup>th</sup> Representative District  
Hawaii State Capitol, Room 320  
Honolulu, HI 96813  
Fax: 808-586-8404

RE: H.B. 2461 - SUPPORT

Dear Representative Herkes,

I am a resident of Hawaii (Kailua) and the Board Secretary of The GBS/CIDP Foundation International.

The Foundation is dedicated to ensuring GBS/CIDP patients obtain the necessary resources and tools to access individualized treatment to improve their quality of life. We strongly support H.B. 2461.

HB 2461 requires health insurers to offer at least the same drug coverage to the insured that the insured had under their previous policy with a different insurer or like entity. In other words, the bill will provide for continuity/portability of drug coverage when patients either switch health plans or renew their existing plans.

Guillain-Barré Syndrome (GBS) is a rare inflammation of the nerves caused by the patient's body producing antibodies against the peripheral nerves. The syndrome affects each patient differently and so the course of the disease differs for each patient. One of the more effective treatments includes infusion of the biological drug intravenous immune globulin (IVIG).

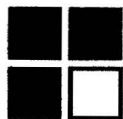
How and why one contracts GBS is as yet unknown. The syndrome is typically observed after an infection in the lungs, diarrhea, surgery, vaccination or pregnancy. CIDP is the chronic form of this debilitating illness. Recovery time from GBS/CIDP, on average, is six to 12 months of intense physical therapy. Thankfully, early diagnosis and treatment allows many patients to live normal lives. Patients and providers alike expect to be protected by having continuity of medically necessary drugs and follow on treatment when they switch from one health plan to another or when they renew plans during open enrollment periods.

HB 2461 would allow residents of Hawaii to continue using medically necessary medications and treatments prescribed prior to enrollment in their plan, whether or not the drug is covered by the plan, until the prescribed therapy is no longer prescribed by the patient's provider.

The Holly Building • 104½ Forrest Avenue • Narberth, PA 19072

(610) 667-0131 • 1 (866) 224-3301 (toll free) • Fax: (610) 667-7036 • www.gbs-cidp.org • e-mail: info@gbs-cidp.org

The official registration and financial information of GBSFI may be obtained from the PA Dept. of State by calling toll free, within PA, 1-800-732-0999. Registration does not imply endorsement.



# **GBS/CIDP** Foundation International

Serving patients of GBS, CIDP and Variants with support, education and research

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## **Guillain-Barré Syndrome • Chronic Inflammatory Demyelinating Polyneuropathy**

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Representative Herkes, February 15, 2010

Page 2

Please help GBS/CIDP patients and others who suffer from chronic illnesses by supporting this patient protection bill that directly strengthens the doctor patient relationship. Should you have any questions, please contact me at 808-254-4534 or by e-mail at [leafishing@aol.com](mailto:leafishing@aol.com). Please visit the Foundation web site at [www.gbs-cidp.org](http://www.gbs-cidp.org)

Aloha,

Phil Kinnicutt

341 Iliaina Street

Kailua, Oahu, HI 96734-1807

808-254-4534 [LEAFISHING@AOL.COM](mailto:LEAFISHING@AOL.COM)

cc: Consumer Protection & Commerce Committee  
Patricia Bryant, Executive Director, GBS/CIDP  
Foundation International, Narberth, PA

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Feb 16, 2010

TO: Committee on Consumer Protection and Commerce  
Rep. Robert N. Herkes, Chair, and Rep. Glenn Wakai, Vice Chair

### STRONG SUPPORT FOR HB2461

Dear Representatives:

Mental Health America of Hawaii strongly supports HB2461, which provides physicians and their patients with continuity of care for prescription medications when patients change health plans.

Medications for mental illnesses they vary greatly in their effectiveness in treating specific symptoms or disorders as well as in their side effects. There are great difference in responses to medications by different individuals. Not everyone responds the same to a given treatment. Treatment decisions are complex, combining both a thorough understanding of pharmacology and a detailed knowledge of a patient's unique condition and medical history.

It can take months and many trials with many different medications to stabilize a mental health patient on the right medication or combination of medications. Therefore, mental health patients who are suddenly switched to a different medicine may suffer both physically and psychiatrically, and this could trigger more costly treatment, such as additional physician visits, ER visits, and even hospitalization.

That is why Mental Health America of Hawaii urges your support for HB2461, which would insure stability and continuity in treatment if there is a change in the patient's health insurance. Mahalo for the opportunity to provide testimony.

Sincerely yours,

Marya Grambs, Executive Director



February 16, 2010

The Honorable Robert N. Herkes, Chair  
Committee on Consumer Protection & Commerce  
Hawaii State Capitol, Room 320  
Honolulu, Hawaii 96813

**Re: H.B. 2464, HD1 – Relating to Practice of Pharmacy**  
**Hearing: Wednesday, February 17, 2010 at 2:00 p.m.**

Dear Chair Herkes and Members of the Committee on Consumer Protection and Commerce:

I am Mihoko Ito, an attorney with Goodsill Anderson Quinn & Stifel, testifying on behalf of Walgreen Co. (“Walgreens”). Walgreens operates and offers immunization services in all 50 states, the District of Columbia and Puerto Rico. To date, this program has allowed Walgreens to provide over 1.6 million H1N1 vaccines across the country. In Hawai‘i, Walgreens now has 9 stores on the islands of Maui and Oahu.

Walgreens **strongly supports H.B. 2464, HD1**, which amends the definition of "practice of pharmacy" by changing the age of persons to whom immunizations are administered from 18 to nine years of age with parental consent.

Presently, 18 states have enacted legislation that allows pharmacists to administer vaccines to the age of 9 years old. Allowing pharmacists to administer vaccinations is a low-cost and convenient way to meet an important public health need. Studies have shown that in states in which pharmacists are allowed to administer vaccines, the vaccine coverage rates are increased for the target population.

Pharmacists are required to receive specialized training to administer vaccinations. Presently, Walgreens pharmacists who participate in vaccine programs go through a “Pharmacy-Based Immunization Delivery” certificate training program offered by the American Pharmacists Association and recognized by the Centers for Disease Control and Prevention (CDC), or a state approved equivalent program. In addition to immunization training, all participating pharmacists are required to become certified in adult and child CPR and take OSHA blood-borne pathogens training. These programs include training to administer vaccines for children nine years of age and older.

Walgreens supports this bill because it gives pharmacists prescriptive authority whereby they, upon proper eligibility screening, can administer any approved vaccine to an eligible patient at least 9 years of age.

Lowering the age restrictions for pharmacist-administered vaccines will improve access to life-saving vaccines and serve as a valuable preventative tool. It would allow for a quick and effective response to vaccinate a large number of people in the event of a public health emergency in Hawai‘i.

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Walgreens respectfully requests that the Committee pass this measure. Thank you very much for the opportunity to testify.