HB 2774, HD2, SD1

Testimony

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March 31, 2010

MEMORANDUM

TO: Honorable Donna Mercado Kim, Chair
Senate Committee on Ways and Means

FROM: Lillian B. Koller, Director

SUBJECT: **H.B. 2774, H.D.2, S.D.1 – RELATING TO HUMAN SERVICES**

Hearing: Wednesday, March 31, 2010, 9:30 a.m.
Conference Room 211, State Capitol

PURPOSE: The purpose of this bill is to require the Department of Human Services (DHS) to include certain provisions in each contract with managed care organizations for the provision of Medicaid benefits under QUEST; makes amendments to the QUEST psychotropic benefits; provides a state lump-sum death benefit in an amount equal to the Social Security Administration's lump-sum death benefit for deceased medical or financial assistance recipients who are ineligible for the Social Security Administration benefit; and prohibits DHS from any expenditures appropriated for Medicaid on any programs not specifically related to Medicaid or not authorized by the Legislature.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides the following testimony on this bill.

DHS respectfully **opposes Part I** of this bill as it would not be permitted by federal law.

DHS recognizes the importance of cost-sharing in helping to decrease inappropriate utilization of medical services and we have been interested in implementing co-payments. DHS already has the statutory authority to do this, but the federal government has strict regulations regarding the amount of co-payments that an individual can pay, who can pay them, and for what services they can apply. The provisions of this bill are inconsistent with federal requirements.

Implementing co-payments will require an 1115 waiver amendment which can take years to get approved by the federal Centers for Medicare and Medicaid Services. Co-payments cannot be implemented in our Medicaid programs without such federal approval. DHS continues to seek such approval.

DHS would like to thank the Senate Human Services and Health Committees for including the substance of DHS-supported bills, S.B.2719/H.B.2566, Relating to Psychotropic Medication, and S.B.2718/H.B.2565, Relating to Death Benefits, into the S.D. 1 of H.B. 2774.

DHS **supports Part II** of this bill relating to psychotropic medication which would generate savings with minimal impact on Medicaid recipients. Prescription drugs are the fastest growing healthcare expense and psychotropic medications comprise the largest Medicaid prescription drug expenditure.

Part II will begin to bend that cost curve by requiring trial of a generic medication for any new psychotropic medication prescription. The out-year savings from this bill would quickly compound to save multiple millions of dollars. While we could save even more if all current brand name psychotropic medications were switched to generics, this

would be disruptive to a vulnerable population, something to which DHS is sensitive and, therefore, our bill also was designed to apply only to new prescriptions.

Part II will allow DHS to improve the safety and cost-effectiveness of psychotropic medication use among its Medicaid population by preventing unintended and inappropriate psychotropic polypharmacy (which means taking multiple psychotropic medications at the same time), increasing access to prescription medications, and promote the efficient use of limited resources by controlling rising prescription drug expenditures without negative impact on health outcomes.

Psychotropic medications are being inappropriately prescribed. A recent study in the Journal of the American Medical Association found that antidepressants are not effective for mild depression, and a Food and Drug Administration advisory panel criticized the overprescribing of antipsychotics for children. Antipsychotic medications can have severe physical side effects, causing drastic weight gain and metabolic changes resulting in lifelong problems.

It is also important for patient safety to prevent psychotropic polypharmacy and prescribing at doses in excess of those approved. Outpatients may see different providers and unknowingly receive multiple psychotropic prescriptions. Studies have found that more than half of nursing home residents receiving antipsychotics were given doses that exceeded recommended maximum levels, received duplicative therapy, or had conditions, like memory problems or depression, for which such drugs are considered inappropriate.

Patients with behavioral health disorders are a particularly vulnerable population and often require prescription drugs to treat their conditions. These patients deserve to have access to effective medications, and they would also benefit from the necessary management to ensure health and safety.

Generic medications are becoming increasingly available. The United States Food and Drug Administration requires that generic medications demonstrate bioequivalence with the brand name product in order to receive approval.

The amendments proposed in Part II are intended to continue to provide access to medically necessary psychotropic medications while improving safety and cost-effectiveness.

The Department fully supports Part II and is expecting initially a conservative estimated savings of $430,000 per year with savings compounding thereafter.

DHS **supports Sections 5 and 6 of Part III** relating to death benefits for medical or financial assistance recipients which will decrease State-only funded funeral benefits to align with the Social Security Administration's lump sum death benefit. The proposed amendment will ensure a standard of equal treatment of both state and federal governmental benefits.

DHS currently provides a fully state-funded funeral payment of up to $800 to surviving relatives to defray the mortuary and burial services costs for medical and financial assistance recipients who do not qualify for a federal death benefit at the time of their death.

The federal benefit provided by the Social Security Administration to surviving spouses or children of eligible individuals who have 40 quarters of work history or receive monthly Social Security income is a lump sum death benefit of $255.

The proposed amendment will require the State to provide a lump-sum death benefit identical to the federal Social Security Administration's lump-sum death benefit.

This change will result in an estimated cost savings of approximately $430,000 in state funds per year, as well as bring parity in the level of government assistance provided to all medical and financial assistance recipients.

The disposition of unclaimed bodies and costs remains unchanged in this proposed bill.

The Department **opposes Section 7 of Part III** that would prohibit DHS from expending any moneys from the Medicaid budget on purposes or programs other than programs directly related to Medicaid or programs that have not been specifically authorized by the Legislature and moneys appropriated for Medicaid programs may not be transferred, shifted, moved, changed, or spent on any programs other than programs directly related to Medicaid or programs specifically appropriated for by the Legislature.

The intent of Section 7 is unclear and as written, the language in this section could prohibit DHS from spending on State-funded medical assistance programs, which are not Medicaid and which do not have specific line item budget appropriations. This could impact State-funded medical assistance programs such as the Immigrant Children's, the Pregnant Immigrant Women, the State Pharmacy Assistance and the Hawaii Rx Plus programs as well as the State Children's Health Insurance program and COFA coverage which are not Medicaid programs.

Also, this section could prevent the Department from shifting moneys between line items within the HMS 401 – Health Care Payments appropriation.

Thank you for this opportunity to testify.

HAWAII DISABILITY RIGHTS CENTER

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THE SENATE
THE TWENTY-FIFTH LEGISLATURE
REGULAR SESSION OF 2010

Committee on Ways and Means

Comments on H.B. 2774, HD2, SD1
Relating to Human Services

Wednesday, March 31, 2010, 9:30 A.M.
Conference Room 211

Chair Mercado Kim and Members of the Committee:

I am Louis Erteschik, Staff Attorney at the Hawaii Disability Rights Center, and am commenting upon this bill.

We take no position on the substantive provisions in Part One and Part Three of the bill and address our remarks to Part Two. We continue to oppose this bill because it undercuts the provisions of Act 239, Session Laws of 2005. That provision was known as "open access for mental health medication."

We supported that bill because it was and is vital that mental health patients receive appropriate medications, prescribed by their physicians, in order to achieve stable, mental health. It is well documented in the medical literature that the pharmacological approach to treating mental illness is far different from that used to treat a physical ailment. Given the intricacies of individual human brain chemistry, it requires pinpoint precision to achieve a fine balance so that the delicate desired outcome of mental stability can be achieved. It is not the same as prescribing a standard antibiotic for the treatment of a common infection. For that reason, the legislature in 2005 recognized this and provided Medicaid coverage for psychotropic mediations which were prescribed in accordance with the terms of the law.

We hope that the Legislature will resist any temptation to either repeal of amend Act 239. We believe that it has served mental health consumers well and has promoted public safety and cost effectiveness for the state at the same time. We do not believe it should be altered. To the extent, however, that the Committee is inclined to advance this measure, we note the following specific concerns with the provisions in this particular bill.

While the measure does not affect the use of antipsychotic medication, it does set forth a "fail twice" policy prior to an individual being able to obtain antidepressants that the physician may wish to prescribe. Inasmuch as the goal of a medication regime is to achieve stabilization and given the costs to society that come from a lack of stabilization, we believe that requiring an individual to "fail" more than once is not responsible public policy. At a minimum, we would prefer to see the bill amended accordingly so that if an individual failed on the first generic medication, they could then receive whatever medication the physician deemed appropriate. We believe this is too crucial a matter to allow failure at all. We believe even more adamantly that requiring failure to occur twice is dangerous public policy.

Similarly, while the intent appears to be to treat anti-anxiety medication in the same fashion as antidepressants, the language in the bill is not clear. While it specifies that existing prescriptions would not be affected, it does not set forth a procedure to be followed, as it does in the case of antidepressants, for an individual to obtain the medication of their physician's choice. If the ultimate decision of the legislature is to adopt the "fail twice" policy for anti-anxiety medications, the language should then mirror the provision governing the use of antidepressants.

Finally, we are troubled by the language in the bill that states that measures to ensure patient safety shall not be considered a restriction on coverage or access. While we understand from discussions with the Department that the intent may be to address issues of poly pharmacy or prescriptions obtained by individuals who may not have disclosed to physicians other medications they were taking, we are concerned that the language as currently drafted could be interpreted so broadly as to effectively nullify the entire Act. If the intent is more limited and focused, it can be stated with greater clarity and specificity.

Thank you for the opportunity to offer comments on this measure.

Hawai'i Primary Care Association

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Senate Committee on Ways & Means
The Hon. Donna Mercado Kim, Chair
The Hon. Shan S. Tsutsui., Vice Chair

Comments on House Bill 2774, HD 2, SD 1

RELATING TO HUMAN SERVICES
Submitted by Beth Giesting, Chief Executive Officer
March 31, 2010 9:30 a.m. Agenda, Room 211

The Hawai'i Primary Care Association strongly opposes Section 2 of this draft measure. The co-pays proposed are likely to be a deterrent to timely care for MedQUEST patients which could lead to higher costs due to delayed care. Moreover, it is likely that physicians, hospitals, and other providers would be responsible for collecting the co-pays, which, as a practical matter, would be hard to do and so would reduce reimbursement for services. For many private providers the extra work and reduction in fees would likely further erode participation in the MedQUEST program.

Implementing this section is also unfeasible because the State could not do so without requesting and being granted an amendment to the 1115 waiver that currently governs the MedQUEST program. An 1115 waiver amendment would be virtually impossible to obtain by January 2011.

We do support other parts of this bill, which could have cost-saving effects without sacrificing services needed by beneficiaries. We note that Hawai'i has also not seized opportunities to save Medicaid money by investing in improved care management and more robust home and community long term care, which could have an even greater impact in savings and quality improvement.

Thank you for this opportunity to comment on this important bill.