

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
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STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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In reply, please refer to:  
File:

## HOUSE COMMITTEE ON HEALTH

### S.B.2490 SD2, RELATING TO COMMUNITY HEALTH CENTERS

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health

March 12, 2010

1 **Department's Position:** The Department of Health supports the intent of Section 2 and recommends  
2 that Section 3 be struck in its entirety from this measure.

3 **Fiscal Implications:** Unspecified appropriation to be made out of the community health centers special  
4 fund for fiscal year 2011, and an unspecified amount of these funds to be released by the Governor.

5 **Purpose and Justification:** The Department supports the intent of Section 2; however, we believe a  
6 budget ceiling can only be increased through the budgetary process. The current expenditure ceiling for  
7 the community health centers special fund in fiscal year 2011 stands at \$6,591,526, and this amount is  
8 insufficient to meet the operational requirements of community health centers. Cigarette tax revenues  
9 are projected to be in the range of \$11,135,000 by the end of fiscal year 2011. The current economic  
10 recession and resulting job losses have increased patient load and are taxing the operational capacity and  
11 infrastructure of community health centers. It is recommended that the expenditure ceiling be increased  
12 to the level of anticipated revenues for fiscal year 2011 which will allow the community health centers  
13 to maximize the use of the cigarette tax dollars to support its operational requirements.

14 The Department disagrees with the provisions contained in Section 3 and recommends that this  
15 section be struck in its entirety. The Department has been releasing cigarette tax revenues for purchase

1 of service contracts to community health centers since July 2009 and intends to do the same for fiscal  
2 year 2011 and beyond. These funds are allocated quarterly to the community health centers based on the  
3 available balances in the account. The Family Health Services Division (“FHSD”) contracts with  
4 thirteen federally qualified health centers (“FQHCs”) to provide comprehensive primary care services  
5 for uninsured and/or underinsured individuals whose family income falls within 250% of the federal  
6 poverty guidelines. Approximately \$3,123,526 in cigarette tax revenues is being allocated for this  
7 purpose in fiscal year 2010. In addition, FHSD has allocated cigarette tax revenues for contracts with  
8 Hana Health (\$1,130,000) and the Waianae Coast Comprehensive Health Center (\$1,468,000) to provide  
9 urgent/primary care and twenty-four hour emergency room services, respectively. Although all of the  
10 aforementioned contracts were previously State funded, these funds were replaced by the community  
11 health centers special fund effective July 1, 2009 due to severe budgetary reductions imposed upon the  
12 Department.

13 Finally, it should be noted that this measure stipulates that the amount of cigarette tax revenue  
14 collected in fiscal year 2008-2009 is estimated to be \$9,000,000. This is an overly generous estimate.  
15 The *actual* amount of cigarette tax revenues deposited into the community health centers special fund  
16 from September 30, 2008 (inception) to June 30, 2009 is \$2,021,317.

17 Thank you for this opportunity to testify on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2010**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2490, S.D. 2, RELATING TO COMMUNITY HEALTH CENTERS.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH

**DATE:** Friday, March 12, 2010      **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Mark J. Bennett, Attorney General, or  
Andrea Armitage, Deputy Attorney General

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Chair Yamane and Members of the Committee:

The Department of the Attorney General provides these comments regarding a constitutional problem in this bill.

This measure would appropriate moneys from the community health centers special fund to be used by community health centers in the State. The bill in section 3 would also direct the Governor and the Department of Health to release funds to the community health centers.

The section of this bill directing the Governor and the Department of Health to release funds violates the separation of powers doctrine, and that portion is therefore unconstitutional.

The legislative and executive branches have distinct roles in the budget and appropriation process. Under the State Constitution, the authority to appropriate moneys for the working of state government rests with the Legislature. Once the appropriations bill has been enacted and the fiscal year begins, the legislative work is completed and it then becomes the responsibility of the executive branch to implement the budget. Therefore, directing the Governor and the Department of Health to release funds would violate the separation of powers doctrine.

The Governor's authority to impose restrictions on moneys appropriated by the Legislature is specifically provided in article VII, section 5 of the Hawaii State Constitution, which states that "[p]rovision for the control of the rate of expenditures of appropriated state moneys, and for the reduction of such expenditures under prescribed conditions, shall be made by law."

In Board of Educ. of State of Hawaii v. Waihee, 70 Haw. 253, 768 P.2d 1279 (1989), the Board of Education and others brought an action to challenge the acts of the Governor and the Director of Finance in connection with the budget appropriation for the Department of Education. Among other things, the Hawaii Supreme Court found that the Governor and the Director of Finance are authorized to impose spending restrictions on moneys appropriated by the Legislature.

The Governor's authority to restrict appropriated funds as authorized by article VII, section 5 of the Hawaii State Constitution is implemented through the allotment system, which is set forth in sections 37-31 to 37-43, HRS. The allotment system requires departments to request the release of appropriated moneys from the Director of Finance or the Governor before the expenditure of such moneys can occur. The allotment requirement is the Administration's means of controlling expenditures consistent with Constitutional requirements.

Also, the Hawaii Supreme Court noted that section 37-31 states that

the policy and intent of the legislature that the total appropriations made by it, or the total of any budget approved by it, for any department [is] the maximum amount authorized to meet the requirements of the department . . . for the period of the appropriation . . . the governor and the director of finance [have been] given the powers [to effect savings] by careful supervision throughout each

appropriation period with due regard to changing conditions; and by promoting more economic and efficient management . . . .

70 Haw. at 265, 768 P.2d at 1286-87.

In finding that the Governor's one percent spending restriction imposed on the Department of Education's budget appropriations was constitutional and violated no statutes, the Hawaii Supreme Court noted:

In essence, the plaintiffs alleged the Governor interfered with the Board's implementation of the budget approved by the legislature when he imposed a one per cent spending restriction on the DOE. The Governor, the plaintiffs maintain, may impose such restrictions only if sufficient funds are not available. But "the policy and intent of the legislature [is] that the total appropriations made by it . . . for any department [is] the maximum amount authorized to meet the requirements of the department . . . for the period of the appropriation," and "the governor and the director of finance [have been] given the powers [to effect savings] by careful supervision throughout each appropriation period[.]" HRS § 37-31. Moreover, when advised by the director of finance "that the probable receipts from taxes or any other sources for any appropriation will be less than was anticipated, and that consequently the amount available for the remainder of the term of the appropriation or for any allotment period will be less than the amount estimated or allotted therefor," the Governor is obliged "to redetermine the allotment ceiling[.]" HRS § 37-37(b).

70 Haw. at 268, 768 P.2d at 1288.

Consequently, while the power to appropriate moneys is a legislative function, the power to expend and manage such appropriations is an executive function. See Communications Workers of America, AFL-CIO v. Florio, 617 A.2d 223, 235 (N.J. 1992) ("There is one thing the Legislature cannot do. It cannot exercise the functions of the executive. It cannot administer the money after it has been once appropriated.") (internal quotation marks, brackets, and citation omitted).

In implementing the budget, the Administration may impose restrictions on funding to address situations such as the uncertainty regarding the receipt of revenues or to ascertain whether a program's requirements would be satisfied by the expenditure of funds. Thus, restrictions are an essential tool in administering the State's budget.

Since the community health centers special fund as administered by the Department of Health would be part of the Executive Branch, it would be subject to the Governor's authority to restrict appropriated funds as authorized by article VII, section 5 of the Hawaii State Constitution. Therefore, the parts of this bill that would direct the Governor and the Department of Health to release appropriated funds would be a violation of the separation of powers doctrine and thus, would be unconstitutional.

We respectfully ask the Committee to amend this bill by deleting section 3 of the bill.



**Testimony to the House Committee on Health  
March 12, 2010 at 9:30 a.m.  
Conference Room 329, State Capitol**

**RE: SENATE BILL NO. 2490 SD2 RELATO TO COMMUNITY HEALTH  
CENTERS**

Chair Yamane, Vice Chair Nishimoto, and Members of the Committee:

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 2490 SD2 relating to Community Health Centers.

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 appropriates moneys from the community health centers special fund to be used by community health centers in the State. The measure also directs the administration and the department of health to release funds to the community health centers.

Improving the primary health care delivery system is an important step in improving quality and lowering costs. Hawaii's fourteen community health centers serve 120,000 people across the state and provide accessible, quality, culturally sensitive comprehensive primary care.

Therefore, The Chamber supports improvements to the quality of our health care system. They include legislation that will support community health centers. This will help address the critical access to healthcare issue.

In light of the above, The Chamber of Commerce of Hawaii supports SB 2490 SD2. Thank you for the opportunity to testify.



## Hawai'i Primary Care Association

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### House Committee on Health

The Hon. Ryan I. Yamane, Chair

The Hon. Scott Y. Nishimoto, Vice Chair

## Testimony in Support of Senate Bill 2490 SD2

### Relating to Community Health Centers

Submitted by Beth Giesting, Chief Executive Officer

March 12, 2010 9:30 a.m., Room 329

The Hawai'i Primary Care Association strongly supports this measure, which would ensure that the cigarette tax funds identified for the use of community health centers (CHCs) are fully expended for that purpose.

They serve the "underserved," a population that is increasing not just among traditional groups – the uninsured, Medicaid enrollees, the impoverished, the homeless, Native Hawaiians, and immigrants or migrants – but also in rural areas across the state where the shortage of providers puts all community residents into the underserved category.

Although the purpose of creating the community health center special fund was to provide additional stable resources to build CHC capacity, last year it was used to supplant general funds that had previously been available to health centers to serve the uninsured and preserve access to emergency room services in Wai'anae and primary care services in Hana. Given the value of the CHC delivery model, Hawai'i's poor economy, reductions in public services, population growth, and provider shortages, community health centers are needed across the state more than ever:

- Uninsured visits to CHCs grew by 7% over the course of the past year. The visit volume exceeds the number subsidized by DOH. This year at least one CHC has already exhausted its allotment for FY 2010.
- When DHS dropped adult dental coverage as a Med-QUEST benefit, the result was an additional 100,000+ people who were unable to afford essential dental care, services which might be provided by CHCs if resources were available to expand capacity and cover operating costs.
- When DOH slashed its in-house capacity to provide mental health services, it left thousands of people with nowhere to turn for help except community health centers which are struggling with the severity of the conditions of these patients and limits of their own and other community resources.

Community health center patients increased by 42% over the past five years, with an even greater increase (62%) at neighbor islands CHCs.

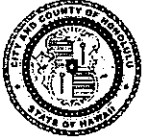
The patient-centered CHC model of care addresses the health and access problems of the most underserved, provides high quality care, and saves a lot of money (\$128 million in 2008). Additional CHCs build capacity to do more and save more.

With the source of this special fund, CHCs could and should be expanding their tobacco cessation services. Their target groups are also the most likely to smoke. Money has never been available to address these needs.

We ensure that funds that should be available for these critically needed services.

Thank you for this opportunity to testify in support of this very





**KAILUA NEIGHBORHOOD BOARD NO. 31**

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**TESTIMONY SUPPORTING SENATE BILL 2490 SD2**  
**RELATING TO COMMUNITY HEALTH CENTERS**

House Committee on Health  
Date: March 12, 2009  
Time: 9:30 a.m.  
Place: Conference Room 329

To: The Honorable Ryan Yamane, Chair  
The Honorable Scott Nishimoto, Vice Chair  
Members of the House Committee on Health

From: Claudine M. Tomasa, RN, Committee Chair  
Kailua Neighborhood Board's Public Health, Public Safety & Civil Defense Committee

Re: Board Action Supporting Senate Bill 2490

On February 4, 2010, the motion that the Kailua Neighborhood Board supports Senate Bill 2490 which appropriates moneys from the Community Health Center's special funds to be used by Community Health Centers in the State; and directs the Administration and the Department of Health to release the funds to the Community Health Centers was ADOPTED unanimously.

Please support and pass Senate Bill 2490 SD2 which allows the Community Health Centers to use the Special Fund for providing medical, dental, and psychiatric services for the uninsured and other intended purposes.

Thank you.

Cc: Senator Jill Tokuda  
Representative Pono Chong  
Representative Cynthia Thielen  
Representative Chris Lee  
May Akamine, RN, Director, Waimanalo Health Center  
Chuck Prentiss, Chair, Kailua Neighborhood Board

