



**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. 1, RELATING TO COMMUNITY HEALTH CENTERS.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Tuesday, February 23, 2010 **TIME:** 10:05 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** WRITTEN TESTIMONY ONLY. For more information, call Michelle E. Nakata, Deputy Attorney General, at 587-3050.

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Chair Mercado Kim 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 powers and thus, would be unconstitutional.

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

**Testimony to the Senate Committee on Ways and Means  
Tuesday, February 23, 2010 at 10:05 a.m.  
Conference Room 211, State Capitol**

**RE: SENATE BILL NO. 2490 SD1 RELATING TO COMMUNITY HEALTH  
CENTERS**

Chair Mercado Kim, Vice Chair Tsutsui, 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 SD1 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 that will improve the quality of our health care system, which include legislation that will support community health centers. This is one way to address the growing need for access to healthcare.

In light of the above, The Chamber of Commerce of Hawaii supports SB 2490 SD1. Thank you for the opportunity to testify.



## Hawai'i Primary Care Association

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### Senate Committee on Health

The Hon. David Y. Ige, Chair

The Hon. Josh Green, MD, Vice Chair

## Testimony in Support of Senate Bill 2490 SD1

### Relating to Community Health Centers

Submitted by **Beth Giesting, Chief Executive Officer**

February 23, 2010 10:05 a.m., Room 211

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, Hawaii’s poor economy, reductions in public services, population growth, and provider shortages, community health centers are needed in Hawai‘i 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 growth (62%) at neighbor islands CHCs.
- The patient-centered CHC model of care addresses the health and access problems of the most vulnerable, provides high quality care, and saves a lot of money (\$128 million in 2008). Additional funds would help CHCs build capacity to do more and save more.
- As appropriate to the source of this special fund, CHCs could and should be expanding their tobacco cessation programs since their target groups are also the most likely to smoke. Money has never been available to adequately address these needs.

We all urge you to pass this measure and ensure that funds that should be available for these critically needed programs are appropriated and released. Thank you for this opportunity to testify in support of this very important bill.

## LĀNA 'I COMMUNITY HEALTH CENTER

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### Senate Committee on Ways and Means

The Hon. Donna Mercado Kim, Chair  
The Hon. Shan Tsutsui, Vice Chair

### Testimony in Support of Senate Bill 2490 SD1

#### Relating to Community Health Centers

**February 23, 2010 10:05 a.m. Agenda, Room 211**

Submitted by Diana V. Shaw, PhD, MPH, MBA, FACMPE, Executive Director

Lana'i Community Health Center (LCHC) strongly supports this bill which directs the State Administration via the Department of Health to release moneys from the previously established Community Health Centers (CHCs) Special Fund to be used by Hawaii CHCs for its intended purpose. Although the original purpose of the CHC Special Fund was to provide additional moneys to build CHC capacity, last year the CHC Fund was used to supplant general funds previously budgeted to care for the uninsured and preserve access to emergency room services in Waiānae and primary care services in Hana.

More than ever, CHCs are needed because of our poor economy, growth in the uninsured, reductions in public services, provider shortages, etc. We at LCHC have seen a 300% increase in uninsured patients looking at Aug thru Nov of 2008 compared to Aug thru Nov of 2009! In addition to State contracts being cut, those contracts that remain are late in making payments to us and to Aloha Care (who in turn is late in making payment to us). As a new start, our cash flow position is weak — and limited/late State funding is exacerbating the problem. Because we have implemented cost-saving measures, improved efficiencies in our processes, and sought and received special purpose grants, we have been able to continue to increase our patient volume. However, to keep our doors open and continue our mission of service to our community, we need access to and full use of this 2007 Legislature-Approved CHC Special Fund.

It is vital that we continue to provide excellent health care to people who are uninsured. We help keep people from using expensive emergency room services by providing preventive and primary medical, dental, and behavioral health care. People who are uninsured cannot afford to purchase private insurance and do not qualify for QUEST Medicaid. They cannot afford to pay for the full cost of their health care so we rely on funding from the State to supplement coverage of this cost.

On Lana'i there is very little option regarding health care providers — this contributes to individuals either not seeking care, or having to seek care on other islands (thereby increasing their expenses). Therefore, LCHC, which serves a Medically Underserved Population in a Health Professions Shortage Area, is a vital part of Hawaii's health care system providing quality preventive and primary health and social services to our community targeting approximately 1300 low income un- and under-insured residents. patients have no health insurance Q

*E Ola nō Lāna'i*

**LIFE, HEALTH, and WELL-BEING FOR LĀNA 'I**



## LĀNA `I COMMUNITY HEALTH CENTER

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I am proud of the high quality and compassionate care that our providers give to our patients.

We appreciate the long-term, unwavering support that the Legislature has given our CHCs, our patients, and our communities. We urge your support for **SB2490 SD1**, which allows the CHCs to use the Special Fund for health care for the uninsured and other intended purposes. Mahalo and Aloha!

*E Ola nō Lāna`i*

**LIFE, HEALTH, and WELL-BEING FOR LĀNA `I**





**HO'OLA LĀHUI HAWAI'I**  
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**Senate Committee on Ways on Means**

The Hon. Donna Kim, Chair

The Hon. Shan Tsutsui, Vice Chair

**Testimony in Support of Senate Bill 2490 SD1**

**Relating to Community Health Centers**

**February 23, 2010 10:05 a.m. Agenda, Room 211**

Submitted by: David Peters, Chief Executive Officer

Ho`ola Lahui Hawai`i strongly supports this measure which supports community health centers. Community Health Centers are essential to assuring that quality primary care exists. As a rural neighbor island community, HLH is committed to ensuring that all those with health care concerns get access to the care they need and deserve.

Health Centers are an important cost-saving, quality driven and community focused asset that are grossly underfunded. Only 3% of HLH revenues come from the uninsured funding as compared to many other states where health centers are supported at much higher amounts than HLH currently receives.

In these troubled economic times, health centers provide low cost alternatives to high cost emergency room visits and prevent unnecessary hospitalizations. It is an essential service that is vital to the survival of those most in need. HLH has long been underfunded in its efforts to assure that access to care for all including many of our Native Hawaiian friends and neighbors.

We urge this committee to do the right thing and recognize community health centers by supporting this bill. Please keep hope alive and provide the funding necessary to make an even bigger impact on those in need.



# Waimānalo Health Center

Ola Hāloa

The Sustaining of Life

## Senate Committee on Health

The Hon. David Ige, Chair

The Hon. Josh Green, MD, Vice Chair

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### Testimony in Support of Senate Bill 2490 SD1

#### Relating to Community Health Centers

February 23, 2010 10:05 a.m. Agenda, Room 211

Submitted by May Akamine, RN, MS, Executive Director

Waimānalo Health Center (WHC) strongly supports this bill which directs the State Administration via the Department of Health to release moneys from the previously established Community Health Centers (CHCs) Special Fund to be used by Hawaii CHCs for its intended purpose. Although the original purpose of the CHC Special Fund was to provide additional moneys to build CHC capacity, however, last year the CHC Fund was used to supplant general funds previously budgeted to care for the uninsured and preserve access to emergency room services in Waianae and primary care services in Hana.

More than ever, CHCs are needed because of our poor economy, growth in the uninsured, reductions in public services, provider shortages, etc. We at WHC have seen 11% more uninsured patients this past year. In spite of most of our state contracts being cut by 50% and our running out of State funds to cover the cost of caring for the uninsured in January 2010, we will continue to serve our patients and anyone who needs medical, dental, mental health services. Because we have implemented cost-saving measures, improved efficiencies in our processes, and sought and received special purpose grants, we can do this only for a short time. However, to keep our doors open and continue our mission of service to our community, we need access to and full use of this 2007 Legislature-Approved CHC Special Fund.

It is vital that we continue to provide excellent health care to people who are uninsured. We help keep people from using expensive emergency room services by providing preventive and primary medical, dental, and behavioral health care. People who are uninsured cannot afford to purchase private insurance and do not qualify for QUEST Medicaid. They cannot afford to pay for the full cost of their health care so we rely on this funding from the State.

WHC, which serves a Medically Underserved Population in a Health Professions Shortage Area, is a vital part of Hawaii's health care system providing quality preventive and primary health and social services to our Ko'olaupoko communities targeting Waimanalo's 10,000 residents. We served nearly 4,000 people in over 18,000 visits this past year; 33% of our patients have no health insurance. Another 43% have QUEST.

I am proud of the high quality and compassionate care that our providers give to our patients.

We appreciate the long-term, unwavering support that the Legislature has given our CHCs, our patients, and our communities. We urge your support for **SB2490**, which allows the CHCs to use the Special Fund for health care for the uninsured and other intended purposes. Mahalo and Aloha!

My testimony is in strong support for SB 2490 SD1.

Hawaii's poor economy plus the elimination of and/or reductions in many State-funded health care programs are putting increasing pressure on Federally Qualified Health Centers like the Waikiki Health Center. At the same time, the State is delaying payments of money owed to the health centers for services provided. This double whammy is pushing the centers to the brink of insolvency.

Community Health Centers are Hawaii's most cost efficient safety net health care providers. This bill would insure that cigarette tax funds identified for the use of Community Health Centers are fully expended for that purpose.

I urge you to support this bill.

Aloha,  
Phil Kinnicutt  
Board Member, HANO  
Former Board Chair, Waikiki Health Center