SB 2650, SD1

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 24, 2010

MEMORANDUM

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

FROM: Lillian B. Koller, Director

SUBJECT: **S.B. 2650, S.D. 1 – RELATING TO THE DEPARTMENT OF HUMAN SERVICES**

Hearing: Wednesday, February 24, 2010, 10:00 A.M.
Conference Room 211, State Capitol

PURPOSE: The purpose of this bill is to require Medicaid contracts between the Department of Human Services and Medicaid healthcare insurance plan contractors to contain provisions affecting the reimbursement obligations in the policies between the Medicaid healthcare insurance plan contractors and the home and community-based case management agencies. This bill prohibits reductions of reimbursements of more than 10%.

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

This bill sets a dangerous precedent, **will require a new substantial State general fund appropriation** at a time the State faces a severe budget crisis, and could worsen patient access to care. DHS is facing a substantial budget shortfall and is making every

effort to minimize the need to decrease patient benefits. This bill prioritizes the interests of certain providers over the interests of our low-income vulnerable recipients. DHS would need a substantial new appropriation of State general funds to offset the expected reduced health plan expenditures through increased efficiency lost as a result of this bill, or DHS will need to further decrease patient benefits.

DHS allows health plans to coordinate patient care through case management services. Health plans can hire staff for this purpose or contract with licensed companies. As such, contracts between the health plans and a provider with whom they may contract are privately negotiated between the health plan and that provider.

By statutorily requiring certain contractual payments for certain providers in this bill, case management agencies, chore providers, and non-emergency medical transportation, this bill will essentially block health plan flexibility to reallocate funds as necessary in the best interest of its vulnerable Medicaid members and will set a dangerous precedent in allowing special interest groups seeking self-interested legislation to protect their incomes. This will have the effect of increasing program expenditures. This bill is tantamount to statutory, anti-trust price-fixing and is not in the best interests of the State taxpayers nor our Medicaid patients.

The nature of managed health care requires that DHS contract with health plans that provide an array of health services to clients by the health plans contracting with a network of providers to provide access to timely quality health care for Medicaid patients. The lengthy contractual documents between DHS and the managed care health plans specify the manner in which services must be delivered, the qualifications of the providers who must deliver them, the quality expectations, and many other factors. The requirements that health plans maintain provider network adequacy and meet quality standards essentially requires the health plans to pay a fair market rate to providers. If they do not, then private

health care providers would not join their network and the health plan would not be able to maintain network adequacy. Failure to maintain network adequacy could lead to DHS sanctioning and even canceling the managed health care contract.

By statutorily requiring certain contractual payments for certain providers in this bill, case management agencies, chore providers, and non-emergency medical transportation, this bill will essentially block health plan flexibility to reallocate funds as necessary in the best interest of its members. For example, if the health plans have to pay above market rate for case management services on Oahu, it may make it economically infeasible to pay a higher rate, as the market might require, to psychiatrists on the Island of Hawaii in order to encourage more Big Island psychiatrists to accept Medicaid clients.

If the Legislature sets this dangerous precedent and opens the door to these three special interest groups seeking self-interested legislation to protect their incomes, it will be besieged by all the other special interest groups who provide services to Medicaid patients seeking similar protections. This will have the effect of increasing program expenditures.

The proposed section 103F- , (a)(3), page 2, lines 10 to 15, links the "Case Management Agency" contracts with the reimbursements for chore and non-emergency medical transportation.

Since 1994, the Department of Human Services (DHS) has contracted with private health plans to manage the care of low-income adults under 65 and children in the QUEST Medicaid program. DHS expanded QUEST last year to include needy adults 65 and over and people of all ages with disabilities.

While it is not a federal requirement, DHS allows health plans to coordinate patient care through case management services. Health plans can hire staff for this purpose or contract with licensed companies. As such, contracts between the health plans and a provider they may contract with are private between the health plan and that provider.

Contracts between health plans and certain provider types are private and independent of contracts between health plans and other provider types. Although, a case management agency may arrange these services for Medicaid clients, it does not pay for them. There is no basis whatsoever of requiring payment terms of one provider in the contract of another provider.

DHS obviously expects Medicaid health plans to deliver cost-effective services. That way, Hawaii residents know their tax dollars are spent wisely.

Thank you for this opportunity to provide testimony.

LINDA LINGLE
GOVERNOR

LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
Med-QUEST Division
Administration
P. O. Box 700190
Kapolei, Hawaii 96709-0190

February 22, 2010

MEMORANDUM

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

FROM: Kenneth Fink, MD, MGA, MPH.
Med-QUEST Division Administrator

RE: BILLS REFERRED TO SENATE WAYS AND MEANS FOR 2010

The following bills affecting the Medicaid program have been referred to Senate Ways and Means for hearing. The following are the budget implications for these bills.

The following bills, if passed, will require substantial new State general fund appropriations. Given the State's current fiscal difficulties and the $1.23 billion budget shortfall for this biennium, we strongly encourage that the Senate Ways and Means Committee defer or not hear the following measures which **require new substantial State general fund appropriations**.

S.B. 2030, S.D.1 - Relating to Health. By adding the requirement that DHS shall pay the health plans 15% interest on any delays in payments to the health plans, will require a new State general funds appropriation of **$7.5 million.** The Med-QUEST Division faces a biennium budget shortfall of nearly $150 million at the end of State Fiscal Year 2011, not including the $7.5 million described above.

S.D. 1 also appropriates $70 million from the Hawaii Hurricane Relief Fund, as well as $149 in matching federal funds, to cover the Medicaid shortfall for FY 2010-2011.

S.B. 2067, S.D.1 - Relating to Medicaid Eligibility. Requires DHS to provide Medicaid presumptive eligibility to patients waitlisted for long-term care. DHS would need a new State general fund appropriation of at least **$2,000,000** per year. Additionally, it should be noted that this is funding expended for people who are not even eligible for Medicaid, therefore, we cannot receive federal funds.

S.B. 2099,S.D.1 – Relating to Health. Establishes limits on requests for proposals from health and human services providers for QUEST contracts that exceed $100,000,000 and commence after the term of the agency director expires.

This proposal will disrupt care for Medicaid clients. The purpose of this bill is not clear but seems to be based on the need for national health care reform to be enacted. The timeline for this happening is uncertain. Having our health care contracts in limbo for an unknown length of time is not good for our Medicaid recipients or for State finances.

This bill also reduces the State's ability to strengthen its oversight and accountability of the QUEST health plans to ensure better quality of health care for Medicaid clients and for efficiency, transparency and greater value to Hawaii taxpayers.

S.B. 2103, S.D.1 - Relating to the Disproportionate Share Hospital Funds. Appropriates State general funds of **$12,291,054** for the State's portion of the Federal disproportionate share hospital allowance (DSH) to offset hospital costs from the uninsured and underinsured.

DSH funds are accessed as a Federal match to a State share that can be a new State general fund appropriation or certain general fund expenditures, such as certified expenditures of the Hawaii Health System Corporation (HHSC).

With agreement from HAH, DHS is submitting a Medicaid State Plan amendment to the Federal Centers for Medicare & Medicaid Services (CMS) using excess HHSC certified expenditures to match the federal DSH allowance for the period July 1, 2008 through June 30, 2009. Federal DSH allowance is still available for the period July 1, 2009 through December 31, 2011.

Due to the efforts of Hawaii's Congressional Delegation and others, a Federal Medicaid DSH allowance of $2.5 million per quarter through December 31, 2011 has been authorized for Hawaii. DSH payments, using the distribution formula developed by the Healthcare Association of Hawaii (HAH), have been made through June 30, 2008.

Additionally, DHS has also been distributing "DSH-like" federal funds of $7.5 million per year to hospitals statewide since 2005 pursuant to a creative Medicaid 1115 waiver that DHS obtained from CMS. DHS distributes these funds based on the same DSH formula developed by the HAH. The next distribution of these funds is scheduled to occur in February 2010. To date, $xx million has been distributed to hospitals.

S.B. 2264 - Relating to QUEST Health Care Payments. This bill would require an additional **$3,100,000** in a new State general fund appropriation to restore adult dental care in Fiscal Year 2011.

S.B. 2270 - Relating to Medicaid Reimbursements. Requires Medicaid reimbursement to hospitals for patients occupying acute-licensed beds who are on a waitlist for long-term care to be at least equal to the rate paid for acute care services; requires Medicaid reimbursement to long-term care facilities for patients with medically complex conditions to be at least equal to the rate paid for subacute care; appropriates funds for increased reimbursements.

This bill would require a new State general fund appropriation of approximately **$10,000,000** to implement the reimbursement at the acute care rate for patients hospitalized and awaiting long-term care. This is based on the number of waitlisted patients from 2008 who were not found eligible for Medicaid. These payments for non-Medicaid eligible patients to nursing homes would have to be made with 100% State general funds.

Additionally, another State general fund appropriation of **tens of millions of dollars** would be required to implement paying subacute rates for those who are "medically complex." Using the definition of "medically complex condition" for paying the subacute rate means that any patient with a chronic illness taking medications would qualify for the subacute rate. This is essentially everyone in a nursing facility and would cost additional tens of millions. The difference between the average nursing facility rate ($234.62) and average subacute rate ($536.96) is an additional $302.34 per day.

S.B. 2650, S.D.1 – Relating to the Department of Human Services. Requires Medicaid contracts between DHS and its contracted Medicaid health plan to contain provisions affecting the reimbursement obligations in the policies between the Medicaid health plan and the home and community-based case management agencies. Prohibits reductions of reimbursements of more than 10%.

This bill sets a dangerous precedent, **will require a new substantial State general fund appropriation** at a time the State faces a severe budget crisis, and could worsen patient access to care. DHS is facing a substantial budget shortfall and is making every effort to minimize the need to decrease patient benefits. This bill prioritizes the interests of certain providers over the interests of our low-income vulnerable recipients. DHS would need a substantial new appropriation of State general funds to offset the expected reduced health plan expenditures through increased efficiency lost as a result of this bill, or DHS will need to further decrease patient benefits.

DHS allows health plans to coordinate patient care through case management services. Health plans can hire staff for this purpose or contract with licensed companies. As such, contracts between the health plans and a provider with whom they may contract are privately negotiated between the health plan and that provider.

By statutorily requiring certain contractual payments for certain providers in this bill, case management agencies, chore providers, and non-emergency medical transportation, this bill will essentially block health plan flexibility to reallocate funds as necessary in the best interest of its vulnerable Medicaid members and will set a

dangerous precedent in allowing special interest groups seeking self-interested legislation to protect their incomes. This will have the effect of increasing program expenditures. This bill is tantamount to statutory, anti-trust price-fixing and is not in the best interests of the State taxpayers nor our Medicaid patients.

S.B. 2810, S.D.1 – Relating to Prescription Drugs. Authorizes pharmacists to provide medication therapy management to qualified QUEST patients. Requires pharmacies to maintain prescription records and medication therapy management records electronically.

The proposed new service would need to be **entirely State general funded**. A State Plan Amendment (SPA) approval by the federal Centers for Medicare and Medicaid Services (CMS) would be needed to potentially access federal funds for this service. CMS would very likely not approve such a SPA because medication management is something already expected of providers in our managed care programs.

This bill also raises concerns about pharmacists' scope of practice. Not all pharmacists are trained to be clinical pharmacists. It is unclear if this bill would give all pharmacists prescribing authority or other new authority.

S.B. 2934 – Relating to Medicaid. Appropriates general funds to pay for QUEST coverage for citizens of compact of free association nations (COFAs).

This bill would require DHS to provide QUEST benefits for medical assistance to citizens of COFA nations at great expense and with benefits that exceed the benefits offered to many U.S. citizens in Hawaii through QUEST ACE and QUEST Net.

This bill will require a substantial new State general fund appropriation. Providing this "Cadillac coverage" will require a new State general fund appropriation of approximately **$7-10 million annually**, and it would result in further delayed payments to health plans and necessitate reductions in eligibility of benefits to Medicaid recipients.

This additional expense for services to COFAs and legal immigrants ineligible for federal Medicaid medical assistance **will result in three times the decrease in services to U.S. citizens and other immigrants eligible for federal Medicaid medical assistance.** In Federal medical assistance programs, the Federal government provides matching Federal funds to the State funds. Currently, for every dollar the State spends in a Federal medical assistance program, the Federal government pays approximately two dollars. So for each dollar of savings not realized through reductions to COFAs, three dollars worth of services will have to be cut for Medicaid recipients. **Therefore, this bill will result in the loss of Federal funds to the State, and reduce the net funding for Med-QUEST Division programs.**

This bill is also not necessary because the new Basic Health Hawaii (BHH) program covers services such as four prescription medications, either brand name or generic, and emergency services under the federal alien emergency medical assistance

program, such as dialysis. Anti-neoplastic medications, more commonly referred to as chemotherapy, are included among the covered prescription medications.

Providing all the services required in this bill can only be achieved through a reduction in services to Medicaid-eligible clients which also means a reduction in federal matching funds for the federal medical assistance programs, such as Medicaid.

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.

Additionally, the following bills have budget implications but were not referred to Ways and Means.

S.B. 2494, S.D. 1 – Relating to Insurance. Requires 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.

Prescription drugs are the fastest growing healthcare expenditure. 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.

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 State general fund appropriation. 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.

S.B. 2598, S.D. 1 - Relating to Insurance. By adding the requirement that DHS shall pay the health plans 15% interest on any delays in payments to the health plans, will require a new State general funds appropriation of **$7.5 million.** The Med-QUEST Division faces a biennium budget shortfall of nearly $150 million at the end of State Fiscal Year 2011, not including the $7.5 million described above.

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 does not have a Ways and Means referral since the funding implications were added in the S.D.1.

Thank you for considering this information.

c: Honorable Colleen Hanabusa, Senate President

CATHOLIC CHARITIES HAWAI'I

TO: Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair
Committee on Ways and Means

FROM: Diane M. Terada, Division Administrator

DATE of Hearing: Wednesday, February 24, 2010
10:10 a.m., Room 211

SUBJECT: **SB 2650, SD1, Relating to the Department of Human Services**

Catholic Charities Hawai`i (CCH) is a private, 501(c)(3) organization that has provided social services for people in need in the State of Hawaii since 1947. **CCH supports the intent of SB 2650, SD1.**

CCH operates as a licensed case management agency on the island of Hawai`i through its program, Quality Living Choices. This program has provided case management for Residential Alternatives Community Care Program (RACCP) residents in community care foster family homes since 1997.

Case management is required to assure that nursing home level patients who reside in foster homes are able to remain in the community safely. Case management services, provided by licensed case management agencies, requires a case management team of Registered Nurses and licensed Social Workers. It also requires RN/Case Managers to delegate nursing functions to foster home caregivers, thereby placing their professional nursing licenses on the line.

Catholic Charities Hawai`i supports the intent of SB 2650, SD1, for the following reasons:

1. **Fragile network on neighbor islands** - The recent attempt to reduce case management rate by one of the two QUEST Expanded Access (QExA) health plans, by nearly 48% created tremendous turmoil within the network of licensed case management agencies, most of which are small businesses. Due to public protest by the case management agencies and their supporters, the health plan agreed to a 17% reduction, which is still an extreme hardship for licensed case management agencies, given the continuing problems with transition to managed care, including increased responsibilities and lack of timely payment.

   There is no differential rate for neighbor islands and Catholic Charities Hawai`i is concerned that this may result in lack of choice for Ohana patients on the neighbor islands, where access to health care is already a challenge.

1) **Avoid compromising quality of care by establishing a minimum rate.** Currently, the complexities of providing case management for RACCP clients in community care foster

family homes requires complying with the requirements of two different health plans, while also being accountable to Federal Medicaid and State regulations, as well as a separate licensing entity – and while continuing to be client-centered and providing quality services that respect the dignity and self determination of the client. Needless to say, this has been a Herculean task.

Catholic Charities Hawai`i is concerned that a reduction in case management rates by more than 10% will compromise the ability of licensed case management agencies to ensure the safety and well-being of foster home residents. Establishing a reasonable minimum rate would ensure that this service remains a stable, viable alternative to more costly institutional care for frail and vulnerable individuals.

Catholic Charities Hawai`i asks for your support of SB 2650, SD1, in order to help ensure the safety and health of frail and vulnerable adults residing in community care foster family homes. If I can provide any further information, please feel free to contact me via phone at 808-527-4702 or via email at diane.terada@catholiccharitieshawaii.org. Thank you for this opportunity to provide testimony.

From:	Casey Alinan on behalf of webmaster
To:	WAM Testimony
Subject:	FW: SB 2650 Hearing Notice HEARING _WAM_02_-24-10-3_-HI State
Date:	Tuesday, February 23, 2010 8:00:42 AM

Forwarding email that was received by webmaster@capitol.hawaii.gov over to WAMtestimony

From: Rosalinda Malalis [mailto:nightingalecmi@hotmail.com]
Sent: Monday, February 22, 2010 7:06 PM
To: webmaster
Subject: SB 2650 Hearing Notice HEARING _WAM_02_-24-10-3_-HI State

Gentlemen:

As a Foster Care Case Management Agency in Hawaii, we feel compelled to strongly endorse the passage of SB 2650 since it not only affects the financial viability of our Agency, but more importantly will ultimately impact the welfare of our patients in the many community care foster homes in the State of Hawaii.

From: Casey Akina on behalf of webmaster
To: WAM Testimony
Subject: FW: SB2650
Date: Monday, February 22, 2010 3:20:07 PM

Forwarding email to WAM Testimony

From: Mercedes ramiro-anderson [mailto:ramiroandersoncma@gmail.com]
Sent: Monday, February 22, 2010 3:17 PM
To: webmaster
Cc: reptsutsui@capitol.hawaii.gov
Subject: SB2650

Aloha: Rep. Mercado-Kim, Rep Shan Tsutsui & members of the
I RESPECTFULLY urge you to hear & pass SB2650
Mahalo,
Mercedes Ramiro-Anderson/Pres./Owner

--
RAMIRO-ANDERSON CASE MANAGEMENT AGENCY, INC.
1136 Union Mall, Ste 801
Honolulu, Hi 96813
Office: (808) 599-2919
Fax: (808) 599-2909
Email: ramiroandersoncma@gmail.com