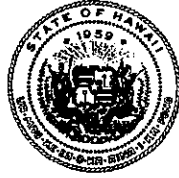


LINDA LINGLE
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Senate Committee on Judiciary

SB 0930, Relating to Volunteer Medical Assistance Services

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

March 16, 2010, 2:15p.m.

Department's Position: The Department of Health strongly supports this Administration sponsored measure.

Fiscal Implications: No impact.

Purpose and Justification: This measure would provide immunity from liability and coverage of medical expenses for licensed medical personnel providing volunteer services in non-emergency situations, such as school-based immunization clinics, on behalf of the State or a county. Volunteer workers who hold medical licenses and who are performing volunteer activities within the scope of their license are indemnified under Hawaii law when responding to an emergency, but are not protected from liability if they are volunteering for the State for a non-emergency activity, even if this activity serves as training for future emergency response. Lack of coverage for professional liability may mean that these valuable workers will not participate as state volunteers, thereby limiting the ability of the State to draw upon their skills as a critical public health resource. The proposed HD2 simply incorporates amendments to HRS 321-23.3 passed in the 2009 session adding physician assistants. The coverage of medical expenses under this bill does not represent an expansion of benefits as it is identical to that offered to State and county volunteers under existing law.

Thank you for the opportunity to testify.

S.B. 930, H.D.1 – PROPOSED HD2 DRAFT

RELATING TO VOLUNTEER MEDICAL ASSISTANCE SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by
2 adding a new section to part I to be appropriately designated and to
3 read as follows:

4 "§321- Volunteer medical assistance personnel. (a) This
5 section shall apply to all volunteer medical assistance personnel
6 including:

7 (1) Physicians;

8 (2) Psychologists;

9 (3) Nurses;

10 (4) Emergency medical technicians;

11 (5) Social workers; and

12 (6) Mobile intensive care technicians, and

13 (7) Physician assistants

14 licensed or certified in this state, or employed by a health care
15 facility, while providing volunteer assistance services on behalf of
16 the State or a county, including participation during periods of
17 assistance services and assistance training.

18 (b) Any physician or physician assistant licensed in the State
19 having privileges and credentials at public or private health care

1 facilities licensed in the State, shall be deemed as having
2 credentials with the same medical staff privileges at other hospitals
3 for the purpose of rendering volunteer medical assistance services
4 pursuant to this section.

5 (c) All volunteer medical assistance personnel who are injured
6 in the performance of duty pursuant to this section, including duty
7 performed during periods of training, shall be entitled to the
8 benefits in section 386-171.

9 (d) Except in cases of wilful or criminal misconduct, gross
10 negligence, or reckless misconduct, any volunteer medical assistance
11 personnel providing volunteer assistance services shall not be liable
12 for the death of or injury to persons, or for damage to property, as
13 a result of any act or omission in the course of rendering volunteer
14 medical assistance services pursuant to this section. No act or
15 omission shall be imputed to the owner of any vehicle by reason of
16 ownership thereof; provided that nothing in this section shall
17 preclude recovery by any person for injury or damage sustained from
18 the operation of any vehicle that may be insured under section 41D-8
19 to the extent of the insurance.

20 (e) A physician assistant licensed in this State, or licensed
21 or authorized to practice in any other United States jurisdiction, or
22 who is credentialed as a physician assistant by a federal employer
23 who is voluntarily responding to a need for medical assistance
24 services, is authorized to provide volunteer medical assistance
25 services without physician supervision, pursuant to chapter 453, or

1 with appropriate physician supervision that is available; provided
2 that:

3 (1) Any physician who supervises a physician assistant
4 providing volunteer medical assistance services pursuant to this
5 section shall not be required to meet the requirements set forth in
6 chapter 453 for a supervising physician; and

7 (2) No physician who supervises a physician assistant
8 providing volunteer medical assistance services pursuant to this
9 section shall be liable for the death of or injury to persons, or for
10 damage to property, as a result of any act or omission by the
11 physician assistant providing volunteer medical assistance services.

12 (f) Nothing in this section shall be construed to affect any
13 civil action brought by the State or a county against any volunteer
14 of the State or a county.

15 (g) In any suit against the State or a county for civil damages
16 based upon the negligent act or omission of a volunteer, proof of the
17 negligent act or omission shall be sufficient to establish the
18 responsibility of the State or a county therefor under the doctrine
19 of respondent superior, notwithstanding the immunity granted to the
20 volunteer with respect to any act or omission included under
21 subsection (d).

22 (h) For the purposes of this section:

23 "Volunteer assistance services" means the rendering of
24 professional medical services that are provided on behalf of the
25 State or a county and that have been accepted by any authorized State
26 or county personnel; provided that services provided pursuant to

1 section 321-23.3 shall not be considered to be volunteer assistance
2 services. Volunteer assistance services shall include rendering
3 professional medical services in support of vaccination campaigns or
4 outreach clinics."

5 SECTION 2. Section 662D-3, Hawaii Revised Statutes, is amended
6 to read as follows:

7 "[+]§662D-3[+] **Exception.** Notwithstanding section 662D-2, if
8 otherwise permitted by law, a person may sue and recover civil
9 damages from a volunteer based upon:

- 10 (1) Any conduct engaged in by the volunteer that would
11 constitute gross negligence, wilful and wanton misconduct,
12 or intentional misconduct;
- 13 (2) Any act or omission in connection with the operation of a
14 motor vehicle;
- 15 (3) Any conduct engaged in by the volunteer while the volunteer
16 is unreasonably interfering with the lawful activities of
17 another;
- 18 (4) Any conduct engaged in by the volunteer that takes place on
19 private property when the volunteer's presence on the
20 property was not consented to by the owner;
- 21 (5) Any act or omission within a volunteer's scope of practice
22 for which the volunteer is licensed, certified, permitted,
23 or registered under state law to perform[+], except that
24 this paragraph shall not apply to volunteer assistance
25 services provided pursuant to section 321- ; and

1. (6) Any criminal offense committed by the volunteer."

2 SECTION 3. Statutory material to be repealed is bracketed and
3 stricken. New statutory material is underscored.

4 SECTION 4. This Act shall take effect upon approval.

5

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Tuesday, March 16, 2010, CR 325

To: COMMITTEE ON JUDICIARY
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, 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: SB 930 RELATING TO VOLUNTEER MEDICAL ASSISTANCE SERVICES

The Hawaii Medical Association supports Senate Bill 930, which provides immunity from liability and coverage of medical expenses for licensed medical personnel providing volunteer services in non-emergency situations. This bill provides protections to healthcare workers volunteering emergency services that are consistent with Good Samaritan practices elsewhere.

We believe SB 930 will protect those healthcare workers who come to the aid of their community in times of crises anywhere in Hawai'i.

SB 930 will also protect those healthcare workers who volunteer to help the Hawai'i State Department of Health with important vaccination efforts.

This bill does not diminish the legal rights of those who were inadvertently harmed when assisted by such volunteers given there is willful or criminal misconduct, gross negligence or reckless misconduct.

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