

Honolulu, Hawaii

FEB 18 2011

RE: S.B. No. 1274
S.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawaii

Sir:

Your Committees on Commerce and Consumer Protection and Health, to which was referred S.B. No. 1274 entitled:

"A BILL FOR AN ACT RELATING TO HEALTH INSURANCE,"

beg leave to report as follows:

The purpose and intent of this measure is to amend the external review procedure contained in Hawaii's Patient's Bill of Rights and Responsibilities to conform to the requirements of the federal Patient Protection and Affordable Care Act.

Your Committees received testimony in support of this measure from the Insurance Commissioner of the Department of Commerce and Consumer Affairs, Hawaii Medical Service Association, Kaiser Permanente Hawaii, and 'Ohana Health Plan. Your Committees received testimony in opposition to this measure from Hawaii Coalition for Health, Kokua Council, and six private citizens.

Your Committees find that this measure is necessary to ensure that Hawaii remains in compliance with federal law. Your Committees note that Hawaii's health care consumers will be prohibited from using the current procedure for external review of adverse decisions by insurers contained in the Patient's Bill of Rights and Responsibilities as of the date that the external review provisions of the federal Patient Protection and Affordable Care Act are fully effectuated. Your Committees further find that, irrespective of any federal mandates, Hawaii's external review process has devolved from a broad consumer protection to a narrowly-available process that is inaccessible to most of



Hawaii's insured individuals. Your Committees are mindful that many individuals have found remedy for denials of service or coverage in Hawaii's process and the current external review system has sometimes served as a locus of advocacy for equitable health care policy. However, the system is currently broken and, in the face of its narrowing applicability and a federal mandate for reform, the State has no choice to implement new and innovative measures that still provide a high level of consumer protection.

Your Committees have amended this measure by:

- (1) Adding a provision to specify that exhaustion of a health carrier's internal appeals process is not necessary in the event that a health carrier substantially fails to comply with its internal review process;
- (2) Extending the response time for certain stages of the external review process from one to three days where allowed pursuant to federal law in order to promote compliance by providing realistic timelines;
- (3) Clarifying the procedure for determining eligibility for external review;
- (4) Clarifying that a health carrier shall make available for review all documents and information considered in making an adverse determination or adverse final determination;
- (5) Clarifying that a health plan is not required to proceed with an internal review in the case of a simultaneously-occurring expedited external review, but may choose to do so and may reverse an adverse determination or adverse final determination through internal review;
- (6) Clarifying that all requests for expedited review of experimental or investigational treatment adverse determinations shall be accompanied by a signed physician's certificate;
- (7) Streamlining the external review process by requiring the participation of only one clinical reviewer;

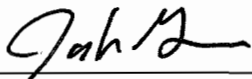


- (8) Clarifying the telecommunications capacity requirements for independent review organizations to ensure compliance with the requirements of this measure;
- (9) Clarifying conflict of interest provisions to comply with federal law;
- (10) Amending procurement requirements to provide protections under the Procurement Code while ensuring that adequate personnel are available to effectively carry out the requirements of this measure;
- (11) Specifying that health carriers shall make certain forms available on their websites and by request;
- (12) Authorizing the Insurance Commissioner to adopt rules to effectuate the purpose of this measure; and
- (13) Making conforming amendments to Hawaii's Patient's Bill of Rights and Responsibilities, chapter 432E, Hawaii Revised Statutes;
- (14) Specifying that this measure shall be construed in conformity with the federal Patient Protection and Affordable Care Act of 2010 and authorizing the Insurance Commissioner to apply emergency rule-making authority if necessary to ensure conformity with the federal law;
- (15) Specifying that, in the event of a delayed effective date of the requirements of the federal law, the currently-applicable provisions of state law shall continue to govern the external appeals process until the federal law is fully effectuated or January 1, 2012, whichever is sooner;
- (16) Specifying that this measure shall sunset in the event that the external review provisions of the federal Patient Protection and Affordable Care Act are found unconstitutional by the Supreme Court of the United States; and
- (17) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

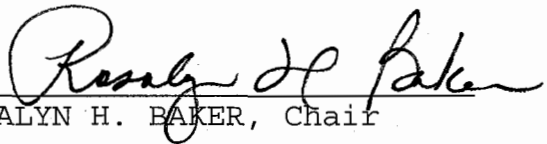


As affirmed by the records of votes of the members of your Committees on Commerce and Consumer Protection and Health that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1274, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1274, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committees on Commerce and
Consumer Protection and Health,



JOSH GREEN, M.D., Chair



ROSALYN H. BAKER, Chair



The Senate
Twenty-Sixth Legislature
State of Hawai'i

Record of Votes
Committee on Health
HTH

Bill / Resolution No.:*	Committee Referral:	Date:		
<i>SB1274</i>	<i>CPN/HTH, WAMM</i>	<i>2/10/11</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312				
<input checked="" type="checkbox"/> Pass, with amendments 2311				
<input type="checkbox"/> Hold 2310				
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
GREEN, M.D., Josh (C)	✓			
NISHIHARA, Clarence K. (VC)	✓			
BAKER, Rosalyn H.	✓			
CHUN OAKLAND, Suzanne	✓			
SHIMABUKURO, Maile				✓
WAKAI, Glenn	✓			
SLOM, Sam				✓
TOTAL	5			2
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<i>Clarence K. Nishihara</i>				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes