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**Testimony of
Ellen Godbey Carson
on behalf of Kaiser Foundation Health Plan, Inc.**

Before the House Committee on
Consumer Protection & Commerce
and Committee on Judiciary

March 23, 2011, 2:00 p.m.
Conference Room 325

SB 1274, SD 2, HD1 RELATING TO HEALTH INSURANCE

Chairmen Herkes and Keith-Agaran and committee members, thank you for this opportunity to provide testimony on behalf of Kaiser on SB 1274, which creates a new external review law to comply with mandates of the Federal Patient Protection and Affordable Care Act of 2010 ("PPACA").

Kaiser supports the purpose and most terms of this bill but has several requested amendments for compliance and clarity.

First, I would like to address the legal necessity for this bill. PPACA mandates this form of external review. Contrary to some of the testimonies you have received, Hawai'i cannot continue to use the existing State external review law in HRS § 432E-6 for health insurance benefit disputes. Hawai'i must, by July 1, 2011, either have an external review law that meets PPACA requirements, or it will be subjected to a federal external review process over which Hawai'i will have no control. That is why the Insurance Division has sought enactment of a new external review law that will both comply with PPACA and promote uniformity in resolving health benefit disputes.

Second, minor amendments cannot fix our existing law. The Hawai'i Supreme Court has invalidated our existing law for most of our health plans, and it is inapplicable to the vast majority of our residents. Minor amendments will only cause it to be invalidated again, as explained in my attached letter to the U.S. Dept. of Health and Human Services.

Third, Kaiser requests the following amendments:

- (1) The effective date of the Act in Section 15 should be changed to be on July 1, 2011, to comply with PPACA's mandate.
- (2) Hawai'i's definition of "medical necessity" in HRS § 432E-1.4 should be incorporated as a matter that the independent review organization and its

Testimony of Ellen Godbey Carson

March 23, 2011

Page 2

reviewer should consider and address in their review, to assure reviews will be consistent with this Hawai'i law (in Sections 432E-__D(i); -__E(g); and -__F(q)).

(3) Amendments to this bill were intended to eliminate the burden and cost of having more than one reviewer per case, but several sections still mention multiple "reviewers" and those should be revised to be singular instead of plural (in Sections 432E-__D(i); -__E(g)), and "each clinical reviewer" should be revised to "the clinical reviewer" (in Sections 432E-__F(r)(2) and -__F(r) at the end).

(4) The termination clause in Section 15 should be deleted, as it would automatically repeal this Act if the US Supreme Court were to declare unconstitutional the PPACA mandate for the external review procedure. Even if such an unusual event occurs, this Act should not be automatically repealed. The Legislature should instead consider whether the new review procedures provide more fairness, expertise and efficiency than our existing process. Kaiser believes the new IRO review procedure will provide a faster and less burdensome procedure to resolve health benefit disputes, with enhanced national medical expertise, that will better serve the interests of all parties, even if the federal mandate is removed. The new external review procedure also provides a fast and economical external review process for many citizens of Hawai'i who currently do not have that option. In any event, any repeal should only follow serious Legislative consideration and adequate advance notice, as is standard procedure for other laws.

(5) Section 432E-__L has inconsistent statements regarding the applicability of the state procurement law. This law should be subject to the state procurement law to the same extent as other laws where the state requires contracting with outside entities.

(6) Other minor clarifications are needed before finalization of this bill:

- the filing fees in §432E-__C(a) should be returned to their original stated amounts (\$25 fee for single filing/\$75 maximum per year limit), which is directly authorized by PPACA;
- "commission" in 432E-__C(a) should be revised to be "commissioner";
- Section §432E-__F(r), "shall be a covered benefit" should be revised to say "shall be covered", as the IRO only makes coverage determinations in individual cases, and is not an insurer writing contractual plan benefits.

In summary, Kaiser supports the purpose of SB 1274 but requests these amendments for compliance and clarification purposes. I would be glad to assist in incorporating these amendments into the pending bill. Thank you for your consideration.

Attachment: March 18, 2011 Letter to Mr. Steve Larsen and Ms. Julie Harada

ATTACHMENT TO TESTIMONY OF
ELLEN GODBEY CARSON ON BEHALF OF
KAISER REGARDING SB 1274, SD 2, HD1



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March 18, 2011

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Mr. Steve Larsen
Ms. Julie Harada
Center for Consumer Information and Insurance Oversight
Department of Health and Human Services
Hubert Humphrey Bldg., Room 445-G
200 Independence Ave., SW
Washington, DC 20201

Re: **CCIIO Review of Hawai'i's External Review Law**

Dear Mr. Larsen and Ms. Harada:

I am writing on behalf of Kaiser Permanente in Hawai'i, in response to a letter to you dated March 14, 2011, from Rafael del Castillo, which was submitted as testimony in our Hawai'i Legislature.

We oppose Mr. del Castillo's request for CCIIO approval of Hawai'i's external review law. He is seriously mistaken in many facts and analysis. Our firm has extensive experience in these matters, and has represented managed care plans in most of the external review cases Mr. del Castillo refers to in his letter.

Hawai'i's current External Review Law (Haw. Rev. Stat. §§432E-6 and -6.5) does not comply with the Patient Protection and Affordable Care Act ("PPACA"), even with the "minor technical corrections" he proposes (which have not been accepted by the Hawai'i Legislature). We find no legal authority for a "waiver" for Hawai'i's External Review Law under PPACA or its Interim Final Rules Relating to External Review Processes, and Mr. del Castillo cites none.

Mr. Steve Larsen
Ms. Jule Harada
March 17, 2011
Page 2

Hawai'i's External Review Law provides an adjudicative remedy clearly inconsistent with ERISA remedies. It has been declared preempted by ERISA by the Hawai'i Supreme Court. *HMAA v. Insurance Commissioner*, 106 Haw. 21 (2004). Accordingly, that law is not applicable to the vast majority of Hawai'i residents who are governed by Hawai'i's mandate for employer-sponsored health plans (Haw. Rev. Stat. ch 393, our Prepaid Health Care Act). Since it is inapplicable to most residents, that law cannot provide the minimum consumer protections required by the Interim Final Rules.

The "minor technical corrections" proposed by Mr. del Castillo do not alter ERISA preemption analysis. His proposed revised law would still be preempted by ERISA because it is an adjudicative process contrary to ERISA's remedies and thus will remain inapplicable to most of our residents. PPACA and the Final Interim Rules do not alter that analysis.

Moreover, our External Review Law suffers numerous serious deficiencies compared to the Final Interim Rule. For example, the process usually takes many months to obtain a ruling because of the challenge of coordinating schedules and scarce resources for the required three-member panel administrative hearing (one hearing I attended took over a year). The standard process usually entails retaining legal counsel, submission of advance written testimonies of all witnesses and briefs on relevant facts and law, making a personal appearance at a hearing to be examined and cross-examined, and presentation of medical testimony; all of which is much more time-consuming and stressful on consumers than the IRO process in the NAIC model. Moreover, the two non-medical panel members can overrule the medical panel member on any issues, even those requiring medical expertise. Mr. del Castillo's technical corrections do not alter any of these major deficiencies.

Our State Insurance Commissioner has proposed a new external review law to comply with the Interim Final Rules, which is modeled after the NAIC Model Act and is currently pending in our State Legislature. We expect that bill will be passed and have asked for an effective date of July 1, 2011, to meet compliance deadlines of the Interim Final Rules. A copy of the current version of that bill is at.

http://www.capitol.hawaii.gov/session2011/CommReports/SB1274_HD1_HSCR983_.HTM

Mr. Steve Larsen
Ms. Jule Harada
March 17, 2011
Page 3

If you would like any further information or response regarding the issues in his letter, please contact me.

Very truly yours,



Ellen Godbey Carson

EGC:rjkp

cc: Kaiser

Honorable Daniel Inouye, United States Senate
Honorable Daniel Akaka, United States Senate
Honorable Mazie Hirono, United States House of Representatives
Honorable Colleen Hanabusa, United States House of Representatives
Honorable Neil Abercrombie, Governor, State of Hawai'i
Honorable Shan Tsutsui, President, Hawai'i State Senate
Honorable Calvin K. Y. Say, Speaker, Hawai'i State House of Representatives
Honorable Suzanne Chun-Oakland, Majority Whip, Hawai'i State Senate
Honorable Sam Slom, Minority Leader, Hawai'i State Senate
Honorable Josh Green, M.D., Hawai'i State Senate
Honorable Blake K. Oshiro, Majority Leader, Hawai'i State House of Representatives
Honorable John Mizuno, Majority Whip, Hawai'i State House of Representatives
Honorable Gene Ward, Minority Leader, Hawai'i State House of Representatives
Honorable Ryan I. Yamane, Chair, House Committee on Health
Honorable Robert N. Herkes, Chair, House Committee on Consumer Protection & Commerce
Honorable Dee Morikawa, Vice-Chair, House Committee on Health
Honorable Della Au Belatti, House Committee on Health
Honorable Chris Lee, House Committee on Health
Honorable Faye P. Hanohano, House Committee on Health
Honorable Jo Jordan, House Committee on Health
Honorable Jessica Wooley, House Committee on Health
Honorable Corinne W. L. Ching, House Committee on Health
Honorable Marcos Pine, House Committee on Health



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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DEPUTY DIRECTOR

TO THE HOUSE COMMITTEES ON
CONSUMER PROTECTION AND COMMERCE AND JUDICIARY

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, March 23, 2011
2 p.m.

TESTIMONY ON SENATE BILL NO. 1274, S.D. 2, H.D. 1 – RELATING TO HEALTH INSURANCE.

TO THE HONORABLE ROBERT N. HERKES AND GILBERT S.C. KEITH-AGARAN,
CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department supports this Administration bill which replaces the existing external review process for deciding health insurance coverage disputes with a new process based on a review by an independent review organization ("IRO") that conforms to the requirements of the federal Patient Protection and Affordable Care Act ("PPACA"). An IRO is a private organization that contracts with a medical doctor to give a medical opinion on a health insurance coverage dispute. Although we support this bill, we have some concerns about the S.D. 2 that we wish to bring to the attention of the Committee. Therefore, our testimony will be in two parts.

A. Generally, we support the intent of this bill.

Hawaii already has an existing external review process located at Hawaii Revised Statutes section 432E-6 which involves review by a 3 member panel, but the

process has suffered some serious setbacks. In 2004, the Hawaii Supreme Court ruled that this process was pre-empted by ERISA which means that those members who get their health insurance through their private employers could no longer use the external review process. In 2008, the Department of the Attorney General ruled that the EUTF was also exempted from the external review process. Today, the external review process only handles individual, non-group members and Medicaid members. Also, we should point out that because Medicaid offers an administrative hearing at the Department Human Services we are offering a duplicative process to Medicaid members. Today, we get about one request per month for an external review, if that. As a result, there is almost nothing left of the original external review process and the process therefore does not help very many of Hawaii's citizens.

The PPACA regulation on external reviews (see Federal Register / Vol. 75, no. 141, July 23, 2010 / Rules and Regulations) requires that by July 1, 2011, Hawaii come into compliance with federal requirements and contemplates an IRO process. The regulation also cites to the National Association of Insurance Commissioner's model act on external reviews using an IRO. This is the model we used in developing HB 1047. In order to meet the federal requirements, and restore a workable process to Hawaii's people, we believe it is advisable to enact SB 1274. Note that we have carved out the EUTF and Medicaid from the proposed IRO program because they both have their own existing administrative appeals process. If we do not create an external review process that is compliant with the federal law, then as of July 1, 2011, the federal HHS will take over the external review process for Hawaii. Although we do not have a definitive decision from HHS, we believe that our current external review process is noncompliant with the federal law in some respects.

The use of an IRO for external reviews is well established. Medicare uses an IRO process as do many other states.

We believe that an IRO can handle a review of Hawaii's medical necessity statute (see HRS section 432E-1.4), which is only applicable in selected cases where there is no specific coverage exclusion. Currently, medical directors of health plans must do a medical necessity review.

B. We have some concerns about the H.D. 1

Proposed section 432E–F, pertaining to external review of experimental or investigational treatment adverse determinations, deleted requirements for: (1) assignment of the external review to clinical reviewers (instead, requiring a single reviewer); and (2) assignment of an additional reviewer if there is a split decision. The Department prefers the original process set forth in the NAIC model law, which required as least two reviewers for external reviews of experimental or investigational treatment.

The proviso in proposed section 432E-L on page 48, lines 18 to 22, and page 49, lines 1 to 4, subjects the Insurance Division to the procurement process. This contradicts the previous section which properly exempts the external review process from procurement. The provision creates unnecessary confusion and ambiguity in the law and should be removed. Because the health plans will be paying for the IRO's no State moneys are involved.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 22, 2011 12:13 AM
To: CPCtestimony
Cc: Onyx_Rose@hotmail.com
Subject: Testimony for SB1274 on 3/23/2011 2:00:00 PM

Follow Up Flag: Follow up
Flag Status: Flagged

Testimony for CPC/JUD 3/23/2011 2:00:00 PM SB1274

Conference room: 325
Testifier position: oppose
Testifier will be present: No
Submitted by: Dana Nolen
Organization: Individual
Address:
Phone:
E-mail: Onyx_Rose@hotmail.com
Submitted on: 3/22/2011

Comments:

I am writing you all for the first time on an issue that I feel so strongly about that I simply cannot in good conscience just sit still and let such a grave injustice occur without making the best attempt that I can to let you know what it is that you are voting on when it comes to SB1274, an incredibly harmful bill that you will hear on March 23rd.

As things currently stand, if a disagreement comes up between your medical insurer and you, you have the right to bring the dispute before an impartial group here in Hawaii where you and your insurance company can both have a say. If a decision is made that seems unfair, or there are other considerations, an appeal may be made. Our insurance premiums provide the insurance companies with a battery of lawyers to see to their best interests at such meetings, and current provisions have the insurance company provide a lawyer for the patient also, (paid for by our premiums, so in effect, the patient is paying all legal expenses) The new law proposes to streamline and centralize this process in order to cut medical costs and to standardize this procedure for all states under proposed federal guidelines. The external review of disputes will be held in the mainland, lawyers will no longer be provided and the decisions made will be final--no appeal allowed.

While this sounds good on paper, and we all see a need to cut medical costs as a large portion of the population is living longer and inevitably aging, this, my friends, is not the answer.

The first problem is that the meetings are to be held in the mainland. For patients in the contiguous United States, centralization may mean that they may have to travel a little further, but even if they have to go into another state, it would not be much more than a Sunday Drive. For our patients, however, this would mean crossing half the entire Ocean, and definitely not in a car, to present their side of the story. A lot of our patients need an act of Congress and all of God's angels just to get them out of their houses, and at great medical risk, let alone a trip to the mainland! I heard a commentator once say, "but they can video conference!" Now, how well do you suppose our Kupuna and the underprivileged parents of some of our most unfortunate keiki will use that to their advantage--especially without the advice and aid of the lawyer that will be denied them by

this bill? There is no provision for anyone to even tell them what they can and cannot legally do. I would remind you that for the insurance companies, they would still have the battery of lawyers paid for with our premiums, and mainland offices that would be just across town from where these meetings will be held. Patients can still pay for a lawyer to advise them out of their own pockets, but with medical conditions that are already taxing their finances terribly, and in this day and age where no one seems to have a lot of money just laying around, these disadvantages may be insurmountable. The new bill will, in effect, silence a person's right to have a say in their medical decisions. They just as well might have duct tape across their mouths! All this, while the insurance representatives can be right there with deep pockets, and we all know how loudly money can speak.

In cases of life-saving procedures, this unfairly biased group will be making life and death decisions, many times without being presented both sides or even being aware of the gravity of the situation. If you allow this bill to pass, I would remind you of your culpability in allowing this to occur. Each one of you that votes yes on this bill will be morally, if not legally, responsible for literally pulling the plug on some patient's lifelines. Some of your own constituents whose only crime would be wanting their money's worth from their insurance would be so affected. They would be given a death sentence with your complicity---and that without appeal.

I realize that we are talking about a relatively few amount of people at any given time, and so could be classified as a "special interest" group, but there are reminders every day that "There, but for the Grace of God" go we. At any time, you or a loved one could contract cancer, become injured, or God forbid, become the victim of violence like Senator Giffords, who is a classmate of my Arizona-born-and-bred husband. This bill will give the insurance companies practically carte blanche to withhold medical care at their discretion, and virtually unopposed. Naturally, this will reduce medical costs for them, but will increase out-of-pocket expenses for patients if they wish to continue getting care. At the same time, the news has been recently bombarded by the effects of recent premium hikes and increases in share-of-cost and co-pay expenses. Where is the savings in medical costs for you, I and the people of Hawaii?

I suppose if you have stock or other interest in the insurance companies or related big-business enterprises, then you could possibly receive a higher profit share. Perhaps you truly believe that the insurance companies will put their patient's needs before profit considerations or that by saving money on their most-expensive care, there will be more money to care for the rest of us, not simply divvied up as profit. This would fly in opposition of everything that we have ever seen of their practices, but God bless you for having faith in your fellow man, and I earnestly hope you are right! While we may hope for a more secure financial future in general, on a personal level, this bill sets us up to have our throats cut by withholding needed care, regardless of Doctor's orders, medical necessity or even prior arrangements. It reminds me of the Bible verse "How does it profit a man to gain the whole world, but lose his own soul?" Could you really look into the eyes of a handicapped child who will be killed by reduction of her care and tell her "It is for the greater good?" This is NOT an exaggeration. I personally care for one such child who's life stands precariously in the balance, and know of several others.

The more cynical of you may be thinking, "Aha! She is a nurse! She is only trying to protect her job!" This could be said of the lawyers that represent these patients as well. I would proudly admit to being a nurse and serving my patients as best I can, including this foray into politics that I honestly know very little about. I would also ask just what is wrong with trying to save jobs? I have a family to support. I think it likely that any of you in my shoes would do the same, but of far greater importance than saving my job, and the real reason for my writing you, is because I take the nurse's role of patient advocate very seriously. I feel it is my duty to speak on behalf those who cannot. In this case, I speak for my patients, anyone who has ever cared for or loved a patient, or who, God forbid, may ever become one. That would include all of you, personally, your friends and loved ones, all

your constituents and all the people who reside in our beautiful state. I may be but one voice, but I hope that it is the voice of Aloha and compassion that you will hear in my plea to please defeat this detrimental bill.

Please forgive me for being so long-winded and taking so much of your time if you have been so gracious as to have read all the way through this. I do not envy the responsibility that you each bear, and am sure it can be very tiring and aggravating at times. Also, forgive me for going all "Patrick Henry" on you, but this is something I feel very strongly about. Passage of SB1274 may have some ill-defined benefits but it's cost in human suffering will be immeasurable. This, or similar bills of this sort may work on the mainland, but surely you can see how it would not work for us.

I thank you for all of the work you each do in representing us, the people of Hawaii, and keeping our best interests at heart. As always, I will be praying for you, that God give you courage and wisdom to do what's right.

Aloha, and God Bless,
Dana Nolen, LPN

Rafael del Castillo

Attorney at Law

COMMENTS ON TO S.B. 1274 HD1

From: Rafael del Castillo
Attorney at Law
Personal testimony, not on behalf of any particular client or organization

To: Joint Committee Hearing
House Committee on Commerce and Consumer Protection,
Hon. Representative Robert N. Herkes, Chair
Hon. Representative Ryan I. Yamane, Vice Chair

House Committee on Judiciary
Hon. Representative Gilbert S.C. Keith-Agaran, Chair
Hon. Representative Karl Rhoads, Vice Chair

Hearing: March 23, 2011, 2:00 p.m., Conference Room 325

Emailed to: CPCtestimony@Capitol.hawaii.gov

oppose

Senate Bill 1274 HD1 as it is presently constituted REPEALS substantive and material consumer rights and thus should not be sent to conference without the revisions I am proposing in a draft S.B. 1274 HD2, which is being distributed to your offices and members of the Committees today. Please note that S.B. 1274 HD1 makes no provision whatsoever to preserve the rights of consumers who are presently pursuing external reviews under existing law and will not complete these cases until after July 1, 2011, the deadline you have been told for Hawaii to implement the minimum consumer protections listed in the interim Federal regulations. Surely these Committees will not repeal the rights of those consumers out from under them.

Included in the above-referenced distribution, for members who have not previously received a copy, is my submission to Steve Larsen, Director, Federal Center for Consumer Information and Insurance Oversight, as Mr. Larsen is in charge of the review of Hawaii's existing external review law. I am also providing your Committee members with copies of my letter to Senator Suzanne Chun Oakland, which she requested in our discussion on Friday, March 18, 2011. My letter to Sen. Chun Oakland summarizes in Exhibit 1 the consumer protections S.B. 1274 HD1 repeals.

I have studied S.B. 1274 HD1 in detail and had lengthy and substantive discussions with Mr. Larsen's staff on February 17. I have long experience with Hawaii's external review law, Federal health care law, and preemption, and thus have provided you with my opinions regarding the effects of the proposed law. I have also provided you with the minimum amendments to HD1 that will preserve the key consumer protections Hawaii consumers presently enjoy, and which Federal law does not require them to surrender.

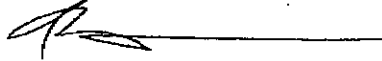
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Re: Comment on S.B. 1274, by Rafael del Castillo
Page 2

Frankly, I view S.B. 1274 HD1 as a stealth attack on 264,000 QUEST and QExA enrollees who presently have the right to external review. In its present form, the Bill repeals those rights altogether. Given Governor Abercrombie's promises to protect Hawaii's most vulnerable citizens, which I believe these Committees and their members support, S.B. 1274 HD1 is not conscionable.

Thank you for the opportunity to comment on this measure.

Very truly yours,



Rafael del Castillo

**Jouxson-Meyers
& del Castillo**

Attorneys at Law
a Limited Liability Law Company

March 21, 2011

Via hand delivery

Hon. Suzanne N. J. Chun Oakland
Hawaii State Senate
Hawaii State Capitol
415 South Beretania Street
Room 226
Honolulu, Hawai'i 96813

*Copies
Available
for
Review*

RE: Hawaii External Review and S.B. 1274 HD1 Revis

Dear Senator Chun-Oakland:

In accordance with your request, I am attaching a table indicating the main protections Hawaii consumers have long enjoyed under H.R.S. §432E-6 which S. B. 1274 HD1 repeals. See Exhibit 1. Incidentally, I compared S. B. 1274 HD1 with S. B. 1274 SD2. S. B. 1274 HD1 replaces the word "commission" in section 432E-C(a)(4) with the word "commissioner" and changes the effective date to July 1, 2040. Otherwise HD1 is identical to SD2. SD2 significantly revised SD1, however.

With all due respect, repeal is the only way to describe the parts of the bill that strike H.R.S. §432E-6 in its entirety because S.B. 1274 HD1 does not replace those protections with equal or better rights. Striking H.R.S. §432E-6 constitutes a repeal of substantial rights. The table enclosed lists the rights Hawaii consumers enjoy under H.R.S. §432E-6 alongside any provision of S. B. 1274 HD1 providing discussion including any right in the same category, if S. B. 1274 HD1 provides any right. In accordance with your suggestion, I have included as Exhibit 3, a proposed HD2 which preserves existing protections and adds sections to our law incorporating a submission to a binding decision by an independent review organization in cases valued at less than \$3,000, and an election by the consumer to submit cases valued at \$3,000 or more to an independent review organization in lieu of the 3-member panel.

Federal Law Does Not Preempt or Require Repeal of Hawaii's More Strict Protections

Interim Federal regulations require Hawaii's external review law to provide sixteen minimum consumer protections. Those minimum protections are not intended to result in

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Rafael G. del Castillo, Member

CPCtestimony

From: Carolyn [cysanto@hawaii.rr.com]
Sent: Wednesday, March 23, 2011 1:15 AM
To: CPCtestimony
Subject: Oppose SB1274 as amended

To Whom It May Concern:

This email is too voice my strong opposition to S.B. 1274 because it takes away important rights. The balance of power between the entities providing health coverage and the individual patient is too skewed already.

I wish I could share the details of my situation and how the existing law worked, but a very powerful health insurance provider bought my silence by finally agreeing to provide the services/treatment that they were obligated to provide under the plan. In return, I signed a confidentiality agreement that prevents me from sharing my experience and the terrible process I went through to try to obtain coverage for medically necessary treatments.

I never received any justification for the initial denial of coverage and denial of my first appeal. I believe that the treatment was too costly to approve without putting me through torture first. I'm certain other people in similar situations simply give up and try to pay for expensive treatments out of pocket.

Please stop S.B. 1274 and help preserve patient rights.

Thank you,
Carolyn Santo
Kailua, HI

CPCtestimony

From: Robert Stiver [stiver-aloah@hawaii.rr.com]
Sent: Wednesday, March 23, 2011 1:01 AM
To: CPCtestimony
Subject: Do not pass S.B 1274 out of your Committees!

Importance: High

Dear Committee Chairs Herkes and Keith-Agaran: I adamantly oppose the repeal of patients' rights, which would be the result of passage of S.B. 1274. Patients -- We, the People -- need our rights to be protected, not abrogated. Please do the right thing and consign S.B. 1274 to the dustbin.

Sincerely, Robert H. Stiver (retiree), Pearl City; tel. 455-9823

CPCtestimony

From: richoep [richoep@aloha.net]
Sent: Tuesday, March 22, 2011 9:45 PM
To: CPCtestimony
Subject: testing

Stop S.B. 1274. I oppose the repeal of my rights.

Much Love, Rich Hoepner, 4865G Nonou Rd., Wailua, Kapaa, Kaua'i, Hawaii, 96746.

Date: March 23, 2011

To: Robert N. Herkes, Chair, Consumer Protection and Commerce Committee, and Gilbert S.C. Keith-Agaran, Chair, Judiciary Committee

From: Chuck Huxel

Subject: SB1274

Dear Sirs,

OPPOSE

This Bill (SB1274) repeals important consumer protections now provided under Hawaii law. We average citizen consumers of Hawaii will be at the mercy of the powerful private healthcare insurers if it passes as now written. Please amend this bill to preserve the rights we now have under the external review processes of current Hawaii law, or stop this bill from progressing any further, now. It is beyond belief that the private healthcare insurance industry would be backing this bill if it were good for the ordinary citizen consumer of healthcare.

Thank you for the opportunity to present this testimony.

Sincerely and with Aloha,

Chuck Huxel

CPCtestimony

From: Peggy Gaither Adams [adamp@hawaii.edu]
Sent: Tuesday, March 22, 2011 6:42 PM
To: CPCtestimony
Subject: S.B. 1274

I oppose the the repeal of my rights by S.B. 1274.

Peggy Gaither Adams
Professor of Theatre & Dance
1770 East West Rd.
Kennedy Theatre
University of Hawaii at Manoa
Honolulu, HI 96822
(808) 956-3264
adamp@hawaii.edu

CPCtestimony

From: Chad Kolomalu [chad.kolomalu@gmail.com]
Sent: Tuesday, March 22, 2011 6:11 PM
To: CPCtestimony
Subject: testing

I'm a 19 year old paralyzed from the neck down. I required 24 hour vent assistance to breathe and I need someone near me at all times to insure I'm able to breathe. Therefore "I oppose the repeal of my rights by S.B. 1274." I wish to preserve my rights. Thank you for considering my opinion.

--

Chad A. Kolomalu

CPCtestimony

From: Shana Metsch [shanametsch@yahoo.com]
Sent: Tuesday, March 22, 2011 5:25 PM
To: CPCtestimony
Subject: Subject: "I oppose the repeal of my rights by S.B. 1274."

Subject: "I oppose the repeal of my rights by S.B. 1274."

Thank you,

**Shana Metsch
PO Box 339
Kilauea, HI 96754**

CPCtestimony

From: Summer Harrison [summer@aloha.net]
Sent: Tuesday, March 22, 2011 4:44 PM
To: CPCtestimony
Subject: "I oppose the repeal of my rights by S.B. 1274."

Summer Harrison
3663 Papalina Road
Kalaheo, HI 96741
808-635-1246

CPCtestimony

From: mele lani [hulask8r@hotmail.com]
Sent: Tuesday, March 22, 2011 4:18 PM
To: CPCtestimony
Subject: Testimony opposing SB 1274

TESTIMONY IN OPPOSITION TO SB 1274

From: MeleLani C. Llanes
Kapolei Resident

To: House Consumer Protection Committee

Hearing: March 23, 2011, 2:00 p.m., Conference Room 325

Emailed to: CPCtestimony@Capitol.hawaii.gov

I am **strongly opposed** to Senate Bill 1274, which will unjustifiably and irreversibly damage health care consumer protection in Hawai'i. Our external review law, H.R.S. § 432E-6, has served health care consumers well for over a decade. It gives health care consumers a more level playing field against powerful insurance companies. Consumers have access to experienced advocates to assist them with preparing and presenting their cases in a manner consistent with Hawai'i's medical necessity law. Decisions are made by a local expert panel, and consumers are able to present expert testimony and other evidence in a fair, but efficient, hearing process.

Instead of repealing our existing external review statute, it should be expanded to include ERISA plan members now that the health care reform act has made that possible. The Insurance Commissioner should be directed to require ERISA plans to make our existing external review available to their members. (If the Commissioner can order ERISA plans to use the outsource review process proposed in S.B. 1274, he can order them to use our existing process.) Decisions on health care in Hawai'i should be made in Hawai'i, not outsourced to mainland doctors who are not in touch with our values, our culture, and our people.

The Administration has inaccurately described S.B. 1274 as providing "uniform standards for external review procedures." In fact, more than a quarter of a million people who now have the right to external review under H.R.S. § 432E-6 will lose it. Nearly half of Hawai'i's population will have to use various other forms of external review.

Personally, I lost an ERISA case for medical care I received in 2007. I paid out of pocket over \$100,000.00 for my care and the insurance company refused to reimburse me \$50,000.00 of benefits still due me. A mainland company upheld their decision despite the fact that I noted numerous entries in my chart that supported my need for care. I am now losing my house because of the shortfall.

Currently, I have an appeal approved for hearing with the External Review board for a durable medical devise that I am seeking in lieu of expensive knee replacement surgery. I am actually trying to save the insurance company and the State tens of thousands of dollars and the insurance company is still refusing to reimburse me for the devise.

Under the S.B. 1274 proposed review, the process is far more complex (you have only to compare the length of our existing law, H.R.S. § 432E-6 with S.B. 1274 to see how much more complex it will be), and, ironically, health care consumers will have a lot less help. S.B. 1274 simply cannot be seen as anything more than a huge favor for insurers. I want you to know that I consider this a VERY IMPORTANT issue, and I ask

you to heed the voices of those of us who oppose S.B. 1274. Vote "NO" on S.B. 1274 because of the irreversible damage it will do to an inestimable number of Hawai'i citizens when they are sick and need our wholehearted support.

Thank you for the opportunity to express my strong opposition to this measure.

Very truly yours,

MeleLani C. Llanes
(808) 220-0905
P.O. Box 701013
Kapolei, HI 96709

Faith Action for



Community Equity

Gamaliel Foundation Affiliate

March 23, 2011

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair

COMMITTEE ON JUDICIARY

Rep. Gilbert S. C. Keith-Agaran, Chair

SB 1274, SD2, HD1

RELATING TO HEALTH INSURANCE

(No Support)

Good Afternoon Chairs Herkes and Keith-Agaran:

I am Rev. Bob Nakata and I am the Chair of the FACE Health Care Committee and its past President. FACE is the largest State inter-faith and community organizing non-profit. We have 24 institutions on Maui, 27 on Oahu and one statewide. There are 38 churches, a Buddhist Temple, 2 Jewish congregations, 10 community groups and non-profit organizations and one labor union. FACE has a statewide participating membership base in excess of 40,000.

WE DO NOT SUPPORT THIS BILL. However, FACE would like to suggest that a public forum and task force be convened this summer to discuss the merits of the external review process as presently in the Patient's Bill of Rights. This process has worked for the people of Hawaii. Further, our population of Medicaid beneficiaries needs these protections in the event they are denied rightful healthcare benefits. A public discussion should be allowed to discuss the merits of the External Review Process and the process of an Independent Review Organization, which could very likely not even be located in Hawaii.

FACE feels the discussion of the impact of the Federal Affordable Care Act (ACH) on this important consumer issue is premature. This decision by the legislature to remove the benefits of the External Review could be better addressed in 2012. This will allow the public and FACE to have public discussion with recommendations as we better understand the impacts of the ACH.

Please hold this bill and allow FACE to convene a public discussion this summer.

Rev. Bob Nakata
Chair, FACE Health Care Committee

1352 Liliha Street, Room 2
Honolulu, HI 96817

Phone (808) 522-1304
Fax (512) 532-7448
face.office@facehawaii.org
www.facehawaii.org

The Rev. Alan Mark
Statewide President

The Rev. Sam Domingo
Oahu President

The Rt. Rev. Monsignor
Terrence Watanabe
Maui President

Mr. Rosario Baniaga
Statewide Treasurer

Ms. Judy Ott
Statewide Secretary

Mr. Drew Astolfi
Executive Director

Mr. Patrick Zukemura
Oahu Lead Organizer

Ms. Terri Erwin
Maui Lead Organizer

CPCtestimony

From: Kevin Glick [kevin@wheelchair-kauai.com]
Sent: Tuesday, March 22, 2011 3:20 PM
To: CPCtestimony
Subject: S.B. 1274, OPPOSED

I AM OPPOSED TO THE PASSAGE OF SB-1274.

Please do not repeal my rights or the rights of my patients by passing SB-1274

Sincerely,
Kevin Glick, R.Ph.

CPCtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 22, 2011 3:25 PM
To: CPCtestimony
Cc: the-green-one@hawaii.rr.com
Subject: Testimony for SB1274 on 3/23/2011 2:00:00 PM
Attachments: Testimony SB1274 External review 3-23-11.pdf

Testimony for CPC/JUD 3/23/2011 2:00:00 PM SB1274

Conference room: 325
Testifier position: ~~oppose~~
Testifier will be present: No
Submitted by: Natalie Iwasa
Organization: Individual
Address:
Phone:
E-mail: the-green-one@hawaii.rr.com
Submitted on: 3/22/2011

Comments:

CPCtestimony

From: jkolomalu@aol.com
Sent: Tuesday, March 22, 2011 3:13 PM
To: CPCtestimony
Subject: "I oppose the repeal of my rights by S.B. 1274"

I oppose the repeal of my rights by S.B. 1274.

Please do not make it even harder for people like my son who has to live as a vented quadraplegic. Imagine yourself or one of your loved ones being Chad and in addition to waking up every morning not being able to hug me his mom or his sister or stretch, scratch his nose, play ball, paddle anymore, you have someone take away the little voice you and your family has to fight the BIG Insurance company's greedy decision to cut your services.

Please, don't do this.

Thank you!

CPCtestimony

From: tred eyerly [teyerly@hotmail.com]
Sent: Tuesday, March 22, 2011 3:10 PM
To: CPCtestimony
Subject: Defeat SB 1274

I oppose the repeal of my rights by S.B. 1274. Please defeat this bill.

Thank you,

Tred Eyerly
1164 Kaeleku St.
Honolulu, HI 96825

CPCtestimony

From: Judie Lundborg Hoepner [judie@aloha.net]
Sent: Tuesday, March 22, 2011 3:02 PM
To: CPCtestimony
Subject: testimony SB 1274

I oppose the repeal of my rights by SB 1274

Aloha,

Judie Lundborg
808 639 -0212

CPCtestimony

From: Vasey Law [vaseylaw@hawaii.rr.com]
Sent: Tuesday, March 22, 2011 2:38 PM
To: CPCtestimony
Cc: 'Rafael del Castillo'
Subject: Testimony re Opposition to SB 1274

DEAR COMMITTEE:

As a recent cancer survivor, I have come face-to-face with the uncaring and profit-driven attitude of my health insurer. I also represent disabled children and their families. This exposure has made it abundantly clear to me that they do NOT have the best interests of the people they are purported to serve in mind.

I oppose the repeal of my rights by the passage of Senate Bill 1274, and any other action that would lessen the rights of those enrolled in these already meager Medicaid health plans.

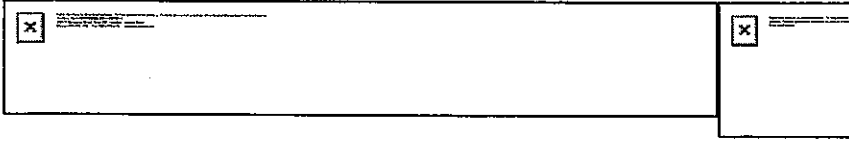
PLEASE DO NOT PASS SB 1274.

Sincerely,
Irene E. Vasey

Law Office of Irene Vasey
808 254 0414
fax 808 254 9211
edulaw@hawaii.rr.com
www.vaseylaw

CPCtestimony

From: Lauren Suzanne Zirbel [laurenzirbel@gmail.com]
Sent: Tuesday, March 22, 2011 2:36 PM
To: CPCtestimony
Subject: HMA TESTIMONY
Attachments: JUD - Relating to Health Insurance.doc



Wednesday, March 23, 2011 2:00 p.m. Conference Room 325

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Robert N. Herkes, Chair

Rep. Ryan I. Yamane, Vice Chair

COMMITTEE ON JUDICIARY

Rep. Gilbert S.C. Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

From: Hawaii Medical Association

Dr. Morris Mitsunaga, MD, President

Linda Rasmussen, MD, Legislative Co-Chair

Dr. Joseph Zobian, MD, Legislative Co-Chair

Dr. Christopher Flanders, DO, Executive Director

Lauren Zirbel, Community and Government Relations

-

Re: SB1274 - Relating to Health Insurance

Chairs & Committee Members:

In Opposition

The Hawaii Medical Association has concerns about this measure. In its current form, this bill will harm those who now have recourse when health insurers deny essential or life-saving procedures.

This measure would gut the external review process. The current provisions of the Patients' Bill of Rights and Responsibilities should be left as-is to continue to protect patients rights. The medical necessity standard is very important.

The best course of action for patients would be to assemble an ad hoc committee/commission, made up of yourselves and consumers, to further consider this measure and the proper course of action once this session is concluded.

The IRO process proposed by the replacement legislation is simply not going to achieve the same results as Hawaii's current protections provide. **Very importantly, the replacement legislation allows for evaluation by a non-local doctor. Hawaii has a unique disease makeup and mainland physicians may not understand necessary medical factors. There is no appeal allowed.**

This very long bill will hurt the patients who are the most vulnerable. Taking away external review will hurt consumers who are very vulnerable to medical denials, namely Medicaid patients, who will lose the external review right they now have. Patients will lose many of their advocacy rights and be denied care, which they may deserve.

PPACA sets minimum standards, and does not require our superior patient protections to be dismantled.

Thank you for the opportunity to provide this testimony.

--

Lauren Zirbel
LSZ Consulting

Government and Community Relations
Direct Line: 808-294-9968

CPCtestimony

From: C Marrows [cmarrows@yahoo.com]
Sent: Tuesday, March 22, 2011 2:11 PM
To: CPCtestimony
Cc: rafa@hawaii.rr.com; Rafael Del Castillo
Subject: I oppose the repeal of my rights by S.B. 1274

I oppose the repeal of my rights by S.B. 1274

**Christine Watanabe
66-341 Kaamooloa Rd. #D
Waialua, HI 96791**



94-450 Mokuola Street, Suite 106, Waipahu, HI 96767
808.675.7300 | www.ohanahealthplan.com

Wednesday, March 23, 2011

To: The Honorable Robert N. Herkes
Chair, House Committee on Consumer Protection and Commerce

The Honorable Gilbert S.C. Keith-Agaran
Chair, House Committee on Judiciary

From: 'Ohana Health Plan

Re: Senate Bill 1274, Senate Draft 2, House Draft 1-Relating to Health Insurance

Hearing: Wednesday, March 23, 2011, 2:00 p.m.
Hawai'i State Capitol, Room 325

Since February 2009, 'Ohana Health Plan has provided services under the Hawai'i QUEST Expanded Access (QExA) program. 'Ohana is managed by a local team of experienced care professionals who embrace cultural diversity, advocate preventative care and facilitate communications between members and providers. Our philosophy is to place members and their families at the center of the health care continuum.

'Ohana Health Plan is offered by WellCare Health Insurance of Arizona, Inc. WellCare provides managed care services exclusively for government-sponsored health care programs serving approximately 2.3 million Medicaid and Medicare members nationwide. 'Ohana has utilized WellCare's national experience to develop an 'Ohana care model that addresses local members' healthcare and health coordination needs.

We appreciate this opportunity to submit testimony in strong support of Senate Bill 1274, Senate Draft 2, House Draft 1-Relating to Health Insurance, as it necessary in order to help the State of Hawai'i conform to requirements under the Patient Protection and Affordable Care Act of 2010 (ACA).

This bill seeks to update Hawai'i's insurance laws to conform to the requirements relating to external medical reviews as established under the ACA, also known as National Healthcare Reform, and is based on the National Association of Insurance Commissioners (NAIC)'s Uniform Health Carrier External Review Model Act. Passage of this bill will provide a uniform and consistent external review procedure and will make the insurance statutes governing the external review of adverse determinations by health plans consistent and available to enrollees, while reducing confusion and inefficiencies in implementing Hawaii law.

The external review process, through an independent review organization (IRO) is very clearly laid out in the bill and ensures the protection of rights for plan enrollees, while balancing the necessity of proper and timely medical treatment. According to this bill, the IRO shall be

comprised of physicians or other health care professionals who meet the minimum qualifications described in 432E- C and, through clinical experience in the past three years, are experts in the treatment of the enrollee's condition and knowledgeable about the recommended or requested health care service or treatment.

Additionally, neither the enrollee, the enrollee's authorized representative, if applicable, nor the health carrier shall choose or control the choice of the physicians or other health care professionals to be selected to conduct the external review and in reaching an opinion, clinical reviewers are not bound by any decisions or conclusions reached during the health carrier's utilization review process or internal appeals process, thus preserving the integrity of the medical decisions being made in the best interest of the patient.

To ensure timely accessibility and transparency the IRO is required, under this bill to maintain a toll-free telephone service to receive information on a twenty-four-hour-day, seven-day-a-week basis related to external reviews that is capable of accepting, recording or providing appropriate instruction to incoming telephone callers during other than normal business hours, and must agree to maintain and provide to the commissioner the information required by this part.

To further protect impartiality, under this proposal an IRO may also not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health benefit plan, a national, state or local trade association of health benefit plans, or a national, state or local trade association of health care providers, nor have a material professional, familial or financial conflict of interest with any of the health carriers that is the subject of the external review, the covered person whose treatment is the subject of the external review or the covered person's authorized representative, any officer, director, or management employee of the health carrier that is the subject of the external review, the health care provider, the health care provider's medical group, or independent practice association recommending the health care service or treatment that is the subject of the external review, the facility at which the recommended health care service or treatment would be provided, or the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.

The process and procedures laid out under this bill are consistent with the model utilized by the NAIC on a national level, and strike the necessary balance to best ensure patient protection and timely access to medical treatment and supplies. More importantly, passage of this measure is necessary in order to conform Hawai'i's insurance laws to provisions of ACA.

We respectfully request that you pass Senate Bill 1274, Senate Draft 2, House Draft 1- Relating to Health Insurance. Mahalo for this opportunity to provide testimony in support of this measure.

George Fox, President,
Hawai'i Advocates For Consumer Rights
447-9424

Arleen Jouxson Meyers, M.D.,
President, Hawaii Coalition for Health and Hawaii Congress of Physicians
622-2655

Richard S. Miller, Professor of Law, Emeritus and
former dean, Richardson School of Law
254-1796

Rafael del Castillo, Esq.
782-1262

March 22, 2011

OPPOSE SB1274, HD1. DON'T REPEAL OUR EXTERNAL REVIEW LAW

Why the Hawai'i House of Representatives must not pass SB1274 HD1

SB1274, HD1, scheduled for hearing today, Wednesday March 23, 2011, by CPC/JUD at 2:00 PM in House conference room 325 deals with one of the most important pieces of healthcare legislation you will be considering this session. We are writing to urge you to examine the full ramifications of SB1274, HD1 before you make your final decision. The wrong decision would cause great harm and physical suffering to you and your family and friends. Before you vote on SB1274, HD1, please take the time to read our following analysis:

Health insurers and other organizations that pay for patient's medical and drug expenses are highly motivated to deny paying benefits ordered by physicians whenever they can get away with it. This is true even though they are "nonprofit" organizations because every dollar saved can be used to increase executive salaries or to help provide costly perks for their officers and employees. Because of the complexity of the issues raised by denials, many patients would not know whether to appeal or how to appeal such negative decisions and may just let them go.

In Hawaii, however, many health plans are governed by the Patient's Bill of Rights and Responsibilities, passed by our Legislature in 1998. That bill has proved very protective of Hawaii patients to whom it applies. Patients may retain an attorney and appeal benefit denials to a 3-person external review panel in the Insurance Commissioner's office. In addition, the Bill of Rights also lays down a useful description of medical necessity, which protects the

patient against the health plans' unpermitted self-description of what is, and what is not, medically necessary. Most importantly – because these cases raise complicated issues of both law and medicine – the Bill of Rights gives the commissioner discretion to award reasonable attorney's fees and costs to the patient even if the patient is ruled against by the external review panel, "unless the commissioner in an administrative proceeding determines that the appeal was unreasonable, fraudulent, excessive, or frivolous."

This provision has served as an effective deterrent to arbitrary denials of benefits by greedy health plans. Since its passage in 1998 there have been only about 30 appeals from denials, and the patient has won about 80% of them. In some of the decisions, the Commissioner's panel has tarred the denying health plan with language of outrage.

Now, however, our legislature is about to do away with the external review panel, weaken the medical necessity language, and replace what they remove with the possibility of an appeal by a patient to an "Independent Review Organization," (IRO), a relatively new concept in which a single physician may end up making the decision and there is no effective appeal. The drafters of the new bill, SB1274 SD2 HD1, assert that it is being passed because it is required by the new Patient Protection and Affordable Care Act of 2010, President Obama's health care bill. *But that is not true!* That act requires only:

(b) EXTERNAL REVIEW.—A group health plan and a health insurance issuer offering group or individual health insurance coverage—
“(1) shall comply with the applicable State external review process for such plans and issuers that, *at a minimum*, includes the consumer protections set forth in the Uniform External Review Model Act promulgated by the National Association of Insurance Commissioners and is binding on such plans (Emphasis added.)

That provision is a bit ambiguous. Since it can be shown that our current Bill of Rights' external appeal provision, with only insignificant changes, will provide greater consumer protection than the NAIC's model act it is likely that we have to do nothing but make those minor changes. Alternatively, it may – though it probably doesn't -- mean that at the least a state must adopt the NAIC IRO model *as an option* available to the patient. However, giving the patient an option to use either an IRO or our current external review, at least until it is shown beyond doubt that the new IRO model really provides effective and impartial independent review equal to the current external review panel, would in no way contradict the new federal law!

We cannot afford to lose the protection offered by the current Patients' Bill of Rights. It is unthinkable that our new insurance commissioner, appointed by our new "progressive" governor, would, as one of his first important policy actions, severely undermine patients' rights by approving the repeal of our current external review law in our Patients' Bill of Rights. *Pau*