Hawaii State Legislature
State Senate
Committee on Health

State Senator Josh Green, M.D., Chair
State Senator Clarence K. Nishihara, Vice Chair
Committee on Health

Wednesday, February 16, 3:30 p.m. Room 229
Senate Bill 1438 Relating to the Relating to Dental Services

Honorable Chair Josh Green, M.D., Vice Chair Clarence K. Nishihara and members of the Senate Committee on Health,,

My name is Russel Yamashita and I am the legislative representative for the Hawaii Dental Association and its 960 member dentists. I appreciate the opportunity to testify in support of SB 1438 Relating to Dental Services. The bill before you today would prohibit health and dental insurance companies from setting fees for dental services not subject to insurance company contracts. This bill is based on the model legislation from the National Conference of Insurance Legislators (NCOIL) which was approved and adopted last October.

Health and dental insurance companies are now including clauses in their contracts with participating dentists which state that non-covered services are subject to a fee schedule dictated by the insurance companies. Such price fixing and restraint of trade by these insurance companies harm not only the consumer, but in some cases will also cause patients with insurance to be turned away from their dentist due to these onerous clauses.

For instance, if an insurance company stipulates there is no reimbursement or coverage for a particular procedure, such as a crown. The insurance contract provision would prohibit a participating dentist from charging a fee for that service. Such a provision would require the patient to seek a non-participating dentist who is not bound by a contract, to perform the procedure. This absurd result clearly demonstrates how unintended consequences would result when boiler plate provisions are included in contracts of adhesion by insurance companies.

Additionally, should a patient with insurance seek the services of their family dentist for a serious dental problem or disease, they could find that their trusted dentist is restricted or prohibited from providing full and complete professional services to their family due the onerous restrictions in such a contract .

In other states, the Delta Dental Plans Association's response to similar bills as HB 414 has been to attack these laws claiming that these contract provisions enable patients to benefit from a discounts on services **which are not provided or covered in the benefits under their insurance coverage**. The HDA not only disputes this assertion and wishes to point out that in many instances this would put the participating dentist into a losing proposition, especially on the

neighbor islands where costs of doing business is much higher.

On the neighbor islands, patients will find that dentists will be unwilling to participate with the insurance companies where fee schedules and reimbursements are based on Honolulu pricing. The consequences of such a situation will further burden the limited number of participating dentists and may result in further access to care on neighbor islands and in remote or rural areas.

In one of its documents, Delta Dental raised the question, " What gives Delta the right to set fees you don't even cover?". The response was: "We believe every-one deserves access to affordable oral health care. Just as you must adjust service, techniques and material to remain competitive in your community, so must Delta Dental adapt to the evolving needs of our enrollees."

The real response is that this is price fixing, pure and simple. It makes is easier for all the insurance companies to then run the business of the dental professionals. Without a federal antitrust exemption that most health insurance companies enjoy, dental and medical professionals are at the mercy of the insurance companies, unable to effectively negotiate like a union for fear of an antitrust or restraint of trade law suit. The only response the individual dentist can do is to reject the contract or sign a contract of adhesion.

Such unique and coercive practices are only allowed through the statutory authority granted to the insurance companies in the regulatory environment in which they exist in the 50 states. As a result, 26 states have seen the necessity to implement similar statutory prohibitions as SB 1438 in the last 18 months in order to reign in the insurance industry's unfair and deceptive activities in this respect. Currently, similar legislation is now pending in over 13 states and the National Conference of Insurance Legislators (NCOIL) adopted a model act last October on which SB 1438 is based on.

This matter is not merely a matter of contractual relationships, the special and protected statutory environment which insurance companies enjoy, allow insurance companies virtual monopolistic power over many providers of a wide range of services. Only through legislative recourse can insurance companies be brought to answer for such over reaching actions such as SB 1438 is attempting to remedy.

Therefore, the HDA and its members urge your favorable consideration of this bill and I thank you for this opportunity to testify in support of this bill.