

# SB948

**Measure Title:** RELATING TO HEALTH COVERAGE FOR BRAIN INJURIES.

**Report Title:** Mandated Coverage; Cognitive Rehabilitation; Brain Injury

**Description:** Requires insurers, hospital and medical services plans, and health maintenance organizations to provide coverage for survivors of brain injuries, including cognitive and neurocognitive therapy, neurobehavioral and neuropsychological testing or treatment, and necessary post-acute transition services or community reintegration activities.

**Companion:**

**Package:** None

**Current Referral:** HTH/CPN, WAM



## Hawaii Association of Health Plans

February 10, 2011

The Honorable Josh Green M.D., Chair  
The Honorable Rosalyn H. Baker, Chair

Senate Committees on Health and Commerce and Consumer Protection

**Re: SB 948 – Relating to Health Coverage for Brain Injuries**

Dear Chair Green, Chair Baker and Members of the Committees:

My name is Howard Lee and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of eight (8) member organizations:

AlohaCare	Kaiser Permanente
Hawaii Medical Assurance Association	MDX Hawai‘i
HMSA	University Health Alliance
Hawaii-Western Management Group, Inc.	UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in opposition to SB 948 which would mandate that health plans provide certain services for individuals with traumatic brain injury.

Our first objection to the bill is that a significant portion of the those with traumatic brain injuries in Hawaii are current or former military service members who came by their injuries in Iran or Afghanistan. The Department of Defense (DoD) has yet to rule on whether or not such care will be rendered in the VA or TRICARE system. If Hawaii adopts this mandate, local employers are going to pay for care that, in our opinion, should be first funded by the federal government. The DoD’s reluctance to declare these therapies “covered” is their cost (an average of \$50,000 per person per year in the government system) and the lack of credible medical evidence supporting such coverage.

Secondly, with passage of the Affordable Care Act (ACA), the federal government will be requiring that any health plans offered within the health insurance Exchange provide “essential health benefits.” These benefits have not yet been defined and it is unclear at this time if infertility treatment will be considered in the final definition. If a state wishes to have plans operating within the Exchange provide benefits above those considered “essential”, the state will be responsible for the cost of these benefits. The language of the ACA states that:

*If a qualified health plan offers benefits in addition to the essential health benefits required to be provided by the plan, or a State requires a qualified health plan to cover benefits in addition to the essential health*

*benefits required to be provided by the plan, the reductions in cost-sharing under this section shall not apply to such additional benefits*

HAHP member plans have concerns regarding the scope of services that SB 948 includes. Health plans typically provide treatment which is restorative in nature and has been scientifically proven to be efficacious. This measure specifically would allow for treatments to be covered for an indefinite amount of time without demonstrating any positive improvements for our members. Unfortunately some of these therapies are not supported by clinical evidence.

Given the potential liability that the State would be facing by mandating the types of services outlined in SB 948, and the fact that the ACA is still in flux and the services to be considered "essential" not yet defined, we believe that the state legislature should not increase the scope of any state mandated benefits.

Therefore we would respectfully request that the Committees see fit to hold this measure today.

Thank you for the opportunity to testify today.

Sincerely,



Howard Lee  
President

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 10, 2011

The Honorable Josh Green, M.D., Chair  
The Honorable Rosalyn H. Baker, Chair  
Senate Committees on Health and Commerce and Consumer Protection

**Re: SB 948 – Relating to Health Coverage for Brain Injuries**

Dear Chair Green, Chair Baker and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 948 which would mandate health plans provide coverage for certain therapies for individuals with traumatic brain injury. HMSA always opposes unfunded mandated benefits.

Cognitive rehabilitation therapy consists of programs that provide therapy to persons with traumatic brain injury. This therapy aids individuals in the management of specific problems in perception, memory, thinking and problem solving. Therapy may also include social and vocational training. Some of the treatment covered within this class may go far beyond the type of services a health plan typically provides. Health plans generally provide services for acute conditions with demonstrated outcomes and the coverage outlined within this measure would continue indefinitely whether or not the treatment was benefitting the member.

Scientific research on the effectiveness of this type of therapy has shown inconclusive results. In their *Assessment of Proposed Mandatory Health Insurance for Cognitive Rehabilitation*, the State Auditor found in November of 2004, that “more conclusive information is needed before mandated health insurance requirements are enacted. Current literature indicates scientific studies are on-going, and existing studies have not definitively determined the efficacy of cognitive rehabilitation for traumatic brain injuries.” It may behoove the Legislature to request another review of this issue by the Auditor to determine if any of the mentioned treatments have been deemed to be effective since the publication of the initial report.

We would also like to point out that states will ultimately be financially liable for any mandated benefits required under state law which end up not being included within the federal definition of “essential benefits”. Under the Affordable Care Act (ACA), qualified health plans offering coverage within the Exchange will have to offer plans which include essential benefits. Any state mandates that fall outside of this definition, will not be eligible for federal funding for those individuals receiving coverage in the Exchange. We would respectfully request the Committee see fit to hold this measure at this time. Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD' followed by a flourish.

Jennifer Diesman  
Vice President  
Government Relations

## **HAWAII DISABILITY RIGHTS CENTER**

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928  
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### **THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2011**

#### **Committee on Health Committee on Commerce and Consumer Protection Testimony in Support of S.B. 948 Relating to Health Coverage For Brain Injuries**

**Thursday, February 10, 2011, 8:30 A.M.  
Conference Room 229**

Chair Baker, Chair Green and Members of the Committees:

I am Louis Erteschik, Staff Attorney at the Hawaii Disability Rights Center, and am testifying in support of this bill.

The purpose of the bill is to require insurance companies to provide coverage for brain injuries. This is a very important bill and this coverage is very appropriate for insurance policies. The whole point of insurance is to spread risk and cost among an entire population, so that disproportionate, catastrophic expenses are not heaped upon specific individuals or groups.

Awareness of brain injury, both traumatic and acquired, has increased exponentially in the past ten to fifteen years. For a long time, individuals with brain injuries truly represented a gap group in terms of receiving services from the state. Despite some overlap in their presenting symptoms, they did not possess the requisite diagnoses to fit into the DD/MR waiver or receive services from the Department of Health AMHD.

Today, however, virtually everybody has heard the expression that traumatic brain injury is the signature wound of the wars around the world. In light of its ever increasing prevalence, it is time to comprehensively address it and provide the necessary coverage to receive appropriate treatment that can help people make the maximum possible recovery. In general, receiving immediate acute hospital care has not been a particular issue. What has been lacking has been coverage for rehabilitation care

following the hospitalization and then further treatment such as cognitive therapy. This bill outlines a very good range of treatments that have proven effective to assist in recuperating from brain injuries.

Inasmuch as brain injuries have unfortunately become common and the costs are so high, insurance coverage is very appropriate as a mechanism to spread the risk and cost amongst all of us. Therefore, this bill would seem to be a good approach to addressing this problem.

Thank you for the opportunity to testify in support of this measure.

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

February 8, 2011

Honorable Rosalyn H. Baker, Chair  
Honorable Brian T. Taniguchi, Vice Chair  
Committee on Commerce and Consumer Protection  
Honorable Josh Green, Chair  
Honorable Clarence K. Nishihara, Vice Chair  
Committee on Health  
Senate  
State Capitol  
415 South King Street  
Honolulu, Hawaii 96813

Re: S.B. No. 948, RELATING TO HEALTH COVERAGE FOR BRAIN INJURIES

Dear Chair Baker and Chair Green, Vice Chairs Taniguchi and Nishihara, and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following written comments on S.B. No. 948, relating to health coverage for brain injuries, which is to be heard by your Committees on Commerce and Consumer Protection, and on Health on February 10, 2011.

Section 2 of S.B. No. 948 adds a requirement to HRS chapter 431:10A to cover certain therapy and services relating to brain injuries, while Section 3 adds an identical requirement to HRS chapter 432.

The language to be added by Section 2 to HRS chapter 431:10A applies to "each individual and group hospital and medical service plan, policy, contract or agreement"; however, HRS chapter 431:10A regulates policies of "accident and health or sickness insurance," whereas the term "hospital and medical service contracts" is used in HRS chapter 432. *Compare, e.g.,* HRS § 431:10A-116.5 with HRS § 432:1-617.

Accordingly, if the intent of the bill is to require coverage by health insurance policies regulated under HRS chapter 431:10A, we respectfully suggest that Section 2 be amended by replacing the reference in subsection (a) to "each individual and group hospital and medical service plan, policy, contract or agreement" with "each individual and group accident and health or sickness insurance policy that provides health care coverage" as follows:

§431:10A- Cognitive rehabilitation therapy;  
notice. (a) ~~Notwithstanding any other law to the~~  
~~contrary, e~~Each individual and group hospital or medical

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Honorable Brian T. Taniguchi, Vice Chair  
Committee on Commerce and Consumer Protection  
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February 8, 2011  
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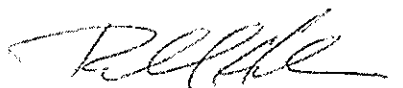
~~service plan, policy, contract, or agreement~~ accident and health or sickness insurance policy that provides health care coverage issued or renewed in this State after December 31, 2011, shall provide the following therapy and services, as a result of and related to an acquired brain injury, for the member and individuals covered under the individual and group ~~hospital or medical service plan, policy, contract, or agreement~~ accident and health or sickness insurance policy: \* \* \*

(Deleted language struck out; additional language underscored.)

Thank you for your consideration of the foregoing.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Peter J. Hamasaki