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KEALI'I S. LOPEZ
DIRECTOR

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Tuesday, February 7, 2012
10 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL NO. 1958 – RELATING TO DENTAL SERVICES

TO THE HONORABLE RYAN I. YAMANE, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department takes no position on this bill which amends Chapter 432, 432D, and 448D by prohibiting mutual benefit societies, health maintenance organizations, and dental service organizations from requiring dentists who provide services to their subscribers to accept fees set by a plan for any services, except for covered services.

The Department does not regulate or oversee the contractual provisions or requirements between dental insurers and dental service providers.

We thank the Committee for the opportunity to present testimony on this matter.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 7, 2012

The Honorable Ryan I. Yamane, Chair
The Honorable Dee Morikawa, Vice Chair

House Committee on Health

Re: HB 1958 – Relating to Dental Services

Dear Chair Yamane, Vice Chair Morikawa and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1958 which would prohibit health or dental plans from requiring dentists to accept a set fee for a service which was determined by the plan unless the service is covered under the member's plan. HMSA opposes this Bill.

Although the language of HB 1958 is seemingly benign, we believe that passage of this measure would set a dangerous precedent. When providers enter into contracts with plans these contracts represent negotiated terms which have been agreed to by both parties. The bill before the Committee today seems to be an attempt to address an issue some dentists have with the terms of a contract which they have already signed. HB 1958 would constitute the Legislature's direct involvement into a legal contractual relationship between two private entities.

Passage of legislation of this type could lead to many other aggrieved individuals seeking recourse from the Legislature when, after entering into a contractual agreement, they are unhappy with the terms.

Given the many issues surrounding HB 1958, we would respectfully request the Committee consider holding this measure today. Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read 'JDiesman', with a long horizontal flourish extending to the right.

Jennifer Diesman
Vice President
Government Relations

HDS

Hawaii Dental Service

February 6, 2012

The Honorable Ryan I. Yamane, Chair
Hawaii State House of Representatives
House Committee on Health

Re: HB 1958-Relating to Dental Services

Dear Chair Yamane and Members of the Committee:

Hawaii Dental Service (HDS) appreciates the opportunity to testify in opposition to HB 1958. Our opposition is based on the following facts:

- HB 1958 will increase the amount that Hawaii residents pay for dental care.
- Seniors and lower income consumers will be the most impacted by HB 1958.
- Dentists voluntarily enter into a contract with HDS for a schedule of fees applicable to all HDS patients. SB 1958 will change that contractual agreement between the dentists and HDS that has been in place for over 35 years.
- HDS's fee schedule includes 310 procedures out of 593 procedures defined by the American Dental Association. Dentists charge their retail fee for the remaining 283 procedures, including cosmetic procedures.
- HB 1958 will not impact the amount that HDS or other dental benefits carriers pay for patients' services.
- Over-charging for non-covered services is the number one complaint that HDS receives from its members. HB 1958 will increase the number of services that are non-covered.

HB 1958 would raise the total cost of dental care for our state without improving oral health. Now is not the time to be putting more financial strain on Hawaii residents who are already burdened by the increasing costs of healthcare in today's challenging economy. Therefore we respectfully request that the Committee hold HB 1958. Thank you for the opportunity to testify today.

Sincerely,



Faye W. Kurren
President and CEO

Testimony to the House Committee on Health
HB 1958
Relating to Dental Services
By
Neil C. Nunokawa, D.D.S.
1885 Main Street, Suite 204
Wailuku, HI 96793

Representative Ryan I. Yamane, Chair
Representative Dee Morikawa, Vice Chair

Tuesday, February 7, 2012, 10:00 am.
Conference Room 329

Re: HB 1958, Relating to Dental Services

Honorable Chair Ryan I. Yamane, Vice Chair Dee Morikawa and
Members of the House Committee on Health:

As the present President of the Hawaii Dental Association and a practicing dentist from the island of Maui for over 30 years, I wish to testify IN SUPPORT of House Bill 1958, Relating to Dental Services. This bill would prohibit health and dental insurance companies from setting fees for dental services not subject to insurance company contracts.

Presently, dental insurance companies limit the fees that a participating dentist may charge even though the procedure is a non-covered benefit under the insurance contract. This provision results in price fixing and restraint of trade that affects the entire dental profession in the State of Hawaii. This restriction is even more onerous considering the fact that Hawaii is so heavily insurance-oriented. To opt out of participating with any dental insurance company would be a heavy burden and possible economic suicide for many dentists.

Such limitations on fees for non-covered services are also harmful to consumers. If fees are set too low, a participating dentist would not offer certain services, resulting in the patient being forced to seek the services of a non-participating provider, thereby losing any benefit of the patient's earned insurance coverage.

Presently 26 states have implemented similar statutory prohibitions and similar legislation is now pending in over 13 states. In addition, the National Conference of Insurance Legislators (NCOIL) adopted a model act in October 2010 on which HB 1958 is based on.

The special and protected statutory environment that insurance companies enjoy provide for virtual monopolistic power over many providers. House Bill 1958 seeks to remedy this injustice.

Please pass House Bill 1958.

Sincerely,

Neil C. Nunokawa D.D.S

Hawaii State Legislature
State House of Representatives
Committee on Health

Representative Ryan I Yamane, Chair
Representative Dee Morikawa, Vice Chair
Committee on Health

Tuesday, February 7, 2012, 10:00 a.m. Room 329
House Bill 1958 Relating to Dental Services

Honorable Chair Ryan I. Yamane, Vice Chair Dee Morikawa and
members of the House 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 HB 1958 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 1958 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 HB 1958 in the last 24 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 HB 1958 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 HB 1958 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.