



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Judiciary

HB 2776, HD 1, Relating to Liability Insurance

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health**

Thursday, February 9, 2012

1 **Department's Position:** The department appreciates and supports the intent of this bill but OPPOSES
2 the bill as written.

3 **Fiscal Implications:** The cost to acquire the actuarial and underwriting expertise to determine a variety
4 of sufficient coverage amounts for a variety of circumstances are likely to be very high. The department
5 is unable to afford this cost.

6 **Purpose and Justification:** This bill will require operators of ARCHs, Expanded ARCHs, and Assisted
7 Living Facilities to obtain and maintain liability insurance at levels to be determined by the director of
8 health. The bill will also require adult foster home operators to have liability insurance. However, DHS
9 testified in OPPOSITION to the bill since their admin rules already require foster homes to have liability
10 insurance and the DHS health plans require liability insurance before they place residents in the adult
11 foster homes.

12 Prudent business practices and the protection afforded to operators and clients by having liability
13 insurance are key reasons to have this insurance, and many care home and assisted living operators have
14 told us during the course of conversation that they have insurance. As a result, this mandate may be
15 unnecessary. In addition, this bill would require the director of health to determine sufficient insurance

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1 coverage amounts. However, determining the amount of insurance necessary for the operation of a
2 healthcare facility and the cost of the insurance is a complicated matter. The department does not
3 currently possess the professional actuarial or underwriting expertise to determine the various coverage
4 amounts that would be sufficient for healthcare operators depending on their individual circumstances.
5 The cost of \$1,000,000 general liability/professional liability insurance coverage could range between
6 \$2,400 - \$250,000 per year depending on the number of beds in the facility, the acuity level of residents,
7 prior claims history, and other actuarial and underwriting factors. Higher insurance coverage would cost
8 more. The department cannot undertake to determine sufficient coverage nor its associated annual costs.

9 However, the department is supportive of the bills intent but feels it can accomplish the intent
10 through other means. The department can highly recommend liability insurance coverage as part of its
11 license application or renewal process if the operator does not have insurance rather than through statute.
12 Or if necessary in the future, the department can require insurance through administrative rule making.
13 This may be the better next step.

14 Thank you for the opportunity to testify.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 9, 2012

MEMORANDUM

TO: The Honorable Gilbert S. C. Keith-Agaran
House Committee on Judiciary

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 2776, H.D.1 - RELATING TO LIABILITY INSURANCE**

Hearing: Thursday, February 9, 2012; 2:00 p.m.
Conference Room 325, State Capitol

PURPOSE: The purpose of H.B. 2776, H.D.1 is to require all operators of adult foster homes, adult residential care homes, assisted living facilities, expanded adult residential care homes, and community care foster family homes to obtain and maintain sufficient liability insurance.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) respectfully opposes Section 2 of this bill.

While the Hawaii Administrative Rules section 17-1454-49 currently require the Community Care Foster Family Homes (CCFFHs) to have liability insurance in order to be certified as a CCFFH, the DHS believes this is a business issue and should not be a regulatory requirement. Currently, every CCFFH must also have a contract with the Med-QUEST Division's health plans in order to be paid for services rendered to Medicaid clients. Liability insurance is a requirement for the health plan contract.

The Department of Health (DOH) has the licensing authority over the Assisted Living Facilities (ALF) and Expanded Adult Residential Care Homes (EARCHs). DHS becomes involved with the ALF and EARCH when a Medicaid client is placed in these facilities and payment for services is needed. In order to be paid, the ALF or the EARCH must have a contract with a health plan and therefore, must have liability insurance.

Thank you for the opportunity to provide comments on this bill.

February 8, 2012

To: The Honorable Keith Agaran
JUD – Chair

The Honorable Karl Rhoads
JUD – Vice Chair

From: Annie Mae Tan, Foster Home Operator

Subject: H.B. 2776 – RELATING TO LIABILITY INSURANCE

Chair, Vice Chair and Members of the Judicial Committee,
Good afternoon;

I SUPPORT THE INTENT OF THE H.B. 2776 HD I

I agree that every caregiver of the care homes, foster homes, expanded adult residential care homes, assisted living facilities, adult day care facilities and home health agencies should be covered by a valid, appropriate liability insurance and not just any liability insurance.

I say this, because there is a lot of confusion going on right now about the insurance that is being offered in our industry. According to my friends, who are also taking care of frail elderly, that I should buy a liability insurance that is covered by “malpractice” because of the type of work that we do. I was offered a different kind of insurance that is “not a true malpractice insurance” and bought it because it was \$80 cheaper.

To end this confusion, I ask the different Committees and Directors involved with this Bill to please scrutinize and evaluate these insurances that are being offered to the community based care home industry to make sure that we are properly covered. We don't want to lose our residents and our homes for reasons that we could have prevented in the first place.

Thank you for allowing me to testify.

Testimony for HB2776 on 2/9/2012 2:00:00 PM

Testimony for HB2776 on 2/9/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 08, 2012 4:39 PM

To: JUDtestimony

Cc: suemura@bisihi.com

Testimony for JUD 2/9/2012 2:00:00 PM HB2776

Conference room: 325
Testifier position: Support
Testifier will be present: No
Submitted by: Stephen Uemura
Organization: Individual
E-mail: suemura@bisihi.com
Submitted on: 2/8/2012

Comments:

I am a insurance agent that provided insurance for care home operators as described in H.B. No. 2776 since 1996. During this period, we have paid over \$500,000 in claims which is a excellent loss history considering the number of years and homes that were insured. Most care home operators use their residence for the care home. The blending of health care in a residential setting I believe is very beneficial to the patient. Unfortunately, there is no blending or diluting the liability exposure associated with providing care.

Many do not realize that their personal assets are exposed regardless of whether the business operated as an individual, corporation, or limited liability company and that merely an accusation could lead to a loss of license (generally not covered by insurance) and a lawsuit for damages. The expectation for health care is the same whether you are in a large retirement home with a large staff or in a residential care home. Proper and adequate insurance is good business and necessary.

As part of servicing the insurance for care homes, we must satisfy the requirements of the State Department of Human Services and State Department of Health. Often the requirements are not the same and each department act independent of the other so satisfying one may not satisfy the other. Bringing all operators who provide health care services for the State or who are regulated/certified or licensed by the State under one department would lead to a more consistent, efficient, and fair procedure for the State and the caregiver.

Testimony for HB2776 on 2/9/2012 2:00:00 PM

Testimony for HB2776 on 2/9/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Wednesday, February 08, 2012 10:24 PM

To: JUDtestimony

Cc: fajotinacare@aol.com

Testimony for JUD 2/9/2012 2:00:00 PM HB2776

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Lilia Fajotina (ARCA President)

Organization: Alliance of Residential Care Administrators

E-mail: fajotinacare@aol.com

Submitted on: 2/8/2012

Comments:

STRONGLY SUPPORT HB2776