

# **TESTIMONY**

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# **HB2776, HD2**

**HTH/HMS  
Committee Hearing  
03-20-2012**



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

In reply, please refer to:  
File:

**Senate Committees on Health and Human Services**

**HB 2776, HD 2, Relating to Liability Insurance**

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

**Tuesday, March 20, 2012**

1 **Department's Position:** The department appreciates the intent of this bill but OPPOSES the bill as  
2 written but we suggest language changes to make the bill more acceptable.

3 **Fiscal Implications:** The department does not currently possess the professional actuarial or  
4 underwriting expertise to determine the various coverage amounts that would be sufficient for healthcare  
5 operators depending on their individual circumstances. The cost to acquire such expertise will likely be  
6 very high and the department is unable to afford this cost.

7 **Purpose and Justification:** This bill will require operators of ARCHs, Expanded ARCHs, and Assisted  
8 Living Facilities to obtain and maintain liability insurance at levels to be determined by the director of  
9 health. Prudent business practices normally require liability insurance as a means to protect the  
10 business, its owner and clients. More specifically, operators of healthcare facilities or providers of  
11 professional healthcare services should have professional liability insurance rather than simply general  
12 liability insurance. This bill does not specify the kind of liability insurance being required.

13 Further, this bill would require the director of health to determine sufficient insurance coverage  
14 amounts. Determining the amount of insurance necessary for the operation of a healthcare facility and  
15 the cost of the insurance is a complicated matter. For example, the cost of \$1,000,000 general

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

8         Instead, the department would support this bill with the following language changes: 1. delete  
9 language that would require the director of health to determine sufficient insurance coverage amounts; 2.  
10 insert language that specifies the kind of liability insurance, specifically, general and professional  
11 liability coverage; and 3. require general and professional liability insurance coverage but do not  
12 establish a minimum. Rather, allow the insurance marketplace to work with the facility operators to  
13 determine the minimum necessary for their specific operation based on actuarial and underwriting  
14 criteria.

15         Thank you for the opportunity to testify.

NEIL ABERCROMBIE  
GOVERNOR



PATRICIA McMANAMAN  
DIRECTOR

BARBARA A. YAMASHITA  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
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March 20, 2012

**MEMORANDUM**

TO: The Honorable Josh Green, M.D., Chair  
Senate Committee on Health  
  
The Honorable Suzanne Chun Oakland, Chair  
Senate Committee on Human Services

FROM: Patricia McManaman, Director

SUBJECT: H.B. 2776, H.D. 2 - RELATING TO LIABILITY INSURANCE -OPPOSE

Hearing: Tuesday, March 20, 2012; 1:30 p.m.  
Conference Room 016, State Capitol

**PURPOSE:** The purposes of H.B. 2776, H.D. 2 are to require care home operators to carry liability insurance to cover the operations of the care home, and to exempt care home operators operating under a contract with either the Department of Health or the Department of Human Services who are in compliance with the liability insurance coverage requirements under the contract.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) respectfully opposes Section 2 of this bill. This section is redundant and is not necessary for the following reasons.

According to the certification requirements for CCFFHs, the CCFFH must have at least one Medicaid client in residence at any given time. In order to be paid for services rendered to Medicaid clients, the CCFFH must have a contract with a Med-QUEST

Division health plan. Liability insurance is a requirement for the health plan contract. Therefore, all CCFFHs must have liability insurance.

The DHS does not have licensing authority over the assisted living facilities (ALF) and the expanded adult residential care homes (EARCH). The ALFs and EARCHs are defined in §346-331, HRS, for clarity only since the case management agencies licensed by the DHS may be placing Medicaid individuals into these facilities.

The Department of Health (DOH) has the licensing authority over the ALFs and EARCHs. Should these facilities accept a Medicaid client, the ALF or the EARCH must have a contract with a Med-QUEST Division health plan in order to be paid for services rendered. Liability insurance is a requirement for the health plan contract.

For these reasons, the DHS feels the language in Section 2 of this bill is unnecessary and should be deleted.

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