

Written Testimony Presented Before the
House Committee on Consumer Protection and Commerce
February 10, 2014 5:00 p.m.

by
Dale M. Allison, PhD, APRN-Rx, FAAN
Hawaii State Center for Nursing
University of Hawai'i at Manoa

HB 2528 RELATING TO HEALTH

Chair McKelvey, Vice Chair Kawakami, and members of the House Committee on Consumer Protection and Commerce, thank you for this opportunity to provide testimony in support of this bill, HB 2528.

The Hawaii State Center for Nursing supports the intent of this measure which requires vendors who have been awarded contracts through the Centers for Medicare and Medicaid Services durable medical equipment, prosthetics, orthotics, and supplies bidding program to have a physical presence in Hawaii; and the amendments proposed by the Healthcare Association of Hawaii.

Thank you for the opportunity to testify on this measure.



Friday – February 10, 2014 – 5:00pm
Conference Room 325

The House Committee on Consumer Protection & Commerce

To: Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: Testimony in Support
HB 2528, HD1 — Relating to Health

The Healthcare Association of Hawaii (HAH) is a 116 member organization that includes all of the acute care hospitals in Hawaii, the majority of long term care facilities, all the Medicare-certified home health agencies, all hospice programs, as well as other healthcare organizations including durable medical equipment, air and ground ambulance, blood bank and respiratory therapy. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing nearly 20,000 people statewide.

Thank you for the opportunity to testify in strong support of HB 2528, HD1, which would require vendors who supply durable medical equipment (DME) to the residents of Hawaii through the Centers for Medicare and Medicaid Services' nationwide Competitive Bidding Program to have a physical presence in the state.

Medicare beneficiaries in Hawaii are experiencing a reduction in access to quality care as a result of the change in the way Medicare purchases DME. Round 2 of Medicare's DME Competitive Bidding Program began July 1, 2013 in Honolulu County. The unintended consequences of the implementation of this national program in Hawaii have been disastrous. Only 13 of the 97 vendors selected to supply the state with DME are located within the state of Hawaii. The minimum shipping time from the mainland to Hawaii is two to four days, and the typical wait time for physician-ordered wheelchairs and hospital beds is four to eight weeks. These vendors do not have special phone or service hours to account for the time difference, which means when Medicare beneficiaries in Hawaii call after 11 a.m., the offices are closed.

Without access to timely, local services, Medicare beneficiaries in Hawaii have been forced to forego necessary DME devices. This restricted access to care has led to reductions in health, increases in preventable admissions and readmissions, increases in costs to beneficiaries and the Medicare system and impact on quality of life for Medicare patients.

HB 2528, HD1 would require Medicare DME vendors to have a physical presence in the State, which would ensure that vulnerable Medicare patients receive DME critical to their care by requiring vendors to have an in-state presence. DME suppliers are required under federal law to comply with all applicable state licensing and regulations as a prerequisite to qualifying for the nationwide Competitive Bidding Program. (42 CFR 424.57(c)(1)(ii).) As a result, if HB 2528, HD1 is enacted, out of state DME suppliers that did not maintain an in-state presence would be ineligible for supplying Medicare DME to Hawaii's patients. This would allow patients to procure DME from alternate, in-state vendors who would be able to timely supply critical DME to Hawaii's Medicare patients.

The failure of the nationwide Competitive Bidding Program has led to at least one other state enacting an in-state presence law for DME suppliers. The Tennessee Department of Health, Board for Licensing Health Care Facilities, adopted Rule 1200-08-29-.06(5), which imposes a similar in-state presence requirement on out of state DME suppliers. (Available at <http://www.state.tn.us/sos/rules/1200/1200-08/1200-08-29.20120402.pdf>.)

The Attorney General expressed concern when this measure was heard before the House Committee on Health. In submitted testimony—and in separate discussions—the Attorney General posited that HB 2528, as originally drafted, might be preempted by 42 CFR 424.57 because, in the Attorney General's view, the federal regulation allowed state regulation of DME suppliers only through licensing requirements. To address these concerns, HAH has submitted a proposed HD2 of HB 2528, which would create a separate chapter in the HRS that would do the following:

1. Require all out-of-state DME suppliers to be licensed in state;
2. Deem DME suppliers licensed if they met in-state presence requirements, which would not require any further cost to the state for licensing;
3. Require out of state-DME-suppliers seeking licensure to maintain an appropriate physical location with specific requirements for public accessibility, inventory, signage, and employee staffing; and
4. Make violations of the chapter an unfair and lawful business practice subject to investigation by the Office of Consumer Protection, Department of Commerce and Consumer Affairs.

HAH is aware of one out-of-state DME supplier—Universal Med Supply out of Irving, Texas—that recently opened a DME supply location in Honolulu. Universal Med Supply informed HAH that it has two full time employees at its Honolulu location where it maintains inventory, and that the entire process of opening an office in Hawaii took two to three weeks to accomplish. Interestingly, Universal Med Supply noted that until it opened its Honolulu location, it was unaware of the significant cost and time challenges associated with shipping DME inventory to Hawaii.

In sum, HAH respectfully asks the committee to pass HB 2528, HD1—with the amendments suggested in HAH's draft proposed HB 2528, HD2—which would ensure that Hawaii's Medicare DME patients have access to critical, life-sustaining medical supplies.

Thank you for the opportunity to testify in strong support of HB 2528, HD1.

DRAFT PROPOSED HB 2528, HD2

SECTION 1. Medicare beneficiaries in Hawaii are experiencing a reduction in access to quality care as a result of the change in the way Medicare purchases its durable medical equipment (DME) and prosthetics, orthotics, and supplies. Round 2 of Medicare's DME Competitive Bidding Program began July 1, 2013 in Honolulu County. The unintended consequences of the implementation of this national program in the Honolulu have been disastrous.

Only 13 of the 97 vendors selected are located within the state of Hawaii. The minimum shipping time is 2-4 days, and the typical wait time for physician-ordered wheelchairs and hospital beds is 4-8 weeks. These vendors do not have special phone or service hours to account for the time difference which means when Medicare beneficiaries in Hawaii call after 11 am, the offices are closed. Without access to timely, local services, Medicare beneficiaries in Hawaii have been forced to forego necessary DME devices. This restricted access to care has led to reductions in health, increases in preventable admissions and readmissions, increases in costs to beneficiaries and the Medicare system and impact on quality of life for Medicare patients.

The national bidding program has the laudable intention of cutting down on fraud and abuse and reducing Medicare costs nationally. A reduction in cost, however, by 12%-56% in Hawaii is unsustainable given the fixed costs of higher rent, utility and shipping costs that businesses in Hawaii face. Hawaii's fees are now on par with those in the Washington D.C. area, even though the cost of living index in Honolulu is 21.4% higher than Washington D.C. Medicare costs in Hawaii were already low. A review of 2011 fee-for-service Medicare spending for DME shows that Hawaii has the lowest per capita DME cost in the nation. On average, each Hawaii beneficiary consumes only \$82.54 in DME, compared with \$230.16 nationally. Furthermore, the total Medicare cost for a Hawaii beneficiary, on average, is only \$530.98, compared with \$792.99 nationally.

Below are some of the incidences of patients facing significant barriers to accessing doctor-prescribed equipment and services on account of the bidding program in Honolulu County and surrounding areas:

- Discharges from hospital, long term care and hospice facilities have been delayed as a direct result of the DMEPOS Competitive Bidding process.

- The typical wait time for a physician-ordered Medicare hospital bed or wheelchair in Hawaii is 4-8 weeks.
- There is no same day or overnight express shipping option to Hawaii, so mainland suppliers servicing oxygen, continual feeding and other life-sustaining equipment cannot get equipment or replacement parts to the islands faster than 2-4 days, depending on if the delivery location is urban or rural.
- Selected suppliers on the US mainland have not been able to sub-contract with local vendors because the prices are below cost of supplying equipment in Hawaii once shipping costs are taken into account.
- Employees are being furloughed at local DME suppliers as a direct result in decrease in Medicare reimbursement rates. Businesses with a substantial number of Medicare customers are facing the imminent prospect of shutting down completely, which will only further limit access to care here.

The purpose of this Act is to require DME suppliers to meet state licensing and business registration requirements to ensure that Hawaii's DME patients have access to the critical, life-sustaining medical supplies they need.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

DURABLE MEDICAL EQUIPMENT SUPPLIER LICENSING AND PATIENT SAFETY
PROGRAM

§ -1 Title. This chapter shall be known and may be cited at the "Durable Medical Equipment Supplier Licensing and Patient Safety Program."

§ -2 Findings and Declaration of Necessity. It is the intent of the legislature to establish standards for the licensing of durable medical equipment suppliers participating in the nationwide competitive bidding program for durable medical equipment, prosthetics, orthotics, and supplies established by section 302 of the Medicare Modernization Act of 2003 to protect medical patients in the State from life threatening delays in receiving life sustaining durable medical equipment that must be shipped from the mainland.

§ -3 Definitions. As used in this chapter:

"Appropriate physical location" means a physical facility within the State that meets the following requirements:

- (1) The facility is staffed during normal business hours by at least one employee;
- (2) The facility has adequate square footage to store durable medical equipment inventory for sale and distribution within the State;
- (3) The facility maintains a working business telephone line for customer service and sales;
- (4) The facility maintains an inventory of durable medical equipment sufficient to meet fifty per cent of anticipated quarterly demands for products offered for sale or distribution within the State;
- (5) The facility is in a location that is:
 - (A) Accessible to the public;
 - (B) Maintains a permanent visible sign in plain view and posts hours of operation; provided that if the supplier's place of business is located within a building complex, the sign must be visible at the main entrance of the building or the hours can be posted at the entrance of the supplier;

(6) The facility meets all local and state regulatory requirements including, but not limited to zoning requirements, for operation as a durable medical supplier doing business in the State.

"Department" means the department of commerce and consumer affairs.

"Durable medical equipment" means equipment that can stand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, and is appropriate for use in the home.

"Supplier" means a durable medical equipment supplier participating in the nationwide competitive bidding program for durable medical equipment, prosthetics, orthotics, and supplies established by section 302 of the Medicare Modernization Act of 2003.

§ -4 Licensing. (a) All suppliers of durable medical equipment shall be licensed.

(b) A supplier of durable medical equipment shall be deemed licensed if:

(1) The supplier maintains an appropriate physical location within the State;

(2) The supplier meets all applicable requirements under federal law including, but not limited to, 42 C.F.R. 424.57 and 42 C.F.R. 424.58; and

(3) The supplier complies with all state legal requirements for a business engaged in the sale of goods in the State including, but not limited to:

(A) Business registration;

(B) Payment of taxes;

(C) Maintenance of proper accreditation and credentialing for participation in the nationwide competitive bidding program for durable medical equipment, prosthetics, orthotics, and supplies established by section 302 of the Medicare Modernization Act of 2003.

§ -5 Non-compliance and remedies. (a) A supplier that engages in the sale of durable medical equipment in violation of this chapter commits an unfair and unlawful business practice.

(b) Complaints of violations of this chapter shall be filed with the office of consumer protection.

§ -6 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or application, and to this end the provisions of this chapter are severable."

SECTION 3. This Act shall take effect on July 1, 2014, and shall be repealed on June 30, 2016.



February 10, 2014

The Honorable Angus L.K. McKelvey, Chair
The Honorable Derek S.K. Kawakami, Vice Chair

Committee on Consumer Protection and Commerce

Re: HB 2528, HD1 – Relating to Health

Dear Chair McKelvey, Vice Chair Kawakami, and Members of the Committee:

My name is Rick Jackson and I am Chairperson of the Hawaii Association of Health Plans (“HAHP”) Public Policy Committee. HAHP is a non-profit organization consisting of nine (9) member organizations:

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

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 provide testimony in opposition to HB 2528 which requires vendors who have been awarded contracts through the Centers for Medicare Services durable medical equipment, prosthetics, orthotics, and supplies bidding program to have a physical presence in Hawaii.

HAHP has concerns with this Bill as it would unnecessarily limit opportunities to contract with vendors. We are aware of the growing pressure that hospitals face with patients on waitlists for specialized equipment, and are concerned that we would lose much needed specialty vendors on the mainland.

Thank you for the opportunity to provide testimony.

Sincerely,

Rick Jackson
Chair, Public Policy Committee

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 10, 2014

The Honorable Angus L. K. McKelvey, Chair
The Honorable Derek S. K. Kawakami, Vice Chair
House Committee on Consumer Protection and Commerce

Re: HB 2528, HD1 – Relating to Health

Dear Chair McKeley, Vice Chair Kawakami, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2528, HD1, which requires vendors who have been awarded contracts through the Centers for Medicare Services durable medical equipment, prosthetics, orthotics, and supplies bidding program to have a physical presence in Hawai'i. HMSA opposes this Bill.

It has long been HMSA's mission to improve the health and well-being of our members and for all the people of Hawai'i. But, we also are cognizant of the need to provide services and products our members demand, in the most efficient way. We need to do our part to contain the cost of Hawai'i's health care system.

To that end, we believe in the importance of ensuring cost-effective access to quality durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) from suppliers that members can trust. HMSA has concerns with this Bill because we believe it veers away from that goal.

We believe our members enjoy having as many options available to them as possible. Limiting our contracting options poses a problem. HMSA could lose providers from our network, limiting options for our Akamai Advantage members.

HMSA has a projection of \$500,000 in annual savings with the competitive bid pricing in place, and members would also have savings with these lower rates. This Bill also effectively would thwart implementation of pricing favorable to HMSA's Akamai Advantage members, and lowering reimbursements may result in providers opting to be non-participating providers. The consequence of this will be higher costs to our members. This, absolutely, is not something we want our members, particularly our Medicare members, having to contend with.

Thank you for the opportunity to testify today in opposition to HB 2528, HD1. We ask that you consider our concerns in your deliberations.

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