



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310

P.O. Box 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

JO ANN UCHIDA TAKEUCHI
DEPUTY DIRECTOR

**TO THE HOUSE COMMITTEE
ON CONSUMER PROTECTION & COMMERCE**

**THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013**

**MONDAY, FEBRUARY 25, 2013
2:30 P.M.**

**TESTIMONY OF JO ANN UCHIDA TAKEUCHI, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS,
TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE**

**HOUSE BILL NO. 656, H.D. 1 - RELATING TO HEALTH CARE ADMINISTRATIVE
UNIFORMITY**

DESCRIPTION:

This measure proposes to facilitate collaboration among health care and insurance providers and government agencies by establishing a statutory framework for discussions regarding health care administrative uniformity.

POSITION:

The Department of Commerce and Consumer Affairs ("Department") supports the intent of this bill and offers comments.

COMMENTS:

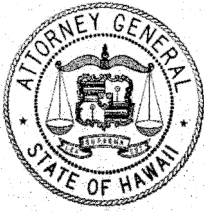
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House Committee on Consumer Protection & Commerce
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The purpose of this bill is to allow open and robust collaboration on uniform administrative standards and procedures to enhance the quality of health care in the state. The Department recognizes that in order to facilitate these discussions, the state may need to create a statutory framework that includes a level of state oversight and state action.

To the extent this bill will need to be amended to provide that framework within the Department, the Department recommends that its role be limited in nature to what may be required to achieve the purpose of this bill and to minimize the fiscal and administrative burdens that would be required to establish this framework.

The Department is already in discussion with other stakeholders regarding Senate Bill No. 1241, S.D.1 which would place oversight responsibilities within the Department.

Thank you for this opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 656, H.D. 1, RELATING TO HEALTH CARE ADMINISTRATIVE UNIFORMITY.

BEFORE THE:

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Monday, February 25, 2013 **TIME:** 2:30 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Rodney I. Kimura, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General recommends that this bill be held because it will not provide immunity from antitrust scrutiny.

The bill expresses an exception to the application of the Hawaii antitrust law for the apparent purpose of conferring antitrust immunity on certain cooperation, collaborations, or agreements ("collaborations") relating to the development and adoption of uniform health care-related procedures.

Implicit in the bill is the notion that the contemplated collaborations will be in violation of the antitrust laws. Otherwise, there would not be a need for this bill.

The bill does not afford complete antitrust immunity because the collaborating entities will be subject to scrutiny under federal antitrust law.

Under the "state action" doctrine, anticompetitive conduct engaged in by private parties can be shielded from the antitrust laws if a rigorous two-pronged test is met. First, the private conduct must be undertaken pursuant to a clearly articulated and affirmatively expressed state policy. Second, the private conduct must be actively supervised by the State itself.

Assuming for the moment that the wording in the bill is sufficient to constitute a "clearly articulated and affirmatively expressed state policy," nothing in the bill provides for active supervision of the collaborating parties by the State.

Thus, the participants will be subject to both governmental and private scrutiny under the federal antitrust laws, and could be subject to prosecution or suit.

We therefore recommend that this bill be held.



HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Angus L.K. McKelvey, Chair

February 25, 2013 at 2:30 p.m.
Conference Room 325

Supporting HB 656 HD 1: Relating to Health Care Administrative Uniformity

The Healthcare Association of Hawaii advocates for its member organizations that span the entire spectrum of health care, including all acute care hospitals, as well as long term care facilities, home care agencies, and hospices. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 40,000 people. Thank you for this opportunity to testify in support of HB 656 HD 1, which encourages open and robust discussion among health care entities when developing uniform administrative standards and procedures to enhance the quality of health care in Hawaii.

Such standards include pre-authorization forms, drug formularies, credentialing forms, quality metrics, and patient demographic information. In the development of these standards, it is important to encourage discussions and agreements among health care providers, insurers, and other health care organizations. However, antitrust laws are likely to have a dampening effect on such discussions. We believe that the bill will facilitate collaborative efforts among Hawaii's health care providers and other relevant health care entities and assist them in meeting the triple aim of improving quality and population health while bending the cost curve downward.

A concern has been raised that the bill does not provide for State supervision of those who are engaged in collaboration. We are willing to work with other stakeholders to create a supervisory mechanism by which a state agency convenes committees to develop different sets of administrative standards. If drafted appropriately, this mechanism may provide protection from federal antitrust law as well as State antitrust law.

Thank you for this opportunity to testify in support of HB 656 HD 1.