



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:
H.B. 2528, RELATING TO HEALTH.

BEFORE THE:
HOUSE COMMITTEE ON HEALTH

LATE

DATE: Friday, January 31, 2014 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Lori K. Aquino, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Attorney General opposes this bill because it conflicts with federal law.

This bill would require a physical presence in Hawaii for Medicare suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) who have been awarded supplier contracts with the Centers for Medicare and Medicaid Services by adding a new section to chapter 346, Hawaii Revised Statutes, which pertains to the Department of Human Services. The bill defines "physical presence" as a physical location or administrative office in the State.

The DMEPOS competitive bidding program is mandated by Congress through the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Federal regulation 42 C.F.R. § 424.57 sets forth the standards for DMEPOS suppliers. The regulation requires that a DMEPOS supplier "maintain a physical facility on an appropriate site." 42 C.F.R. § 424.57(c)(7). It does not require a physical presence in every competitive bidding area in which the DMEPOS supplier has been approved. A significant part of the federal program is the National Mail Order program for diabetic testing supplies, which contemplates Medicare beneficiaries accessing suppliers across the country. A physical presence requirement in the State would contravene the intent and purpose of the program.

The bill conflicts with federal law because it imposes on federally approved DMEPOS suppliers the additional requirement of a physical presence in Hawaii. The provision would be preempted by federal law under the Supremacy Clause of the United States Constitution. In addition, section 1856(b)(3) of the MMA broadened the scope of federal preemption of state law governing plans serving Medicare beneficiaries. The only exceptions to this broad preemption

pertain to state laws and regulations regarding licensing and plan solvency. The bill would impermissibly regulate Medicare plans by restricting the ability of federally approved DMEPOS suppliers to supply Hawaii Medicare beneficiaries.

We respectfully recommend that the Committee hold this bill.



Friday – January 31, 2014 – 8:30am
Conference Room 329

The House Committee on Health

To: Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: **Testimony in Support**
HB 2528 — 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, 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 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 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 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>.)

In sum, HAH respectfully asks the committee to pass HB 2528, 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.



H.B. 2528, Relating to Health
House Committee on Health
January 31, 2014, 8:30 a.m.

Thank you for the opportunity to provide testimony in **support** of HB 2528, Relating to Health.

Section 302 of the Medicare Modernization Act of 2003 established requirements for a new competitive bidding program for certain durable medical equipment, prosthetics, orthotics, and supplies. Under the program, suppliers compete to become Medicare contract suppliers by submitting bids to furnish certain items in competitive bidding areas, and the Centers for Medicare and Medicaid Services awards contracts to finite number of suppliers meant to meet the supply demand. The majority of the award winners are located 5,000-10,000 miles away. HB 2528, which requires awarded vendors to have a physical presence in Hawaii, is needed as the new process has resulted in various challenges for Hawaii's system of care:

- 1) The time difference makes it difficult to contact vendors to obtain needed equipment.
- 2) At times, the contracted vendors experience difficulty in fulfilling the order demands and delivery requirements in a timely manner. These have led to QMC staff faxing, sometimes for hours, to get the order to go through to the company.
- 3) There is no "choice" when it comes to the purchase of certain items that are only available through a certain vendor. There have been situations when vendors are not able to service a patient, so the order is redirected by the vendor to be filled, but without coordinating with the hospital. This is very frustrating and impedes communication, coordination, and limits patient choice.
- 4) With so many challenges and complications, patients are not being discharged to appropriate settings in a timely manner, which drives costs up.
- 5) Not having needed equipment can also have a negative impact on the patient's well-being and improvement.
- 6) Some patients have been purchasing the equipment on their own because it takes too long to obtain it through a designated Medicare DME provider.

Given the complexity and implications of the accurate and prompt fulfillment of these orders, QMC suggests requiring the vendors to maintain a local, physical presence is reasonable and could resolve many of these ongoing concerns.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

LATE

January 31, 2014

The Honorable Della Au Belatti, Chair
The Honorable Dee Morikawa, Vice Chair
House Committee on Health

Re: HB 2528 – Relating to Health

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on 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 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. We ask that you consider our concerns in your deliberations.

Sincerely

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

Jennifer Diesman
Vice President, Government Relations

**The House Committee on Health
Friday – January 31, 2014 – 8:30am
Conference Room 329**



To: Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair
From: Emilie Smith
Administrator
CareResourcee Hawaii

Re: Testimony in Support of H8 2528 — Relating to Health

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 has had unintended negative consequences. 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. There have been situations in which patients have chosen to purchase needed equipment using out-of-pocket funds although Medicare would have paid for the needed equipment. 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 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 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 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.

I respectfully asks the committee to pass HB 2528, 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.

