SB 2031

Measure Title:	RELATING TO HEALTH.
Report Title:	Centers for Medicare and Medicaid Services; Physical Presence; Durable Medical Equipment, Prosthetics, Orthotics, and Supplies; Bidding Program
Description:	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.
Companion:	HB2528
Package:	None
Current Referral:	HMS/HTH/EGH, JDL
Introducer(s):	GREEN, CHUN OAKLAND, RUDERMAN, L. Thielen

NEIL ABERCROMBIE
GOVERNOR

PATRICIA McMANAMAN
DIRECTOR

BARBARA A. YAMASHITA
DEPUTY DIRECTOR

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

February 13, 2014

TO: The Honorable Suzanne Chun Oakland Chair
Senate Committee on Human Services

The Honorable Josh Green, M.D., Chair
Senate Committee on Health

The Honorable Donovan M. Dela Cruz, Chair
Senate Committee on Economic Development, Government Operations and Housing

FROM: Barbara Yamashita, Acting Director

SUBJECT: **S.B. 2031 - RELATING TO HEALTH**

Hearing: Thursday, February 13, 2014; 1:00 p.m.
Conference Room 016, State Capitol

PURPOSE: The purpose of this bill is to require 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.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) opposes this bill and defers to the Department of Attorney General on the legal issues of this bill.

Additionally, the durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) program is a Medicare program, it is not a Medicaid program. The DHS does not license, certify, or otherwise regulate DMEPOS providers.

Thank you for the opportunity to testify on this measure.

Thursday – February 13, 2014 – 1:00pm
Conference Room 016

The Senate Committee on Human Services

To: Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair

The Senate Committee on Health

To: Senator Josh Green, Chair
Senator Rosalyn H. Baker, Vice Chair

The Senate Committee on Economic Development, Government Operations and Housing

To: Senator Donovan M. Dela Cruz, Chair
Senator Sam Slom, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: Testimony in Support
SB 2031 — 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 SB 2031, 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.

SB 2031 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 SB 2031 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 SB 2031, 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 SD1 of SB 2031, 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 SB 2031 —with the amendments suggested in HAH's draft proposed SB 2031 —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 SB 2031.

DRAFT PROPOSED SB 2031, SD1

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.

Healthcare Association of Hawaii

Tuesday February 11, 2014

To: Lori K. Aquino
Deputy Attorney General
State of Hawaii
Health & Human Services Division

From: George Greene
President & CEO
Healthcare Association of Hawaii

RE: Preemption Analysis of Proposed HB 2528, HD2

The Attorney General has asked for an analysis of federal preemption as it relates to HB 2528. At the hearing before the House Committee on Health, the Attorney General raised preemption concerns with HB 2528 because, in the Attorney General's view, HB 2528 "conflicts with federal law,"—namely the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)—"because it imposes on federally approved DMEPOS suppliers the additional requirement of a physical presence in Hawaii." (HB 2528, Late Testimony of the Attorney General, January 31, 2014, p. 1 [AG Testimony].) The Attorney General did, however, note that "exceptions to this broad preemption pertain to *state laws and regulations regarding licensing* and plan solvency." (AG Testimony, pp. 1-2 [italics added].) As such, we have submitted a draft proposed HB 2528, HD2 to the House Committee on Consumer Protection & Commerce—which is drafted as a state licensing law and which we shared with the Attorney General's office—and offer the following analysis of that proposal.

Analysis

The Supremacy Clause of the United States Constitution provides Congress with the authority to preempt state law. (*See* U.S. Const., art. VI.) And the United States Supreme Court has recognized that federal preemption of state law can occur in three different areas: (1) where Congress explicitly preempts state law; (2) where preemption is implied because Congress has occupied the entire field; and (3) where preemption is implied because state law actually conflicts with federal law. (*Schneidewind v. ANR Pipeline Co*., 485 U.S. 293, 299-300 (1988); *Bank of America v. City & County of San Francisco*, 309 F.3d 551, 558 (9th Cir. 2002).) Nevertheless, "[c]onsideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law. (*Maryland v. Louisiana*, 451 U.S. 725, 746 (1981), citing *Rice* v. *Santa Fe Elevator Corp*., 331 U.S. 218, 230 (1947).)

In examining HB 2525, HD2—the Healthcare Association of Hawaii's (HAH) draft proposed durable medical equipment (DME) licensing bill—we must assume that Congress did not intend to preempt state law unless there is an actual conflict between the language in the draft proposed HB 2525, HD2 and the MMA and related federal regulations. As such, we believe that the

Legislature has the authority to regulate DME suppliers unless the provisions of the draft proposed HB 2528, HD2 actually conflict with federal law. HAH's draft proposed HB 2528, HD2 does not conflict with federal statute or regulation.

As the Attorney General points out, "[f]ederal regulation 42 C.F.R. § 424.57 sets forth the standards for DMEPOS suppliers." (AG Testimony, p. 1.) Under 42 Code of Federal Regulations §424.57(c), a "supplier must meet and must certify in its application in its application for billing privileges that it meets and will continue to meet . . . State licensure and regulatory requirements." (42 CFR 424.57(c)(1).) Further, "[i]f a State requires licensure to furnish certain items or services, a [DME] supplier . . . must be licensed to provide the item or service." (*Id.*) Thus, the federal regulation expressly provides that states may impose licensing requirements on DME suppliers, and further requires DME suppliers to meet such state licensing laws as a prerequisite to participation in the federal program. As a result, the licensure requirements contained in HAH's draft proposed HB 2528, HD2 do not conflict with 42 CFR §424.57(c), which clearly allows states to impose licensing requirements on DME suppliers.

The Attorney General also expressed the view that "section l856(b)(3) of the MMA broadened the scope of federal preemption of state law governing plans serving Medicare beneficiaries." (AG Testimony, p. 1.) Section 232 of the MMA, however, expressly exempts "State licensing laws" from preemption:

> **SEC. 232. AVOIDING DUPLICATIVE STATE REGULATION.**
> (a) IN GENERAL.—Section 1856(b)(3) (42 U.S.C. 1395w–26(b)(3)) is amended to read as follows:
> ''(3) RELATION TO STATE LAWS.—The standards established under this part shall supersede any State law or regulation (**other than State licensing laws** or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part.

(MMA, §232(a), emphasis added.) As such, state licensing laws—such as that proposed by HAH's draft proposed HB 2528, HD2—are not preempted by federal law, and are expressly exempted from preemption under the MMA.

The Legislature has the inherent authority—derived from its traditional police power—to adopt laws for the wellbeing and security of its citizenry. "The police power of the State is broad and extends to the public safety, health, and welfare." (*State v. Ewing*, 81 Haw. 156, 164 (Haw. St. App. 1996), citing *State v. Lee*, 55 Haw. 505, 513, 523 P.2d 315, 319 (1974) [holding statutes "reasonably related to the preservation of public health, safety, morals or general welfare of the public" are within the State's legitimate exercise of the police power]; see also *State v. Lee*, 51 Haw. 516 (1970); *State v. Diamond Motors, Inc*., 50 Haw. 33 (1967).) Here, the Legislature—were it to enact HAH's draft proposed HB 2528, HD2—would be acting under its traditional police power to protect its vulnerable Medicare patients by ensuring they receive timely delivery of critical DME supplies.

In sum, the state licensure program contemplated by HAH's draft proposed HB 2528, HD2 is not preempted by federal law. The applicable federal statute and related

regulations all expressly recognize the state's authority to regulate DME suppliers through state licensure. And the state has authority under its traditional police power to adopt laws for the safety, public health, and general welfare of the public such as the DME licensing and patient safety program offered under HAH's draft proposed HB 2528, HD2.

The Healthcare Association of Hawaii (HAH) surveyed providers for examples of DME supply –related stories highlighting serious patient difficulties in obtaining timely, critical DME supplies. The following are responses HAH received from providers.

Patient and provider names are redacted to preserve patient confidentiality.

Oahu home health agency

Today, we had another example of problems ordering and receiving a standard 30 inch sliding transfer board for a pt we have had on service for over 2 months. After receiving all the paperwork and making numerous phone calls with both [local DME award vendor] and [local vendor that did not win an award], we are told this item is not stocked on the islands. I finally had a friend copy and make a sliding board for this patient, paid him $25 out of my own pocket, and provided the sliding transfer board myself. Oahu home health agency

Oahu hospital

1. There are limited choices resulting in delays in discharging the patient.
2. Patient care is impeded by the competitive bidding process. We are limited to ordering from certain vendors who it appears cannot handle the demands or others require a minimum of 2 items before filing in our order. We end up faxing, sometimes for hours, just to get the order to the vendor.
3. There is no "choice" when it comes to wheelchairs as [local DME award vendor] is the only vendor that has that DME contract. There have been situations when vendors are not able to service the patient, for one reason or another, and they simply send the order to another vendor, but without discussing it with the patient or the Case Manager --thus, impeding communication, coordination, and limiting patient choice.
4. There are reports from Home Health Care agencies that [local DME award vendor] does not have an RN or RD to do the teaching for their enteral patients, rather have used their driver to teach how to do TubeFeeding at home. As a result, Home Care Agencies have had several patients readmitted to the hospital for aspiration and have reported this to the appropriate CMS department.

Oahu skilled nursing facility

A medically fragile patient who has Respiratory disease and is fed via Gastric Tube, will be going home to Wailuku, Maui in about 10 days.

The company on the mainland that [Medicaid managed care plan] contracted with is [mainland award vendor]. Apparently, since our doctor and Social Worker had several conversations with both [Medicaid managed care plan] and [mainland award vendor] staff, regarding the arrival and accessibility of equipment he needs, they have realized that they could not effectively get this boy's equipment to him as needed. They share they "are making other plans" as I write this to you.

Oahu home health agency

Female Home health pt referred for management of pressure ulcer on lower back. At SOC, RN requested hospital bed and Hoyer lift via [local DME award vendor], Medicare vendor for competitive bid contract. Forms sent to MD's office, forms not completed properly per [local DME award vendor]. No instructions provided for MD and no customer svc at Vendor to assist MD office in completing forms properly to meet Medicare criteria. This process has been going on for 3 wks. Family having difficulty repositioning

pt and daughter in law has injured her back. Both the hospital bed and the Hoyer lift have not been delivered as yet. The home health RN has been frustrated as she feels helpless in assisting with the paper work between the vendor and the MD to be completed in order to process the order. This vendor has expressed that they are unable to manage the orders coming in.

Oahu home health agency
[Local DME award vendor], vendor for Medicare competitive bid contract, President of company informing staff with equipment orders - expressed desire to set up a contract with home health agency. Also expressed his (vendor) frustration in not being able to keep up with orders. Staff contacting vendor with 4 phone calls on this particular pt case, left msgs and no follow up for 2 wks until staff left a threatening msg.

[Local DME award vendor], vendor for Medicare competitive bid contract, was faxed a request for a hospital bed for pt. Pressure ulcer became worsened and had to be re-hospitalized as the bed was not delivered until 4 wks later. Concern is that these worsened outcomes impacts home health agency outcomes such as in "Home Health Compare".

Oahu home health agency
Pt. discharged on 092513 from Rehab and Nursing facility, youth front wheeled walker with 5" wheels/ from [local DME award vendor]- ordered 102913. So far, 3 phone calls were made to [local DME award vendor], and pt still has not received walker. Latest phone call to [local DME award vendor] on 110813, we were told "sometime next week" family would be contacted. As of today, family has not been contacted, walker has not been delivered.

Oahu home health agency: Patient readmission to the hospital
[Local DME award vendor] wins the DME Competitive Bidding and signs an exclusive contract with a healthcare provider. The healthcare provider agreed on the exclusive contract with one DME Company because this DME Vendor agreed to coordinate the DME needs for all their patients (i.e., the Case Manager or Discharge Planner will only have to contact one DME Company). However, [local DME award vendor] lacked the expertise to provide a specialty service that the patient needed. The patient needed enteral feeding supplies, which they delivered, but there were no instructions or nutritional counseling provided. The lack of expertise resulted in the patient's readmission to the hospital.

Oahu home health agency: DME Competitive Bidding does not offer patient choice
A patient was discharged from the hospital, and safety equipment was needed for the home. After three fax messages and numerous phone calls (at least four) to contact [local DME award vendor], the suction equipment and bed were delivered three days later. This posed a safety issue to the patient who needed the suction machine and hospital bed. Before DMEPOS Competitive Bidding Program implementation, patients could reach out to a DME supplier that could provide prompt service from a local office and warehouse.

Neighbor Island skilled nursing facility
One of our problems is that our local vendors do not participate in the competitive bidding program. Because of this, we do not have a vendor that is responsible for providing DME to our

residents upon d/c. The vendors that we work with now, have different policies (which continues to change) with regard to required documentation for DME.

We are in the process of scheduling in-services with the different vendors to assist us with preparing for DME documentation and/or other steps necessary to obtain the DME.

Neighbor Island medical center
"As you may or may not be aware Mr. A has been here 153 days. Since 7/31/13 he has been here solely due to the insurance plan's inability to procure a wheelchair. Once the CFO became involved we saw a little effort as the insurance plan did issue a "one time" contract with [a Maui DME supplier] to provide a wheelchair, but it turns out [a Maui DME supplier] is not licensed to issue the type of wheelchair our patient requires. As such we are now back at "square one" with a patient taking up an acute bed simply because he does not have a wheelchair. We have since lost his bed offer at [nursing facility], which is a source of great frustration for all parties involved. While this is an extreme example, it is indicative of our ongoing issues in working with the insurance plan and the DME providers and their inability to provide the services their members require"

Neighbor Island medical center: Delay in discharge and avoidable hospital stay
[Locally-based award vendor] wins the DME Competitive Bidding and signs an exclusive contract with a healthcare provider. The healthcare provider agreed on the exclusive contract with one DME Company because this DME Vendor agreed to coordinate the DME needs for all their patients. (the Case Manager will have to contact one DME Company). However, [locally-based award vendor] was unable to provide a specialty service that the patient needed. The patient needed Trach Supplies. [locally-based award vendor] was unable to provide Trach supplies without additional durable medical equipment ordered. The service had to be sent from an off island vendor causing an avoidable day in the hospital. Due to no Trach supply vendor on island, there is a problem with servicing the equipment and the ability to provide hands on representative to initiate help or problem solve on island.

Neighbor Island medical center: Competitive Bidding does not offer patient choice
A patient was being discharged from the hospital, and safety equipment was need for the home. After numerous phone calls to off island and Maui vendors, the oxygen was delivered to the patient and all expenses needed to be paid out of pocket for all oxygen supplies indefinitely. The patient recently moved to Maui from the mainland with oxygen use history. Patient was unable to have [local award vendor] or [locally-based award vendor] service due to prior authorization to mainland DME provider.

Oahu medical center: Numerous problems with [local award vendor] for DME equipment:
[Local award vendor] won the DME Competitive Bidding and signed an exclusive contract with certain healthcare providers. There is a monthly charge to the healthcare providers by [local award vendor] to be exclusive for all their DME needs. Our medical center did not facilitate an exclusive contract with them.

Calls were made to [local award vendor] to because they won the DME Competitive Bid for the DME needed at discharge.

[Local award vendor] response has been they service healthcare providers that signed a contract them first and they are too busy and cannot accommodate us.

We contacted the Medicare Hotline for DME issues many times to report these issues.

THE QUEEN'S HEALTH SYSTEMS

1301 Punchbowl Street • Honolulu, Hawaii 96813 • Phone (808) 691-5900

S.B. 2031, Relating to Health
Senate Committee on Human Services
Senate Committee on Health
Senate Committee on Economic Development, Government Operations, and Housing
February 13, 2014; 1:00 p.m.

Thank you for the opportunity to provide testimony in **support** of SB 2031, 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. SB 2031, 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, including but not limited to:

1) The time difference makes it difficult to contact vendors to obtain needed equipment. Not available on Sundays or afterhours (last delivery is 3:30 p.m.).
2) Case Managers ask for the vendor to provide an order in a certain timeframe because the patient has a flight home to a neighbor island and the vendor does not respond
3) 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.
4) 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.
5) Vendor wants to actually speak to a patient to ensure the patient is able to make co-payment prior to discharge
6) With so many challenges and complications, patients are not being discharged to appropriate settings in a timely manner, which drives costs up.

7) Not having needed equipment can also have a negative impact on the patient's well-being and improvement.
8) 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 Blue Cross Blue Shield of Hawaii

An Independent Licensee of the Blue Cross and Blue Shield Association

February 13, 2014

The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services
The Honorable Josh Green, Chair
Senate Committee on Health
The Honorable Donavan M. Dela Cruz, Chair
Senate Committee on Economic Development, Government Operations and Housing

Re: SB 2031 – Relating to Health

Dear Chair Chun Oakland, Chair Green, Chair Dela Cruz, and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2031, 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 Hawaii'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 SB 2031. We ask that you consider our concerns in your deliberations.

Sincerely

Jennifer Diesman
Vice President
Government Relations

SB2031
Submitted on: 2/8/2014
Testimony for HMS/HTH/EGH on Feb 13, 2014 13:00PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

SB2031
Submitted on: 2/11/2014
Testimony for HMS/HTH/EGH on Feb 13, 2014 13:00PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments: Mahalo for the opportunity to testify in STRONG SUPPORT of SB 2031, which requires vendors who supply durable medical equipment (DME) through the Centers for Medicare and Medicaid Services' nationwide Competitive Bidding Program to have a physical presence in the state. There are many people in Hawai'i who are Medicare beneficiaries. Frequently, patients experience a delay in access to quality care as a result of the change in the way Medicare purchases DME. As an APRN (Advanced Practice Registered Nurse), I see this occurrence too often. 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 are disastrous. As noted by HAH (Healthcare Association of Hawai'i), only 13 of the 97 vendors selected to supply the state with DME are located within the state of Hawai'i. The minimum shipping time from the mainland to Hawaii is two to four days, and the typical wait time for healthcare provider-ordered wheelchairs and hospital beds is four to eight weeks. Since the off-island vendors do not have special phone or service hours to account for the time difference between Hawai'i and their mainland offices, Medicare beneficiaries in Hawaii cannot contact their main offices after 11 a.m., since their offices close at Eastern or Central time. Without access to timely, local services, Medicare beneficiaries in Hawai'i are forced to wait excessive periods to receive critical devices or completely forego necessary DME devices. This restricted access to care leads to degrading health conditions, increases in preventable admissions and readmissions, increases in costs to beneficiaries and the Medicare system and impacts quality of life for Medicare patients who live in Hawai'i. I urge you to support passage of SB 2031 for the benefit of Medicare eligible patients living in Hawai'i. Patients should not be penalized for living in Hawai'i.