TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:
H.B. NO. 580, H.D. 1, RELATING TO THE LICENSURE OF DURABLE MEDICAL EQUIPMENT SUPPLIERS.

BEFORE THE:
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

DATE: Wednesday, February 18, 2015 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Lori H. Wada, Deputy Attorney General

Chair McKelvey and Members of the Committees:

The Department of the Attorney General provides the following comments.

This bill confers on the Office of Health Care Assurance (OCHA) of the Department of Health the authority to license suppliers of durable medical equipment, prosthetics, orthotics, and related supplies (DMEPOS). The Centers for Medicare and Medicaid Services (CMS) is the federal agency entrusted with administering the Medicare program. The federal regulation governing DMEPOS Medicare suppliers, 34 C.F.R. section 424.57, expressly provides that "[i]f a State requires licensure to furnish certain items or services, a DMEPOS supplier (A) Must be licensed to provide the item or services; and (B) May contract with a licensed individual or other entity to provide the licensed services unless expressly prohibited by State law."

This bill's definition of the term "supplier" on page 5, lines 4-8, is problematic because it limits the group that must be licensed to those businesses "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." Businesses that do not participate in this bidding program would not be able to obtain a license to supply DMEPOS in Hawaii. This distinction could be interpreted by CMS as too narrowly tailored to target only participants in the bidding program. We recommend that the licensing scheme be broadened to license any entity or person that supplies DMEPOS to Medicare beneficiaries in Hawaii, not just participants in the bidding program.

Colorado recently enacted a DMEPOS law that has been in effect for a little over a month and is very similar in content and intent to this measure. As it is such a new law, we are unsure of how CMS would view it. However, the Colorado law uses broader language than this measure and may be a useful model. The Colorado law is attached as Exhibit A to this testimony and the bill that led to its enactment is attached as Exhibit B.

Colorado's definition of the term "durable medical equipment supplier" provides in pertinent part: "'durable medical equipment supplier' means a person or entity that delivers disposable medical supplies or durable medical equipment products directly to a recipient and that currently bills or plans to bill the medicare program for services or products in the current calendar year." In Colorado, the broad licensing scheme, through this definition, applies to all entities that provide DMEPOS to Medicare beneficiaries, whether they participate in the bidding program or not.

We recommend that the Legislature broaden the licensing scheme in this bill in either of the following ways:

(1) By amending the bill's definition of "supplier" on page 5 to delete the following on lines 4-8: "participating in the nationwide competitive bidding program to provide durable medical equipment to medicare beneficiaries in Hawaii," so that licensure in Hawaii would apply to all suppliers of DMEPOS; or

(2) By using the definition in the Colorado law instead of the bill's current wording.

For either recommendation, the bill should also delete the language "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" on page 3, lines 11-12 and page 4, lines 10-13. And in the bill's purpose section, the phrase "participating in the nationwide competitive bidding program" at page 3, lines 11-12, should be deleted.

We also recommend that the licensing requirements for suppliers of DMEPOS be express, and similar to those already employed by licensing agencies in the State. The statement on page 5, line 12, that a supplier "deemed to be licensed" if it meets three conditions is unnecessary and nebulous. OHCA will either license the applicant or not. We recommend deleting the phrase "deemed to be" on page 5, line 12.

We respectfully request that the Committee consider our comments.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTON & COMMERCE
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

Date: Wednesday, February 18, 2015
Time: 3:00 p.m.
Conference Room: 325

TESTIMONY ON HOUSE BILL NO. 580 H.D.1
RELATING TO THE LICENSURE OF DURABLE MEDICAL EQUIPMENT SUPPLIERS

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to testify. My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division of the Department of Commerce and Consumer Affairs ("BREG"). We offer technical comments relating to this H.D.1's references to business registration and take no position beyond our area of expertise.

This H.D.1 requires the Office of Health Care Assurance to implement a licensing program for durable medical equipment suppliers and it refers to state business registration in three different sections using inconsistent language that we have highlighted below.

1. §321- Licensing. (b), relating to licensing states: "(b) A supplier of durable medical equipment shall be deemed licensed if…(3) The supplier is registered to do business in the State." (Emphasis added.)[1]
2. §321- Annual inspection. (b), relating to annual inspection states: "(b) The inspection shall consist of…(4) Confirmation that the durable medical equipment supplier is registered with the business registration division of the department of commerce and consumer affairs to do business in the State." (Emphasis added.)[2]
3. §321- Supplier duties. (b), relating to supplier duties states: "b) A durable medical equipment supplier shall register its business with the business registration division of the department of commerce and consumer affairs and shall provide a copy of a current business registration[3] to the office of health care assurance during its annual inspection." (Emphasis added.)

We recommend maintaining consistency in the language from these sections to reduce ambiguity and confusion on the requirements for the new licensing program. Moreover, the bill's current language does not make clear whether the intention is to have the supplier register with BREG and maintain good standing with our office (e.g., provide a certificate of good standing upon applying for the license); or whether the intention is to require the supplier to register with BREG and also properly obtain a General Excise Tax License from the Department of Taxation.

[1] This language is quite broad and could encompass not only DCCA-BREG registrations, but Department of Taxation General Excise Tax licensing as well.
[2] Confirmation of DCCA-BREG registration and compliance is usually given through the issuance of a Certificate of Good Standing ("COGS") for business entities. However, if a supplier is a sole proprietorship, he or she may register a trade name for which there is no COGS.
[3] The term "current business registration" is a vague term, which could apply to COGS or other registration documents.

For the reasons above, we recommend replacing all three variations of the sections of the bill that require business registration to consistently and clearly state that the supplier "shall provide proof that it has complied with the business registration laws of the state and has all required tax identification numbers."

Thank you for the opportunity to testify. I would be happy to answer any questions the Committee may have and to assist with drafting alternative language if desired.

DAVID Y. IGE
GOVERNOR OF HAWAII

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

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Testimony of COMMENTS on House Bill 0580, HD 1
Relating to the Licensure of Durable Medical Equipment Suppliers

REPRESENTATIVE ANGUS L.K. MCKELVEY, CHAIR

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hearing Date: Wednesday, February 18, 2015 Room Number: 325

Fiscal Implications: This bill would require general funds to implement and support this new licensure program, and funding would need to continue on an ongoing basis. The Office of Health Care Assurance (OHCA) Special Fund does not currently have sufficient funds to implement or support this new program. Approximately $225,000 over the next two (2) fiscal years and two (2) new full time, permanent, civil service positions would be required which are not part of the governor's budget proposal.

Department Testimony: The department supports the intent of this bill with the following COMMENTS, reservations and concerns:

1. Priorities: OHCA's current licensure programs should be sufficiently supported before adding new licensure programs. While the intent of this bill is laudable, it would divert potential new resources away from the support of OHCA's other licensure programs.
2. Funding: The OHCA special fund does not currently have a sufficient fund balance to cover the expected start-up expenses. The fund balance at the end of 2014 was approximately $12,000. The special fund will be used in the future to deposit licensure fees but the implementation of fees has had its own challenges including intervention by

Gov. Abercrombie to halt the implementation of fees on certain types of providers. General funds would be required but funds should not be provided at the expense of requested funds under the governor's budget proposal.

3. Staffing: this bill allows for one (1) full time position. If the legislature intends for this to be an ongoing program, two (2) positions will be requested and could also be used to help support other current licensure programs - a clinical position similar to other surveyor positions and an administrative support position. Both positions could also support current licensure programs. The bill must also clearly identify these positions as full time, permanent, civil service positions.
4. Administrative Rules: the bill requires administrative rules. However, administrative rules should be permitted rather than required. This should enable the department to implement the licensure program based on the statutory requirements more quickly, assuming other funding is found to implement and maintain the program.
5. Fairness: the licensure program should be required of all DME providers in Hawaii whether they are a Medicare contractor or not. It would seem that a licensure law requiring licensure of Medicare contractors only would be unfair.

Offered Amendments: None except as identified above.

Hawaii Association of Health Plans

February 18, 2015

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Representative Angus L. K. McKelvey, Chair
Representative Justin H. Woodson , Vice Chair

RE: House Bill 580 HD1 – Relating to the Licensure of Durable Medical Equipment Suppliers

Chairs, Vice Chairs and Members of the Committees:

The Hawai'i Association of Health Plans (HAHP) respectfully submits comments in opposition of House Bill 580 HD1, which among other things establishes a licensure requirement for durable medical equipment suppliers participating in the nationwide competitive bidding program through the Office of Health Care Assurance (Department of Health).

HAHP has previously opposed similar legislation, primarily because of the potential unintended consequences of suppliers choosing not to participate in Hawaii's marketplace due to the additional regulations and fees that would accompany passage of this measure. In effect, the bill undermines existing Medicare procurement policy, thus reducing competition and driving up costs for Medicare recipients.

We would also draw the Committee's attention to the possible impact that this bill would have on creating a monopoly in certain situations if suppliers choose not to do business in Hawaii.

The concerns expressed by the Department of Health with regard to the ongoing expense derived from this program, as well as whether there is adequate staff currently to execute this measure, are also worth considering should this measure advance.

Thank you for allowing HAHP to testify on HB 580 HD1.

Sincerely,

Wendy Morriarty
Chair, HAHP Public Policy Committee

Cc: HAHP Board Members

Healthcare Association of Hawaii

Wednesday, February 18, 2015 – 3 p.m.
Conference Room #325

House Committee on Consumer Protection and Commerce

To: Rep. Angus McKelvey, Chair
Rep. Justin Woodson, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: Testimony in Support
HB580 HD1 — Relating to the Licensure of Durable Medical Equipment (DME) Suppliers

The Healthcare Association of Hawaii's 160 member organizations include all of the acute care hospitals in Hawaii, all public and private skilled nursing facilities, all the Medicare-certified home health agencies, all hospices, all assisted living facilities, durable medical equipment suppliers and home infusion/pharmacies. Members also represent other healthcare providers from throughout the continuum including case management, air and ground ambulance, blood bank, dialysis, and more. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

Thank you for the opportunity to testify in **support** of HB580 HD1, which establishes licensure requirements for durable medical equipment (DME) suppliers participating in Medicare's competitive bidding program through the Department of Health's Office of Healthcare Assurance.

Round 2 of Medicare's DME Competitive Bidding Program began July 1, 2013 in the City and County of Honolulu. Unfortunately, only 13 of the 97 vendors selected were located within the state of Hawaii, leaving the vast majority of vendors incapable of delivering equipment in a timely fashion. These vendors also tend not to have special phone or service hours to account for the time difference in Hawaii. Without access to timely, local services, Medicare beneficiaries in Hawaii have been forced to either wait several weeks, forego necessary DME devices, or purchase such devices out of their own pocket. This restricted access to care has led to reductions in health, increases in preventable admissions and readmissions, increases in costs to beneficiaries, and reduced quality of life for Medicare patients.

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It has also negatively impacted hospital, long-term care and hospice facilities by resulting in delays in patient discharge. Lack of locally-available DME supplies also greatly impacts our ability to care for patients in a time of major emergency or disaster. As an isolated island state, it is crucial to have at least a minimal in-state inventory of equipment and supplies. Hawaii historically has only a small inventory of essential devices such as ventilators, infusion pumps and oxygen concentrators.

At an earlier hearing on this bill, issues were raised that a state licensure program might further reduce competition in our market. We note that Medicare's competitive bidding program has been designed to ensure that at least five suppliers are available for each product category; if Medicare determines additional suppliers are needed, they may offer contracts to suppliers who previously submitted bids for the program (but were not selected). Further, when a supplier signs a competitive bidding contract, that supplier agrees to all the provisions of the contract, and is not allowed to terminate the contract early without jeopardizing future participation in Medicare.

It is also important to note that this bill would not apply to DME suppliers of Medicare Advantage (MA) plans, as MA does not participate in the competitive bidding program. Such suppliers would continue to negotiate with MA plans directly.

In closing, establishing the licensure program and requiring a physical in-state presence as outlined in this measure would go a long way to ensure that Medicare beneficiaries in Hawaii have timely access to the DME devices they need to maintain their quality of life. We respectfully defer to the Department of Health in determining the amount of resources they would require to carry out the licensing and inspecting duties as outlined in this bill.

Thank you for the opportunity to testify in support of HB580 HD1.

HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

"Quality Healthcare For All"

House Committee on Consumer Protection & Commerce
Representative Angus L. K. McKelvey, Chair
Representative Justin H. Woodson, Vice Chair

Rep. Della Au Belatti
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Rep. Mark M. Nakashima
Rep. Marcus R. Oshiro
Rep. Joy A. San Buenaventura
Rep. Gregg Takayama
Rep. Ryan I. Yamane
Rep. Beth Fukumoto Chang
Rep. Bob McDermott

February 18, 2015
Conference Room 325
3:00 p.m.
Hawaii State Capitol

Testimony Strongly Supporting House Bill 580, HD1, Relating to the Licensure of Durable Medical Equipment Suppliers

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

On behalf of the Hawaii Health Systems Corporation (HHSC) Corporate Board of Directors, thank you for the opportunity to present testimony **in strong support of** House Bill 580 HD1, which requires licensure of durable medical equipment suppliers.

The Medicare program implemented a bidding process for the award of contracts to supply durable medical equipment to Medicare patients a few years ago. Unfortunately, the vast majority of the vendors in the program are located on the mainland, which causes logistical and communication problems resulting in delays in receipt of the equipment. Not all vendors who are located here are allowed to provide all types of equipment. Last year, Maui Memorial Medical Center estimated a loss of $516,096 in one year due to the delays in discharging patients who were not able to obtain the necessary equipment to use at home. (2 day delay x $1344 room and board rate x 4 patients per week = $10,752. 52 weeks = $516,096.). Our other acute facilities are facing similar delays.

More important than the lost revenue is the fact Maui Memorial Medical Center's acute beds have been consistently full for the past year. Patients needing the acute beds are being held in the Emergency Department or elsewhere while patients ready to be discharged but for the needed equipment occupy the acute beds. Therefore, the care of our patients is affected by this delay in the discharge process.

This bill requires that the vendors comply with local licensing regulations administered by the Office of Healthcare Assurance. By adding this requirement, the State can ensure that the vendors meet the needs of the patients and meet explicit standards, including the timely supply of needed equipment.

We strongly support this measure. Thank you for the opportunity to testify.

HPCA
HAWAI'I PRIMARY CARE ASSOCIATION

House Committee on Consumer Protection and Commerce
The Hon. Angus L.K. McKelvey, Chair
The Hon. Justin H. Woodson, Vice Chair

Testimony on House Bill 580 HD1

Relating to the Licensure of Durable Medical Equipment Suppliers
Submitted by Nani Medeiros, Public Affairs and Policy Director
February 18, 2015, 3:00 pm, Room 325

The Hawaii Primary Care Association (HPCA), which represents the federally qualified community health centers in Hawaii, supports House Bill 580, establishing licensure requirements for durable medical equipment suppliers.

In Hawaii there is an extreme dearth of access to durable medical equipment. This shortage often times leads to the foregoing of necessary devices, resulting in reductions in health, increases in preventable admissions, and increases in costs to patients and the system as a whole. This bill hopes to alleviate that by providing a system of annual inspection that will make participation in the national program easier for local providers.

For this reason we support House Bill 580 and thank you for the opportunity to testify.

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An Independent Licensee of the Blue Cross and Blue Shield Association

February 18, 2015

The Honorable Angus L. K. McKelvey, Chair
The Honorable Justin H. Woodson, Vice Chair
House Committee on Consumer Protection and Commerce

Re: HB 580, HD1 – Relating to the Licensure of Durable Medical Equipment Supplies

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 580, HD1 which would establish licensure requirements for durable medical equipment suppliers. HMSA has grave concerns with 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 Hawaii. 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. The Center for Medicare and Medicaid Services (CMS) competitive bid program for DMEPOS is designed to do just that. During its first year of the procurement program's implementation, it saved the Medicare program over $202 million, a 42 percent drop in expenditures in the nine participating markets.

HMSA has concerns with this Bill because it undermines the goal of that efficient CMS procurement process – it will reduce competition and drive up costs for Medicare recipients.

Under the original Medicare program, purchases of DMEPOS must be made exclusively from the list of vendors secured under the CMS DMEPOS procurement contract. This Bill will require the licensure of DMEPOS vendors that includes a requirement that all DMEPOS to have a physical local presence. This legislation will:

- Reduce competition
- In some cases, effectively create monopolies; and
- Worst of all, potentially eliminate the availability of any vendor a particular DMEPOS.

Some devices only are supplied by a few CBP vendors, and Medicare will deny claims from non-CBP vendors. Should a CBP vendor choose not to have a local presence, as is required under the Bill, beneficiaries may lose access to those devices.

An Independent Licensee of the Blue Cross and Blue Shield Association

The provisions of this Bill will impact all Medicare and QUEST beneficiaries, and EUTF retirees as well. Simply put, this Bill is not consumer friendly, and it is detrimental to the welfare of Honolulu's Medicare recipients.

HMSA believes in the importance of ensuring cost-effective access to quality DMEPOS from suppliers that members can trust. HMSA has concerns with this Bill because it will have the immediate effect of reducing competition and, consequently, driving-up the cost of health care for our members and the State.

Thank you for allowing us to testify on HB 580, HD1 and you consideration of the concerns we have raised is appreciated.

Sincerely,

Jennifer Diesman
Vice President
Government Relations

THE QUEEN'S HEALTH SYSTEMS

LATE

HB 580 HD 1, Relating to the Licensure of Durable Medical Equipment Suppliers
House Committee on Consumer Protection and Commerce
Hearing—February 18, 2015 at 3:00 PM

Dear Chairman McKelvey and Members of the House Committee on Consumer Protection and Commerce:

My name is Paula Yoshioka and I am a Senior Vice President at The Queen's Health Systems. I would like to take this opportunity to provide our support for legislative efforts that will increase the quality of services provided to our patients need durable medical equipment and to stand behind testimony provided by the Healthcare Association of Hawaii.

Like many other facilities, we have had issues with durable medical suppliers who compete in the Medicare national competitive bidding program. Many of the suppliers participating in this program are located thousands of miles from Hawaii. Because of the large distances and time differences, it is often hard for our staff to engage with these suppliers to even check on the status of previously placed orders. We have many cases where our staff is unable to contact vendors to obtain needed equipment and many contracted vendors are unable to fulfill our orders in a timely fashion.

The many issues we have had with these contracted vendors has directly and negatively impacted the quality of care our patients receive. This happens because of delayed discharges to the appropriate settings and, sometimes, because the right equipment is simply not delivered.

I am grateful that your committees are exploring ways to resolve this issue and ask for your continued to support to ensure that Hawaii residents are able to get the highest possible quality of care. Thank you for your time and consideration of this matter.

LATE

PRESENTATION OF THE
BOARD OF PHARMACY

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, February 18, 2015
3:00 p.m.

TESTIMONY ON HOUSE BILL NO. 580, H.D. 1, RELATING TO THE LICENSURE OF DURABLE MEDICAL EQUIPMENT SUPPLIERS.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lee Ann Teshima, Executive Officer of the Board of Pharmacy ("Board"). I appreciate the opportunity to offer comments on House Bill No. 580, H.D. 1, Relating to the Licensure of Durable Medical Equipment Suppliers, that establishes licensure requirements for durable medical equipment suppliers participating in the nationwide competitive bidding program through the Office of Health Care Assurance.

The Board supports the bill with the following amendments:

- Board licensed/permitted pharmacies should be exempt from the Department of Health licensing and inspection requirements because dispensing of prescription drugs and devices are already covered under the pharmacy license/permit. A new subsection may be added to read as follows: "§321- Exemptions. Pharmacies licensed or permitted under section 461, HRS are exempt from these licensing requirements." ; and
- Clarify that "Durable medical equipment" may not contain any prescription drugs. The definition of "Durable medical equipment" may be amended as follows:

"'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. Durable medical equipment shall not contain any prescription drug."

Thank you for the opportunity to provide comments on House Bill No. 580, H.D. 1.