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TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, February 4, 2015
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 728 – RELATING TO INSURANCE.

TO THE HONORABLE DELLA AU BELATTI, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department opposes this bill, and submits the following comments on this bill.

The purpose of this bill is to require that health organizations provide de-identified claims data to the Commissioner which data the Commissioner must provide at no charge to large group purchasers upon request.

The Department has concerns regarding it being turned into a middleman for the transfer of information between a private insurer and a private business. The Department does not have the resources to perform this function, and notes that it may require an information systems solution. In addition, the Department thinks that it is inadvisable for the State government to warrant the accuracy or credibility of data received from one party and transferred to another party.

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Hawaii has been deemed an effective rate review state under federal regulation, and conducts merit reviews and rate regulation under existing Hawaii law. Insurers, as part of the rate review, submit aggregate loss data as part of the filing. The current rate review procedure achieves a level playing field for health insurance consumers of any size whether in the individual, small group, or large group markets.

We thank this Committee for the opportunity to present testimony on this matter.

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To: House Committee on Health

From: Cheryl Kakazu Park, Director

Date: February 4, 2015
State Capitol, Conference Room 329

Re: Testimony on H.B. No. 728
Relating to Insurance

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) takes no position on the general intent and most provisions of this bill, which provides for disclosure of de-identified claims data to the Insurance Commissioner, allows disclosure of that data by the Insurance Commissioner’s only in specified circumstance, and creates a confidentiality provision for the data. However, OIP opposes section 5 of the bill, which would create a new exemption to disclosure under the Uniform Information Practices Act (“UIPA”), chapter 92F, HRS, specifically covering the de-identified claims data.

The UIPA’s exceptions to disclosure are not intended to provide a list of specific records that may be withheld, but instead are general and conceptual, applying to categories such as information whose disclosure would frustrate a legitimate government function or information whose disclosure would be an unwarranted invasion of an individual’s privacy. Confidentiality provisions applicable to specific records or specific pieces of information are placed in the section of the Hawaii Revised Statute relevant to the records or information in question. The UIPA then recognizes those confidentiality provisions through

section 92F-13(4), which allows an agency to withhold records that are protected from disclosure pursuant to state or federal law.

Proposed section 431:2-__ (e), in bill section 1, already creates a confidentiality provision for de-identified claims data in the appropriate part of the Hawaii Revised Statute. The UIPA's existing exemption for records protected from disclosure by state law will recognize that confidentiality provision and allow the Insurance Commissioner to withhold records based on it. There is no need to also create a new exemption to disclosure within the UIPA specifically for the de-identified claims data, and as noted previously, such an exemption would be inconsistent with the UIPA's statutory scheme. OIP therefore respectfully requests that this Committee delete bill section 5, which would create a new exemption to disclosure within the UIPA.

Thank you for the opportunity to testify.



February 4, 2015

The Honorable Della Au Belatti, Chair
The Honorable Richard P. Creagan, Vice Chair
House Committee on Health

Re: HB 728 – Relating to Insurance

Dear Chair Au Belatti, Vice Chair Creagan and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 728, which would require mutual benefit societies and health maintenance organizations, annually, to provide to the Insurance Commissioner de-identified claims data, and the Commissioner is required to provide that claims data to large employer groups, upon request. HMSA opposes this Bill.

This Bill is not necessary. If the intent of the Bill is to allow large group purchasers to have access to their claims data, HMSA already has a third party data request process in place, and we already have direct communications with our large groups. We can and do provide data to the large groups directly on our own. If this Bill were to pass, it would add an administrative burden and delay large groups having access to such information.

The administrative and financial burden is exacerbated if the Commissioner is expected to develop a standard reporting template. Issuers would be expected to comply with the new template, as well as maintain existing reporting systems

In this vein, we note that the State received federal funding to develop an all payer claims data base, and that effort is ongoing. We believe the State should be allowed to work with all affected parties to continue this effort in a systematic manner that minimizes the administrative and financial impacts to the health care system.

Finally, we believe HB 728 raises an equity issue. The Bill applies only to mutual benefit societies and health maintenance organizations and does not apply to commercial health insurers.

Thank you for the opportunity to testify on HB 728. Your consideration of our concerns is appreciated.

Sincerely,

Jennifer Diesman
Vice President
Government Relations

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House Committee on Health
Honorable Della Au Belatti, Chair
Honorable Richard P. Creagan, Vice Chair

RE: Testimony Commenting on H.B. 728, Relating to Insurance
Hearing: February 4, 2015 at 9:00 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony on H.B. 728. The Law Center respectfully requests that the Committee **amend the bill by removing Section 5**, concerning HRS § 92F-13 of the Uniform Information Practices Act (UIPA).

Amending the UIPA is not necessary to accomplish the confidentiality objectives of H.B. 728.¹ HRS § 92F-13(4) provides that “[g]overnment records which, pursuant to state or federal law including an order of any state or federal court, are protected from disclosure.” Exception (4) enforces any statute that provides express confidentiality. *See, e.g.*, OIP Op. No. 07-01 at 3-4 (registered firearm information protected from disclosure under Exception (4) because confidential under HRS § 134-3(b)). H.B. 728 provides express statutory authority to maintain the confidentiality of “de-identified claims data” in proposed HRS § 431:2-__(e). There is no need to amend the UIPA.

Moreover, the proposed UIPA amendment provides less protection than HRS § 431:2-__(e). In the absence of a confidentiality statute, such as 431:2-__(e), the UIPA exceptions are discretionary. *See, e.g.*, OIP Op. No. 05-18 at 3 n.3 (“The UIPA, however is not a confidentiality statute and, therefore, does not prohibit an agency from disclosing records, even those that the agency could withhold under one of the UIPA exceptions.”). The 1988 Legislature did not adopt the UIPA exceptions with the intent to address specific records. S. Stand. Comm. Rep. No. 2580, in 1988 Senate Journal, at 1094 (“Rather than list specific records in the statute, at the risk of being over- or under-inclusive, your Committee prefers to categorize and rely on the developing common law.”). That legislative intent explains why the UIPA exceptions have not been substantively amended since enacted.

Thank you again for the opportunity to testify.

¹ The Law Center takes no position on those confidentiality objectives.

UNITE HERE!

LOCAL  HAWAII

Eric Gill, Financial Secretary-Treasurer

Hernando Ramos Tan, President

Godfrey Maeshiro, Senior Vice-President

Tuesday, February 3, 2015

The Honorable Representative Au Belatti, Chair
and Members
Committee on Health
Hawaii State House of Representatives

TESTIMONY submitted on behalf of UNITE HERE! Local 5

Re: HB 728, Relating to Insurance

Chair Au Belatti and members:

UNITE HERE Local 5 is a local labor organization representing 10,000 hotel, health care and food service workers employed throughout our State, including over 1,800 workers at Kaiser Permanente. We stand in strong support of HB 728 and ask for your Committee's support in advancing the measure.

Health care transparency is good policy, as it allows health care consumers and regulators alike to understand the true costs of providing care. It gives consumers the granular level of detail they need to choose coverage that best supports the needs of the group they represent, while keeping costs reasonable.

Health care costs are becoming an increasing burden for individuals and employers alike. With plans such as those offered by Kaiser Permanente, it is not always clear to consumers how much of their premiums reflect the actual cost of care, and how much represents net income for Kaiser. What is clear is that Kaiser Permanente, a non-profit, made \$2.7 billion in net income in 2013, and \$3.1 billion in the first nine months of 2014. Kaiser's total net worth as of the end of September 2014 was over \$25 billion.

We need transparency to ensure that when companies like Kaiser request premium increases, both from the Insurance Commissioner and from group employers, that those increases are necessary and reasonable.

We ask for the Committee's support in moving HB 728 forward.

Thank you.