



DAVID Y. IGE
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

CATHERINE P. AWAKUNI COLÓN
DIRECTOR
JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, April 8, 2015
2:00 p.m.

TESTIMONY ON SENATE BILL NO. 1095, S.D. 1, H.D. 1 – RELATING TO HEALTH INSURANCE.

TO THE HONORABLE SYLVIA J. LUKE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department offers the following comments on this measure.

SB 1095, S.D. 1, H.D. 1, proposes to define the term "habilitative services" to mean health care services, including, but not limited to, physical and occupational therapy, speech-language therapy, speech and swallowing therapy, applied behavior analysis, medical equipment, orthotics, and prosthetics, that help a person keep, learn, or improve skills and functioning for daily living.

In contrast, the federal definition of "habilitative services" is: "Habilitative Services--Health care services that help a person keep, learn, or improve skills and functioning for daily living. Examples include therapy for a child who isn't walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology, and other services for people with disabilities in a variety of inpatient and/or outpatient settings."

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SB 1095, S.D. 1, H.D. 1 creates a new definition that deviates from the federal definition under the federal Patient Protection and Affordable Care Act, Public Law 111-148 ("PPACA").

The Department recommends adoption of the federal definition. In addition, the Department recommends that guidance be obtained from the federal government and the State's Department of the Attorney General to ascertain whether the adoption of a definition not conforming to the federal definition would constitute the addition of new mandated coverage in excess of Hawaii's benchmark health plan that may trigger section 1311(d)(3) of the PPACA, which requires states to defray the additional cost of any benefits in excess of the essential health benefits of the State's qualified health plan.

Also, the proposed new definition of "habilitative services" is not the same definition as proposed by SB 791, S.D. 1, H.D. 1.

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



April 7, 2015

House Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair

State Capitol
415 South Beretania St
Honolulu, HI 96813

Re: In Support of SB1095, Proposed SD1 HD1

Relating to Health Insurance – Habilitative Services.

Dear Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

I am Lorri Unumb, Vice President for State Government Affairs at Autism Speaks, the parent of a child with autism, and a consumer of Applied Behavior Analysis services for my child. Autism Speaks is the world's leading autism science and advocacy organization, dedicated to funding research into the causes, prevention, treatments and a cure for autism; increasing awareness of autism spectrum disorders; and advocating for the needs of individuals with autism and their families. Autism Speaks is pleased to submit testimony in strong support of SB1095, Proposed HD1.

Hawaii has an opportunity to define "habilitative services" for purposes of coverage under the Affordable Care Act, and doing so will lead to better health insurance coverage not only for individuals with autism but also for individuals with other developmental and related disabilities.

The Affordable Care Act (ACA) specified 10 Essential Health Benefit categories that must be included in any ACA-compliant plan ("qualified health plan"), whether sold on or off the marketplace ("the Connector"). The 10 Essential Health Benefit categories are:

- (A) *Ambulatory patient services.*
- (B) *Emergency services.*
- (C) *Hospitalization.*

- (D) Maternity and newborn care.
- (E) Mental health and substance use disorder services, including behavioral health treatment.
- (F) Prescription drugs.
- (G) Rehabilitative and habilitative services and devices.
- (H) Laboratory services.
- (I) Preventive and wellness services and chronic disease management.
- (J) Pediatric services, including oral and vision care.

If a state mandates a benefit that exceeds the 10 Essential Health Benefits, then the state must defray the cost of that mandate (as to individuals who purchase insurance through the Connector with premiums subsidized by the federal government).¹

Rather than fleshing out the 10 Essential Health Benefit (EHB) categories in a uniform way, the U.S. HHS allowed each state to select an existing insurance plan as a benchmark for the state. Whatever benefits the benchmark included for the 10 EHB categories would be the EHBs for the state. If a state selected a benchmark that was missing a category, HHS set forth rules for how the category could be supplemented.

Numerous states selected benchmark plans that were wholly missing the category “habilitative services.” As such, HHS set forth a two-part scheme to address this deficiency:

- A state could define habilitative services, or
- As a transitional approach, health insurance plans would decide which habilitative services to cover, and would report on that coverage to HHS.

In a December 2011 bulletin, HHS indicated that it would evaluate those decisions and further define habilitative services in the future.

About a dozen states became aware of and took advantage of the opportunity to define “habilitative services” following the December 2011 guidance; the rest of the states in which

¹ (3) RULES RELATING TO ADDITIONAL REQUIRED BENEFITS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an Exchange may make available a qualified health plan notwithstanding any provision of law that may require benefits other than the essential health benefits specified under section 1302(b).

(B) STATES MAY REQUIRE ADDITIONAL BENEFITS.—

(i) IN GENERAL.—Subject to the requirements of clause (ii), a State may require that a qualified health plan offered in such State offer benefits in addition to the essential health benefits specified under section 1302(b).

(ii) STATE MUST ASSUME COST.—A State shall make payments to or on behalf of an individual eligible for the premium tax credit under section 36B of the Internal Revenue Code of 1986 and any cost-sharing reduction under section 1402 to defray the cost to the individual of any additional benefits described in clause (i) which are not eligible for such credit or reduction under section 36B(b)(3)(D) of such Code and section 1402(c)(4).

habilitative services were missing from the benchmark allowed the health insurance plans to determine what “habilitative services” meant.

On February 27, 2015, HHS issued Final Regulations on EHBs. The Final Regulations embraced and maintained the general EHB benchmark approach established in 2011, but it made one major change on “habilitative services.” In the Final Regulations, health insurance plans can no longer decide for themselves what “habilitative services” means. Instead, the states are asked to define “habilitative services,” and, if they don’t, the Final Regulations establish a federal default definition (“Health care services that help a person keep, learn, or improve skills and functioning for daily living”).

The Final Regulations issued last month also make clear that state laws enacted in order to define “habilitative services” are not considered benefits in addition to the EHB; such laws ensure compliance with 45 C.F.R. § 156.110(a), which requires coverage of all EHB categories. Therefore, there is no obligation to defray the cost of such State-required benefits.

Hawaii’s benchmark is missing habilitative services, and Hawaii has not defined “habilitative services.” (See the state tables created by the Center for Consumer Information and Insurance Oversight at the U.S. Department of Health and Human Services, <http://cciio.cms.gov/resources/data/ehb.html>)

As such, Hawaii presently has an opportunity to define “habilitative services” as including Applied Behavior Analysis (which fits squarely in the common understanding and federal default definition of “habilitative services”) and to thereby avoid defraying the cost of ABA coverage.

Ohio and Michigan took advantage of this flexibility after the 2011 guidance and defined “habilitative services” explicitly to include ABA. As such, ABA has been an EHB in Ohio and Michigan since ACA plans began being sold in 2014. Altogether, ABA is an EHB in 29 states, either because ABA was originally included in the benchmark or because the state defined “habilitative services” to include applied behavior analysis.

Hawaii should exercise its authority under 45 C.F.R. sec. 156.110(f) to define “habilitative services” and should include ABA, among other treatments, as examples of covered services. The proposed SB1095 SD 1 HD 1 accomplishes this goal, and we strongly urge its passage.

Respectfully submitted,



Lorri Shealy Unumb
Vice President, State Government Affairs
Autism Speaks

1 East 33rd Street

New York, NY

803-582-9905

Lorri.unumb@autismspeaks.org



4/8/15

COMMITTEE ON FINANCE
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair

Hawai'i State Capitol
415 South Beretania Street, Conference Room 308

Committee Chair Luke, Vice Chair Nishimoto, and Committee Members,

Mahalo for the opportunity to submit testimony on behalf of **SB1095**, which calls for habilitative services for children with disabilities, including applied behavior analysis (ABA). Medicaid now covers this benefit, making it more urgent than ever to ensure that private health insurance also covers access to medically necessary treatment. SB1095 proposed HD1 allows Hawai'i to define habilitative services pursuant to the recent Federal ruling issued by HHS in January of this year.

My name is [Amanda N. Kelly, PhD, BCBA-D](#) and I am the current President of the [Hawai'i Association for Behavior Analysis \(HABA\)](#). On behalf of HABA, we are grateful for your consideration of this bill. **We wish to submit testimony in strong support of SB1095 proposed HD1.**

Malama Our Keiki,

A handwritten signature in black ink that reads 'Amanda N. Kelly' in a cursive script.

Amanda N. Kelly, PhD, BCBA-D
President, Hawai'i Association for Behavior Analysis



4/08/15

COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair

Representative Scott Y. Nishimoto, Vice Chair

Conference Room 308

Hawaii State Capitol

415 South Beretania Street

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

My name is Lara Bollinger and I am a Board Certified Behavior Analyst and the Treasurer of the Hawaii Association for Behavior Analysis. I'm writing to you today to lend my support to House Bill 1095, defining habilitative services to include Applied Behavior Analysis. Since Medicaid is now providing this service, it is even more important for ALL health plans to step up to the plate and provide equal service for all of the keiki in Hawaii. This legislation will allow Hawaii to define "habilitative services" as part of the federal ruling by HHS. This is an important step for our state to take and I believe the time is right to provide these medically necessary services for all of our children.

Thank you for your time,

A handwritten signature in black ink, appearing to read "Lara B.", with a long horizontal flourish extending to the right. The signature is written on a light-colored, slightly textured background.

Lara Bollinger, M.S.Ed., BCBA

Treasurer, Hawaii Association for Behavior Analysis

Hawai'i Association for Behavior Analysis (HABA)

350 Ward Avenue

Ste 106-221

Honolulu, HI 96814

www.hawaiiaba.org



4/01/15

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

Hawaii State Capitol
415 South Beretania Street, Conference Room 329

Committee Chair, Vice Chair, and Committee Members,

As a special educator originally hailing from MA, a place where similar legislation has been adopted outlining habilitative vs. rehabilitative services, I am **providing testimony in support of SB1095**. As a Board Certified Behavior Analyst (BCBA) and someone interested in the role policy plays in impacting change, especially in the area of social justice, I would urge everyone to pass this measure without haste. This critical piece of legislation will ensure people with disabilities have access to treatment throughout their lives as determined by their needs, whether it is Speech Therapy, Occupational Therapy (OT), Applied Behavior Analysis (ABA), Physical Therapy (PT), or Feeding Therapy, the list is endless. Including habilitative services in legislation acknowledges that although there is no cure for many disabilities, the symptoms persist, and we can continue to treat these symptoms. This will ensure individuals with disabilities will continue to have access to services, which will improve their conditions and prevent skill regression.

Through the continued treatment of behaviors and symptoms experienced co-morbidly or as a result of underlying disabilities, SB1095 will ensure people with disabilities are provided with the treatment options needed throughout their lives. In the case of autism, this legislation will provide individuals access to treatment, which is now federally mandated under Medicaid.

Respectfully Submitted,
Molly Benson M.S., BCBA

4/08/15

COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair

Representative Scott Y. Nishimoto, Vice Chair

Conference Room 308

Hawaii State Capitol

415 South Beretania Street

Dear Chair Luke, Vice Chair Nishimoto, and members of the committee,

My name is Kristen Koba-Burdt and I am Board Certified Behavior Analyst (BCBA) living on Maui. Thank you for the opportunity to submit testimony in **support of SB1095 HD1**, allowing access to habilitative services for children with disabilities, including applied behavior analysis (ABA).

Medicaid now covers this benefit in Hawai'i, making it more pressing than ever before to ensure that private health insurance also covers this benefit for our keiki. SB1095 proposed HD1 allows Hawai'i to define habilitative services pursuant to the recent Federal ruling issued by HHS in January of this year.

Thank you for your consideration of this important bill.

Mahalo for your support,

A handwritten signature in black ink that reads "KBURDT". The letters are stylized and cursive.

Kristen Koba-Burdt, M.S., BCBA
Vice-President, Hawaii Association for Behavior Analysis (HABA)
Behavioral Services Manager, BAYADA

4/08/15

COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair

Representative Scott Y. Nishimoto, Vice Chair

Conference Room 308

Hawaii State Capitol

415 South Beretania Street

Dear Chair Luke, Vice Chair Nishimoto, and members of the committee,

My name is Tracy Ruggiero and I am Board Certified Behavior Analyst (BCBA) living on Maui. Thank you for the opportunity to submit testimony in **support of SB1095 HD1**, allowing access to habilitative services for children with disabilities, including applied behavior analysis (ABA).

Thank you for your consideration of this important bill.

Tracy Ruggiero, M.Ed, BCBA
Behavioral Services Manager, BAYADA



An Independent Licensee of the Blue Cross and Blue Shield Association

April 8, 2015

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
House Committee on Finance

Re: SB 1095, SD1; HD1 – Relating to Health Insurance

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 1095, SD1, HD1, which would statutorily define “habilitative services.” HMSA opposes this Bill.

This Bill would include under the definition of “habilitative services” specific health care services (ABA), including applied behavior analysis services. This Bill effectively would make ABA services an essential health benefit (EHB), pursuant to the Affordable Care Act; and the cost for these services will be borne by all fully insured plans that offer EHBs. Since the scope of the definition is so broad, the financial impact on the rate payers could be substantial.

The Legislature has been considering other measures to address coverage autism spectrum disorder services, including ABA services. Those Bills were targeted at providing services to those in need during those periods when such services would be most effective. SB 1095, SD1, HD1, is open-ended with respect to the provision of those services and will result in higher premiums and higher cost to the health care system.

The U. S. Department of Health and Human Services (HHS) has adopted a uniform definition of habilitative services for plans beginning in 2016 as:

: health care services and devices that help a person keep, learn, or improve skills and functioning for daily living (such as therapy for a child who is not walking or talking at the expected age), which may include physical and occupational therapy, speech-language pathology, and other services for people with disabilities in a variety of inpatient and/or outpatient settings.

As it has in the past, however, HHS has afforded a state the flexibility to adopt its own definition. And as he previously did, we are informed that the Insurance Commissioner already has embarked on a process to determine whether to accept the federal definition or to extend or to amend the current State definition. We believe the Commissioner should be allowed to complete this process.

Thank you for the opportunity to comment on SB 1095, SD1, HD1. Your consideration of our concerns is appreciated.

Sincerely,

Jennifer Diesman
Vice President, Government Relations

April 7, 2015

House Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair

State Capital
415 S. Beretania St.
Honolulu, HI 96813

Re: In support of SB1095

Dear Chair Luke, Vice Chair Nishimoto, and members of the committee,

Thank you for this opportunity to submit a testimony in support of SB1095, proposed HD1. My name is Natalie Splinter and I am a student at the University of Hawai`i at Manoa. This bill proposes coverage and access of habilitative services for children with disabilities. As a soon-to-be mother and aunt of a child who is under the care of a physical therapist and speech therapist, it is important to have access and coverage of these services. It helps children develop the skills needed to maximize their quality of life.

Thank you for this opportunity to support SB1095, proposed HD1.

Sincerely,

Natalie Splinter
Student
University of Hawai`i at Manoa