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March 22, 2015

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

State Capitol  
415 South Beretania St  
Honolulu, HI 96813

**Re: In Support of SB1095, Proposed HD1**

*Relating to Health Insurance – Habilitative Services.*

Dear Chair McKelvey, Vice Chair Woodson, 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).<sup>1</sup>

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

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<sup>1</sup> (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://cciiio.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 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 33<sup>rd</sup> Street

New York, NY

803-582-9905

[Lorri.unumb@autismspeaks.org](mailto:Lorri.unumb@autismspeaks.org)



3/23/15

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Angus L.K. McKelvey, Chair

Representative Justin H. Woodson, Vice Chair

Conference Room 325

Hawaii State Capitol

415 South Beretania Street

Dear Chair McKelvey, Vice Chair Woodson, and members of the committee,

Thank you for this opportunity to submit testimony on behalf of SB1095 proposed HD1, 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,

Amanda Kelly, Ph.D., BCBA-D  
2015 HABA President



3/23/15

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Angus L.K. McKelvey, Chair

Representative Justin H. Woodson, Vice Chair

Conference Room 325

Hawaii State Capitol

415 South Beretania Street

Members of the Committee on Consumer Protection and Commerce:

My name is Sara Sato and I was born and raised in Honolulu, Hawai'i. I am a Board Certified Behavior Analyst (BCBA) and hold a Master's Degree in Special Education with an Autism and Severe Disabilities Specialization from the University of Hawai'i at Manoa. I am writing to you today, asking for your **support of SB1095 proposed HD1.**

Thank you again for the opportunity to voice my support for this important bill.

Sincerely,

Sara Sato, M.Ed., BCBA

Legislative Co-Chair

Hawaii Association for Behavior Analysis



3/23/15

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Angus L.K. McKelvey, Chair

Representative Justin H. Woodson, Vice Chair

Conference Room 325

Hawaii State Capitol

415 South Beretania Street

Dear Chair McKelvey, Vice Chair Woodson, 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 proposed 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".

Kristen Koba-Burdt, M.S., BCBA  
Vice-President, Hawaii Association for Behavior Analysis (HABA)  
Behavioral Services Manager, BAYADA Habilitation—Maui  
kkoba-burdt@BAYADA.com



3/23/15

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Angus L.K. McKelvey , Chair

Representative Justin H. Woodson, Vice Chair

Conference Room 325

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 horizontal line extending to the right.

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](http://www.hawaiiaba.org)



3/23/15

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Angus L.K. McKelvey , Chair

Representative Justin H. Woodson, Vice Chair

Conference Room 325

Hawaii State Capitol

415 South Beretania Street

Dear Chair McKelvey, Vice Chair Woodson and members of the committee,

My name is Johanna Taylor and I am a Board Certified Behavior Analyst (BCBA) residing on the Big Island. I hold a PhD in Early Intervention with an emphasis on individuals with autism and related disorders.

**I support SB1095.** This bill would provide habilitative services for children with disabilities including applied behavior analysis (ABA). Now that Medicaid covers ABA it is even more important that private insurance companies support the application of behavior analysis to support individuals with disabilities. Additionally, this bill allows for Hawaii to define habilitative services in accordance with the recent Federal ruling issued by HHS in January 2015.

Please consider SB1095 this legislative session.

Mahalo for providing me the opportunity to provide testimony,

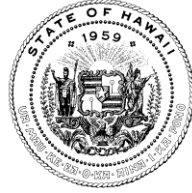
**Johanna Taylor, PhD, BCBA**

Neighbor Island Representative

Hawaii Association for Behavior Analysis



**LATE**



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](http://www.hawaii.gov/dcca)

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Monday, March 23, 2015  
2:45 p.m.

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

TO THE HONORABLE ANGUS L.K. McKELVEY, 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 requests that the Committee retain all of the language  
contained in SB 1095, S.D. 1 that seeks to update various provisions of title 24, Hawaii  
Revised Statutes, either in this measure or in some other appropriately titled bill. The  
Department also offers the following comments on Proposed H.D. 1.

SB 1095, S.D. 1, Proposed 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 "[h]ealth care  
services that help you keep, learn, or improve skills and functioning for daily living.

**Senate Bill No. 1095, S.D. 1, Proposed H.D. 1**  
**DCCA Testimony of Gordon I. Ito**  
**Page 2**

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." SB 1095, S.D. 1, Proposed 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.

We thank this Committee for the opportunity to present testimony on this matter. We ask for your favorable consideration of SB 1095, S.D.1, or, in the alternative, that the Committee ensures that the language of SB 1095, S.D. 1 be retained in another appropriately titled bill.



*A specialty of BAYADA Home Health Care*

**LATE**

One Main Plaza  
2200 Main St. #650  
Wailuku, HI 96793

808-244-4700  
808-244-7575 fax  
www.bayada.com

March 22, 2015

Thank you for the opportunity to submit testimony on this important bill. On behalf of BAYADA Habilitation and BAYADA Home Health Care on Maui, we **support SB1095 proposed HD1.**

Thank you

Eliza Lipp, LCSW

BAYADA Home Health Care and Habilitation | Director – Maui Habilitation ( MAB )

From: mailinglist@capitol.hawaii.gov  
Sent: Sunday, March 22, 2015 2:52 PM  
To: CPCtestimony  
Cc: starsister2000@yahoo.com  
Subject: Submitted testimony for SB1095 on Mar 23, 2015 14:45PM



**SB1095**

Submitted on: 3/22/2015

Testimony for CPC on Mar 23, 2015 14:45PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bonnie Koba	Individual	Support	No

Comments: I am writing in support of SB1095 proposed HD1 and access to services for children with disabilities.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov  
Sent: Sunday, March 22, 2015 2:51 PM  
To: CPCtestimony  
Cc: bburdt3@gmail.com  
Subject: Submitted testimony for SB1095 on Mar 23, 2015 14:45PM



**SB1095**

Submitted on: 3/22/2015

Testimony for CPC on Mar 23, 2015 14:45PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brian Burdt	Individual	Support	No

Comments: I support SB1095 proposed HD1.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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49 South Hotel Street, Room 314 | Honolulu, HI 96813  
[www.lwv-hawaii.com](http://www.lwv-hawaii.com) | 808.531.7448 | [voters@lwvhawaii.com](mailto:voters@lwvhawaii.com)

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
Hearing Scheduled 2:45 pm, Monday, March 23, 2015, Conference Room 325  
SB 1095, SD 1, PROPOSED HD 1, RELATING TO HEALTH INSURANCE  
TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Angus L.K. McKelvey, Vice-Chair Justin H. Woodson, and Committee Members:

**The League of Women Voters of Hawaii opposes SB 1095, SD 1, Proposed HD 1** because the subject of the Proposed HD 1 has no rational connection to the subject of SB 1095, SD 1 referred to the House Committee on Consumer Protection and Commerce. The Proposed HD1 uses a “gut and replace” tactic, which is unacceptable, regardless of the underlying merits of the bill.

SB 1095, SD1 prohibits changing rates approved by the Insurance Commissioner for health insurance issued by managed care plans: in subsequent transfers, sales, and pass throughs; establishing statutory criteria and procedures under which the Insurance Commissioner may suspend, revoke, or deny authorization for a mutual benefit society to offer health insurance to its members; and makes various housekeeping amendments to insurance statutes. SB 1095, SD 1, Proposed HD 1 is entirely different – it defines "habilitative services" in statutes governing health insurance contracts and provision of health insurance to members of mutual benefit societies.

The League believes that Article III, Sections 14 and 15 of the Hawaii Constitution require that before a bill is passed by the Legislature, the subject of that bill (*not just the bill title and bill number*) must have three readings in the State House and three readings in the State Senate. According to the Hawaii Supreme Court the three-reading requirement ensures that each house of the legislature gives sufficient consideration to the effect of the bill. However, when the subject of a bill is gutted and replaced with a totally unrelated subject after crossover, as with SB 1095 Proposed HD 1, the bill's new subject may pass the Legislature with only one reading and inadequate consideration by the originating house.

Thank you for the opportunity to submit testimony.





March 23, 2015

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

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

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

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

As drafted, the proposed HD1 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. The proposed HD1 draft of SB 1095, SD1, 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, proposed HD1. Your consideration of our concerns is appreciated.

Sincerely,

Mark K. Oto  
Director, Government Relations