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Testimony COMMENTING on SB 2668 SD2 HD1
RELATING TO INSURANCE

REPRESENTATIVE ANGUS L.K. MCKELVEY, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Hearing Date: Mon, April 4, 2016 2:00pm Room Number: 325

Fiscal Implications: SB 2668 SD2 HD1 places a cap on the amount that a nonparticipating provider may charge a patient for services performed without the approval of the patient's health care plan. Enacting this legislation would significantly decrease the amount of monies returned to the State's general fund by the Hawaii Emergency Medical Services (EMS) system.

Department Testimony: While the Department of Health (DOH) concurs with Legislature's desire for an efficient and responsive statewide ambulance system, further discussion is needed to assure the right balance between consumer protection and the overall sustainability, size, and scope of the EMS. To this end, the department respectfully recommends one or all of the following: 1) deferring this measure in favor of a task force to make recommendations to the Legislature, 2) exempting the State of Hawaii, or 3) authorizing negotiated rates that assure recovery of costs for providing ambulance services.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Monday, April 4, 2016
2:00 p.m.

TESTIMONY ON SENATE BILL NO. 2668, S.D. 2, H.D. 1 – RELATING TO INSURANCE.

TO THE HONORABLE ANGUS L.K. MCKELVEY, 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 supports the intent of this bill and submits the following comments.

Section 4 of the bill, pages 9 to 17, adds a disclosure requirement to insurers but does not impose this requirement on mutual benefit societies ("MBSs"), governed by article 432, Hawaii Revised Statutes ("HRS"), or health maintenance organizations ("HMOs"), governed by article 432D, HRS. If the Committee's intent is to also impose the same disclosure requirements on MBSs and HMOs, the Committee may wish to consider making similar amendments to those chapters. We also point out that the Affordable Care Act also has disclosure requirements for issuers.

Consumers should not receive unexpected follow-up provider billings when it is their belief and understanding that those services are covered by their health insurance.

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

55 Merchant Street
Honolulu, Hawai'i 96813-4333

www.hawaiipacifichealth.org

April 4, 2016 at 2:00 PM
Conference Room 325

House Committee on Consumer Protection & Commerce

To: Representative Angus McKelvey, Chair
Representative Justin Woodson, Vice Chair

From: Michael Robinson
Vice President – Government Relations & Community Affairs

Re: SB 2668, SD2, HD1 – Testimony in Opposition

My name is Michael Robinson, Vice President, Government Relations and Community Affairs at Hawai'i Pacific Health (HPH). Hawai'i Pacific Health is a not-for-profit health care system, and the state's largest health care provider and non-governmental employer. Hawai'i Pacific Health is committed to providing the highest quality medical care and service to the people of Hawai'i and the Pacific Region through its four hospitals, more than 50 outpatient clinics and service sites, and over 1,600 affiliated physicians. Hawai'i Pacific Health's hospitals are Kapi'olani Medical Center for Women & Children, Pali Momi Medical Center, Straub Clinic & Hospital and Wilcox Memorial Hospital.

HPH respectfully **opposes** SB 2668, SD2, HD1 which specifies disclosure requirements for health care providers, health care facilities, or hospitals shall disclose in writing to a patient or prospective patient prior to the provision of nonemergency services that are not authorized by the patient's health care plan.

We understand the issues both patients and providers face with respect to the lack of transparency and inadequacy of health plan provider networks resulting in "surprise" or "balance" billing practices in certain parts of our nation, and we appreciate the intent of this measure in tackling this difficult matter.

At the same time, we also want to ensure that legislation meant to addresses the particular issues actually will have the effect of meeting its intended purpose and does not unnecessarily hinder the ability of providers and plans to negotiate and settle contractual differences between parties. We appreciate the amendment made by the House Committee on Health in removing the requirement that payments be based upon Medicare whose methodology would be inapplicable for a number of cases and treatments.

At a prior hearing, it was disclosed that this legislation was an attempt to resolve the issue of air ambulance billings as the Insurance Division indicated that in 2015 it received 19 complaints statewide – 14 of which were specifically related to air ambulance billings on the neighbor island.

It is our understanding that Federal Airline Deregulation Act of 1978 **does not** allow states to regulate air transportation services. Pursuant to the *Airline Deregulation Act of 1978*, states are preempted from any economic regulation of air ambulance services which includes setting or regulating the rates that air ambulances may charge.

Specifically under 49 USC 41713 section on "Preemption of authority over prices, routes and services" it states specifically (**See Attachment A**):

- "States may not enact or enforces a law, regulation or other provision having the force and effect of law relate to a price, route or service of an air carrier that may provide air transportation under this subpart."

The U.S. Department of Transportation clarified this Federal pre-emption of State law in a letter sent to Pacific Wings LLC, dated April 23, 2007 (**See Attached B**). As a result in 2009, SHPDA decided to remove certificate of need requirements on air ambulance services in recognition of this federal preemption which until today remains a service completely unregulated by SHPDA.

Given the Federal pre-emption, it is therefore unlikely that the present legislation will address any current surprise billing transport involving air ambulance transport which represents 74% (14 of 19 complaints) of all balance billing cases reported to the Insurance Commissioner in 2015 from across the entire state.

The issue of "surprise billing" is complex requiring a complex solution beyond 3rd party adjudication of billing disputes. The solution needs to incorporate all facets of the problem including the current state of network adequacy in Hawai'i, patient information and motivation, and available information amongst and between stakeholders. SB 2668, SD2, HD1 now requires the insurance commissioner to establish a working group to evaluate the issue of balance billing. Among the tasks to be performed, the working group must determine the appropriate amount that can be billed by a non-participating healthcare provider for services performed without prior or subsequent authorization from the patient's health plan.

We do appreciate the effort to create a working group, and in fairness to the provider community, the working group should include representation from all facets of the healthcare community, including hospitals. Therefore, should a working group be convened and it is determined that the function of establishing payment rates does not amount to an antitrust issue, we request that the hospitals be allowed to be members of the working group.

In order for providers to either comply with or evaluate the benefits raised in SB 2668, significant initial discussion regarding the shared responsibilities between plans, providers and patients would need to occur in order to best inform the direction needed to move forward.

Before jumping straight into legislation, we believe that it would be helpful first to have a discussion and process involving relevant stakeholders to first assess the extent of the problems based on the experience of patients within the State of Hawai'i and then determine the steps needed to address the need identified.

Thank you for the opportunity to testify.

Attachment A

49 USC 41713
Federal Preemption of State Authority of prices, routes & services

(2) INTERNET OFFERS.—In the case of an offer to sell tickets described in paragraph (1) on an Internet Web site, disclosure of the information required by paragraph (1) shall be provided on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1143; Pub. L. 106–181, title II, § 221, Apr. 5, 2000, 114 Stat. 102; Pub. L. 111–216, title II, § 210, Aug. 1, 2010, 124 Stat. 2362.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41712	49 App.:1381(a).	Aug. 23, 1958, Pub. L. 85–726, § 411(a), 72 Stat. 769; Oct. 4, 1984, Pub. L. 98–443, § 7(a), 98 Stat. 1706.
	49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98–443, § 3(e), 98 Stat. 1704.

The words "such action by" are omitted as surplus. The words "opportunity for a" are added for consistency in the revised title and with other titles of the United States Code.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–216 added subsec. (c).

2000—Pub. L. 106–181 designated existing provisions as subsec. (a), inserted heading, and added subsec. (b).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as a note under section 106 of this title.

§ 41713. Preemption of authority over prices, routes, and service

(a) DEFINITION.—In this section, "State" means a State, the District of Columbia, and a territory or possession of the United States.

(b) PREEMPTION.—(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.

(2) Paragraphs (1) and (4) of this subsection do not apply to air transportation provided entirely in Alaska unless the transportation is air transportation (except charter air transportation) provided under a certificate issued under section 41102 of this title.

(3) This subsection does not limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates an airport served by an air carrier holding a certificate issued by the Secretary of Transportation from carrying out its proprietary powers and rights.

(4) TRANSPORTATION BY AIR CARRIER OR CARRIER AFFILIATED WITH A DIRECT AIR CARRIER.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier or carrier affiliated with a direct air carrier through common controlling ownership when such carrier is transporting property by aircraft or by motor vehicle (whether or not such property has had or will have a prior or subsequent air movement).

(B) MATTERS NOT COVERED.—Subparagraph (A)—

(i) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization; and

(ii) does not apply to the transportation of household goods, as defined in section 13102 of this title.

(C) APPLICABILITY OF PARAGRAPH (1).—This paragraph shall not limit the applicability of paragraph (1).

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1143; Pub. L. 103–305, title VI, § 601(b)(1), (2)(A), Aug. 23, 1994, 108 Stat. 1605, 1606; Pub. L. 105–102, § 2(23), Nov. 20, 1997, 111 Stat. 2205.)

HISTORICAL AND REVISION NOTES
PUB. L. 103–272

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
41713(a)	49 App.:1305(c), (d) (related to (a), (b)(1), (c)).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 105(a)(2), (b)(1), (c), (d) (related to (a), (b)(1), (c)); added Oct. 24, 1978, Pub. L. 95–504, § 4(a), 92 Stat. 1708.
41713(b)(1) ..	49 App.:1305(a)(1).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 105(a)(1); added Oct. 24, 1978, Pub. L. 95–504, § 4(a), 92 Stat. 1707; Oct. 4, 1984, Pub. L. 98–443, § 9(u), 98 Stat. 1709.
41713(b)(2) ..	49 App.:1305(a)(2).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, § 1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98–443, § 3(e), 98 Stat. 1704.
	49 App.:1551(b)(1)(E).	
41713(b)(3) ..	49 App.:1305(b)(1).	
	49 App.:1551(b)(1)(E).	

In subsection (a), the words "the term" are omitted as surplus. The words "the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, and" are omitted as surplus because of the definition of "territory or possession of the United States" in section 40102(a) of the revised title, 48:734, and section 502 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. The text of 49 App.:1305(c) is omitted as obsolete.

In subsection (b)(1) and (3), the words "interstate agency or other" are omitted as surplus. The word "authority" is substituted for "agency" for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(1), the word "rule" is omitted as being synonymous with "regulation". The words "standard" and "having authority" are omitted as surplus.

In subsection (b)(2), the words "pursuant to a certificate issued by the Board", "by air of persons, property, or mail", and "the State of" are omitted as surplus.

Attachment B

Letter from US Dept of Transportation to Pacific Wings LLC
April 23, 2007

U.S. Department
of Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

APR 23 2007

Gregory S. Walden
Counsel for Pacific Wings, L.L.C.
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037-1350

Dear Mr. Walden:

Re: Hawaii Certificate of Need Program Requirements for Air Ambulance Operators

This responds to your request for our opinion on whether Hawaii's Certificate of Need Program, as applied by that State to air ambulances, is preempted by Federal law. You relate that Pacific Wings, a DOT certificated air carrier, was informed by the Hawaii Department of Health that it must first obtain a State Certificate of Need before it could begin any air ambulance operations within the State and that any violation would subject it to State penalties. You add that State hospitals and other health care providers informed Pacific Wings that they could do no business with Pacific Wings until it obtained such a State certificate and a State license. You question whether such State requirements are preempted by Federal law, citing specifically the Federal preemption provision at 49 U.S.C. § 41713.

You point out that, under Hawaiian State law, a State Certificate of Need is required before any air ambulance can begin operations, citing section 323D-43(a) of the Hawaii Revised Statutes (HRS) and sections 11-186-6(a) and 11-186-15(a)(1) of the Hawaii Administrative Rules (HAR). You further advise that a State license is mandated, with liability insurance as well as essential equipment requirements and fees (HAR §§ 11-72-45, -46 and -47).

At our invitation, the State (by John F. Molay, Deputy Attorney General, Health & Human Services Division, as approved by Attorney General Mark J. Bennett) offered its analysis and views on the matter, in a letter dated August 2, 2006. The Hawaii letter points out that, while the State statutes and State administrative rules do require an air ambulance operator within the State to first obtain a State certificate (a "CON", or Certificate of Need) and license, Hawaii has, upon its own recent review of the matter, decided that its CON requirement is preempted by section 41713. Mr. Molay states that Hawaii will no longer require air carriers to obtain a CON prior to conducting air ambulance operations within

the State and has so informed relevant parties, with a letter to Pacific Wings. However, Mr. Molay states that Hawaii will continue to maintain its licensing requirement for State air ambulance operators insofar as those requirements concern matters of patient care, having concluded that the Federal government does not regulate this subject. Hawaii believes that a DOT Opinion letter is not needed in light of its decision to not require air ambulances to obtain a CON.

Pacific Wings has subsequently indicated that it remains concerned about future State enforcement of the CON program in that the requirements remain as active State statutes, that the extent of State regulation of air ambulance services in the area of medical care is unclear, and that ultimately the State might use medical care regulation to indirectly regulate preempted economic aspects of air ambulance operations.

We have reviewed the facts presented, the positions of the parties, previous Department holdings on the issues, and the Department interests involved, and have decided to issue this General Counsel opinion to assist the parties in understanding the impact of Federal law on these matters.

First, we find it clear, as Mr. Molay concedes, that Hawaii's CON program involves economic regulation of air carriers operating an air ambulance service in a manner that is indeed preempted by the express Federal preemption provision, 49 U.S.C. § 41713. To the extent that the State statutes require, as they do, any air ambulance operator to obtain a State operating certificate dependent on the State's determination of the "public need" for it, the "reasonableness" of the "cost of the ... service," and other criteria including "quality, accessibility, availability and acceptability," (see subsections 323D-12(b)(5), -43(a) and -43(b) of the Hawaii Revised Statutes), they are preempted by the Federal criteria prohibiting State regulation "related to" an air ambulance's "price, route, or service." 49 U.S.C. §41713(b)(1).[1]

However, as you note, the State of Hawaii's air ambulance requirements extend beyond the CON program and its economic regulations to encompass medical requirements for air ambulance operators, which the State defends as within its authority to regulate and not in conflict with any Federal regulations. The State has set forth a comprehensive list of essential equipment and requirements for air ambulance medical services, such as: a requirement that there be a medical attendant assigned to each patient, minimum flow rates for a patient's oxygen supply, reporting requirements as to a patient's condition, and liability insurance requirements.

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[1] In this regard, note that the Federal preemption provision was enacted as a section of the Airline Deregulation Act of 1978 (ADA), a primary objective of which was to place a maximum reliance on competitive market forces and on actual and potential competition to provide needed air transportation. See Section 4 of the ADA, Pub. L. No. 95-504, October 24, 1978. See also our June 16, 1986 opinion letter to the Arizona Assistant Attorney General, Chip Wagoner, finding that Arizona's State program of economic regulation of air ambulances, which included airline certification, regulation of rates, operating response times, base of operations, bonding requirements, and required accounting and report systems, was preempted by Federal law.

In reviewing the State's provisions concerning liability insurance requirements, we noted a reference in HAR §11-72-45 (a) to a document entitled "Essential Equipment and Requirements for Air Ambulance Services," which requires adherence by all air ambulance operators, and specifies numerous medical and medical personnel requirements for such operators. The document also specifies (at paragraph A.8) that each air ambulance operator maintain "liability insurance" in an amount of at least $300,000 (with a minimum of $75,000 per seat) over and above its "normal" amount.

The Department of Transportation administers a comprehensive regime addressing aircraft accident liability insurance requirements for air carriers, as authorized by 49 U.S.C. § 41112. In particular, extensive requirements for aircraft accident liability insurance are set out at 14 CFR Part 205. These extend to air ambulances under the exemption authority granted such operators at 14 CFR Part 298 (see in particular 14 CFR §§ 298.21(c)(2) and 205.5(c)), and we consider such regulation to be pervasive, fully occupying this field. While the State informally advised us that it merely checks for aircraft insurance in an amount equal to the amount required by DOT, it nonetheless maintains a redundant regulatory regime with independent enforcement capabilities in this area. In our view, Congress' enactment of section 41112, resulting in the broad requirements set out by DOT in implementing regulations, leaves no room for State efforts to "supplement" in this manner the Federal accident liability insurance regime. See, e.g., *Gade v. National Solid Wastes Management Ass'n.*, 505 U.S. 88, 98 (1992).

We also note in the State's "Essential Equipment and Requirements for Air Ambulance Services" document a provision, listed as an operating requirement, that any air ambulance service "shall be operative 24 hours daily" with a 24-hour telephone answering capability as well as a 24-hour availability for pilot, medical crew, and a physician. While such full service features for an emergency air service may be desirable from a State policy perspective, we believe the requirement for an air carrier to be able to operate 24 hours a day is preempted on at least two grounds.

First, Hawaii's 24 hours a day service requirement for air ambulance operators runs afoul of the Federal express preemption provision, 49 U.S.C. 41713(b). Just as the State may not impose any entry criteria on air carriers through its CON program, neither may it prescribe particular hours or times of operation, for in both cases such requirements "relate to" air carrier "service" within the meaning of the statute. A key purpose of the Airline Deregulation Act was to ensure that the services offered by air carriers are ones dictated by the competitive market and not by any regulatory body.

Secondly, Hawaii's 24-hour requirement intrudes on regulations and operations specifications for aircraft and crew operations, which are within the plenary authority of the Federal Aviation Administration (FAA). As you may know, acting pursuant to various statutory authorities,[2] FAA has developed and administers an extensive system of aviation

[2] See, e.g., 49 U.S.C. § 44701 [FAA to prescribe minimum standards for the design, material, construction, quality of work, performance, inspection and overhaul of aircraft, aircraft engines, and propellers]; § 44704 (a) [FAA to issue type certificates for aircraft, aircraft engines, and aircraft appliances]; § 44704(d) [FAA to issue airworthiness certificates for particular aircraft after they are inspected for safe operation]; § 44705

safety certification and regulation, which extends to air ambulances. Accordingly, an operator of aircraft seeking to do business as an air ambulance must obtain an air carrier certificate pursuant to 14 CFR Part 135, which certificate cannot be granted unless the person is found to be properly and adequately equipped to operate safely and the aircraft is found able to operate under the conditions foreseen. Such operators would also apply to FAA for grant of operating specifications under 14 CFR Part 119, which detail the kinds of operations that are authorized, the category and class of aircraft that may be used, and any applicable exemptions.[3]

It is the Department's firm view that matters concerning aviation safety, including aircraft equipment, operation, and pilot qualifications, are under the exclusive jurisdiction of the FAA and, therefore, are preempted by Federal law. To the extent that Hawaii's 24-hour operability requirement would require equipment and flight crew capabilities that are different from those needed for FAA approvals, that requirement, and any similar requirements, would improperly encroach on the Federal regulatory scheme, be preempted, and should be repealed.[4]

The FAA also regulates the safety aspects of medical equipment installation and storage aboard aircraft (for example, to prevent shifting of heavy equipment in flight causing an abrupt and dangerous change in the center of gravity on the aircraft), and does have requirements as to medical personnel (*qua* flight crew) training. See FAA Ops Inspectors handbook (Order 8400.10, chapter 39, chapter 5, section 1, para. 1336 and 1337, chapter 5, section 4) and FAA advisory circulars (AC 135-14A and 135-15A). However, upon review of the Hawaii medical requirements specifically at issue here, which involve such

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[FAA to issue operating certificate to person desiring to operate an air carrier if person found equipped and able to operate safely]; § 44703 [FAA to issue certificates to airmen who are found qualified and physically able to perform]; § 44711 [Failure to operate aircraft in accordance with FAA requirements is prohibited; FAA may grant exemptions]; § 44717 [FAA to prescribe regulations for ensure continuing airworthiness of aircraft]; §44722 [FAA to prescribe regulations to improve safety of aircraft operations in winter conditions]; etc.

[3] For a fuller description of both FAA's statutory authorities and the regulatory programs in the context of air ambulance activities, see the November 26, 2006 Statement of Interest of the United States in *Air Evac EMS, Inc., d/b/a Air Evac Lifeteam v. Robinson and Tennessee Board of EMS*, Case No. 3:06-0239 (E.D. Tenn. Nashville Div). In this case, an air ambulance applied for and was granted FAA authority to operate under visual flight rules. Thereafter, the State of Tennessee notified Air Evac that it lacked certain equipment – two very high frequency omnidirectional ranging receivers, a nondirectional beacon receiver, and a glide slope receiver – that were required under its rules for operating in the State. In its Statement of Interest, the United States took the position that the avionics equipment mandated by Tennessee acted as an entry requirement for air ambulance operators, and hence was preempted by express statutory language (49 USC § 41713). It also urged that the broad statutory authorities in the area of aircraft certification and safety Congress granted to FAA, and the pervasive regulatory regime that FAA administers pursuant to those authorities, leave no room for State regulation in this field, and that competing State requirements stand as obstacles to Federal regulation of aviation safety and so cannot stand.

[4] Of course, a full 24 hour service commitment among State air ambulance operators may be pursued by non-regulatory means, e.g., through economic incentives rather than regulatory actions. For example, the State or a local government entity, as a customer of air ambulance services, could opt to contract with or use the services of only those who offer a 24 hour service. Such a position by the State or local government *as a customer* is distinguishable from action by the State or local government as a *regulator*.

items as patient oxygen masks, litters, blankets, sheets, and trauma supplies, FAA has advised that they are outside the scope of their regulation and does not find them preempted. Hawaii may choose to prescribe such medical supplies and equipment for air ambulance operators, so long as FAA requirements are met regarding how those items are safely installed and carried aboard any aircraft.

Of course, it is possible that a State medical program, ostensibly dealing with only medical equipment/supplies aboard aircraft, could be so pervasive or so constructed as to be indirectly regulating in the preempted economic area of air ambulance prices, routes, or services. While that has not been shown here, the parties are reminded of the breadth of the Federal express preemption provision, which extends to prohibit any State provision having the force and effect of law *related to* a price, route or service ...." (emphasis added) 49 U.S.C. §41713(b)(1).

We are forwarding a copy of our letter here to Attorney General Bennett for his information, and for his use in advising the State Legislature of the inconsistency of the subject provisions in the HRS and HAR with Federal requirements.

I trust that this opinion will be helpful to you and to the State of Hawaii.

Sincerely,

Rosalind A. Knapp
Acting General Counsel

cc:
Mark J. Bennett, Attorney General
John F. Molay, Deputy Attorney General
Department of Attorney General
State of Hawaii
469 King Street, room 200
Honolulu, Hawaii 96813

An Independent Licensee of the Blue Cross and Blue Shield Association

April 4, 2016

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

Re: SB 2668, SD2, HD1 – Relating to Insurance

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2668, SD2, HD1, which limits an insured's financial obligations when the insured receives emergency healthcare services by an out-of-network provider. It further establishes disclosure requirements for health care providers and health plans. HMSA opposes this Bill as drafted.

Current and pending federal provisions, as well as pending implementation of the National Association of Insurance Commissioner's (NAIC) Model Network Adequacy Act, include balance billing and disclosure requirements. This Bill may be premature and, ultimately, unnecessary. In lieu of this Bill, the Committee may wish to consider establishing a workgroup with a broader scope than that specified in Section 7 of the Bill. The workgroup would review the issues of balance billing and transparency within the context of federal and NAIC requirements.

Current and Pending Federal Provisions

The Affordable Care Act (ACA) already prohibits greater out of pocket costs for emergency services received from a nonparticipating provider. While the ACA does not prevent balance billing, it does require health plans to reimburse a "reasonable" amount for emergency services rendered by nonparticipating providers and includes a formula for calculating that amount

The recently finalized Benefit and Payment Parameters Rule requires plans, in 2018, to notify members of the potential to receive out-of-network care in an in network setting. If a member receives an Essential Health Benefit from an out-of-network "ancillary provider" in an in-network setting, these services (even though out of network), would count towards their maximum out of pocket limit.

A key component of this Bill relates to balance billing in an attempt to ensure that consumers are notified of a provider's non-participating status prior to services being performed. There is a national effort to ensure that consumers are made aware of available choices. The Center for Medicare and Medicaid sections of President Obama's FY 2017 budget includes a provision to eliminate surprise out-of-network bills. Specifically, hospitals would be required to take "reasonable steps" to match patients with in-network providers, and all physicians who regularly provide services in hospitals would be required to accept "an appropriate" in-network rate as payment in full. If a hospital fails to match a patient to an in-network provider, the patient would still be protected from surprise out-of-network charges.

hmsa

An Independent Licensee of the Blue Cross and Blue Shield Association

The provisions of this Bill may be inconsistent and duplicative of existing federal regulatory requirements.

NAIC Network Adequacy Act

After years of review and discussions, the NAIC recently adopted a Model Network Adequacy Act which, in part, addresses the concerns raised in this Bill. The Model Act includes a provision that specifically precludes balance billings in cases of emergencies. In addition, the Model Act includes disclosure requirements with respect to patient's cost-sharing responsibility. We understand that the Insurance Division already has planned to convene a working group to implement the provisions of the Model Act.

Air Ambulance Service Charges are Precluded from State Regulation

We understand that this legislation may have been initiated because of concerns related to balance billing charges resulting from air ambulance services. However, the federal government has tied states' hands when regulating air ambulance services. States may not regulate anything concerning the financial aspects of air ambulance services.

In 1978, Congress passed the Airline Deregulation Act (ADA) to help spur airline competition and remove many government regulations of the industry. One unique industry subset that is regulated under the ADA is air ambulances

Numerous court decisions, U. S. Department of Transportation (DOT) guidance letters, and state attorneys general opinions have been decided that states may regulate the medical aspects of air ambulances, but may not implement regulations that could affect the finances, safety or operation of the air ambulances. Moreover, a 2007 DOT letter concerning a certificate of need requirement for air ambulance services in Hawaii specified that states cannot use medical regulations for "indirectly regulating in the pre-empted economic area of air ambulance prices, routes or services." This has been interpreted as meaning state regulations cannot even have the appearance of regulating the economic aspects of air ambulances.

Thank you for allowing us to testify on SB 2668, SD2, HD1. Your consideration of our concerns is appreciated.

Sincerely,

Jennifer Diesman
Vice President, Government Relations

HAWAII / ACEP
AMERICAN COLLEGE OF EMERGENCY PHYSICIANS

March 31, 2016

Representative Angus McKelvey
Chair, House Committee on Consumer Protection & Commerce

SB2668 SD2 HD1: Relating to Insurance

Testimony in OPPOSITION

Dear Representative McKelvey and Committee Members:

On behalf of our 150 emergency physician members and the hundreds of thousands of patients we care for in Hawaii's emergency department each year, I am writing in opposition to SB2668 SD2 HD1.

We respectfully request the committee consider the negative impact that banning balance billing without comprehensive reform of out-of-network reimbursement would have on patient access to emergency physicians in the state. Further, we offer a more fair and transparent alternative and suggest a work group to better study the issue for the people of Hawaii.

431:10A- of the proposed bill would ban balance billing by providers, thereby giving health care plans much greater leverage in contract negotiations with emergency physicians. The Emergency Medical Treatment and Labor Act (EMTALA) requires that all patients presenting to an emergency department be medically stabilized without regard to their ability to pay for services rendered. We whole-heartedly agree with the premise of EMTALA, that all people deserve emergency medical care. However, the law does limit our ability to negotiate fair reimbursement. While any other provider may walk away from negotiations with a health care plan and decline to see their patients, those of us who provide emergency care do not refuse to see any patient. The only leverage we have is retaining to ability to bill patients when health care plans reimburse below the cost of providing services. Balance billing prohibitions uniquely punish emergency physicians because we cannot choose if we will care for a patient based on insurance. Stripping the right of emergency physicians to balance bill removes a key incentive for managed care companies to negotiate with physicians in good faith.

We also ask the committee to consider that virtually all emergency care for Hawaii residents is delivered by participating providers. The vast majority of non-participating provider emergency care in the state is delivered to non-residents. Balance billing is rare in our state. Hawaii's Insurance Division has informed us that, after removing 14 complaints related to air transport in 2015, *Hawaii has averaged less than 3 balance billing complaints per year since 2009*.

We are not necessarily opposed to regulating balance billing in the context of comprehensive reform of out-of-network billing. There are justifiable concerns on the part of both patients and providers regarding the lack of transparency in provider reimbursement. Connecticut and New York have successfully addressed this issue by creating a fair dispute resolution process and benchmarking out-of-network provider reimbursement to a transparent database not aligned with the insurance industry (FAIRHealth). Such a system would be an improvement over the current practice in Hawaii, which determines out-of-network provider reimbursement by way of opaque, insurance-industry regulated databases. It important to note that in 2009, one such database (Ingenix) settled a lawsuit for fraudulently manipulating provider reimbursement. That result has led to at least two multi-million dollar settlements reimbursing providers for lost income.

The average emergency physician in the United States provides $139,000 of uncompensated care each year. Hawaii's emergency physicians consistently rank in the lowest five states in the country in reimbursement even before considering the high cost of living in the state. Further limiting our ability to negotiate fair reimbursement from health care plans will very likely drive quality emergency physicians from our islands. Our patients and our communities will suffer because of reduced access to emergency care and a weakened health care safety net.

We ask that your committee remove the balance billing language from this bill and create a work group of appropriate stakeholders to address this issue in a more comprehensive manner.

Sincerely,

William Scruggs, MD, FACEP
President, Hawaii College of Emergency Physicians

American Congress of Obstetricians and Gynecologists
District VIII, Hawaii (Guam & American Samoa) Section
Greigh Hirata, MD, FACOG, Chair
94-235 Hanawai Circle, #1B
Waipahu, Hawaii 96797

ACOG
THE AMERICAN CONGRESS OF OBSTETRICIANS AND GYNECOLOGISTS

To: Committee on Consumer Protection & Commerce
Representative Angus McKelvey, Chair
Representative Justin Woodson, Vice Chair

DATE: Monday, April 4, 2016
TIME: 2:00 P.M.
PLACE: Conference Room 325

FROM: Hawaii Section, ACOG
Dr. Greigh Hirata, MD, FACOG, Chair
Dr. Jennifer Salcedo, MD, MPH, MPP, FACOG, Vice-Chai
Lauren Zirbel, Community and Government Relations

Re: SB 2668, SD2, HD1 Relating to Insurance

Position: Oppose

Dear Representatives McKelvey, Woodson and Committee Members:

The American Congress of Obstetricians and Gynecologists, Hawaii Section (Hawaii ACOG) stands with the Hawaii Medical Association in opposing this bill.

This bill, if enacted, will in essence set fees for out of network services that were not agreed upon by the provider. This issue particularly impacts emergency medical care but it has a harmful impact on the ability for all medical providers to have any control over the payment they receive from insurance companies. Since Hawaii's market is essentially an insurance monopoly, physicians already have almost no bargaining power. This bill will take away what little is left.

Removing balance billing essentially allows managed care organizations to set market rates for emergency care and strips the rights of providers to independently set fees for their services.

We would welcome efforts to improve the transparency in the process by which health care plans set rates, which would lead to reduced need for balance billing and dispute resolution. The lack of transparency by health care plans has long been a problem.

We sympathize with the concerns of our patients, but we should be clear about who balance billing prohibitions really benefit. Banning balance billing is not a

patient protection initiative; it is a profit protection initiative for health care plans. Without balance billing, negotiating power will be stripped from physicians providing emergency care in Hawaii. Efforts to limit reimbursement to emergency physicians and specialist physicians providing care threaten to further limit access to health care in Hawaii.

Thank you for the opportunity to provide testimony
Mahalo for the opportunity to testify, and for your support of Hawaii Women's Health.

HAWAII EMERGENCY PHYSICIANS ASSOCIATED

March 31, 2016

Representative Angus McKelvey
Chair, House Committee on Consumer Protection & Commerce

SB2668 SD2 HD1: Relating to Insurance

Dear Representative McKelvey and Committee Members:

We are submitting testimony in OPPOSITION to SB2668 SD2 HD1. The proposed bill would ban balance billing by emergency providers.

Hawaii Emergency Physicians Associated (HEPA) is the largest group of emergency providers in the state, with 70 board-certified emergency physicians staffing nine emergency departments on four islands, including six critical access hospitals. We are an integral part of the health care safety net for Hawaii and take pride in our ability to serve all of our patients, our hospitals, and our communities as board certified emergency physicians; the highest quality emergency physicians found anywhere in the world. Recruiting providers to our underserved neighbor islands is challenging as is. Last year, we lost approximately 20 candidates to other states because of low compensation in Hawaii. This bill would further weaken our ability to recruit and retain the quality physicians that our patients deserve.

We participate with all health care plans in Hawaii as well as some out-of-state plans and international plans. We honor those contracted rates and do not balance bill patients within those plans. We balance bill patients only when we do not participate with their plan, and even then, only if we receive inadequate reimbursement from their plan.

Our emergency physicians can work anywhere in the world. The proposed bill would provide significant leverage to health care plans in our negotiations for fair reimbursement. Harming our ability to negotiate fair reimbursement will make it even more difficult to recruit and retain high quality emergency physicians. Our patients and our communities would suffer. We ask that this committee protect Hawaii's health care emergency safety net and not pass this bill.

Sincerely,

Craig Thomas, MD
President, Hawaii Emergency Physicians Associated

Hawaii Emergency Physicians Associated Inc
PO Box 1266, Kailua Hawaii 96734-1266 • (808)261-3326 • (808)261-3092

woodson2-Shingai

From: mailinglist@capitol.hawaii.gov
Sent: Friday, April 01, 2016 2:54 PM
To: CPCtestimony
Cc: paul.eakin@hawaii.edu
Subject: Submitted testimony for SB2668 on Apr 4, 2016 14:00PM

SB2668
Submitted on: 4/1/2016
Testimony for CPC on Apr 4, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Eakin	Emergency Medicine Physicians of Honolulu	Oppose	No

Comments: Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients. The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:35 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: SB2668 SD2 HD1

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Kate Heinzen Jim [mailto:kheinzenjim@hepa.net]
Sent: Friday, April 01, 2016 6:03 AM
To: Rep. Angus McKelvey
Subject: SB2668 SD2 HD1

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

Katherine Heinzen Jim, MD
Chair, Emergency Department
Castle Medical Center
808-561-5641
kheinzenjim@hepa.net

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:42 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: Opposition of SB2668 SD2 HD1

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Takashi Nakamura [mailto:takashi.nakamura@gmail.com]
Sent: Friday, April 01, 2016 11:11 AM
To: Rep. Angus McKelvey
Subject: Opposition of SB2668 SD2 HD1

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

--
Takashi Nakamura, M.D.
The Emergency Group, Queen's Medical Center
JABSOM Clinical Faculty

Hawaii ACEP Board of Directors
takashi.nakamura@gmail.com
808.258.2370

America's Health Insurance Plans

601 Pennsylvania Avenue, NW
South Building
Suite Five Hundred
Washington, DC 20004

202.778.3200
www.ahip.org

March 31, 2016

Representative Angus L.K. McKelvey
Chair, House Committee on Consumer Protection & Commerce
House District 10
Hawaii State Capitol, Room 320
Honolulu, HI 96813

Representative Della Au Belatti
Chair, House Committee on Health
House District 24
Hawaii State Capitol, Room 426
Honolulu, HI 96813

Re: SB 2668 SD2 HD1 – Out-of-Network Payment & Balance Billing (OPPOSE UNLESS AMENDED)

Dear Representatives McKelvey and Belatti:

I write today on behalf of America's Health Insurance Plans (AHIP) to express concerns, and respectfully oppose, SB 2668 unless it is amended. We recognize the importance of legislation that aims to limit the liability of insureds for out-of-network costs, and thus suggest how the bill can be modified to achieve that.

America's Health Insurance Plans (AHIP) is the national association representing health insurance plans. Our members provide health and supplemental benefits to the American people through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. AHIP advocates for public policies that expand access to affordable health care coverage to all Americans through a competitive marketplace that fosters choice, quality, and innovation.

A clear exclusion of specialty policies and Medicaid managed care plans is needed.

We request that limited benefit and specified disease plans be specifically exempted from the requirements of this legislation. As we understand the definitions of "health care plan" in Section 2 and "managed care plan" in Section 4, this bill would apply to all group or individual accident and health or sickness insurance plans. We believe it should be clear that these requirements should not apply to dental, supplemental, or other HIPAA-excepted benefits insurers, and additional clarification is needed to specify that these requirements apply only to comprehensive medical plans.

An exclusion for limited benefit health insurance plans currently exists in statute at HRS § 431:10A-102.5[1]. For the requirements of Section 3 (balance billing; hold harmless), which amends Article 10A, we recommend making it clear that the exclusions found in HRS § 431:10A-102.5 apply to those requirements. For remaining sections of this bill, we ask that further amendments be made to include language excluding limited benefit health insurance plans similar to that found in HRS § 431:10A-102.5.

Additionally, we believe that it is untenable for the state to apply the same requirements to Medicaid managed care plans. Requiring these plans to pay billed charges by out-of-network providers, which have a pattern of far exceeding Medicare reimbursement for the same service performed in the same geographic area[2], would devastate the state's budget. Medicaid should be treated differently than the commercial market.

Insureds' out-of-pocket costs vary for in-network services and a benchmark payment level must be established to calculate insureds' out-of-pocket liability.

Sections 3, 5, and 6 require insurers to make certain that an insured incurs no greater out-of-pocket costs for emergency services from an out-of-network provider than the insured would have incurred with a participating provider. When insureds' have a cost sharing responsibility based on coinsurance, their in-network out-of-pocket costs may vary from provider to provider or facility to facility, depending on the contracted rate between the provider and the insurer. A calculation for a specific out-of-pocket cost by service across all providers or facilities is not possible. We recommend that the language refer to "no greater cost-sharing for emergency services from an out-of-network provider than the insured would have incurred from a participating provider". This is consistent with the intent expressed above.

To create a "hold harmless" provision in the scenario when there are out-of-network providers and limit insureds' out-of-pocket costs and exposure to billed charges generally higher than the amount paid to providers under negotiated health plan contracts, Medicare, or Medicaid, then a benchmark payment rate must be established in this bill. This is more workable than allowing a working group to determine at a later time what amount an insurer would pay a nonparticipating provider. We believe an appropriate benchmark rate of payment from insurers to nonparticipating providers should be set at a level that encourages plans and providers to enter into mutually beneficial contracts and is based on what the market is already paying for those

[1] HRS § 431:10A-102.5(a): "…When used in this article, the terms "accident insurance", "health insurance", or "sickness insurance" shall not include an accident-only, specified disease, hospital indemnity, long-term care, disability, dental, vision, Medicare supplement, or other limited benefit health insurance contract that pays benefits directly to the insured or the insured's assigns and in which the amount of the benefit paid is not based upon the actual costs incurred by the insured."

[2] *Charges Billed by Out-of-Network Providers: Implications for Affordability*. America's Health Insurance Plans. September 2015. Available online at https://www.ahip.org/Workarea/DownloadAsset.aspx?id=4294973660.

health care services. This will also allow for more precise calculation of what the consumer's cost share would be at the time of service.

For emergency services, we suggest that the bill use a benchmark similar to that outlined in the Affordable Care Act rules promulgated by the U.S. Department of Health and Human Services for out-of-network emergency services.

For emergency services, the rate of payment to nonparticipating providers shall be the greatest of these three possible amounts:

1. The amount negotiated with in-network providers for the emergency service furnished, excluding any in-network copayment or coinsurance imposed with respect to the enrollee.

2. The amount for the emergency service calculated using the same method the plan generally uses to determine the usual, customary and reasonable payments for out-of-network services, excluding any in-network copayment or coinsurance imposed with respect to the enrollee.

3. The amount that would be paid under Medicare (part A or part B of title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.) for the emergency service, excluding any in-network copayment or coinsurance imposed with respect to the enrollee.

We also urge the legislature to take an important step towards protecting consumers from out-of-network charges for non-emergency services by expanding the same protections and benchmark rate discussed above to those non-emergency services provided by an out-of-network physician at an in-network hospital or outpatient center.

A payment made by an insurer based on these benchmark methodologies should constitute payment as full. We thus recommend that the bill be amended to require that providers are also required to either negotiate with insurer or accept the benchmark payment rate as payment in full, thereby making certain that insureds are not billed for amounts beyond these benchmark payment levels. We urge the inclusion of the following language in Sections 3, 5, and 6:

> "A payment made by an insurer in accordance with this section to the nonparticipating provider shall constitute payment in full for emergency services rendered and the provider shall not bill the consumer for any amounts owed beyond applicable copayments, coinsurance or deductible amounts."

Methodologies for setting contracted provider reimbursement rates are proprietary and should not be disclosed.

Section 4 includes a list of information that health insurers must disclose to current and prospective insureds, including "a description prepared annually of the types of methodologies the insurer uses to reimburse providers specifying the type of methodology that is used to reimburse particular types of providers or reimburse for the provision of particular types of services." We note that this should include "in general terms" inserted after the word "description". Insurers cannot release more specific information on contractual provider reimbursements, since they are confidential and proprietary business practices and based on contracting agreements that are part of the negotiation process with providers. As such, those should be treated as confidential information and not be required to be disclosed publicly.

For these reasons, AHIP opposes SB 2668 as currently written and asks that the above amendments be made. If you have any questions, please do not hesitate to contact me at gcampbell@ahip.org (971-599-5379).

Sincerely,

Grace Campbell

Grace Campbell
Regional Director

April 4, 2016 at 2:00 PM
Conference Room 325

House Committee on Consumer Protection and Commerce

To: Chair Angus L.K. McKelvey
Vice Chair Justin H. Woodson

From: George Greene
President and CEO
Healthcare Association of Hawaii

Re: Testimony in Opposition
SB 2668 SD 2 HD 1, Relating to Insurance

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 180 member organizations who represent almost every aspect of the health care continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

The Healthcare Association of Hawaii would like to thank the committee for the opportunity to provide comments in **opposition** to SB 2668 SD 2 HD 1. While we agree that consumers and their families should be protected from undue financial burdens caused by unexpected bills, we have concerns with this measure. In order to mitigate the practice of balance billing, all players in the health care arena—including hospitals, physicians and insurers—must have a role. While we appreciate some of the changes made to the bill, this legislation still places a large burden on providers to resolve the issue of balance billing.

For example, this legislation introduces new requirements for providers that could delay the provision of necessary medical services. We are particularly concerned with section 2(b), which could affect the timeliness of care. The delays caused by this provision may be significant. It could potentially take hours for a provider to contact a patient's insurance company to determine the estimated amount the hospital will bill and that the patient would ultimately be responsible for. This is because, although the physician or facility might know their charges for a procedure, they are unable to immediately determine exactly which insurance plan a patient might be enrolled in. The estimated bill will vary greatly based on whether the individual is enrolled in a catastrophic plan, a platinum plan, or is a low-income senior dually covered by Medicare and Medicaid.

This provision also seems to run counter to the current practice of seeking prior authorization for services. In cases where patients are seeking scheduled, non-emergency services, providers must secure a prior authorization for services from the patient's insurer. The patient's insurer should then

be responsible for disclosing to the patient the estimated amount of the planned or non-emergent procedures and services that he or she will be responsible for. Requiring hospitals to provide these estimates for every piece of a patient's admission could delay care. This provision may also be untenable in cases where a last-minute change must occur due to unforeseen medical circumstances and we would respectfully seek guidance on the implementation of such provisions.

There are other sections of the bill that could further burden providers. While we are appreciative of the effort to create a working group to determine reasonable billing rates for non-participating providers, we are concerned that any system devised by this group could still be problematic since setting a flat fee that non-participating providers could bill would take away the ability of providers to negotiate appropriate contracts and rates. Instead, we would respectfully suggest that your committee consider nationally-recognized models of addressing balance bills, such as the model supplied by the National Association of Insurance Commissioners (NAIC, which includes alternative methods of settling reimbursement. For example, the model legislation from the NAIC creates a mediation process that may more fairly resolve this issue while protecting the consumer. Moreover, we would ask that your committee consider instituting requirements on timeliness of payments by insurers.

We would also maintain our concern that this provision could affect physicians treating an out-of-network patient who has knowingly and willingly agreed to receive care from that non-participating physician and pay any differences in cost.

Lastly, we would like to note that this bill would likely not resolve most of the balance billing cases in the state. At a previous hearing, there was discussion about the issue of balance billing for air ambulance services. We noted that the Department of Insurance released information that the vast majority of balance billing complaints in the state involved air ambulance services. Last year, there were 14 balance billing complaints related to air ambulances – taking those out, the department found that there have been less than three complaints filed each year since 2009.

This legislation may not fully resolve the issue of balance billing by air ambulance providers. This is because federal law does not allow state to regulate the rates of all air transportation companies. According to the *Airline Deregulation Act of 1978*, states are preempted from any economic regulation of air ambulances, which includes setting or regulating the rates that air ambulance companies can set.

We would respectfully request that your committee defer this measure. We would be supportive if a task force was convened to discuss the matter in greater depth. The issue of balance billing is complex and difficult to resolve in a compact period of time. It would be helpful to better understand the unique and specific issues that consumers in Hawaii have experienced related to balance billing. It would also give all stakeholders the opportunity to explore models from national groups or other states and tailor the language to provide an appropriate solution that fits the problems identified in the state.

Thank you for your consideration of our concerns and for your time on this matter.

TESTIMONY OF RAFAEL DEL CASTILLO
ON BEHALF OF THE HAWAII COALITION FOR HEALTH
TO COMMITTEE ON CONSUMER PROTECTION
FOR CONSIDERATION ON SENATE BILL 2668 HD1

TO: Honorable Angus McKelvey
Chair, House Committee on Consumer Protection & Commerce
Honorable Justin H. Woodson
Vice Chair, House Committee on Consumer Protection & Commerce

Submitted Electronically

Re: S.B. 2668 HD1 – Relating to Insurance
Hearing: April 4, 2016
2:00 p.m.
Conference Room 325
Decision Making to Follow

Dear Chair McKelvey and Members of the Committee on Consumer Protection & Commerce:

Thank you for hearing and considering S.B. 2668 HD1. S.B. 2668 is based upon a model act by the National Association of Insurance Commissioners in furtherance, and to comply with, Health Insurance Reform under the Patient Protection and Affordable Care Act. The Bill adds a new section under Chapter 431:10A, Hawaii Revised Statutes, relating to insurance contracting (which has inspired controversies that are not well-founded) and amends section 431:10-109 to specify a number of types of disclosure insurers must make to plan enrollees and beneficiaries to better understand the coverage offered before they purchase coverage or decide to continue their present coverage. The NAIC has identified the disclosures as necessary to address a nationwide problem for consumers in navigating the complex world of health care with little or no assistance from providers and insurers.

The Bill addresses a very significant concern in Hawaii, the problem of insurers exploiting **network inadequacy**, and the complexities inherent in network adequacy, to profit, and avoid costs, at the expense of unsuspecting insureds. Network adequacy is entirely within the control of the insurer, and failing to address the problem of network inadequacy, which has resulted in "surprise bills" to numerous Hawaii consumers, provides the insurers who have inadequate networks with undue profits and strong incentives to restrict their networks.

Hawaii is presently home to at least one "water's-edge" insurer, meaning that the insurer has no participating providers outside of the State, and thus its insureds are responsible for large balance bills if they require services not available in Hawaii (such as many types of transplants, special types of radiation, surgeries, and intensive therapies)

because there would be too few patients to make it economically feasible for any provider in Hawaii to make the services available.

The Bill focuses on emergency services, which is important for the reasons discussed *infra*, **but it is essential for this Committee to also understand** that the Hawaii Coalition for Health has dealt with numerous complaints where network inadequacy presents a significant, and often insurmountable, obstacle to consumers who require services, often times to avoid death or injury, for which they must resort to a specialty provider not contracted with their insurer. Those situations do not arise solely from travel emergencies, but usually arise as a result of an unexpected diagnosis from a Hawaii provider which is, for the consumer, urgent or emergent nonetheless, for obvious reasons.

As the Committee is aware, it is the employer, rather than the consumer, in Hawaii that frequently decides which coverage to purchase to meet the requirements of H.R.S. § 393-11 for prepaid health care employee benefits. Consumers have little or no say in the selection of the insurer, and therein lies a significant problem with network inadequacy that H.R.S. § 393-7(a) was designed to minimize or avoid, assuming that employers and insurers comply with its requirements. Some insurers do not, as discussed below, resulting in thousands of employees in Hawaii presently having inferior coverage in violation of section 393-7(a). In the experience of the Hawaii Coalition for Health, and as a result of its investigations, even employers who are sophisticated about health insurance coverage, who believed they conducted reasonable due diligence and were committed to providing the required coverage and complying with the law, have been misled as a result of omissions and misrepresentations in the marketing/advertising of the coverage.

Hawaii regrettably harbors domestic health insurers that routinely avoid paying even contracted rates for emergency services by restricting network coverage. The Hawaii Coalition for Health has fielded numerous complaints relating to charges resulting from services an insured has received having presented for emergency treatment to a provider that is not contractually bound by the insurer to accept the eligible charge plus the authorized co-payment. The Coalition has also fielded numerous complaints in which an insured was told that services were "authorized" but the insurer later refused to pay for the services at participating rates, invalidating the annual deductible (stop-loss for the insured) and leaving the insured with a huge balance bill surprise.

The Hawaii Coalition for Health believes that providers may be unduly concerned about the Bill, possibly because insurers have instigated a controversy to protect their ability to abuse the market. Providers may have focused on the requirement that they provide disclosures if they are non-participating with the patient's insurer without duly noting that the Bill requires the insurer to make the insured whole, not the provider. Providers should be focusing on the following provision of new section 431:10A (emphasis added):

> (d) When an insured receives emergency services from a provider that is not a participating provider in the provider network of the insured, **the insurer shall make certain** that the insured shall incur no greater out-of-pocket costs for emergency services than the insured would have incurred with a participating provider of health care services.

This provision properly places the burden where it belongs, with the insurer which has failed to provide network adequacy sufficient for its insureds to have the benefit they believed they were purchasing with the insurance.

Based upon its experience with the issue over the past nearly two decades, the Hawaii Coalition for Health is of the opinion that the controversy over the disclosure requirements has been instigated by insurers which have employed network **inadequacy** to their substantial benefit for many years. Providers may prefer not to be burdened with a disclosure requirement, but disclosure requirements have long been routine in the health care industry and providers are potentially liable to a patient for failure to disclose the information the Bill requires in any event. The Hawaii Coalition for Health sympathizes with the concern, but the providers' concerns appear to be inflated. Providers, whether they participate or not, have direct access to insurers and therefore can obtain information they do not have on hand with a telephone call. In its two decades of service to consumers, the Hawaii Coalition for Health has witnessed numerous such exchanges, even in the case of patient emergencies, such that the information required is likely to be accessible. The Hawaii Coalition for Health is also confident that providers can resort to requesting a release from the insured as a condition of receiving emergency care in cases in which the insurer is not available to provide the required information. All things considered, the Bill does not present unsurmountable, or even very difficult or burdensome problems, for providers.

The Bill does, however, address a very significant area of abuse some insurers are presently exploiting to the substantial detriment of Hawaii employers and their covered employees, and consumers who have been misled as to how network inadequacy affects them. The Hawaii Coalition for Health is in possession of sworn statements from three employer who must be considered to be more sophisticated about the requirements of the Prepaid Health Care Act than most, but who unknowingly purchased "water's-edge" plans from University Health Alliance for employee coverage required by H.R.S. § 393-11. The Coalition is not presently informed whether any other insurers are engaged in similar practices, but the three employers were told in purchasing UHA plans that the coverage was "the same" as the coverage they were purchasing from the plan with the 'largest number of subscribers in the State. . ." *see* H.R.S. § 393-7(a), when that was false. All have switched, or are in the process of switching, back to their prior coverage with HMSA, which has the largest number of subscribers in the State. It is a well-known fact that HMSA has a large network of participating providers out-of-state. Some of those providers offer services not available in Hawaii, but which could be medically

necessary to save the life of an insured, or prevent permanent injury. The Coalition has prior experience with cases in which the insurer has refused to limit the insured's out-of-pocket costs for such services even though the insurer has no participating provider in its network for the services. Such cases are obviously not limited to care in the instance of a travel emergency, but they constitute a type of emergency because the insured may be facing a balance bill which, even if the amount is disclosed in advance as the Bill provides, is nonetheless insurmountable. Transplants and other highly specialized types of treatment can cost hundreds of thousands of dollars, and the insured's stop-loss (annual deductible) would limit the cost but for the fact that the insurer has no contracted provider in its network. Such omissions must be clearly and specifically disclosed to the consumer or the employer prior to purchasing the coverage, and **never** represented as "the same as HMSA." (The Coalition has had many disagreements with HMSA over the past two decades. Nonetheless, happily for employers and their employees, plans sold pursuant to H.R.S. § 393-7(a) must be equal to the similar type HMSA plan having access to a broad network of specialized providers and centers devoted to the exceptional and often high cost treatments that save lives.)

The Hawaii Coalition for Health has also had numerous complaints relating to charges resulting from services arising from a diagnosis (instead of a travel emergency) an insured has received based upon an understanding, and oftentimes express assurances, that the care is "authorized," where the consumer was thereafter presented with a 5- or 6-figure surprise bill because the insurer had not contracted with the provider due to intentionally maintained **network inadequacy**. Again, these instances all arose in circumstances in which the insurer was in complete control of the outcome, and the consumer, and possibly the consumer's employer, was duped by someone who had superior facts concerning the network inadequacy and its effects, and withheld them.

The Hawaii Coalition for Health understands that certain provisions of the Bill are controversial because they impose disclosure requirements upon providers, and indemnify insureds if the disclosures are not provided. Frankly, it is not altogether clear that disclosure by providers would solve the larger concern which has arisen from **network inadequacy** intentionally maintained. For example, the Coalition was presented with a case, which was successfully concluded for the insured through litigation, where an infant was on the mainland to have an evaluation for a heart defect. While there, the infant's condition significantly deteriorated and required emergency surgery to avoid permanent injury or death. The surgeons on staff at the facility where the evaluation was taking place were out of town, and the infant was pre-approved for an evaluation, not for surgery, by his insurer. The facility where the evaluation was taking place assisted the parents in finding a surgeon at another facility several hundred miles away, and they flew the infant there and he had a successful surgery. He is now a healthy and normal adolescent. Without the emergency surgery, he would likely have expired

very prematurely. The insurer agreed to pay for the services only at non-par rates and the annual deductible was not applicable, so there was no stop-loss for the parents.

The insurer actually "pre-authorized" the surgery, but without disclosing that the parents would be liable for a six-figure balance because the insurer would refuse to pay more than its non-par rates and the annual deductible would not apply. IN THAT CASE, AND MANY OTHERS, THE PROVIDER WAS ALSO DUPED BY THE INSURER, HAVING CONFUSED "AUTHORIZED" WITH "COVERED AT PARTICIPATING RATES." A disclosure would not have helped the parents in the aforementioned case because they had a higher, legal duty, to proceed with the surgery to protect the child, irrespective of any projected indebtedness. That is a common reality with emergency care.

In the aforementioned case, litigation resulted in the insurer and the providers working out an agreement, with the parents paying their annual deductible limit and no more. Litigation should not have been required. Insurers and providers have the capacity to work out an agreement. Consideration of the issue must be undertaken with the certainty that the insurer would have been liable for a contracted rate if the provider had been contracted, and thus permitting insurers to pay at non-participating rates is *both a bonus for the insurer and an incentive to restrict contracted networks*.

The Hawaii Coalition for Health respectfully proposes that S.B. 2668 HD1 be moved forward by this Committee with a small collection of amendments purposed with addressing the problem of non-compliance with H.R.S. § 393-7(a) by unsuspecting employers, in which plans are being sold as "the same as" the plan of the same/similar type covering the largest number of subscribers in the State, when they are, in fact, significantly and meaningfully inferior. Additional disclosure requirements will render the practice of omitting facts about section 393-7(a) plans too dangerous for insurers to engage in the practice.

SECTION 1 AMENDMENTS
(RECOMMENDED) ADDITIONAL FINDINGS

- Add the following finding:

  <u>The legislature further finds that insured beneficiaries of prepaid health care plans sold as section 393-7(a) compliant plans have similarly received surprise bills for services received outside of their provider network that would have been covered at participating provider rates by the same plan type having the largest numbers of subscribers in the State.</u>

(RECOMMENDED) ADDITIONAL PURPOSES

- Add the following "purpose":

(4) That an insured beneficiary of a prepaid health care group benefits plan sold pursuant to section 393-7(a) who receives any services from a non-participating provider within or without the State shall not incur greater out-of-pocket costs for the services than an insured beneficiary of the same type of prepaid health care group benefits plan with the largest number of subscribers in the State;

Renumber purpose "(4)" as purpose "(5)."

SECTION 3 AMENDMENTS
PROPOSED NEW SECTION 431:10A-

- Strike "; emergency services" from the section title.
- Add the following subsections (and renumber subsection "(c)" as "(d)":

(c) An insured beneficiary of a prepaid health care group benefits plan, presently in force or hereafter sold under section 393-7(a), shall not incur greater out-of-pocket costs for any service than the beneficiary would have incurred under the section 393-7(a) plan of the same type with the largest number of subscribers in the State.

(f) Any violation of this section by an insurer of new or existing group health plans issued or sold as a section 393-7(a) prepaid health care benefit plan shall be deemed to be a violation of section 431:13-103.

NEW SECTION 4 AMENDMENTS TO 431:10A-105.6, Hawaii Revised Statutes

- Add the following new subsection "(d)":

(d) Any contract for a prepaid health care group benefit plans issued or sold pursuant to section 393-7(a) shall contain a statement that the types and quantity of benefits, limitations on reimbursability, including deductibles, and required amounts of co-insurance are, and shall continue to be, equal to the benefits, limitations on reimbursability, deductibles, and required amounts of co-insurance as the plan of the same covering the largest number of subscribers in the State.

RENUMBER SECTION 4 TO SECTION "5"; SECTION 5 TO SECTION "6"; SECTION 6 TO SECTION "7"; SECTION 7 TO SECTION "8"; SECTION 8 TO SECTION "9"; SECTION 9 TO SECTION "10"

SECTION 5, (amending) Section 431:10109, Hawaii Revised Statutes

- Add the following additional disclosure number 17 to subsection (a):

  (17) All prepaid health care group benefit plans issued or sold pursuant to section 393-7(a) shall contain a statement that the types and quantity of benefits, limitations on reimbursability, including deductibles, and required amounts of co-insurance are, and shall continue to be, equal to the benefits, limitations on reimbursability, deductibles, and required amounts of co-insurance as the plan of the same covering the largest number of subscribers in the State.

On behalf of the Hawaii Coalition for Health and its members and supporters, I thank you for your work on this very important legislation and for the opportunity to submit this substantive testimony addressing the issues S.B. 2668 HD1 addresses and should address. I am happy to testify in person at the hearing and to provide answers to any of the issues involving S.B.2668 or the issues and facts which gave rise to the concerns expressed herein.

Sincerely yours,

Rafael del Castillo

UHA
HEALTH INSURANCE | Better Health • Better Life

April 1, 2016

The Honorable Angus L.K. McKelvey, Chair
House Committee on Consumer Protection & Commerce

Re: SB2668 SD2 HD1 – Relating to Insurance

Dear Chair McKelvey and Members of the Committee:

University Health Alliance (UHA) appreciates the opportunity to testify in opposition to SB2668 SD2 HD1, which attempts to protect members from "surprise bills" when they receive health care services rendered by non-participating providers.

The bill contains language that is duplicative of provisions already established with the Affordable Care Act (ACA). The ACA already prohibits greater out-of-pocket costs for emergency services rendered by non-participating providers because insurers are prohibited from imposing any copayment or coinsurance greater than if services were rendered by participating providers. However, the bill does not define "out-of-pocket costs," and thus is not clear whether the intent of the measure is for members to be subject to a balance bill amount.

The bill's Section 4 also includes a list of information that insurers must disclose to current and prospective members, and these provisions are worrisome:

- Fees for participating providers are proprietary, and insurers may be prohibited from releasing specific information on reimbursements based their contracts.
- Several of the items describe processes where members can obtain a preauthorization for out-of-network providers where there is perceived network inadequacy to treat a medical condition. The current language could encourage members to seek care on the mainland when care is available in Hawaii. Such care is often more costly to the health plan and to the member.
- Two items require insurers to provide a description of methodology used to determine reimbursement for out-of-network health care services, list the amount of said reimbursement as a percentage of the usual and customary cost for out-of-network services, and provide examples of anticipated costs for members' share of services. Usual and customary cost is determined based on services performed in the same or similar specialty and provided in the same geographical area. There is no language in the bill protecting members from balance bill amounts for services rendered by mainland providers, especially in areas where their UCR is higher than in Hawaii.

The bill's Section 7 proposes that the insurance commissioner shall establish and convene a work group for the purpose of evaluating the issue of balance billing in the state; we would support such a workgroup as described.

Based on the foregoing, we urge you to oppose this bill. Thank you for the opportunity to submit written comments.

Respectfully submitted,

Howard Lee
President and CEO

Topa Financial Center
Bishop Street Tower
700 Bishop Street, Suite 300
Honolulu, Hawaii 96813-4100
T 808.532.4000
800.458.4600
F 866.572.4393
www.uhahealth.com

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:11 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: SB2668 SD2 HD1

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Annette Pedrina [mailto:annette@hepa.net]
Sent: Thursday, March 31, 2016 7:06 PM
To: Rep. Angus McKelvey
Subject: SB2668 SD2 HD1

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

Annette Pedrina

Hawaii Emergency Physicians Assoc.
PO Box 1266
Kailua, Hawaii 96734
Phone: (808) 263-7204
Fax: (808) 263-4604

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:11 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: Physician concerned re SB2668 SD2 HD1

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Amelie Peryea [mailto:aperyea@gmail.com]
Sent: Thursday, March 31, 2016 6:40 PM
To: Rep. Angus McKelvey
Subject: Physician concerned re SB2668 SD2 HD1

Dear Representative:

I am an emergency physician working in Hilo. I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

Amelie M Peryea MD MALD

Hawaii Emergency Physicians Associated
Hilo, Hawaii
aperyea@gmail.com
617-308-2241

Sent from my iPhone

woodson2-Shingai

From: mailinglist@capitol.hawaii.gov
Sent: Friday, April 01, 2016 1:35 PM
To: CPCtestimony
Cc: lchar@honolulu.gov
Subject: Submitted testimony for SB2668 on Apr 4, 2016 14:00PM

SB2668
Submitted on: 4/1/2016
Testimony for CPC on Apr 4, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Char	Individual	Oppose	No

Comments: This bill would weaken Hawaii's emergency safety net and patients will suffer. Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. This bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:13 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: Balance billing bill

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Thomas Forney, MD [mailto:tforney@hepa.net]
Sent: Thursday, March 31, 2016 8:34 PM
To: Rep. Angus McKelvey
Subject: Balance billing bill

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Thanks

Tom Forney

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:14 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: SB2668

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Will Scruggs, MD [mailto:wscruggs@hepa.net]
Sent: Thursday, March 31, 2016 8:25 PM
To: Rep. Angus McKelvey
Subject: SB2668

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

William Scruggs, MD
Emergency Physician
Kailua, HI

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:14 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: SB2668

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Philip Chung [mailto:pchung@hepa.net]
Sent: Thursday, March 31, 2016 8:25 PM
To: Rep. Angus McKelvey
Subject: SB2668

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

Philip Chung, M.D

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:15 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: SB2668

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Steven Mates [mailto:monkeybutt2001@icloud.com]
Sent: Thursday, March 31, 2016 8:47 PM
To: Rep. Angus McKelvey
Subject: SB2668

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

Dr. Steven Mates, DO FACEP

Sent from my iPad

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:24 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: Oppose SB2668 SD2 HD1

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Kyle Boyd, MD [mailto:KBoyd@hepa.net]
Sent: Friday, April 01, 2016 4:52 AM
To: Rep. Angus McKelvey
Subject: Oppose SB2668 SD2 HD1

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:34 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: SB 2668 - Oppose

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Jason Fleming [mailto:jflemingmd@mac.com]
Sent: Friday, April 01, 2016 9:16 AM
To: Rep. Angus McKelvey
Subject: SB 2668 - Oppose

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

Jason Fleming, MD

Medical Director
Kuakini Emergency Services

Past President
American College of Emergency Physicians - Hawaii Chapter

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:43 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: oppose SB2668 SD2 HD1

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Suprina Dorai [mailto:suprina@gmail.com]
Sent: Friday, April 01, 2016 10:53 AM
To: Rep. Angus McKelvey
Subject: oppose SB2668 SD2 HD1

Dear Angus McKelvey:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

Suprina Dorai MD

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:45 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: Request to oppose SB2668 SD2 HD1

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: Paul Eakin [mailto:peakin@hawaii.edu]
Sent: Friday, April 01, 2016 2:33 PM
To: Rep. Angus McKelvey
Subject: Request to oppose SB2668 SD2 HD1

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

The intent of the bill is to protect patients. However, the end results would be less access to quality emergency physicians. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans.

Sincerely,

Paul J. Eakin, MD

--

Paul J. Eakin, MD, FAAP, FACEP
Division Head | Pediatric Emergency Medicine
University of Hawaii Department of Pediatrics
Associate Director of Emergency Medicine, EMP
Kapi'olani Medical Center for Women and Children
808.554.1696 CELL
808.983.6474 OFFICE
808.983.8562 FAX
OFFICE 1319 Punahou Street, Honolulu, HI 96826

woodson2-Shingai

From: Leticia Acido-Mercado on behalf of Rep. Angus McKelvey
Sent: Friday, April 01, 2016 5:52 PM
To: woodson2-Shingai; woodson1-Anthony
Cc: Daniel Kalili
Subject: FW: SB2668 SD2 HD1

Importance: High

FYI

Leticia "Tish" Acido-Mercado
Office Manager
Representative Angus L. K. McKelvey
District 10: West Maui, Maalaea, N. Kihei
State Capitol Room 320
Phone: (808) 586-6160
Fax:: (808) 586-6161
Email: l..acidomercado@capitol.hawaii.gov

From: melaniekelly@yahoo.com [mailto:melaniekelly@yahoo.com]
Sent: Friday, April 01, 2016 5:50 PM
To: Rep. Angus McKelvey
Subject: SB2668 SD2 HD1

Dear Representative:

I am writing to ask that you oppose SB2668 SD2 HD1, which will be heard in your committee on the afternoon of Monday, April 4. This bill would weaken Hawaii's emergency safety net and patients will suffer.

Emergency physicians are available to our patients 24 hours a day, 7 days a week. We are bound by federal law (EMTALA) to evaluate and treat all patients who come to the emergency department without considering their ability to pay for services. While the purpose of the law is well intended, emergency physicians provide far more uncompensated care than any other specialty because the mandate is unfunded and often patients cannot pay. Prohibiting balance billing gives health care plans overwhelming leverage in negotiations with emergency physician groups, thereby reducing our ability to negotiate fair reimbursement. Hawaii's emergency physician reimbursement already ranks among the five lowest states in the country, even before considering the high cost of living. I am very concerned that this bill will make it even harder to recruit and retain quality emergency physicians to care for our patients.

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Sincerely,

Melanie Kelly, MD
Kuakini ER

Sent from my iPhone

Melanie

I have operated a small business in Honolulu for 31 years and originally covered employees of Christopher W.T. Woo DDS Inc. under HMSA medical plan. HMSA had coverage with a nationwide network of participating providers. In 2008 agents for United Health Alliance sold me medical plan coverage represented as same coverage as HMSA at a lower premium. I never would have switched to United Health Alliance for inferior coverage. I learned the hard way that it is not true that United Health Alliance is the same coverage as HMSA. They h have no participating providers on the mainland. My son Zachary Woo who was a Hawaii state swimming champion for Punahou School was recruited by several colleges for academics and athletics suffered severe groin pain. For over one year no definitive dianosis by Hawaii orthopedic doctors. He underwent physical therapy with no diagnosis. We searched for expert help and found an orthpedic surgeon at University of Colorado. He diagnosed the problem in five minutes. Zack required bilateral hip surgery to avoid permanent disability. We decided the summer vacation between highschool and college was the best time to have the procedures. Zack and myself visited United Health Alliance to see if it was covered under our medical plan and to ascertain our cost. The representaive Jay guaranteed University of Colorado and Dr. Mei-Dan were participating providers. Our cost was to be $2200.00 maximum out of pocket. We bought airline tickets and arranged for three months of rehab in Colorado. Five days before the surgery with Zack in Colorado UHA refused to cover the $120,000.00 cost and to apply the $2200.00 out of pocket maxumum. UHA paid only $16,400.00. Investigation has determined that UHA only mainland network is for NONPARTICIPATING providers.UHA has no participating provider network. UHA agents represent to employers that their plan is equal to HMSA. The Prepaid Health Care Act requires employers to provide coverage equal to the plan with the largest number of subscribers which is HMSA. Does that mean I, as an employer, are liable to beneficiaries of my plan if UHA does not provide equal benefits?

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:
S.B. NO. 2668, S.D. 2, H.D. 1, RELATING TO INSURANCE.

LATE

BEFORE THE:
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Monday, April 4, 2016 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Daniel K. Jacob, Deputy Attorney General
Rodney Kimura, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General submits comments on two legal issues posed by this bill.

The purpose of this bill is to address issues relating to the billing practices associated with service provided by non-participating health care service providers, including disclosure requirements.

According to the House Committee on Health's report, the bill was amended to authorize the Insurance Commissioner to convene a working group for the purpose of evaluating the issue of balance billing in the State. Section 7, beginning on page 19 at line 17 of the bill, also appears to authorize the working group to establish the billing rates for non-participating healthcare providers.

The first legal issue is one of preemption, to the extent that the working group will set billing rates for air ambulance services. Air ambulance service providers are air carriers. As such, federal law prohibits a state from enacting a law relating to the price, route, or service of an air carrier providing interstate air transportation. 49 U.S.C. § 41713. Relative to the State of Hawaii, interstate air transportation includes the transportation of passengers between a place in Hawaii and another place in Hawaii through the airspace over a place outside Hawaii. 49 U.S.C. § 40102(25)(A)(ii).

The second legal issue regards section 7(c) on page 20, lines 5 through 10, which authorizes the working group to "determine the appropriate amount that can be billed by a non-participating healthcare provider. . . ." This task could invite scrutiny by the federal antitrust

agencies under federal antitrust law, and a challenge because the working group could be comprised of active market participants, and because nothing in the bill provides for active supervision of the working group's policies and actions.

In order to address the potential preemption and federal antitrust concerns, we recommend that page 20, lines 5 through 17, of the bill be amended to task the working group with making recommendations to the Legislature, or a designated state agency, as to changes to the billing amounts and practices of non-participating healthcare providers, as follows:

> [~~(c)~~] (4) [~~The working group shall determine the~~] Whether and to what extent an appropriate amount [~~that~~] can [~~be billed~~] or should be established for billings for services performed by a non-participating healthcare provider to a patient for services [~~performed~~] provided without prior or subsequent authorization from [~~a~~] the patient's health care plan [~~and what~~], including the amount that should be paid by an insurer to [~~a~~] the nonparticipating provider.
>
> [~~(d)~~] (c) The working group shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2017, including an explanation of the methodologies used to reach its conclusions.
>
> [~~(e)~~] (d) The working group shall cease to exist on June 30, 2017.

By making this amendment to the bill, the concerns regarding preemption and antitrust should be resolved, and the wording of the bill will reflect the House Committee on Health's description of the amendment.

Thank you for the opportunity to testify on this bill.

LATE

Monday April 4, 2016
2:00 PM.
Capitol Rm. 325

To: HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Angus McKelvey, Chair
Rep. Justin Woodson, Vice Chair

From: Hawaii Medical Association
Dr. Scott McCaffrey, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Ronald Keinitz, MD, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: SB 2668 SD2 HD1 – RELATING TO INSURANCE

IN OPPOSITION

Chair, Vice Chair, and Committee Members:

The Hawaii Medical Association opposes SB 2668 SD2 HD1.

This is primarily a mainland issue, as virtually all physicians participate in the few insurance plans available in Hawaii. We are not aware of complaints that have risen surrounding this issue.

This bill, if passed, would particularly impact emergency medical care and has a harmful impact on the ability for all medical providers to have control over the payment they receive from insurance companies. Since Hawaii's market is essentially an insurance monopoly, physicians already have virtually no bargaining power. This bill will remove the little that is left. Hawaii has the lowest fee schedules in the nation when adjusted for the cost of doing business in the state. In that Hawaii must compete with the rest of the nation, this makes it very difficult to bring physicians to the state. **Passage of this bill would leave Hawaii non-competitive in recruiting and retaining physicians.**

This bill calls for the establishment of a working group to discuss the issue as it pertains to Hawaii residents. Perhaps we should take this action prior to the legislation of restrictive covenants, the necessity of which are in doubt.

Thank you for the opportunity to provide this testimony.