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TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Monday, March 14, 2016
2:15 p.m.

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

TO THE HONORABLE DELLA AU BELATTI, 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
comment.

Consumers should not be receiving 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.



An Independent Licensee of the Blue Cross and Blue Shield Association

March 14, 2016

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

Re: SB 2668, SD2 – Relating to Insurance

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2668, SD2, which attempts to address concerns over balance or “surprise” billings. It establishes disclosure requirements for non-participating healthcare providers, and it specifies the amount a nonparticipating provider may bill for services performed without authorization of a health plan. HMSA supports the intent of this Bill and offer comments.

HMSA certainly understands and is sensitive to concerns our members have when faced with substantial balance billings. We appreciate this legislation’s intent to give a patient advanced notice of the potential cost of having healthcare services rendered by a non-participating provider. This will greatly enhance transparency in the healthcare system.

We also appreciate provisions in this measure that will limit the charge for a service rendered by a non-participating provider to 120 percent of the Medicare rate for the same service. This would be in alignment with the national agenda to control the negative impacts of balance billings on the consumer and on the healthcare system.

The Affordable Care Act (ACA) 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.

More recently, President Obama’s FY 2017 budget for the Centers for Medicare and Medicaid Services 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.

Thank you for allowing us to testify on SB 2668, SD2.

Sincerely,

Jennifer Diesman
Vice President, Government Relations



March 14, 2016 at 2:15 PM
Conference Room 329

House Committee on Health

To: Chair Della Au Belatti
Vice Chair Richard P. Creagan

From: George Greene
President and CEO
Healthcare Association of Hawaii

Re: Testimony in Opposition
SB 2668 SD 2, 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. While we support the intent of this legislation, we are concerned with the current language of the bill since it could delay care and place burdens on providers.

Consumers and their families should be protected from undue financial burdens caused by unexpected bills. Ultimately, all players in the health care arena—including hospitals, physicians and insurers—have a role to play in mitigating this practice. Insurance plans need to bear some of the responsibility for this issue considering the importance of adequate networks and up-to-date, accessible directories for consumers to use when seeking in-network care.

The present language in SB 2668 SD 2 places most of the burden of mitigating balance billing on providers. For example, only providers are required to disclose information on potential out of network costs to patients. Insurers need to have a role in helping to disclose and describe their coverage provisions, prior authorization requirements, or methodologies for reimbursing particular types of providers. Insurers can also help to educate their members about their financial responsibilities, including cost-sharing obligations and the consequences of receiving services out-of-network, either knowingly or unknowingly.

This legislation would also introduce 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. It is also a concern that the language seems like it could be interpreted to apply in emergency situations.

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 they will bill the patient. 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.

Further, this provision does not seem necessary in non-emergency cases. In cases where patients are seeking scheduled, non-emergency services, providers must seek prior authorization 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.

Providers are at a disadvantage based on the requirements in section 6 of the bill. This section limits any non-participating provider from billing more than 120 percent of the amount that Medicare would pay for the same or similar service, which would significantly impair the negotiating ability of such providers. While this is particularly problematic for emergency physicians, this provision will have ripple effects for all provider types. That is because this section essentially allows all insurers to pay the same flat rate to providers who are out of network, meaning that providers would lose any leverage they might have when discussing appropriate contracts and rates. This could negatively affect our physician shortage issue by making it less attractive to practice in the state.

This provision also affects physicians who may be 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. We would request that your committee strike this section in order to protect the ability of physicians to negotiate appropriate rates.

Lastly, we would respectfully request that your committee consider conforming references to "out-of-pocket costs" in section 2(b), section 3(d) and section 4(d) with provisions included in the *Affordable Care Act (ACA)* by clarifying that insured individuals who receive out-of-network emergency services are not liable for cost-sharing requirements—expressed as a co-pay or co-insurance—above what their insurer would require if they received care in-network.

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.



March 14, 2016

Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair
Committee on Health
Conference Room 329

RE: SB2668 SD2, Relating to Insurance

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

We respectfully oppose SB2668 SD2 Relating to Insurance because it would eliminate incentives for participating providers and would create a cumbersome fee dispute resolution process for the nonparticipating providers to challenge any lower fees.

Many of our customers understand and value participating providers because it helps to maintain the current fees and keep the costs of health care reasonable. Our members are already notified that if they see a non-participating provider, they will be responsible for the out-of-pocket costs associated with the service by that non-participating provider. For emergency services, we have a process where members can appeal their use of a non-participating emergency room services, which we understand is often necessary when members are traveling.

This bill dramatically changes the relationship between the insurer and the provider by removing this mechanism. Our concern is that many physicians and providers will choose to become a nonparticipating provider because they can then charge a higher fee. That higher fee, for any charges over the reimbursement rate by the insurer, will have to be borne by the member. Members will have to pay these fees as upfront costs to the nonparticipating providers. The overall net outcome of this approach will result in driving up the costs for everyone, including those who are not be able to afford it, and especially those who are using the benefits prudently.

We urge you to oppose this bill. Thank you for the opportunity to submit written comments.

Respectfully submitted,

Howard Lee
President, CEO



Monday March 13, 2016
2:15 PM.
Capitol Rm. 329

To: HOUSE COMMITTEE ON HEALTH
Rep. Della Au Belatti, Chair
Rep. Richard Creagan, 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 – RELATING TO INSURANCE

IN OPPOSITION

Chair, Vice Chair, and Committee Members:

The Hawaii Medical Association opposes SB 2668 SD2.

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 among the lowest fee schedules in the nation when adjusted for the cost of doing business in the state. In that Hawaii must compete with all other states, this makes it very difficult to bring physicians to the state. Passage of this bill would leave Hawaii non-competitive.

Thank you for the opportunity to provide this testimony.

OFFICERS

PRESIDENT – D. SCOTT MCCAFFREY, MD, PRESIDENT ELECT – BERNARD ROBINSON, MD
IMMEDIATE PAST PRESIDENT – ROBERT SLOAN, MD, SECRETARY - THOMAS KOSASA, MD,
TREASURER – MICHAEL CHAMPION, MD, EXECUTIVE DIRECTOR – CHRISTOPHER FLANDERS, DO



March 12, 2016

Representative Della Au Belatti
Chair, House Committee on Health

SB2668 SD2: Relating to Insurance

Dear Representative Belatti and Committee Members:

We are submitting testimony in OPPOSITION to SB2668 SD2. The proposed bill would limit non-participating provider charges to 120% Medicare if preauthorization has not been obtained, without an exclusion for emergency care, and prohibit balance billing for emergency services.

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 cripple our ability to recruit and retain the quality physicians that our patients deserve.

We offer two statistics to demonstrate the impact this bill would have on our physicians:

1. Capping our non-participating charges at 120% Medicare would immediately reduce our physician income by 13%.
2. The long term effect of this cap would set our maximum market rate with any insurance provider to 120% Medicare and prohibit us from seeking further reimbursement by balance billing patients, effectively stripping us of all negotiating leverage with health care plans. The long term impact would be a 30% reduction in our physician income.

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. Our out-of-network billing is limited to out-of-state and international plans with whom we do not participate. Balance billing is limited to only those plans with whom we do not participate and receive inadequate reimbursement.

Our emergency physicians can work anywhere in the world. The proposed bill would artificially set our market rate at a level that would make it impossible to recruit and retain high quality emergency physicians. Our patients and our communities would suffer. We ask that this committee protect Hawaii's emergency safety net and not pass this bill.

Sincerely,

Craig Thomas, MD
President, Hawaii Emergency Physicians Associated



March 12, 2016

Representative Della Au Belatti
Chair, House Committee on Health

SB2668 SD2: Relating to Insurance

Testimony in OPPOSITION

Dear Representative Belatti and Committee Members:

Thank you for the opportunity to testify on SB2668 SD2, which would cap non-participating provider charges for care without preauthorization at 120% Medicare and ban balance billing by emergency providers. The legislation as written would undoubtedly reduce access to quality emergency care in Hawaii, and would likely worsen the growing deficit of physicians in the state.

Hawaii emergency physician income already consistently ranks in the bottom five states in the country. Coupled with the high cost of living and geographic isolation, the relatively low rates of reimbursement make recruiting and retaining board-certified emergency physicians increasingly difficult - especially to the rural areas of the state where high quality emergency physicians are most needed. Emergency physicians are the only specialty available for our patients every day and every night of the year, and we care for patients without considering their ability to pay for our services. The average emergency physician in the United States provides \$138,000 in uncompensated care each year, far more than any other specialty. It is not at all an exaggeration to suggest that the proposed legislation would reduce reimbursement and drive emergency physicians from Hawaii.

321-B Health care provider responsibility. (a) A health care provider, health care facility, or hospital who is a nonparticipating provider with a patient's health care plan shall bill no more than one hundred twenty per cent of the amount Medicare would pay for the service to the patient's health care plan if the services were performed without the prior or subsequent authorization of the patient's health care plan.

Section 321-B (above) of SB2668 SD2 would immediately reduce emergency physician income by capping non-participating provider charges for care delivered without preauthorization. *The language does not exclude emergency care.* It should be noted that emergency physicians are not able to obtain preauthorization from health care plans because there is significant risk for patients in delaying emergency care in order to attempt to obtain preauthorization for services. This was recognized in the Balance

Budget act of 1997, which requires that all Medicare and Medicaid plans adopt the Prudent Layperson language and “no prior authorization” for emergency services. We suggest that SB2668 SD2 may violate that federal legislation.

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. Further, 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.

Lastly, we wish to emphasize that SB2668 SD2 would give health care plans much greater leverage in contract negotiations with emergency physicians. Consider the negotiation position of emergency providers when the health care plan knows that even if an emergency physician group becomes out of network, they will be limited to charging 120% Medicare. Further, they will not have the ability to seek further reimbursement from patients by balance billing. What incentive would the health care plan have to negotiate rates greater than 120% Medicare with those physicians? We submit that there is significant potential that this leverage would extend to all physicians in the state to some degree, reducing income for all specialties and exacerbating physician shortages.

We understand the concern the legislature has for the financial well being of our patients. We share those concerns. Finance in the health care system is complex and difficult to navigate for both patients and providers. We believe there is a fair way to reimburse physicians for out of network emergency care and protect patients by defining ‘usual and customary’ charges with a transparent, 3rd party database maintained by a nonprofit organization not affiliated with an insurance company. Such a database does exist, and Hawaii health care plans do participate.

The intent of this bill is to protect patients. However, without comprehensive reform that also includes fair benchmarking for out of network reimbursement and fair dispute resolution, limiting emergency provider charges would only serve to limit access to quality care. SB2668 SD2 would harm our patients by making it even more difficult to find emergency and on-call physicians when they become ill or are injured by limiting reimbursement to such a degree that it would be virtually impossible to recruit and retain physicians. We offer solutions and hope to be involved in the creation of a fair and transparent system in the future.


Sincerely,

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



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Della Au Bellati, Chair, Committee on Health
The Honorable Richard P. Creagan, Vice Chair, Committee on Health
Members, Committee on Health

From: 
Paula Yoshioka, Senior Vice President, The Queen's Health Systems

Date: March 11, 2016

Hrg: House Committee on Health Hearing; Monday, March 14, 2016 at 2:15 p.m. in Room 329

Re: **Testimony in Opposition of SB 2668, SD2, Relating to Insurance**

My name is Paula Yoshioka, and I am a Senior Vice President at The Queen's Health Systems (QHS). I would like provide my comments in opposition of SB 2668, SD2, Relating to Insurance.

QHS would like to thank the committee for providing the opportunity to provide comments in opposition of SB 2668, SD2 which would place undue burdens on health care providers and potentially lead to delays in care. We also concur with the Healthcare Association of Hawaii's (HAH) comments on the bill.

We are particularly concerned with section 6 of the bill. This section would limit any non-participating provider from billing more than 120 percent of the amount that Medicare would pay for the same or similar service. Fixed reimbursement rates would impede on our ability to negotiate rates and contracts, which in-turn would adversely impact our providers.

We echo HAH's comments and humbly request that this measure be deferred. QHS would be supportive if a task force was convened to examine this complex and difficult issue. Hawaii's health care landscape is unique in comparison to our counterparts on the continental United States.

Thank you for your time and attention to this important issue.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

**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



To: Committee on Health
Representative Della Au Bellati, Chair
Representative Richard P. Creagen, Vice Chair

DATE: Monday, March 14, 2016
TIME: 2:15 P.M.
PLACE: Conference Room 329

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

Re: SB 2668, SD2 Relating to Insurance

Position: Oppose

Dear Representatives Bellati, Creagen 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.

March 14, 2016 at 2:15 PM
Conference Room 329

House Committee on Health

To: Representative Della Au Belatti, Chair
Representative Richard Creagan, Vice Chair

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

Re: SB 2668, SD2 – 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 **opposes** SB 2668, SD2 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. At the same time, we also want to ensure that legislation addresses the particular issues that Hawai'i's patients face and creates an environment which encourages – rather than hinder - network participation by both providers and consumers that is informed by the dynamics of our local market.

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.

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. We believe that it would initially be helpful 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.

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 13, 2016 3:52 PM
To: HLTtestimony
Cc: hedgesew@gmail.com
Subject: Submitted testimony for SB2668 on Mar 14, 2016 14:15PM

SB2668

Submitted on: 3/13/2016

Testimony for HLT on Mar 14, 2016 14:15PM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Jerris Hedges	Individual	Oppose	No

Comments: There is a significant physician shortage in Hawaii that is unlikely to be resolved in the near future. This bill which seeks to protect the consumer will actually harm residents of Hawaii by reducing the reimbursement for those delivering emergency care in Hawaii and thus reducing the willingness of physicians to provide emergency care in Hawaii as either backup providers to the emergency department or those taking positions as an emergency physician in Hawaii. This bill should be defeated. Jerris Hedges, MD

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

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