

SB1076

Measure Title: RELATING TO AIR AMBULANCE SERVICES.

Report Title: Emergency Health Care; Air Ambulance Units; Balance Billing

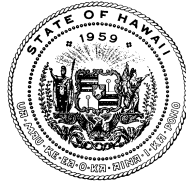
Description: Requires health care facilities to first request transport services from an air ambulance that is contracted with the patient's health carrier when transferring a patient to another health care facility via air ambulance. Requires notification if a non-contracted air ambulance service is utilized. Establishes a procedure for dispute resolutions.

Companion: HB915

Package: None

Current Referral: CPH/JDL, WAM

Introducer(s): BAKER, K. KAHELE, KEITH-AGARAN, S. Chang, Dela Cruz, Espero, Ihara, Nishihara



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in OPPOSITION to SB1076
RELATING TO AIR AMBULANCE SERVICES.**

SENATOR ROSALYN BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

SENATOR GILBERT KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Hearing Date: February 10, 2017 Room Number: 016

1 **Fiscal Implications:** None for Department of Health.

2 **Department Testimony:** The Department of Health opposes the amendment of chapter 321,
3 reserving comment on the merits of the substance of SB1076. The department respectfully urges
4 the Legislature to consider health carrier regulation as a more appropriate alternative.

5 SB1076 proposes both preventive measures and remediation to consumers who become
6 financially responsible for large health care bills from providers that do not participate in the
7 consumer's health insurance plan network. Thus, consumer relief rather than patient care is the
8 fundamental issue. Although the measure delineates some responsibilities for health care
9 facilities regulated by the Department of Health, issues of quality of care, patient safety, and
10 public health are immaterial to the resulting phenomenon of air ambulance "surprise billing,"
11 particularly given the proposed exception for medical necessity in proposed section 321-D.

12 SB1076 proposes remedies that may be accomplished more effectively through existing chapters,
13 such as:

- 14 • Mandated coverage of air ambulance services by health carriers similar to those in
15 chapter 431, article 10A, part I, "Individual Accident and Health or Sickness Policies," as
16 well as section 432D-23 "Required provisions and benefits" under the Health
17 Maintenance Organization Act;

- 1 • Requirements for health carriers to include dispute resolution pursuant to proposed
2 section 321-E and similar to chapter 432E, part IV, “External Review of Health Insurance
3 Determinations,” within the Patients’ Bill of Rights and Responsibilities Act; and
- 4 • Amendments to chapter 432F-2, “Health care provider network adequacy” that may
5 include refinements to the concept of “accessibility without unreasonable delay, after
6 taking into consideration of geography,” where geography may be a deciding factor in
7 method of transportation, such as air ambulance.
- 8 • Require health carrier network contracts to mandate that transferring facilities utilize
9 participating air ambulance providers for non-emergent transfers, which would otherwise
10 be impractical to enforce in chapter 321.

11 **Offered Amendments:** Strike references to chapter 321.

12

13



HAWAII MEDICAL ASSOCIATION

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FROM:

HAWAII MEDICAL ASSOCIATION

Dr. Chris Flanders, Executive Director

Lauren Zirbel, Community and Government Relations

TO:

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair

Senator Clarence K. Nishihara, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Karl Rhoads, Vice Chair

DATE: Friday, February 10, 2017

TIME: 8:30am

PLACE: Conference Room 016

SB1076: Relating to air ambulance services

COMMENTS

On behalf of the physician and medical student members of the Hawaii Medical Association, we are writing regarding our ongoing commitment to reform of the health care system.

HMA has enjoyed serving on the network adequacy work group. We are encouraged that the group has made progress. However, we are concerned that the bill, as proposed, could result in patient harm. It is imperative that any legislation on the matter allow the treating physician to choose the method of transportation that he or she feels best serves the patient.

The HMA understands and shares the legislature's concern about the significant potential financial implications related to air ambulance services in Hawaii. We understand that the decisions we make and the process hospitals use to determine which air medical transport company is chosen to provide transport may have significant financial implications for our patients. We support legislation that would decrease financial risk for our patients provided the process created does not interfere with our primary goal, which is to provide the very best medical care for our patients.

We respectfully suggest the following changes to the proposed legislation:

HMA OFFICERS

President – Bernard Robinson, MD President-Elect – William Wong, Jr., MD Secretary – Thomas Kosasa, MD

Immediate Past President – Scott McCaffrey, MD Treasurer – Michael Champion, MD

Executive Director – Christopher Flanders, DO



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Page 2, Line 16

If a contracted air ambulance service is not available or the treating physician believes that the time needed to contact the contracted air ambulance company may result in patient harm, then the transferring facility may pursue transfer with a non-contracted air ambulance service.

321-D

We are concerned that Section 321-D would unnecessarily complicate the transfer process and could potentially cause harm by delaying transfer of patients. It is essential that the treating physician be allowed broad authority to transfer patients in a timeframe that they feel will most benefit the patient.

We suggest changing 321-D to the following:

321-D Transport by contracted air ambulance service not timely available.

If, in the opinion and medical judgment of the transferring physician, the patient's condition is such that contacting the contracted air medical transport service may result in patient harm, the transferring facility may contact a non-contracted air medical transport service immediately.

If, after contacting the contracted air medical transport service, in the opinion and medical judgment of the transferring physician, the contracted air ambulance service is not available in a timeframe appropriate for the patient, a non-contracted air ambulance service may be used without further notification.

321-E Dispute resolution

The dispute resolution process in 321-E should be removed from the bill.

All parties agree that we want to help mitigate the financial risk our patients may incur due to air medical transport in the state. Additionally, we would like to help find a solution that maintains a strong market for multiple air medical transport companies.

We support the amendments and testimony offered by HAH and the working group members that we all share the following perspective:

- Our members are committed to the principle that consumers should be protected and provided high-quality care.

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- Because it has been demonstrated that air ambulance services have generated the majority of balance billing complaints filed with the Hawaii Department of Commerce and Consumer Affairs, any legislation on balance billing should focus on air ambulance services.
- The line “prior to commencing a transfer of the covered person using a non-contracted air ambulance service,” (page 6, lines 10-11) should be stricken; and
- The dispute resolution process contained in Section 321-E (page 7, lines 9-20, page 8, page 9, page 10 and page 11, lines 1-16) should be stricken.

We believe this legislation will address the heart of the problem we are attempting to address.

Thank you for the opportunity to provide this testimony.

HMA OFFICERS

President – Bernard Robinson, MD President-Elect – William Wong, Jr., MD Secretary – Thomas Kosasa, MD
Immediate Past President – Scott McCaffrey, MD Treasurer – Michael Champion, MD
Executive Director – Christopher Flanders, DO

February 10 2017/8:30 a.m.
Conference Room 016

Senate Committee on Commerce, Consumer Protection & Health

To: Senator Rosalyn Baker, Chair
Senator Clarence Nishihara, Vice Chair

Senate Committee on Judiciary and Labor

To: Senator Gilbert Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

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

**Re: SB 1076 – Relating To Air Ambulance Services
SUPPORTING INTENT AND PROVIDING COMMENTS WITH PROPOSED
AMENDMENTS**

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.

We support the intent of SB 1076 **but have concerns about portions of the measure and offer amending language**. SB 1076 will require all health care facilities, when transferring a patient to another health care facility by air ambulance, to request transport services from an air ambulance that is contracted with the patient's health carrier first. The transferring health care facility is required to provide notice to the patient's health carrier of the use of a non-contracted air ambulance when the contracted air ambulance is not available. The measure also establishes a dispute resolution process involving the health carrier and the transferring facility in the event the health carrier disagrees with the transferring facilities' use of a non-contracted air ambulance service. We have concerns with the language related to the dispute resolution process.

Hawai'i Pacific Health was a member of the Network Adequacy Workgroup convened by the Insurance Commission that has been meeting since August 2016. HPH is a high utilizer of intensive air transport as both a receiving facility at Kapi'olani Medical Center and as a sending facility at Wilcox Memorial Hospital on the island of Kaua'i. Understanding both the importance of this service and having experience with working with a variety of insurers and providers over the years, we have approached the issue of balance billing as fundamentally a network

adequacy matter. As a provider organization, we also begin with the assumption that the physician is making the necessary and appropriate decision with respect to the total needs of the patient.

One of the points of consensus that we have agreed upon is that despite these network adequacy issues, the patient being transported must be kept from harm from being balance billed. In response, we are supportive of legislation that would provide additional statutory guidelines – provided that they mirror the current criteria and considerations and do not hinder the process. Additionally, HPH is supportive of efforts that do not tilt the balance of negotiating power to either plans or providers in any contractual dispute that could arise in any setting – including balance billing.

SB 1076 does address these concerns, with the exception of the dispute resolution section beginning at Page 7 Line 9. We are concerned that the dispute resolution process envisioned unfairly targets the transferring facility and the decision made by its health care providers to transfer a patient to another facility for needed treatment via a non-contracted air ambulance service. Although the measure includes an exemption to the use of a non-contracted air ambulance service when the contracted service is unavailable, the transferring facility remains subject to arbitration should the health carrier disagree with the decision to use a non-contracted air ambulance service. If the arbitrator deems the use of a non-contracted air ambulance service to be inappropriate, the transferring facility becomes liable for the difference in payment between the non-contracted air ambulance service's fees and the amount paid by the patient's health insurer. The leverage of the proposed arbitration process – tips in favor of health carriers – will enable the carriers to question the health care decisions being made entirely at their choosing.

Wilcox Memorial Hospital currently serves as a sending facility for more than 50 Kaiser patients and has an exclusive contract with an air transport provider that is not in-network with Kaiser's HMO. Despite this arrangement, we are not aware of a single issue related to balance billing regarding air transport occurring at any of our facilities. We have been able to accomplish this thus far without resorting to a dispute resolution process. However under the current legislation, the proposed language would now allow plans to second guess a sending facility. **Therefore, we suggest deleting the section dealing with dispute resolution as well as any references in the bill to Section 321-E, and have attached a proposed draft reflecting this amendment.**

Additionally, consensus has been reached to delete the requirement of prior notification to carriers that a non-contracted air ambulance service will be used on page 6, lines 10-11. The requirement to provide prior notice places an unnecessary burden on providers who are expeditiously working toward stabilizing the patient and arranging for the necessary air ambulance transportation.

Therefore, we prefer to move forward with the following amended language based upon the consensus that was reached among the members of the Healthcare Association of Hawaii.

Thank you for your consideration of this important matter.

A BILL FOR AN ACT

PROPOSED AMENDMENTS

RELATING TO AIR AMBULANCE SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that patients are able to receive care in emergency situations at health care facilities that serve communities throughout the State. However, sometimes a patient may need to be transferred to another health care facility in order to receive continuing care or a higher level of care. Because of the unique geography of Hawaii, many of these patients must be transferred to another health care facility by air ambulance services. These transfers can be very costly, considering the specialized equipment and technology that is required.

While many patients are covered by their health benefits insurance for these services, there have been cases where patients are transported using an air ambulance service that does not contract with the covered patient's health insurance carrier. In a case where a non-contracted air ambulance service is used, the health carrier determines an appropriate payment for the air ambulance provider. The patient is then expected to cover the difference between what the provider charged and what

the health carrier pays. This places the patient in the middle between the health carrier and the non-contracted air ambulance service when the non-contracted air ambulance service bills the patient for the difference. This practice is referred to as balance billing. Balance bills can cause a significant financial burden on patients. The legislature believes that transferring health care facilities should utilize air ambulance services that are covered by the person's health insurance carrier, except as otherwise permitted in this Act.

The purpose of this Act is to require all health care facilities, when transferring a patient to another health care facility via air ambulance for receiving continuing or higher level care, to first request transport services from an air ambulance that is contracted with the patient's health carrier. If the contracted air ambulance service is not available, then the transferring health care facility must notify the health carrier of the use of a non-contracted air ambulance service to transport the patient. Exceptions are made to ensure the safety of a patient if a contracted air ambulance service is not available in a reasonable amount of time based on the acuity of the patient's condition.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . TRANSFERS UTILIZING
AEROMEDICAL AMBULANCE SERVICES PROVIDERS**

§321-A Definitions. For purposes of this chapter:

"Air ambulance" means any privately or publicly owned fixed wing or rotor wing aircraft that is specially designed or constructed, equipped pursuant to section 11-72-29, Hawaii Administrative Rules, intended to be used for and maintained or operated for the transportation of patients with medical conditions who are unable to use other means of transportation.

"Contracted air ambulance service" means an air ambulance service that is contracted with a health carrier.

"Covered person" means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan, offered or administered by a person or entity, including an insurer governed by chapter 431, mutual benefit society governed by chapter 432, and health maintenance organization governed by chapter 432D.

"Facility" means a hospital licensed under section 321-14.5.

"Health carrier" means the covered person's health plan, including mutual benefit society, and a health maintenance organization.

"Non-contracted air ambulance service" means an air ambulance service that is not contracted with a health carrier.

"Notification" means the transferring facility contacts the covered patient's health carrier about the use of a non-contracted air ambulance service for the transfer of a covered person.

"Receiving facility" means the facility to which the covered person is being transported.

"Transfer" means the transportation of a covered person, by air ambulance from the transferring facility to the receiving facility for a transfer.

"Transferring facility" means the facility from which the covered person is being transported.

"Transferring physician" means the physician at the transferring facility who is responsible for the care of the covered person who is being transferred.

§321-B Contracted air ambulance service notification.

Health carriers shall provide a list of all contracted air ambulance services in the area to facilities on an annual basis and as necessary to update changes in contracted air ambulance

services. Health carriers shall also provide to facilities contact information for notification purposes if a non-contracted air ambulance service will be used to transport a covered person.

§321-C Utilizing contracted air ambulance services.

Transferring facilities shall utilize an air ambulance service that contracts with the covered person's health carrier, except as provided in section 321-D.

§321-D Transport by contracted air ambulance service not timely available. (a) If, in the opinion and medical judgment of the transferring physician:

- (1) The health carrier's contracted air ambulance service's estimate of the covered person's pick up time at the transferring facility, as documented by the transferring facility in the covered person's medical record or in writing by the covered person's contracted air ambulance service, including the timeframe for other forms of transportation such as the use of ground ambulance from the transferring facility to an airport; or
- (2) The transit time is not medically indicated for the covered person, taking into account the acuity of the covered person's medical condition,

the transferring facility, [~~prior to commencing a transfer of the covered person using a non-contracted air ambulance service,~~] shall notify the health carrier of the use of a non-contracted ambulance service.

(b) The receipt of the notification pursuant to subsection (a) shall not be considered [~~+~~

~~(1) A] an agreement by the health carrier or the transferring or receiving facility to pay the non-contracted ambulance service's charge as billed[; or~~
~~(2) A waiver of the health carrier's right to pursue the dispute resolution process described in section 321-E].~~

(c) If the health carrier acknowledges the use of a non-contracted ambulance service, this acknowledgement shall not be considered to be [~~+~~

~~(1) A] an agreement by the health carrier or the transferring or receiving facility to pay the non-contracted ambulance service's charge as billed[; or~~
~~(2) A waiver of the health carrier's right to pursue the dispute resolution process described in section 321-E].~~

~~[§321-E Dispute resolution. (a) If the health carrier disagrees with the transferring facility's use of a non-~~

~~contracted air ambulance service because the health carrier believes that the use of a non-contracted air ambulance service does not meet the criteria established under this part, a health carrier and the transferring facility shall first attempt to mediate the matter before engaging in binding arbitration proceedings.~~

~~—— (b) Mediation. The parties shall first meet and confer and attempt to resolve the matter. If the matter has not been resolved after thirty calendar days from the date of the first meet and confer, the health carrier may submit the matter to binding arbitration by providing written notice to the transferring facility.~~

~~—— (c) Binding Arbitration. The binding arbitration shall be conducted in accordance with chapter 658A, the selected arbitration service's arbitration rules, and any other arbitration rules mutually agreed upon by the parties. The binding arbitration shall be conducted in accordance with the following:~~

~~—— (1) The arbitration shall be conducted by an independent arbitration service mutually selected by the parties and shall be held in Honolulu;~~

~~—— (2) If the parties are unable to agree upon an arbitration service within thirty calendar days of the date of~~

~~health carrier's notice of binding arbitration, the health carrier shall select an arbitration service to conduct the arbitration;~~

~~(3) If the parties are unable to agree upon an arbitrator within thirty calendar days following the submission of the claim to the arbitration service, then the parties shall select an arbitrator in accordance with the arbitration service's arbitrator selection procedures. Once selected:~~

~~(A) The arbitrator may hear and determine motions for summary disposition pursuant to section 658A-15(b); and~~

~~(B) The arbitrator shall hear and determine any challenges to the arbitration agreement and any disputes regarding whether a controversy is subject to an agreement to arbitrate;~~

~~(4) In order to make the arbitration hearing fair, expeditious, and cost-effective, discovery shall be limited to requests for production of documents material to the claims or defenses in the arbitration;~~

~~(5) Limited depositions for use as evidence at the arbitration hearing may occur as authorized by section 658A-17(b);~~

~~(6) The health carrier and transferring facility shall pay its own attorney and witness fees; provided that the arbitrator shall award to a prevailing party those attorney fees and costs, in an amount authorized by law, related to any claim or contention of a non-prevailing party that the arbitrator determines was frivolous or wholly without merit;~~

~~(7) The decision of the arbitrator shall be limited to the question of whether or not the transferring facility's use of a non-contracted air ambulance service was appropriate under this part. If the arbitrator determines that the use of a non-contracted air ambulance service was not appropriate under this part, the arbitrator shall order the transferring facility to pay to the non-contracted air ambulance service the difference between the non-contracted air ambulance service's billed charge and the amount paid by the covered person's health carrier to the non-contracted air ambulance service. The judgment shall be final and binding on the health carrier and transferring facility, and judgment shall be entered thereon upon timely motion by either party in a court of competent~~

~~jurisdiction. The arbitrator shall only award the remedy described in this subsection;~~

~~(8) No other action may be brought in any court in connection with this decision, except as provided under chapter 658A;~~

~~(9) The health carrier and transferring facility shall take appropriate precautions to protect the confidentiality of any personal health information related to the arbitration proceeding;~~

~~(10) Following completion of the arbitration process, the cost of arbitration, including fees and costs of the arbitrator and arbitration service, shall be split evenly and paid by the health carrier and the transferring facility; and~~

~~(11) The rights and remedies provided under this subsection to covered persons shall be in addition to and shall not preempt any other rights and remedies available to covered persons under state or federal law.]"~~

SECTION 3. This Act shall take effect upon its approval and shall apply to all transfers occurring on or after the date of approval regardless of any existing arrangements that the transferring facility may have with an ambulance service unless otherwise prohibited by law.

SECTION 4. This Act shall take effect upon its approval.



February 10, 2017 at 8:30 AM
Conference Room 016

Senate Committee on Commerce, Consumer Protection, and Health
Senate Committee on Judiciary and Labor

To: Chair Rosalyn H. Baker
Vice Chair Clarence K. Nishihara

Chair Gilbert S.C. Keith-Agaran
Vice Chair Karl Rhoads

From: Paige Heckathorn
Senior Manager, Legislative Affairs
Healthcare Association of Hawaii

Re: Testimony Submitting Comments
SB 1076, Relating to Air Ambulance Services

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 160 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 committees for the opportunity to **submit comments** on SB 1076. This measure would require facilities transferring a patient to another hospital for care to use an air ambulance provider that is contracted with the patient's health insurance carrier. Exceptions are made to this requirement to ensure patient safety and preserve physician discretion. Lastly, a dispute resolution process is established to resolve outstanding billing and payment issues between health insurance carriers and facilities.

There have been many discussions on this and related issues in the past few months and our members and partners have been able to find consensus on the points below:

- Our members are committed to the principle that consumers should be protected and provided high-quality care.
- Because it has been demonstrated that air ambulance services have generated the majority of balance billing complaints filed with the Hawaii Department of Commerce

and Consumer Affairs, any legislation on balance billing should focus on air ambulance services.

- The line “prior to commencing a transfer of the covered person using a non-contracted air ambulance service,” (page 6, lines 10-11) should be stricken; and
- The dispute resolution process contained in Section 321-E (page 7, lines 9-20, page 8, page 9, page 10 and page 11, lines 1-16) should be stricken.
- References to Section 321-E (page 6, lines 19-20 and page 7, lines 7-8) should also be stricken.

These suggested amendments are also included at the end of this testimony.

Hawaii is one of the first states to attempt legislation of this kind to address balance billing with air ambulance providers. It is a very complex issue that has vexed many states, largely because federal law does not allow states to set rates for air ambulance services. We appreciate that the legislature is considering this important issue and look forward to working with you and other stakeholders to find a workable solution on this matter.

Thank you for your time and consideration of this issue.

JAN 25 2017

A BILL FOR AN ACT

RELATING TO AIR AMBULANCE SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that patients are able to
2 receive care in emergency situations at health care facilities
3 that serve communities throughout the State. However, sometimes
4 a patient may need to be transferred to another health care
5 facility in order to receive continuing care or a higher level
6 of care. Because of the unique geography of Hawaii, many of
7 these patients must be transferred to another health care
8 facility by air ambulance services. These transfers can be very
9 costly, considering the specialized equipment and technology
10 that is required.

11 While many patients are covered by their health benefits
12 insurance for these services, there have been cases where
13 patients are transported using an air ambulance service that
14 does not contract with the covered patient's health insurance
15 carrier. In a case where a non-contracted air ambulance service
16 is used, the health carrier determines an appropriate payment
17 for the air ambulance provider. The patient is then expected to



S.B. NO. 1076

1 cover the difference between what the provider charged and what
2 the health carrier pays. This places the patient in the middle
3 between the health carrier and the non-contracted air ambulance
4 service when the non-contracted air ambulance service bills the
5 patient for the difference. This practice is referred to as
6 balance billing. Balance bills can cause a significant
7 financial burden on patients. The legislature believes that
8 transferring health care facilities should utilize air ambulance
9 services that are covered by the person's health insurance
10 carrier, except as otherwise permitted in this Act.

11 The purpose of this Act is to require all health care
12 facilities, when transferring a patient to another health care
13 facility via air ambulance for receiving continuing or higher
14 level care, to first request transport services from an air
15 ambulance that is contracted with the patient's health carrier.
16 If the contracted air ambulance service is not available, then
17 the transferring health care facility must notify the health
18 carrier of the use of a non-contracted air ambulance service to
19 transport the patient. Exceptions are made to ensure the safety
20 of a patient if a contracted air ambulance service is not



1 available in a reasonable amount of time based on the acuity of
2 the patient's condition.

3 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 "PART . TRANSFERS UTILIZING
7 AEROMEDICAL AMBULANCE SERVICES PROVIDERS

8 §321-A Definitions. For purposes of this chapter:

9 "Air ambulance" means any privately or publicly owned fixed
10 wing or rotor wing aircraft that is specially designed or
11 constructed, equipped pursuant to section 11-72-29, Hawaii
12 Administrative Rules, intended to be used for and maintained or
13 operated for the transportation of patients with medical
14 conditions who are unable to use other means of transportation.

15 "Contracted air ambulance service" means an air ambulance
16 service that is contracted with a health carrier.

17 "Covered person" means a policyholder, subscriber,
18 enrollee, or other individual participating in a health benefit
19 plan, offered or administered by a person or entity, including
20 an insurer governed by chapter 431, mutual benefit society



1 governed by chapter 432, and health maintenance organization
2 governed by chapter 432D.

3 "Facility" means a hospital licensed under section 321-
4 14.5.

5 "Health carrier" means the covered person's health plan,
6 including mutual benefit society, and a health maintenance
7 organization.

8 "Non-contracted air ambulance service" means an air
9 ambulance service that is not contracted with a health carrier.

10 "Notification" means the transferring facility contacts the
11 covered patient's health carrier about the use of a non-
12 contracted air ambulance service for the transfer of a covered
13 person.

14 "Receiving facility" means the facility to which the
15 covered person is being transported.

16 "Transfer" means the transportation of a covered person, by
17 air ambulance from the transferring facility to the receiving
18 facility for a transfer.

19 "Transferring facility" means the facility from which the
20 covered person is being transported.



S.B. NO. 1076

1 "Transferring physician" means the physician at the
2 transferring facility who is responsible for the care of the
3 covered person who is being transferred.

4 §321-B Contracted air ambulance service notification.
5 Health carriers shall provide a list of all contracted air
6 ambulance services in the area to facilities on an annual basis
7 and as necessary to update changes in contracted air ambulance
8 services. Health carriers shall also provide to facilities
9 contact information for notification purposes if a non-
10 contracted air ambulance service will be used to transport a
11 covered person.

12 §321-C Utilizing contracted air ambulance services.
13 Transferring facilities shall utilize an air ambulance service
14 that contracts with the covered person's health carrier, except
15 as provided in section 321-D.

16 §321-D Transport by contracted air ambulance service not
17 timely available. (a) If, in the opinion and medical judgment
18 of the transferring physician:

- 19 (1) The health carrier's contracted air ambulance
20 service's estimate of the covered person's pick up
21 time at the transferring facility, as documented by



S.B. NO. 1076

1 the transferring facility in the covered person's
2 medical record or in writing by the covered person's
3 contracted air ambulance service, including the
4 timeframe for other forms of transportation such as
5 the use of ground ambulance from the transferring
6 facility to an airport; or
7 (2) The transit time is not medically indicated for the
8 covered person, taking into account the acuity of the
9 covered person's medical condition,
10 the transferring facility, ~~prior to commencing a transfer of the~~
11 ~~covered person using a non-contracted air ambulance service,~~
12 shall notify the health carrier of the use of a non-contracted
13 ambulance service.
14 (b) The receipt of the notification pursuant to subsection
15 (a) shall not be considered:
16 (1) An agreement by the health carrier or the transferring
17 or receiving facility to pay the non-contracted
18 ambulance service's charge as billed; ~~or~~
19 (2) ~~A waiver of the health carrier's right to pursue the~~
20 ~~dispute resolution process described in section 321 E.~~



S.B. NO. 1076

1 (c) If the health carrier acknowledges the use of a non-
2 contracted ambulance service, this acknowledgement shall not be
3 considered to be:

4 (1) An agreement by the health carrier or the transferring
5 or receiving facility to pay the non-contracted
6 ambulance service's charge as billed; ~~or~~

7 ~~(2) A waiver of the health carrier's right to pursue the~~
8 ~~dispute resolution process described in section 321-E.~~

9 ~~§321-E Dispute resolution. (a) If the health carrier~~
10 ~~disagrees with the transferring facility's use of a non-~~
11 ~~contracted air ambulance service because the health carrier-~~
12 ~~believes that the use of a non-contracted air ambulance service~~
13 ~~does not meet the criteria established under this part, a health~~
14 ~~carrier and the transferring facility shall first attempt to~~
15 ~~mediate the matter before engaging in binding arbitration~~
16 ~~proceedings.~~

17 ~~(b) Mediation. The parties shall first meet and confer~~
18 ~~and attempt to resolve the matter. If the matter has not been~~
19 ~~resolved after thirty calendar days from the date of the first~~
20 ~~meet and confer, the health carrier may submit the matter to~~



1 ~~binding arbitration by providing written notice to the~~
2 ~~transferring facility.~~

3 (c) ~~Binding Arbitration. The binding arbitration shall be~~
4 ~~conducted in accordance with chapter 658A, the selected~~
5 ~~arbitration service's arbitration rules, and any other~~
6 ~~arbitration rules mutually agreed upon by the parties. The~~
7 ~~binding arbitration shall be conducted in accordance with the~~
8 ~~following:~~

9 (1) ~~The arbitration shall be conducted by an independent~~
10 ~~arbitration service mutually selected by the parties~~
11 ~~and shall be held in Honolulu;~~

12 (2) ~~If the parties are unable to agree upon an arbitration~~
13 ~~service within thirty calendar days of the date of~~
14 ~~health carrier's notice of binding arbitration, the~~
15 ~~health carrier shall select an arbitration service to~~
16 ~~conduct the arbitration;~~

17 (3) ~~If the parties are unable to agree upon an arbitrator~~
18 ~~within thirty calendar days following the submission~~
19 ~~of the claim to the arbitration service, then the~~
20 ~~parties shall select an arbitrator in accordance with~~



S.B. NO. 1076

1 ~~the arbitration service's arbitrator selection~~
2 ~~procedures. Once selected:~~
3 ~~(A) The arbitrator may hear and determine motions for~~
4 ~~summary disposition pursuant to section 658A-~~
5 ~~15(b); and~~
6 ~~(B) The arbitrator shall hear and determine any~~
7 ~~challenges to the arbitration agreement and any~~
8 ~~disputes regarding whether a controversy is~~
9 ~~subject to an agreement to arbitrate;~~
10 ~~(4) In order to make the arbitration hearing fair,~~
11 ~~expeditious, and cost-effective, discovery shall be~~
12 ~~limited to requests for production of documents,~~
13 ~~material to the claims or defenses in the arbitration;~~
14 ~~(5) Limited depositions for use as evidence at the~~
15 ~~arbitration hearing may occur as authorized by section~~
16 ~~658A-17(b);~~
17 ~~(6) The health carrier and transferring facility shall pay~~
18 ~~its own attorney and witness fees, provided that the~~
19 ~~arbitrator shall award to a prevailing party those~~
20 ~~attorney fees and costs, in an amount authorized by~~
21 ~~law, related to any claim or contention of a non-~~



S.B. NO. 1076

1 ~~prevailing party that the arbitrator determines was~~
2 ~~frivolous or wholly without merit;~~
3 ~~(7) The decision of the arbitrator shall be limited to the~~
4 ~~question of whether or not the transferring facility's~~
5 ~~use of a non-contracted air ambulance service was~~
6 ~~appropriate under this part. If the arbitrator~~
7 ~~determines that the use of a non-contracted air~~
8 ~~ambulance service was not appropriate under this part,~~
9 ~~the arbitrator shall order the transferring facility~~
10 ~~to pay to the non-contracted air ambulance service the~~
11 ~~difference between the non-contracted air ambulance~~
12 ~~service's billed charge and the amount paid by the~~
13 ~~covered person's health carrier to the non-contracted~~
14 ~~air ambulance service. The judgment shall be final~~
15 ~~and binding on the health carrier and transferring~~
16 ~~facility, and judgment shall be entered thereon upon~~
17 ~~timely motion by either party in a court of competent~~
18 ~~jurisdiction. The arbitrator shall only award the~~
19 ~~remedy described in this subsection;~~



S.B. NO. 1076

1 ~~(8) No other action may be brought in any court in~~
2 ~~connection with this decision, except as provided~~
3 ~~under chapter 658A;~~
4 ~~(9) The health carrier and transferring facility shall~~
5 ~~take appropriate precautions to protect the~~
6 ~~confidentiality of any personal health information~~
7 ~~related to the arbitration proceeding;~~
8 ~~(10) Following completion of the arbitration process, the~~
9 ~~cost of arbitration, including fees and costs of the~~
10 ~~arbitrator and arbitration service, shall be split~~
11 ~~evenly and paid by the health carrier and the~~
12 ~~transferring facility; and~~
13 ~~(11) The rights and remedies provided under this subsection~~
14 ~~to covered persons shall be in addition to and shall~~
15 ~~not preempt any other rights and remedies available to~~
16 ~~covered persons under state or federal law."~~
17 SECTION 3. This Act shall take effect upon its approval
18 and shall apply to all transfers occurring on or after the date
19 of approval regardless of any existing arrangements that the
20 transferring facility may have with an ambulance service unless
21 otherwise prohibited by law.



S.B. NO. 1076

1 SECTION 4. This Act shall take effect upon its approval.

2

INTRODUCED BY:

Rosely H. Baker

~~W. C. Fairclough~~

Barbara J. ...

Will Egan

...

William J. ...

Clarence K. ...

...



From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 8, 2017 6:24 PM
To: CPH Testimony
Cc: wscruggs@hepa.net
Subject: Submitted testimony for SB1076 on Feb 10, 2017 08:30AM

SB1076

Submitted on: 2/8/2017

Testimony for CPH/JDL on Feb 10, 2017 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
William Scruggs	Hawaii College of Emergency Physicians	Comments Only	Yes

Comments: February 8, 2017 Senator Rosalyn Baker Chair Senate Committee on Commerce, Consumer Protection, and Health Senator Gilbert Keith-Agaran Chair Senate Committee on Judiciary and Labor SB1076: Relating to air ambulance services
 COMMENTS Dear Senator Baker, Senator Keith-Agaran, and Committee Members: I am writing to submit comments on SB1076. It has been my pleasure to serve on the network adequacy work group. I am encouraged that we have made progress. However, I am concerned that the bill, as proposed, could result in patient harm. It is imperative that any legislation on the matter allow the treating physician to choose the method of transportation that he or she feels best serves the patient. First, let me say that emergency physicians in Hawaii understand and share the legislature's concern about the significant potential financial implications related to air ambulance services in Hawaii. We understand that the decisions we make and the process hospitals use to determine which air medical transport company is chosen to provide transport may have significant financial implications for our patients. We support legislation that would decrease financial risk for our patients provided the process created does not interfere with our primary goal, which is to provide the very best medical care for our patients. I respectfully suggest the following changes to the proposed legislation: Page 2, Line 16 If a contracted air ambulance service is not available in an appropriate timeframe, as determined by the treating physician, or the treating physician believes that the time needed to contact the contracted air ambulance company may result in patient harm, then the transferring facility may pursue transfer with a non-contracted air ambulance service. 321-D I am concerned that Section 321-D would unnecessarily complicate the transfer process and could potentially cause harm by delaying transfer of patients. It is essential that the treating physician be allowed broad authority to transfer patients in a timeframe that they feel will most benefit the patient. I suggest changing 321-D to the following: 321-D Transport by contracted air ambulance service not timely available. If, in the opinion and medical judgment of the transferring physician, the patient's condition is such that the time that would be taken to contact the contracted air medical transport service may result in patient harm, the transferring facility may contact a non-contracted air medical transport service immediately. If, after contacting the contracted air medical

transport service, in the opinion and medical judgment of the transferring physician, the contracted air ambulance service is not available in a timeframe appropriate for the patient as determined by the treating phys, a non-contracted air ambulance service may be used without further notification. 321-E Dispute resolution The dispute resolution process in 321-E should be removed from the bill. Emergency physicians in Hawaii want to help mitigate the financial risk our patients may incur due to air medical transport in the state. Additionally, we would like to help find a solution that maintains a strong market for multiple air medical transport companies. Sincerely, William Scruggs, MD, RDMS, FACEP Chair, Department of Emergency Medicine Castle Medical Center Immediate Past President, Hawaii College of Emergency Physicians

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



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair
Members, Committee on Commerce, Consumer Protection, and Health

The Honorable Gilbert S.C. Keith-Again, Chair
The Honorable Karl Rhoads, Vice Chair
Members, Committee on Judiciary and Labor

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

Date: February 8, 2017

Hrg: Senate Committees on Commerce, Consumer Protection, and Health and Judiciary and Labor Joint Hearing; Friday, February 10, 2017 at 8:30AM in Room 016

Re: **Comments on SB 1076, Relating to Air Ambulance Services**

My name is Paula Yoshioka, and I am a Senior Vice President at The Queen's Health Systems (QHS). QHS would like to provide **comments** on SB 1076, Relating to Air Ambulance Services. This bill requires health care facilities to first request transport services from an air ambulance that is contracted with the patient's health carrier when transferring a patient to another health care facility via air ambulance. It also requires notification if a non-contracted air ambulance service is utilized and establishes a procedure for dispute resolutions.

There have been many discussions on this and related issues in the past few months. We concur with the testimony from the Healthcare Association of Hawaii on the consensus on the points below:

- We are committed to the principle that consumers should be protected and provided high-quality care.
- Since it has been demonstrated that air ambulance services have generated the majority of balance billing complaints filed with the Hawaii Department of Commerce and Consumer Affairs, any legislation on balance billing should focus on air ambulance services.
- The line "prior to commencing a transfer of the covered person using a non-contracted air ambulance service," (page 6, lines 10-11) should be stricken; and
- The dispute resolution process contained in Section 321-E (page 7, lines 9-20, page 8, page 9, page 10 and page 11, lines 1-16) should be stricken.

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.

Castle Medical Center



February 10 2017/8:30 a.m.

Conference Room 016

Senate Committee on Commerce, Consumer Protection & Health

To: Senator Rosalyn Baker, Chair
Senator Clarence Nishihara, Vice Chair

Senate Committee on Judiciary and Labor

To: Senator Gilbert Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

From: Laura Westphal RN MBA CPHQ
Chief Nursing Officer and VP of Patient Care Castle Medical Center

Re: **SB 1076 – Relating To Air Ambulance Services**
SUPPORTING INTENT AND PROVIDING COMMENTS WITH PROPOSED
AMENDMENTS

We support the intent of SB 1076 **but have concerns about portions of the measure and offer amending language**. SB 1076 will require all health care facilities, when transferring a patient to another health care facility by air ambulance, to request transport services from an air ambulance that is contracted with the patient's health carrier first. The transferring health care facility is required to provide notice to the patient's health carrier of the use of a non-contracted air ambulance when the contracted air ambulance is not available. The measure also establishes a dispute resolution process involving the health carrier and the transferring facility in the event the health carrier disagrees with the transferring facilities' use of a non-contracted air ambulance service. We have concerns with the language related to the dispute resolution process.

Castle Medical Center was a member of the Network Adequacy Workgroup convened by the Insurance Commission that has been meeting since August 2016. As a provider organization, we also begin with the assumption that the physician is making the necessary and appropriate decision with respect to the total needs of the patient.

One of the points of consensus that we have agreed upon is that despite these network adequacy issues, the patient being transported must be kept from harm from being balance billed. In response, we are supportive of legislation that would provide additional statutory guidelines – provided that they mirror the current criteria and considerations and do not hinder the process. Additionally, CMC is supportive of efforts that do not tilt the balance of negotiating power to either plans or providers in any contractual dispute that could arise in any setting – including balance billing.

SB 1076 does address these concerns, with the exception of the dispute resolution section beginning at Page 7 Line 9. We are concerned that the dispute resolution process envisioned unfairly targets the transferring facility and the decision made by its health care providers to transfer a patient to another facility for needed treatment via a non-contracted air ambulance service. Although the measure includes an exemption to the use of a non-contracted air ambulance service when the contracted service is unavailable, the transferring facility remains subject to arbitration should the health carrier disagree with the decision to use a non-contracted air ambulance service. If the arbitrator deems the use of a non-contracted air ambulance service to be inappropriate, the transferring facility becomes liable for the difference in payment between the non-contracted air ambulance service's fees and the amount paid by the patient's health insurer. The leverage of the proposed arbitration process – tips in favor of health carriers – will enable the carriers to question the health care decisions being made entirely at their choosing.

Consensus has been reached to delete the requirement of prior notification to carriers that a non-contracted air ambulance service will be used on page 6, lines 10-11. The requirement to provide prior notice places an unnecessary burden on providers who are expeditiously working toward stabilizing the patient and arranging for the necessary air ambulance transportation.

Therefore, we prefer to move forward with the following amended language based upon the consensus that was reached among the members of the Healthcare Association of Hawaii.

Thank you for your consideration of this important matter.

A BILL FOR AN ACT

PROPOSED AMENDMENTS

RELATING TO AIR AMBULANCE SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that patients are able to receive care in emergency situations at health care facilities that serve communities throughout the State. However, sometimes a patient may need to be transferred to another health care facility in order to receive continuing care or a higher level of care. Because of the unique geography of Hawaii, many of these patients must be transferred to another health care facility by air ambulance services. These transfers can be very costly, considering the specialized equipment and technology that is required.

While many patients are covered by their health benefits insurance for these services, there have been cases where patients are transported using an air ambulance service that does not contract with the covered patient's health insurance carrier. In a case where a non-contracted air ambulance service is used, the health carrier determines an appropriate payment for the air ambulance provider. The patient is then expected to cover the difference between what the provider charged and what

the health carrier pays. This places the patient in the middle between the health carrier and the non-contracted air ambulance service when the non-contracted air ambulance service bills the patient for the difference. This practice is referred to as balance billing. Balance bills can cause a significant financial burden on patients. The legislature believes that transferring health care facilities should utilize air ambulance services that are covered by the person's health insurance carrier, except as otherwise permitted in this Act.

The purpose of this Act is to require all health care facilities, when transferring a patient to another health care facility via air ambulance for receiving continuing or higher level care, to first request transport services from an air ambulance that is contracted with the patient's health carrier. If the contracted air ambulance service is not available, then the transferring health care facility must notify the health carrier of the use of a non-contracted air ambulance service to transport the patient. Exceptions are made to ensure the safety of a patient if a contracted air ambulance service is not available in a reasonable amount of time based on the acuity of the patient's condition.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . TRANSFERS UTILIZING
AEROMEDICAL AMBULANCE SERVICES PROVIDERS**

§321-A Definitions. For purposes of this chapter:

"Air ambulance" means any privately or publicly owned fixed wing or rotor wing aircraft that is specially designed or constructed, equipped pursuant to section 11-72-29, Hawaii Administrative Rules, intended to be used for and maintained or operated for the transportation of patients with medical conditions who are unable to use other means of transportation.

"Contracted air ambulance service" means an air ambulance service that is contracted with a health carrier.

"Covered person" means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan, offered or administered by a person or entity, including an insurer governed by chapter 431, mutual benefit society governed by chapter 432, and health maintenance organization governed by chapter 432D.

"Facility" means a hospital licensed under section 321-14.5.

"Health carrier" means the covered person's health plan, including mutual benefit society, and a health maintenance organization.

"Non-contracted air ambulance service" means an air ambulance service that is not contracted with a health carrier.

"Notification" means the transferring facility contacts the covered patient's health carrier about the use of a non-contracted air ambulance service for the transfer of a covered person.

"Receiving facility" means the facility to which the covered person is being transported.

"Transfer" means the transportation of a covered person, by air ambulance from the transferring facility to the receiving facility for a transfer.

"Transferring facility" means the facility from which the covered person is being transported.

"Transferring physician" means the physician at the transferring facility who is responsible for the care of the covered person who is being transferred.

§321-B Contracted air ambulance service notification.

Health carriers shall provide a list of all contracted air ambulance services in the area to facilities on an annual basis and as necessary to update changes in contracted air ambulance

services. Health carriers shall also provide to facilities contact information for notification purposes if a non-contracted air ambulance service will be used to transport a covered person.

§321-C Utilizing contracted air ambulance services.

Transferring facilities shall utilize an air ambulance service that contracts with the covered person's health carrier, except as provided in section 321-D.

§321-D Transport by contracted air ambulance service not timely available. (a) If, in the opinion and medical judgment of the transferring physician:

- (1) The health carrier's contracted air ambulance service's estimate of the covered person's pick up time at the transferring facility, as documented by the transferring facility in the covered person's medical record or in writing by the covered person's contracted air ambulance service, including the timeframe for other forms of transportation such as the use of ground ambulance from the transferring facility to an airport; or
- (2) The transit time is not medically indicated for the covered person, taking into account the acuity of the covered person's medical condition,

the transferring facility, [~~prior to commencing a transfer of the covered person using a non-contracted air ambulance service,~~] shall notify the health carrier of the use of a non-contracted ambulance service.

(b) The receipt of the notification pursuant to subsection (a) shall not be considered [~~+~~

~~(1) A] an agreement by the health carrier or the transferring or receiving facility to pay the non-contracted ambulance service's charge as billed[; or~~
~~(2) A waiver of the health carrier's right to pursue the dispute resolution process described in section 321-E].~~

(c) If the health carrier acknowledges the use of a non-contracted ambulance service, this acknowledgement shall not be considered to be [~~+~~

~~(1) A] an agreement by the health carrier or the transferring or receiving facility to pay the non-contracted ambulance service's charge as billed[; or~~
~~(2) A waiver of the health carrier's right to pursue the dispute resolution process described in section 321-E].~~

~~[§321-E Dispute resolution. (a) If the health carrier disagrees with the transferring facility's use of a non-~~

~~contracted air ambulance service because the health carrier believes that the use of a non-contracted air ambulance service does not meet the criteria established under this part, a health carrier and the transferring facility shall first attempt to mediate the matter before engaging in binding arbitration proceedings.~~

~~—— (b) Mediation. The parties shall first meet and confer and attempt to resolve the matter. If the matter has not been resolved after thirty calendar days from the date of the first meet and confer, the health carrier may submit the matter to binding arbitration by providing written notice to the transferring facility.~~

~~—— (c) Binding Arbitration. The binding arbitration shall be conducted in accordance with chapter 658A, the selected arbitration service's arbitration rules, and any other arbitration rules mutually agreed upon by the parties. The binding arbitration shall be conducted in accordance with the following:~~

~~—— (1) The arbitration shall be conducted by an independent arbitration service mutually selected by the parties and shall be held in Honolulu;~~

~~—— (2) If the parties are unable to agree upon an arbitration service within thirty calendar days of the date of~~

~~health carrier's notice of binding arbitration, the health carrier shall select an arbitration service to conduct the arbitration;~~

~~(3) If the parties are unable to agree upon an arbitrator within thirty calendar days following the submission of the claim to the arbitration service, then the parties shall select an arbitrator in accordance with the arbitration service's arbitrator selection procedures. Once selected:~~

~~(A) The arbitrator may hear and determine motions for summary disposition pursuant to section 658A-15(b); and~~

~~(B) The arbitrator shall hear and determine any challenges to the arbitration agreement and any disputes regarding whether a controversy is subject to an agreement to arbitrate;~~

~~(4) In order to make the arbitration hearing fair, expeditious, and cost-effective, discovery shall be limited to requests for production of documents material to the claims or defenses in the arbitration;~~

~~(5) Limited depositions for use as evidence at the arbitration hearing may occur as authorized by section 658A-17(b);~~

~~(6) The health carrier and transferring facility shall pay its own attorney and witness fees; provided that the arbitrator shall award to a prevailing party those attorney fees and costs, in an amount authorized by law, related to any claim or contention of a non-prevailing party that the arbitrator determines was frivolous or wholly without merit;~~

~~(7) The decision of the arbitrator shall be limited to the question of whether or not the transferring facility's use of a non-contracted air ambulance service was appropriate under this part. If the arbitrator determines that the use of a non-contracted air ambulance service was not appropriate under this part, the arbitrator shall order the transferring facility to pay to the non-contracted air ambulance service the difference between the non-contracted air ambulance service's billed charge and the amount paid by the covered person's health carrier to the non-contracted air ambulance service. The judgment shall be final and binding on the health carrier and transferring facility, and judgment shall be entered thereon upon timely motion by either party in a court of competent~~

~~jurisdiction. The arbitrator shall only award the remedy described in this subsection;~~

~~(8) No other action may be brought in any court in connection with this decision, except as provided under chapter 658A;~~

~~(9) The health carrier and transferring facility shall take appropriate precautions to protect the confidentiality of any personal health information related to the arbitration proceeding;~~

~~(10) Following completion of the arbitration process, the cost of arbitration, including fees and costs of the arbitrator and arbitration service, shall be split evenly and paid by the health carrier and the transferring facility; and~~

~~(11) The rights and remedies provided under this subsection to covered persons shall be in addition to and shall not preempt any other rights and remedies available to covered persons under state or federal law.]"~~

SECTION 3. This Act shall take effect upon its approval and shall apply to all transfers occurring on or after the date of approval regardless of any existing arrangements that the transferring facility may have with an ambulance service unless otherwise prohibited by law.

SECTION 4. This Act shall take effect upon its approval.



February 9, 2017

Senator Roslyn H. Baker, Chair
Senator Clarence K. Nishihara, Vice Chair
Members of the Senate Committee on Commerce,
Consumer Protection and Health

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair
Members of the Senate Committee on Judiciary and Labor
Twenty Ninth Legislature
Regular Session of 2017

RE: SENATE BILL 1076 – Relating to Air Ambulance Services

Mahalo for the opportunity to testify in **OPPOSITION** to SB 1076 Relating to Air Ambulance Services. My name is Jay Kreuzer and I am the CEO for the Kona Community Hospital. Although we support the legislature's efforts to reduce healthcare costs for our patients, we have serious concerns about the financial burden SB 1076 places on hospitals and other health care facilities.

SB 1076 would require hospitals to utilize an insurance carrier's contracted air ambulance services when transferring a patient via air to another healthcare facility or notify the insurer if a non-contracted air ambulance service is to be utilized. Hospitals that fail to utilize the contracted air ambulance service may be liable for the difference in costs for the patients' air transport and must participate in binding arbitration.

Kona Community Hospital places patient care at the heart of our mission. During emergency situations, we are focused on providing patients the best care under extreme time constraints. When air transport is required, the goal is to transfer the patients through the quickest and safest mode available, especially when minutes can be critical to the treatment and recovery of the patient. From West Hawaii, the difference in transfer times between a helicopter transport and fixed-wing can add hours to the transfer process; potentially delaying critical treatment.



The notification process suggested in SB 1076 puts an administrative burden on emergency department personnel and can distract them from their duties, delay the transfer process and increase transfer times.

In addition, SB 1076 unnecessarily shifts the difference in costs between contracted and non-contracted air ambulance services to the hospitals rather than the insurance carriers. Even where hospitals notify the insurance carrier, the hospital may incur significant legal bills for arbitration, which will undoubtedly increase given the number of air transports our patients utilize each year. Moreover, as part of a publicly funded hospital system, taxpayers will ultimately bear the cost of these services.

Simply put, the procedures laid out in SB 1076 will result in an unnecessary financial burden for hospitals, forces emergency personnel to make decisions based on an insurer carrier's contracting decisions and jeopardizes hospitals ability to deliver the best care to our patients. For these reasons we oppose SB 1076. Mahalo for your consideration.

A loha,

Jay Kreuzer, CEO
Kona Community Hospital
West Hawaii Region

Testimony of
Jonathan Ching
Government Relations Specialist

Before:
Senate Committee on Commerce, Consumer Protection, and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Clarence K. Nishihara, Vice Chair

Senate Committee on Judiciary and Labor
The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice Chair

February 10, 2017
8:30 a.m.
Conference Room 016

Re: SB1076 Relating to Air Ambulance Services

Chairs, Vice-Chairs, and committee members, thank you for this opportunity to provide testimony on SB1076. This measure requires all health care facilities, when transferring a patient to another health care facility, via air ambulance for receiving continuing or higher level care, to first request transport services from an air ambulance that is contracted with the patient's health carrier. In addition, the measure provides exceptions to ensure patient safety and preserve physician discretion. Finally, a dispute resolution process is established.

Kaiser Permanente Hawaii SUPPORTS SB1076.

Kaiser Permanente Hawaii is aware that patients nationwide often struggle with egregious balance bills after they have been transported by an air ambulance. Given that the majority of balance billing complaints filed with the Hawai'i Department of Commerce and Consumer Affairs are about air ambulance services, a working group convened by the State Insurance Commissioner agreed to work on developing a measure that addresses decisions to use a non-contracting air ambulance service. We note that as currently drafted, there are concerns by certain members of the working group on specific provisions of SB1076; however, we believe SB1076 is a starting point for further discussion.

Kaiser Permanente Hawaii believes that SB1076 appropriately addresses situations when a patient requires air ambulance transportation to a medical facility. We look forward to having the opportunity to work with the Committees in furtherance of this bill to protect the best interest of the patient.

Therefore, Kaiser Permanente Hawaii urges the Committees to **PASS** SB1076. Mahalo for the opportunity to testify on this important measure.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 9, 2017 8:47 AM
To: CPH Testimony
Cc: csmorimoto@aol.com
Subject: *Submitted testimony for SB1076 on Feb 10, 2017 08:30AM*

SB1076

Submitted on: 2/9/2017

Testimony for CPH/JDL on Feb 10, 2017 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Curt S. Morimoto	Individual	Support	No

Comments:

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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