SB225

Measure Title:	RELATING TO HEALTH COVERAGE FOR BRAIN INJURIES.
Report Title:	Mandated Coverage; Cognitive Rehabilitation; Brain Injury
Description:	Requires certain insurance contracts and plans to provide coverage beginning 1/1/2017 for treatment of brain injuries, including cognitive and neurocognitive therapy, neurobehavioral and neuropsychological testing or treatment, and necessary post-acute transition services or community reintegration activities for a period of at least twenty years from the date the injury occurred and up to a lifetime cap per person of $300,000. Defines "cognitive rehabilitation therapy".
Companion:	
Package:	None
Current Referral:	CPH, WAM
Introducer(s):	BAKER, Gabbard

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2017

Friday, January 27, 2017
9:30 am

TESTIMONY ON SENATE BILL NO. 225 – RELATING TO HEALTH COVERAGE FOR BRAIN INJURIES.

TO THE HONORABLE ROSALYN H. BAKER, 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 takes no position on this bill, which is a companion to H.B. 392, but submits the following comments.

The purpose of this bill is to add a mandated health insurance benefit for treatment of brain injuries, including cognitive and neurocognitive therapy, neurobehavioral and neuropsychological testing or treatment, and necessary post-acute transition services or community reintegration activities for a period of at least twenty years from the date the injury occurred and up to a lifetime cap per person of $300,000.

The addition of a new mandated coverage may trigger section 1311(d)(3) of the federal Patient Protection and Affordable Care Act ("PPACA"), which requires states to defray the additional cost of any benefits in excess of the essential health benefits of the State's qualified health plan under PPACA.

Additionally, any proposed mandated health insurance coverage requires the passage of a concurrent resolution requesting the State Auditor to prepare and submit a report assessing the social and financial impacts of the proposed mandate, pursuant to Hawaii Revised Statutes section 23-51. Therefore, we respectfully request that section 6 of this bill be amended so that the State Auditor, and not the Department, is tasked with reporting the economic impact of the expanded coverage on affected insurers.

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

DAVID Y. IGE
GOVERNOR

PANKAJ BHANOT
DIRECTOR

BRIDGET HOLTHUS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

January 27, 2017

TO: The Honorable Senator Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection & Health

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 225 – RELATING TO HEALTH COVERAGE FOR BRAIN INJURIES**

Hearing: January 27, 2017, 9:30 a.m.
Conference Room 229, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides comments on this measure.

PURPOSE: The purpose of the bill is to require certain insurance contracts and plans to provide coverage beginning 1/1/2017 for treatment of brain injuries, including cognitive and neurocognitive therapy, neurobehavioral and neuropsychological testing or treatment, and necessary post-acute transition services or community reintegration activities for a period of at least twenty years from the date the injury occurred and up to a lifetime cap per person of $300,000.

DHS recognizes the importance of cognitive behavior therapy and currently provides most of the listed services to Medicaid recipients who meet criteria. Recipients will receive cognitive behavioral services as long as it is determined to be medically necessary and the recipients are eligible for coverage under Medicaid. Medicaid also covers all medically necessary care for children, including treatment for traumatic brain injury under the Early Periodic Screening, Diagnosis and Treatment (EPSDT) requirements. The listed services that are currently covered are: Cognitive Rehabilitation Therapy; Cognitive Communication Therapy;

Neurobehavioral, neurophysiological, psychophysiological testing or treatment; and Neurofeedback therapy.

Neurocognitive Therapy and Rehabilitation, Remediation and Post-acute transition Services or community reintegration services listed are not detailed enough to determine if the scope of services would be considered a subset of the broad category of Cognitive rehabilitation therapy or not. If not, the service would not be covered by Medicaid for adults. If the health plans contracted with the DHS would be required to provide the services as a result of this bill, the services would have to be state-only funded until Medicaid could seek and obtain approval from the federal regulatory agency, Centers for Medicare and Medicaid Services (CMS). DHS would require an additional state fund appropriation for the total amount to cover the services pending approval by CMS.

To provide clarity, and because the majority of the services are already covered, the DHS respectfully recommends the measure specify that the Medicaid program is excluded from this bill's requirement if that is the intent of the Legislature.

While Medicaid already provides the majority of the named services, we note that the start date of the services 1/1/2017, and suggest that the date be changed to a date in the future to avoid the unknown fiscal and other consequences of a retroactive date.

Thank you for the opportunity to testify on this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 25, 2017 1:42 PM
To: CPH Testimony
Cc: louis@hawaiidisabilityrights.org
Subject: Submitted testimony for SB225 on Jan 27, 2017 09:30AM

SB225
Submitted on: 1/25/2017
Testimony for CPH on Jan 27, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Support	Yes

Comments: We have been involved with this issue for more than a decade. During that time the prevalence of brain injuries has increased exponentially. Everyone has heard the expression that traumatic brain injury is the signature wound of the wars around the world. Our understanding is that while receiving immediate acute hospital care has not been a particular issue, what has been lacking has been coverage for rehabilitation care and further treatment such as cognitive therapy.Having reviewed prior testimony on similar measures over the years, it seems unclear as to exactly what is covered or not covered either by private insurers or by Medicaid. We also are aware of a prior Report from the Legislative Auditor which expressed that there was not a clear definition of what constitutes cognitive rehabilitation therapy. We would like to see the Committee advance this measure and encourage further stakeholder discussion in the hope that the parties can either achieve consensus or at least come to a baseline understanding of specifically what gaps currently exist in the service delivery and coverage system so that the legislature can then assess the rationale for any gaps in coverage and make a comprehensive policy decision as to what further steps are needed.

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

hmsa

An Independent Licensee of the Blue Cross and Blue Shield Association

January 26, 2017

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

Re: SB 225 – Relating to Health Coverage for Brain Injuries

Dear Chair Baker, Vice Chair Nishihara, and Committee Members:

The Hawaii Medical Association (HMSA) appreciates the opportunity to testify on SB 225, which would mandate health plan coverage for treatment of survivors of brain injuries. We truly are empathetic to the concerns that this measure attempts to address. That said, we have serious concerns about this unfunded mandate of benefits, but we do offer comments for consideration.

Cognitive rehabilitation therapy consists of programs that provide therapy to persons with traumatic brain injury. Such therapy aids individuals in the management of specific problems in perception, memory, thinking and problem solving. Therapy also may include social and vocational training. Some of the treatment included within this class may go far beyond the type of services a health plan typically provides. Health plans, including HMSA, generally provide services for acute conditions with demonstrated outcomes.

We have concerns that the bill as currently written does not detail the necessary specificity as to the services that would be covered by a plan or policy. In addition, the Bill seeks to mandate services be offered for up to 20 years from the date of injury, with a $300,000 maximum coverage. We seek a better understanding of the parameters defined in these provisions.

A considerable amount of time has passed since the Legislature commissioned a review of this mandate. The 2004 State Auditor's report, "Assessment of Proposed Mandatory Health Insurance for Cognitive Rehabilitation" found that more conclusive information was needed before mandated health insurance requirements were enacted. Given that a range of studies on the treatment of traumatic brain injuries have been published since then, the Committee may wish to consider an updated review of this mandate.

Thank you for allowing us to testify on SB 225. Your consideration of our concerns is appreciated.

Sincerely,

Mark K. Oto
Director, Government Relations.

KAISER PERMANENTE®

Government Relations

Testimony of
John M. Kirimitsu
Legal and Government Relations Consultant

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

January 27, 2017
9:30 am
Conference Room 229

Re: SB 225 Relating to Health Coverage for Brain Injuries

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on this bill mandating insurance coverage for various services to treat survivors of traumatic brain injuries.

Kaiser Permanente Hawaii would like to offer comments to amend this bill.

This issue of mandating insurance coverage for cognitive rehabilitation for survivors of traumatic brain injuries has a long standing history before the Hawaii legislature. In 2004, the Hawaii legislature requested an audit assessment that resulted in ***inconclusive*** findings by the auditor based on the following determinations:

- "Current literature indicates scientific studies are on-going, and existing studies have not definitely determined the efficacy of cognitive rehabilitation for traumatic brain injuries. Much of the research has been largely anecdotal. Definitive scientific studies are still in their infancy, and part of the problem with existing studies is the lack of a standard definition for cognitive rehabilitation."

- "In addition to the lack of more conclusive studies, conflicting survey results from consumers and insurance companies led us to conclude that the social and financial impact of health insurance coverage for cognitive rehabilitation for traumatic brain injury cannot be determined at this time. "

- "An example of a conflicting response is in the area of the level of public demand for the treatment or service. For the most part, consumers indicated a moderate to significant demand for services, while insurers indicated little to no demand."

711 Kapiolani Boulevard
Honolulu, Hawaii 96813
Office: (808) 432-5224
Cell: (808) 282-6642
Facsimile: (808) 432-5906
Email: john.m.kirimitsu@kp.org

The complete Legislative Reference Bureau report and its findings may be viewed at http://files.hawaii.gov/auditor/Reports/2004/04-11.pdf

I. **Kaiser Requests Amendments to the Overly Broad Referneces to "Acquired Brain Injury" and "Therapy and Services"**.

A. "Acquired Brain Injury"

On Page 2, Lines 11-12, health insurers "shall provide the following therapy and services, as a result of and related to an ***acquired brain injury*** . . ." However, as recognized in the auditor's report, an "acquired brain injury" is an overly broad reference to *all brain injuries* occurring later in life (versus at birth), of which traumatic brain injury is a subcategory. Some examples of "acquired brain injury" are brain tumors and head concussions. Thus, we request that the general reference to "acquired brain injury" be replaced with the more specific "traumatic brain injury".

B. "Therapy and Services"

On Page 2, Lines 15-21, and Page 3, Line 1, health insurers are required to cover subcategories (1) through (6) as "***therapy and services***" relating to "an acquired brain injury." However, these "therapy and services", i.e., cognitive communication therapy, neurocognitive therapy and rehabilitation, etc., are not defined. Without standard definitions for these "services", it is difficult for health insurers to gather data to determine if they are already covered by the insurer. For health insurers, the primary method to identify diagnosis and treatments for claims purposes is to analyze treatment codes. These procedural codes offer concise descriptions of each diagnosis or type of treatment with an attached identification number. However, overly broad references to treatments such as "neurocognitive therapy and rehabilitation" and "neurobehavioral treatment" are too general to be associated with particular treatment codes, and therefore, cannot be properly identified. To avoid this confusion, we recommend that the overly broad cognitive therapy treatments identified in subcategories (1) through (6) be deleted and instead, apply the standard definition of "cognitive rehabilitation therapy" to capture all the types of cognitive therapies.

Additionally, the auditor recognized that the gathering of data (to determine if different types of services are included as "cognitive rehabilitation therapy") was problematic because the services offered by insurers are often integrated with other therapies, such as occupational and physical therapy. Similarly, Kaiser Permanente provides certain cognitive treatment, i.e. helping a patient to improve memory skills, problem solving strategies, visual tracking/processing, compensatory techniques, etc., which is integrated with other therapies, such as occupational, speech, and physical therapy as part of its rehabilitation services. As part of its rehabilitation services, Kaiser Permanente also offers separate community integration as part of functional activity training in the clinic by working with patients to simulate situations that may occur in the community, i.e., shopping, social interactions, using a computer, etc.

II. Kaiser Requests the Addition of the "Medically Necessary" Standard.

On Page 3, Lines 2-3, health insurers are also required to cover as "therapy and services:" "Any ***necessary*** post-acute transition services or community reintegration services." In the best interest of the patient, all "therapy and services," including any necessary post-acute transition care, should be based on what is medically necessary according to the treating physician. This medically necessary standard has been well recognized as the generally accepted standard for medical care. Clearly, only the treating physician, and not the patient or patient's representative, is best qualified to determine the appropriate treatment, including the length of treatment, based on improvement outcomes and any appreciable gains in the patient's progress.

In the alternative, Kaiser requests an updated legislative audit, pursuant to Sections 23-51 and 23-52 of the Hawaii Revised Statutes, to re-assess the financial and social impact of this mandate, with the newly added definition of "cognitive rehabilitation therapy," given that the original audit report was inconclusive.

Thank you for the opportunity to comment.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS COMMENTING ON S. B. 225 RELATING TO HEALTH COVERAGE FOR BRAIN INJURIES

January 27, 2017

Via e mail: cphtestimony@capitol.hawaii.gov

Honorable Senator Rosalyn H. Baker, Chair
Committee on Consumer Protection and Health
State Senate
Hawaii State Capitol, Conference Room 229
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Baker and Committee Members:

Thank you for the opportunity to comment on SB 225, relating to Health Coverage for Brain Injuries.

Our firm represents the American Council of Life Insurers ("ACLI"), a Washington, D.C. – based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 94 percent of industry assets, 93 percent of life insurance premiums, and 97 percent of annuity considerations in the United States. Two hundred twenty-two (222) ACLI member companies currently do business in the State of Hawaii; and they represent 96% of the life insurance premiums and 99% of the annuity considerations in this State.

As drafted, SB 225 would amend Article 10A of Hawaii's Insurance Code to require all individual and group accident and health or sickness insurance plan, policy, contract, or agreement issued after a stated date to provide "coverage for treatment for survivors of brain injuries, including cognitive and neurocognitive therapy, neurobehavioral and neuropsychological testing or treatment and necessary post-acute transition services or community reintegration activities."

By its terms, *Article 10A of the Code (by reference to HRS §431:1-205) defines "accident and health or sickness insurance" to include disability income insurance*.

Disability income insurance provides cash payments designed to help individuals meet ongoing living expenses in the event they are unable to work due to illness or injury. Unlike health insurance, disability income insurance does not provide coverage for the insured's health care or medical treatment; further, the cash payments are made directly to the insured – not to the insured's health care providers or suppliers. Finally, the disability insurance policy typically does not dictate how the cash payments received by the insured are to be used by the insured.

However, SB 225, as drafted, requires every individual and group accident and health or sickness insurance plan, policy, contract or agreement to provide coverage for "therapy and services, as a result of and related to an acquired brain injury, for the member and individuals covered under the individual and group accident and health or sickness insurance plan, policy, contract, or agreement . . . ." See lines 7 through 14, page 2, of the bill.

ACLI submits that the intent and purpose of this bill is to require only health insurers to provide coverage for treatment and care relating to a brain injury – not insurers issuing disability insurance.

In order to dispel any confusion as to what this bill is intended to cover, ACLI suggests that a new paragraph (e) be added to the end of the new section proposed to be added to §431: 10A (beginning after line 8, page 4, and before Section 3 of the bill) as set forth below:

> (d) For the purposes of this section, "cognitive rehabilitation therapy" means a service that assists an individual in learning or relearning cognitive skills that have been lost or altered as a result of damage to brain cells in order to enable the individual to compensate for the lost cognitive functions.
>
> (e) This section shall not, however, apply to disability income insurance.

Again, thank you for the opportunity to comment on SB 225.

LAW OFFICES OF
OREN T. CHIKAMOTO
A Limited Liability Law Company

Oren T. Chikamoto
1001 Bishop Street, Suite 1750
Honolulu, Hawaii 96813
Telephone: (808) 531-1500
E mail: otc@chikamotolaw.com

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

January 25, 2017

Honorable Rosalyn H. Baker, Chair
Honorable Clarence K. Nishihara, Vice Chair
Committee on Commerce, Consumer Protection and Health
The Senate
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Re: S.B. NO. 225 RELATING TO HEALTH.

Dear Chair Baker, Vice Chair Nishihara and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following written comments on Senate Bill No. 225, relating to health, which is to be heard by your Committee on Commerce, Consumer Protection and Health on January 27, 2017.

One of the purposes of Senate Bill No. 225 is to require insurers to provide coverage for treatment for survivors of brain injuries, including cognitive and neurocognitive therapy, neurobehavioral and neuropsychological testing or treatment, and necessary post-acute transition services or community reintegration activities. While section 431:10A-102.5, Hawaii Revised Statutes, contains a general exclusion for limited benefit health policies, AFLAC's concern with Senate Bill No. 225 is that, as drafted, the inclusion of the phrase "Notwithstanding any other law to the contrary" in the new section to be added to article 10A, chapter 431, Hawaii Revised Statutes, by Section 2 of Senate Bill No. 225 may create some ambiguity as to whether these mandates could be interpreted to apply to AFLAC's limited benefit policies, which are not reimbursement policies.

AFLAC's limited benefit policies provide for the payment to the insured of supplemental amounts that are intended to assist the insured with the costs related to receiving services or treatment, rather than to reimburse the insured for the costs of the services or treatment itself, which are covered by the insured's primary health insurance. These limited benefit insurance policies provide benefits directly to the insured, based on specific occurrences of treatment (or disease), without regard to the cost to the insured, *i.e.*, are not reimbursement policies. Thus, requiring that a limited benefit policy provide coverage for the services enumerated in Senate Bill 225 would not be appropriate because the insured under a limited benefit policy can determine the use of the supplemental benefit, and the benefit is not a reimbursement.

For the foregoing reasons, we respectfully request that the new subsection (a) to be added to article 10A, chapter 431, Hawaii Revised Statutes, by Section 2 of Senate Bill No. 225 be amended as follows:

P.O. Box 2800 • Honolulu, Hawaii 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawaii 96813
Telephone: (808) 529-7300 • FAX: (808) 524-8293

"**§431:10A- Cognitive rehabilitation therapy; notice.** (a) Notwithstanding any other law to the contrary, each individual and group accident and health or sickness insurance plan, policy, contract, or agreement issued or renewed in the State after December 31, 2017, other than an accident-only, specified disease, hospital indemnity, long-term care, disability, dental, vision, medicare supplement, or other limited benefit health insurance contract that pays benefits directly to the insured or the insured's assigns and in which the amount of the benefit paid is not based upon the actual costs incurred by the insured, shall provide the following therapy and services, as a result of and related to an acquired brain injury, for the member and individuals covered under the individual and group accident and health or sickness insurance plan, policy, contract, or agreement:

(1) Cognitive rehabilitation therapy;
(2) Cognitive communication therapy;
(3) Neurocognitive therapy and rehabilitation;
(4) Neurobehavioral, neurophysiological, neuropsychological, and psychophysiological testing or treatment;
(5) Neurofeedback therapy;
(6) Remediation; and
(7) Any necessary post-acute transition services or community reintegration services;

provided that the therapies and services required under this section shall be covered for up to twenty years from the date the acquired brain injury occurred; provided further that no insurance provider shall be required to pay more than $300,000 for therapies and services provided under this section per insured unless the insurance plan, policy, contract, or agreement states otherwise.

(Additional language underscored.)

The proposed exception is based upon similar exceptions in mandated coverage for limited benefit health insurance policies contained in section 431:10A-102.5, Hawaii Revised Statutes.

Thank you for your consideration of the foregoing.

Very truly yours,

McCorriston Miller Mukai MacKinnon LLP

Peter J. Hamasaki

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, January 26, 2017 1:54 PM
To: CPH Testimony
Cc: luvm8s@gmail.com
Subject: *Submitted testimony for SB225 on Jan 27, 2017 09:30AM*

SB225
Submitted on: 1/26/2017
Testimony for CPH on Jan 27, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Lea del Castillo	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.

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