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TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE  
Regular Session of 2018

Wednesday, February 7, 2018  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 1705, H.D. 1, RELATING TO HEALTH  
COVERAGE FOR PORT-WINE STAINS.**

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 1705, H.D. 1, Relating to Health Coverage for Port-Wine Stains. My name is Gordon Ito, and I am the Insurance Commissioner for the Department’s Insurance Division. The Department offers the following comments.

The purpose of this bill is to add a mandated health insurance benefit for treatment of port-wine stains up to a lifetime cap of an unspecified dollar amount.

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 this bill

be amended so that the State Auditor is tasked with reporting the economic impact of the expanded coverage on affected insurers.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1705, H.D. 1, RELATING TO HEALTH COVERAGE FOR PORT-WINE STAINS.

**BEFORE THE:**

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

**DATE:** Wednesday, February 7, 2018   **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):**     Russell A. Suzuki, Acting Attorney General, or  
                          Daniel K. Jacob, Deputy Attorney General

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Chair Takumi and Members of the Committee:

The Department of the Attorney General provides the following comments:

The purpose of this bill is to require insurance coverage for medical procedures to eliminate or provide maximum feasible treatment for port-wine stains.

Section 1311(d)(3)(B) of the Affordable Care Act allows a state to require Qualified Health Plans to add benefits as long as the state defrays the cost of the additional benefits. A federal regulation, 45 C.F.R. section 155.170, provides that unless the enactment is directly attributable to State compliance with Federal requirements, a benefit is in addition to the Essential Health Benefits if the benefit was required by a state after December 31, 2011, and it directly applies to Qualified Health Plans.

This bill would require Qualified Health Plans to provide coverage for medical procedures to eliminate or provide maximum feasible treatment for port-wine stains. Because this benefit was not mandated by state law prior to December 31, 2011, it would be considered an additional mandate that the State would be required to defray the cost.

In the event a state mandates a benefit in addition to the essential health benefits, 45 C.F.R. section 155.170(c)(2)(iii) requires Qualified Health Plan issuers to quantify the cost attributable to each additional state-required benefit and report their

calculations to the state. States are then required to defray the cost by either making the payment to an individual enrolled in a qualified health plan offered in the state, or on behalf of an individual enrolled in a Qualified Health Plan directly to the Qualified Health Plan in which such individual is enrolled. At this time, our department is unaware of a state that has been subjected to the obligation to pay for a benefit in addition to the Essential Health Benefits. Therefore, there are no prior examples of how the State would meet its obligation and what specific procedures would be necessary to fulfill the obligation. Our office believes, however, that after the Qualified Health Plan issuer submits the issuer's costs attributable to the additional mandate, the Legislature would need to appropriate the money during the following legislative session and propose a mechanism in order to distribute the money.

Thank you for the opportunity to provide testimony.



Testimony of  
John M. Kirimitsu  
Legal & Government Relations Consultant

Before:  
House Committee on Consumer Protection & Commerce  
The Honorable Roy M. Takumi, Chair  
The Honorable Linda Ichiyama, Vice Chair

February 7, 2018  
2:00 pm  
Conference Room 329

**Re: HB 1705, HD1, Relating to Health Coverage for Port-Wine Stains**

Chair, Vice Chair, and committee members, thank you for this opportunity to provide testimony on this bill regarding mandated health coverage for port-wine stains.

**Kaiser Permanente Hawaii supports the intent of this bill, but requests an auditor study.**

Kaiser Permanente supports the intent of this bill to provide insurance coverage equality for port-wine stain treatments, but requests that the legislative auditor conduct an impact assessment report, as statutorily required under Section 23-51 of the Hawaii Revised Statutes:

*Before any legislative measure that mandates health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of individual or group health insurance policies, can be considered, there shall be concurrent resolutions passed requesting the auditor to prepare and submit to the legislature a report that assesses both the social and financial effects of the proposed mandated coverage.*

Under Section 23-52 of the Hawaii Revised Statutes, this impact assessment report shall assess among other things:

- a) *The extent to which such insurance coverage is already generally available;*
- b) *The extent of the coverage;*
- c) *The level of public demand for the treatment or service;*

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- d) *The level of public demand for individual or group insurance coverage of the treatment or service;*
- e) *The extent to which the proposed coverage might increase the use of the treatment or service;*
- f) *The extent to which this mandated insurance coverage would be reasonably expected to increase the insurance premium and administrative expenses of policy holders; and*
- g) *The impact of this mandated coverage on the total cost of health care.*

Furthermore, any addition of a new mandated coverage may trigger section 1311(d)(3) of the federal Patient Protection and Affordable Care Act, which requires states to defray the additional cost of any benefits enacted after December 31, 2011, in excess of the State's essential health benefits. Since port-wine stain coverage was not mandated by state law prior to December 31, 2011, it may be considered an additional mandate that the State would be required to defray the cost.

Thank you for the opportunity to comment.

# MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

February 5, 2018

Honorable Roy M. Takumi, Chair  
Honorable Linda Ichiyama, Vice Chair  
Committee on Consumer Protection and Commerce  
House of Representatives  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: H.B. NO. 1705, H.D.1 RELATING TO HEALTH COVERAGE FOR PORT-WINE STAINS

Dear Chair Takumi, Vice Chair Ichiyama and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following written comments on House Bill No. 1705, House Draft 1, relating to health coverage for port-wine stains, which is to be heard by your Committee on Consumer Protection and Commerce on February 7, 2018.

The purpose of House Bill No. 1705, House Draft 1, is to require insurers to provide coverage for port-wine stains. While section 431:10A-102.5, Hawaii Revised Statutes, contains a general exclusion for limited benefit health policies, AFLAC's concern with House Bill No. 1705, House Draft 1, 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 House Bill No. 1705, House Draft 1, may create some ambiguity as to whether these mandates could be interpreted to apply to AFLAC's supplementary health insurance for which such mandated coverage of port-wine stains would not be appropriate. Specifically, there are certain types of limited benefit insurance, for example, supplemental insurance covering only accidental injuries, hospital stays or specific diseases, such as cancer, for which it would not be appropriate to mandate coverage of port-wine stains.

At present, limited benefit insurance policies allow consumers to acquire supplemental insurance coverage, for example for specific diseases, at a low cost. Requiring that such limited benefit insurance policies (*e.g.*, accidental injury, hospital confinement or specified disease such as cancer) also include port-wine stains is not appropriate and is unnecessary because such policies are intended to be supplemental and limited in nature. Requiring limited benefit insurance to cover port-wine stains will not result in additional protection for the consumer, as such coverage will be provided in the primary insurance, and likely will harm the consumer by unnecessarily increasing the cost of limited benefit insurance by requiring consumers to pay for benefits unrelated to the purpose of the coverage being purchased.

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 House Bill No. 1705, House Draft 1, be amended as follows:

**"§431:10A- Port-wine stain coverage.** (a) Notwithstanding any other law to the contrary, each individual or group health or sickness insurance plan, policy, contract, or agreement issued or renewed in the State after December 31, 2018, 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 coverage for medical procedures, laser surgery, remediation, and any necessary post-acute medical services related to port-wine stain, for policyholders and individuals covered under the individual or group health or sickness insurance plan, policy, contract, or agreement. Coverage required pursuant to this section shall include any medical procedures, laser surgery, remediation, or necessary post-acute medical services required to eliminate or provide maximum feasible treatment for port-wine stain for up to twenty years from the date the port-wine stain was medically detected; provided that no insurer shall be required to pay more than \$        per covered individual for medical procedures, laser surgery, remediation, and any necessary post-acute medical services subject to this section 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

PJH:fk



**HB-1705-HD-1**

Submitted on: 2/6/2018 1:53:17 PM

Testimony for CPC on 2/7/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments:



**LATE**

February 7, 2018

The Honorable Roy M. Takumi, Chair  
The Honorable Linda Ichiyama, Vice Chair  
House Committee on Consumer Affairs and Commerce

Re: HB 1705, HD1– Relating to Health Coverage for Port-Wine Stains

Dear Chair Takumi, Vice Chair Ichiyama, and Committee Members:

The Hawaii Medical Association (HMSA) appreciates the opportunity to testify on HB 1705 HD1, which would mandate health plan coverage for treatment of port-wine stains beginning January 1, 2019. We appreciate the intent of this measure but, have significant concerns with it at this time.

Current HMSA policy defers to the member’s primary care physician, or appropriate provider, to determine what is medically necessary treatment for a member exhibiting port-wine stains. This ensures our members receive the most appropriate, safe, and timely care possible. HB 1705, HD1 would potentially require plans to expand coverage to include “any medical procedures” associated with port-wine stains; we believe this opens the proposed benefit to procedures which may not be safe or appropriate.

Finally, this Bill proposes to create a new mandated health benefit and therefore would require a formal auditor’s report pursuant to HRS 23-51 to evaluate the Bill’s costs, risks, and impact to members, plans and the overall healthcare system.

Thank you for allowing us to express our concerns with HB1705, HD1.

Sincerely,  
Jace Mikulanec  
Hawaii Medical Service Association