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**TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, February 21, 2018
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2208, H.D.1, RELATING TO ASSOCIATION
HEALTH PLANS.**

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. 2208, H.D.1, Relating to Association Health Plans. My name is Gordon Ito, and I am the Insurance Commissioner for the Department’s Insurance Division. The Department appreciates the intent of this bill and submits the following comments.

The purpose of this bill is to require association health plan policies to comply with the laws of this State regardless of the association’s domicile, and enable certain voluntary associations, including employer associations that issue association health plans, to qualify for authorization to transact insurance in the State.

The U.S. Department of Labor issued a proposed rule on January 5, 2018, to expand access to association health plans. See 83 Fed. Reg. 4 which proposes to amend 29 CFR Part 2510. The Department believes the proposed rule warrants a review to promote further discussions among stakeholders.

Thank you for the opportunity to testify on this measure.

Testimony of
Jonathan Ching
Government Relations Specialist

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

February 21, 2018
2:00 p.m.
Conference Room 329

Re: HB2208 HD1, Relating to Association Health Plans

Chair Takumi, Vice-Chair Ichiyama, and committee members, thank you for this opportunity to provide testimony on HB2208 HD1, which requires association health plan policies to comply with Hawai'i law regardless of the association's domicile. Furthermore, it enables certain voluntary associations, including employer associations that issue association health plans, to qualify for authorization to transact insurance in the State.

Kaiser Permanente Hawai'i SUPPORTS HB2208 HD1

As the committee is aware, significant uncertainties exist in the individual health insurance market. Last year, the federal government eliminated funding of Cost Sharing Reduction (CSR) payments, which drove up premiums for many consumers seeking coverage in Hawai'i and across the nation. Additionally, Congress and President Trump signed into law tax legislation that reduces the federal individual mandate penalty to zero. Finally, in October President Trump issued an Executive Order on health care directing Federal agencies to examine expanding and extending short-term, limited-duration health plans, increasing enrollment in Association Health Plans (AHPs), and relaxing rules for employer Health Reimbursement Arrangements (HRAs).

We appreciate that HB2208 HD1 seeks to ensure that AHPs are not exempt from state regulation and oversight. We have the following concerns with AHPs being exempt from Hawai'i law:

Exemptions would lead to market instability and higher premiums in the traditional small-group market. AHPs exempt from state regulation and oversight would enable them to be more selective about who they cover. They will be less likely to cover higher-risk populations, which would cause an imbalance in the risk pool for other small business health plans that are part of the state small group risk pool. Adverse selection would likely abound and Association Health Plans

would be selling an unregulated product alongside small group plans, which creates an unlevel playing field. Premiums would go up for those buying in the traditional small-group market, according to the Congressional Budget Office (CBO).¹

Exemptions would eliminate consumer and patient protections. Under federal association plan proposals, AHPs would not be subject to state patient protections, such as laws that provide access to emergency care, access to specialists, mandatory grievance procedures, and required internal and external review of denied medical claims. Fewer consumers would have their rights protected, according to the National Association of Insurance Commissioners. AHPs would also be exempt from state solvency requirements, putting consumers at serious risk of incurring medical claims that cannot be paid by their Association Health Plan.²

Exemptions would increase the potential for fraud and abuse. Allowing AHPs to operate outside of state oversight creates opportunities for unscrupulous entities to engage in fraud and abuse. For example, between 2000 and 2002, insurance scams through associations left more than 200,000 policyholders with unpaid medical bills totaling \$252 million. Policy experts have found that “the most prevalent way to sell phony insurance continues to be either through real or phony associations.” Weakening state oversight would expose more consumers to hardship, loss of coverage, and unpaid medical bills.³ Proposals like The Small Business Health Fairness Act (H.R. 1101), passed by the U.S. House of Representatives in March 2017, would essentially create a newer version of the unregulated Self-Funded Multiple Employer Welfare Arrangements (MEWAs) that existed until Congress intervened in 1983.⁴ Self-funded MEWAs had no clear regulatory authority, as initially it appeared that ERISA exempted them from state-level regulatory oversight. Multiple MEWA bankruptcies resulted, and consumers had limited avenue for redress.⁵

We thank the committee for hearing this important measure. Kaiser Permanente Hawai‘i supports building on The Hawai‘i Prepaid Health Act and the strides made in a reformed market in Hawai‘i through the Patient Protection and Affordable Care Act. We look forward to having the opportunity to work with the committee to further HB2208 HD1 to ensure that consumers in our state are protected.

Thank you for the opportunity to testify on this measure.

¹ CBO Paper—Increasing Small-Firm Health Insurance Coverage Through Association Health Plans and HealthMarts, January 2000. <https://www.cbo.gov/publication/12066>.

² NAIC Consumer Alert: Association Health Plans Are Bad For Consumers. http://www.naic.org/documents/consumer_alert_ahps.pdf.

³ Mila Kofman, Kevin Lucia, Eliza Bangit, and Karen Pollitz. “Association Health Plans: What’s All The Fuss About?” Health Affairs; November/December 2006. <http://content.healthaffairs.org/content/25/6/1591.full>.

⁴ <https://www.congress.gov/bill/115th-congress/house-bill/1101/text>.

⁵ Mila Kofman, Eliza Bangit, and Kevin Lucia. “MEWAs: The Threat of Plan Insolvency and Other Challenges.” Commonwealth Fund; March 2002. http://www.commonwealthfund.org/usr_doc/kofman_mewas.pdf.



LATE

February 21, 2018

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

Re: HB 2208, HD1 – Relating to Association Health Plans

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2208, HD1, which requires association health plan (AHP) policies to comply with the laws of this State regardless of the association's domicile and enables certain voluntary associations, including employer associations that issue association health plans, to qualify for authorization to transact insurance in the State. HMSA supports this Bill, and we would like to offer some suggested changes for the Committee's consideration.

Hawaii has benefited from the forethought and protections provided under the Prepaid Health Care Act (PHCA). For over 40 years the PHCA has allowed Hawaii to have one of the lowest uninsured rates in the nation and the people of this state to enjoy some of the richest benefits. HB 2208, HD1 ensures that any AHP would adhere to the same benefit requirements as prescribed under the PHCA.

To that end, HMSA respectfully requests the Committee to consider the following clarifying amendments:

- To include the following criteria for a sponsoring association. A "Sponsoring association" means a nonstock corporation that:
 1. Has been actively in existence for at least five years;
 2. Has had in the five preceding years an average of not fewer than five members, all of which are employers;
 3. Has been formed and maintained in good faith for purposes other than obtaining or providing health benefits;
 4. Does not condition membership in the sponsoring association on any factor relating to the health status of an individual, including an employee of a member of the sponsoring association or a dependent of such an employee;
 5. Makes any association plan available to all members regardless of any factor relating to the health status of such members or individuals eligible for coverage through a member;
 6. Does not make any association plan available to any person who is not a member of the association and,
 7. Operates as a nonprofit entity under § 501(c)(6) of the Internal Revenue Code of 1986.
- Requiring a true employer/employee relationship for membership in an association.



An Independent Licensee of the Blue Cross and Blue Shield Association

Thank you for the opportunity to testify in support of HB 2208, HD1. Your consideration of our comments is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "JD", is written over a horizontal line.

Jennifer Diesman
Senior Vice-President - Government Relations

LATE

Date: February 20, 2018

To: The Honorable Roy Takumi, Chair, The Honorable Linda Ichiyama, Vice Chair, and members of the House Consumer Protection and Commerce Committee

RE: Support for HB 2208 HD1

From: Doris Segal Matsunaga, Save Medicaid Hawaii

Aloha Chair Takumi, Vice Chair Ichiyama, and members of the House Committee on Commerce, Consumer Protection, and Health:

Save Medicaid Hawaii strongly supports HB 2208 HD1, and is very concerned that the recent federal regulations issued with 60 day comment periods for Association Health Plans and Short Term Health Plans have the potential to undermine Hawaii's Pre-Paid Health Act.

We are concerned that that these regulations will allow a company like Walmart or Pizza Hut, for example, to go around Hawaii law and provide its employees across the country and in Hawaii with "junk insurance" – essentially bare bones, substandard policies. Hawaii employers, including the State of Hawaii, and residents will end up paying for this in increased premiums and lost productivity.

In Hawaii we understand that we are one small island state, and what affects one, affects all. When residents are uninsured or underinsured the costs increase for providers of last resort (hospitals, community health centers, emergency responders) which are then passed on to all of us via increased health premiums.

Doris Segal Matsunaga
Save Medicaid Hawaii
savemedicaidhawaii@gmail.com
<https://www.facebook.com/SaveMedicaidHawaii/>