



STATE OF HAWAII
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND

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TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON HEALTH
ON HOUSE BILL NO. 1086

February 7, 2019
8:30 a.m.
Room 329

RELATING TO OUT-OF-NETWORK HEALTH CARE CHARGES

Chair Mizuno, Vice Chair Kobayashi, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees has not been able to take a position on this bill. Their next meeting is scheduled for February 19, 2019. EUTF staff would like to provide comments at this time.

Under section -1 Definitions, the EUTF and “any other entity providing a health benefits plan” are considered carriers. Additionally, line 10-11 of page 1, includes “under a health benefits plan” in the carrier definition. I do not believe that the EUTF and other companies offering health benefit plans should be considered “carriers”. The EUTF and most companies in Hawaii contract a health insurer, mutual benefit society and/or health maintenance organization (collectively Insurer) to provide health benefits plans, or utilize third party networks, in which the Insurer and/or third party network will contract with health providers to be a part of the network, negotiate eligible charge

rates, process claims and reimburse health care providers, etc. Even if the EUTF decided to offer self-funded medical plans, it would likely use a third party's network to provide these functions since the EUTF does not have the in-house resources and expertise. In addition, the EUTF does not currently and does not plan to do the following items mentioned in the bill:

1. Provide members with information on their share of costs should they receive out-of-network services, which health care providers are in the network, and examples of typical out-of-network costs.
2. Submit an annual filing with the Insurance Commissioner.
3. Negotiate payment of out-of-network reimbursements or enter in binding arbitration.
4. Contract with health care providers.

The EUTF and most companies in Hawaii contract with Insurers to provide these services.

Thank you for the opportunity to testify.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Health
Thursday, February 7, 2019
8:30 a.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 1086, RELATING TO OUT-OF-NETWORK HEALTH CARE CHARGES**

Chair Mizuno and Members of the Committee:

My name is Colin M. Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

The purpose of this bill is to require health care facilities and health care professionals to disclose to patients whether they are in-network or out-of-network providers with respect to the patients' health benefits plans and the financial implications to the patients of that status. The bill further protects patients from charges in excess of any deductibles, copayment, or coinsurance when treated for medically necessary services on an emergency or urgent basis by any health care professional and at any health care facility.

While this bill imposes obligations on providers, such as hospitals and physicians, this bill is vague as to the agency responsible for enforcement and where the provisions should be placed in the Hawaii Revised Statutes (HRS). Additionally,

Testimony of DCCA

H.B. 1086

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while this bill provides for rules to be promulgated by the Insurance Commissioner, the Insurance Division does not regulate hospitals and physicians.

Finally, this bill creates a definition for “medical necessity” that is inconsistent with the medical necessity provisions of HRS section 432E-1.4.

Thank you for the opportunity to testify on this bill.



HAWAII MEDICAL ASSOCIATION

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Phone (808) 536-7702 Fax (808) 528-2376
www.hawaiimedicalassociation.org

To:

HOUSE COMMITTEE ON HEALTH

Rep. John Mizuno, Chair

Rep. Bertrand Kobayashi, Vice Chair

Date: February 7, 2019

Time: 8:30 a.m.

Place: Conference Room 329

From: Hawaii Medical Association

Jerry Van Meter, MD, President

Christopher Flanders, DO, Executive Director

Re: HB 1086 Relating to Out-of-Network Health Care Charges

Position: Oppose

On behalf of the physicians and medical students of Hawaii, the Hawaii Medical Association respectfully opposes HB 1086 as unwieldy, burdensome and unnecessary.

Following the 2017 legislative session, the HMA participated in a working group focused on the Insurance Commissioner's request to bring the National Association of Insurance Commissioners (NAIC) model bill on balance billing to the 2018 Legislature. Out of these discussions involving insurers, providers, facilities and legislators it was determined that issues with balance billing were virtually non-existent in Hawaii, with the exception of medical air transport. As a result, the workgroup recommended that legislation be focused on medical air transport and sections of the model bill on balance billing by facilities and providers be deleted and HB 915 and SB 1076 were submitted to the 2018 Legislature.

To our knowledge, there has been no change to the frequency of balance billing issues from providers. This remains a mainland issue as insurers "narrow" their networks, and does not apply to the Hawaii market at this time.

This bill would also set prices for non-participating providers of an insurance plan. The issue of "price fixing" may arise in that insurers unilaterally establish pricing, physicians being barred from collective bargaining, and the only option available to physicians is to opt out of inadequately priced plans.

The requirements placed within this bill would be difficult for independent providers to fulfill. It is unclear as to whether physician clinics would be required to fulfill the posting requirements under the definition of "health care facility." Many individual practices do not maintain a website, which may be mandated by this bill.

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February 5, 2019

Representative John Mizuno
Chair, House Committee on Health

HB1086: Relating to Out-of-Network Health Care Charges

Testimony in OPPOSITION

Dear Chair Mizuno and Committee Members:

Thank you for the opportunity to submit testimony. HB1086 would negatively impact medical care in Hawaii. There are fair solutions to this problem and we request a work group among stakeholders rather than implementation of this bill.

Please consider the position of physicians providing emergency care if HB1086 were to pass. HB1086 would remove the incentive for insurers to negotiate with providers. The rate of reimburse would arbitrarily be set by insurers at the 'in-network' rate they deem appropriate. Hawaii consistently ranks in the bottom five states in the country for emergency physicians. Coupled with the high cost of living and geographic isolation, the relatively low rates of reimbursement already make recruiting and retaining board certified emergency physicians increasingly difficult – particularly in the rural areas of the state where high quality emergency physicians are most needed. Specialist physicians providing emergency care would potentially be impacted in similar ways.

It is important to note that balance billing is rare in our state. Hawaii's Insurance Division informed us that, after removing 14 complaints related to air transport in 2015, Hawaii averaged less than 3 balance billing complaints per year between 2009-2016.

We share your concerns regarding the impact of out of network billing on our patients and we have participated in efforts to try to improve our system in the past. We support a solution that creates transparency in medical billing, takes the patient out of insurer-provider disputes, and creates a fair alternative dispute resolution process. The American College of Emergency Physicians has proposed such a solution nationally and legislation in Connecticut and New York are two examples of fair processes at the state level we can support. We hope to work closely with you to create a solution that will benefit our patients and health care in Hawaii.

Sincerely,

William Scruggs, MD
President-Elect, Hawaii College of Emergency Physicians



February 7, 2018 at 8:30 am
Conference Room 329

House Committee on Health

To: Chair John M. Mizuno
Vice Chair Bertrand Kobayashi

From: Paige Heckathorn Choy
Director of Government Affairs
Healthcare Association of Hawaii

Re: **Submitting Comments**
HB 1086, Relating to Out-of-Network Health Care Charges

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the healthcare 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.

Thank you for the opportunity to **submit comments** on HB 1086. We appreciate the intent of this measure, which is to help ensure that patients are not burdened with large medical bills if they receive care from out-of-network providers. As an Association, our hospital members have taken steps to ensure that patients are not stuck with large bills after receiving services from providers who they thought were in-network with their insurance plan. However, the requirements in this law are extensive and could prove burdensome to implement without providing much benefit.

First, it is important to note that Hawaii does not face the magnitude of balance billing issues that other states have reported. In past reports from the Insurance Commissioner, it is clear that most balance billing cases in the state happen when a visitor gets healthcare services while in Hawaii—unfortunately, this bill would do nothing to resolve those cases. This bill would also not resolve incidents when a patient from Hawaii gets services on the mainland or in another country. While we agree that patients should be protected from the financial burdens of unexpected medical bills, the disclosure and notification focus of this legislation could be problematic.

This leads us into our second comment—that the requirements in this bill are potentially very onerous. In some instances, it may be logistically impossible to meet the requirements of the bill; in others, meeting the requirements in the bill will not actually assist a patient in avoiding a balance bill. For example, it is common practice among hospitals to check if the facility is in-network with a patient’s health plan. While there can be attempts made to see if a provider is in-network, it is sometimes not possible for a hospital or facility to know this information. Many providers are completely independent in their practice, and the facility has no way of knowing which health plans the provider might have a contract with. The plan and the provider would be the only ones capable of providing this information. Further, there are requirements that hospitals provide information on which physicians are affiliated with the facility—however, affiliations do not indicate insurance status with a plan. These requirements would likely add a massive burden to hospital staff, taking away from direct patient care without providing meaningful benefits to patients.

Third, we are concerned that the arbitration process may not be the most fair and equitable way to ensure that providers are appropriately reimbursed for care they provide. Many states that have looked at balance billing have noted that arbitration processes need to involve specialized mediators, or rely on specialized databases, to ensure that providers are paid at an appropriate rate. Setting arbitrary payment levels or not allowing a fair and equitable arbitration process could be problematic in appropriately reimbursing providers for care and could cause issues with the recruitment and retainment of physicians. One of the only ways that physicians—especially emergency physicians—are able to negotiate reasonable rates for their services is by being able to decide whether or not to contract with a plan. Most, if not all, providers want to be able to provide affordable care to patients. However, by not allowing physicians to negotiate by setting arbitrary payment rates, there is the chance that providers will simply choose not to serve in this market.

Lastly, we would like to note that there is deep interest in this issue on the federal level, with a commitment by the Trump Administration and leaders in Congress to address balance billing on a national level. We would ask that the legislature consider allowing national standards to take effect so that Hawaii providers are not subject to multiple sets of rules. Already, this bill would create a duplicative process for providers to post their charges online. The Centers for Medicare and Medicaid services already requires providers to post this information online, and putting additional state requirements will create a burdensome and duplicative process for hospitals in Hawaii. We would note that the American Hospital Association (AHA), which is our national affiliate, has taken the position that patients should not be stuck in the middle of disputes between providers and insurers and are working constructively to help patients avoid this situation, including by developing materials to help patients, providers, and plans each understand their role in avoiding balance billing.

We appreciate the intent of this bill and are committed as an industry to continuing our work to help patients avoid this situation, even if it is not one that comes up frequently in Hawaii. However, the directives in this bill are potentially burdensome and difficult to implement. Thank you for the opportunity to provide testimony.

Thursday, February 7, 2019 at 8:30 AM
Conference Room 329

House Committee on Health

To: Representative John Mizuno, Chair
Representative Bertrand Kobayashi, Vice Chair

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

Re: **Comments on HB 1086**
Relating to Out-Of-Network Health Care Charges

My name is Michael Robinson, Vice President, Government Relations & Community Affairs at Hawai'i Pacific Health. Hawai'i Pacific Health (HPH) is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

I offer the following comments on HB 1086 which would require health care facilities and health care professionals to disclose to patients whether they are in-network or out-of-network providers in relation to the patients' health insurance plan and the financial implications of that status. Additionally HB 1086 seeks to protect patients from charges in excess of any deductibles, copayment, or coinsurance when treated for medically necessary services on an emergency or urgent basis by any health care professional and at any health care facility.

We appreciate the intent of this measure, however, the requirements in this law would be extremely burdensome to implement without providing much benefit, as balance billing is not a pressing issue in Hawaii. The HPH network of hospitals has taken steps to ensure that patients are not burdened with large bills they received from providers whom they thought were in-network.

The requirements in this bill are extremely onerous for such a small number of cases as cited below. In some instances, it may be nearly impossible to meet the requirements of the law, or complying with the law will not actually assist a patient in avoiding a balance bill. For example, it is common practice among hospitals to attempt to check if the hospital or a provider is in-network with a patient's health plan. However, many providers are independent contractors and the facility has no way of knowing which health plans the sub-contracted provider has a contract with on that specific day, with that specific patient.

In a study conducted by the American College of Emergency Physicians-Hawaii Chapter, it was highlighted that “after removing 14 complaints related to air transport in 2015, Hawaii has averaged less than 3 balance billing complaints each year since 2009.” The vast majority of balance billing cases occur when a visitor receives healthcare services while in Hawaii. This measure would not resolve those cases. Ultimately, this bill would only affect a very small number of cases, which are usually resolved through discussions with the provider, the plan, and the insurance commissioner.

At HPH balance billing occurs on occasion and in primarily a few areas: (1) In the Emergency Department with visitors with out-of-state health plans; (2) patients who have coverage through a form of traveler’s insurance policy; and (3) patients with coverage but who have exhausted their benefits. HPH works with all patients to resolve billing issues and to help alleviate these burdens. HPH considers Catastrophic Consideration to provide financial relief to a patient where if the charges are 15% or more of their income, they are allowed a discount of up to 85%. Information on our financial assistance policies is available on our website at: <https://www.hawaiipacifichealth.org/patients-visitors/financial-assistance-program/> and is available to all patients to be aware of and access.

Further, there are requirements that hospitals provide information on which physicians are affiliated with the facility—however, affiliations do not indicate insurance status with a plan. These requirements mandate additional work that would not produce meaningful consumer protection to patients.


Finally we also have concerns with the proposed arbitration process. Ensuring that the arbitration process will be a fair and equitable process to ensure that providers are appropriately reimbursed for care they provide. Many states that have looked into balance billing have noted that arbitration processes need to involve specialized mediators, or rely on specialized databases, to ensure that providers are awarded a usual and customary rate. Setting arbitrary payment levels or not allowing a fair and equitable arbitration process could be problematic in appropriately reimbursing providers for care.

This may prove to be a major obstacle in addressing the physician shortages in the state as it creates another barrier to keeping physicians here or recruiting them to work here. One of the only ways that physicians—especially emergency physicians—are able to negotiate reasonable rates for their services is by being able to decide whether or not to contract with a plan. Most, if not all, providers want to be able to provide affordable care to patients. However, in not allowing physicians to negotiate by setting arbitrary payment rates, there is the chance that providers will simply choose not to serve in this market.

Thank you for the opportunity to testify.



To: The Honorable John M. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair
Members, Committee on Health

From: 
Paula Yoshioka, Vice President, Government Relations and External Affairs, The
Queen's Health Systems

Date: February 6, 2019

Hrg: House Committee on Health Hearing; Thursday, February 7, 2019 at 8:30 AM in Room
329

Re: **Comments on H.B. 1086, Relating to Out-of-Network Health Care Charges**

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to provide comments on H.B. 1086, which seeks the disclosure of out-of-network providers and protect patients from charges in excess of their coverage, and concur with the Healthcare Association of Hawaii's (HAH) comments on the bill. Queen's appreciates the intent of this measure and while we believe that our patients should be protected from undue financial burdens from receiving care through out-of-network providers, whether inadvertent or not, the requirements in the measure would be extremely burdensome and provide little benefit. We would also like to note that the Centers for Medicare and Medicaid Services (CMS) already requires public posting of hospital standard charges on the internet and additional requirements from the state would create a duplicative process for hospitals.

We echo HAH's comments and thank you for your time and attention to this important issue.

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

February 6, 2019

Honorable John Mizuno, Chair
Honorable Bertrand Kobayashi, Vice Chair
Committee on Health
House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

LATE

Re: H.B. NO. 1086 RELATING TO OUT-OF-NETWORK HEALTH CARE CHARGES

Dear Chair Mizuno, Vice Chair Kobayashi 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. 1086, relating to out-of-network health care charges, which is to be heard by your Committee on Health on February 7, 2019.

House Bill No. 1086 excludes from the definition of "health benefits plan," certain limited benefit insurance, such as accident only, credit, disability, long-term care, and dental insurance

We respectfully request that the definition of "health benefits plan" also exclude the other types of limited benefit insurance covered by section 431:10A-102.5, Hawaii Revised Statutes, by amending the definition of "health benefit plan" in § -1 to be added by Section 1 of House Bill No. 1086, as follows:

A "health benefits plan" does not include the following plans, policies or contracts:

- (1) Med-QUEST, medicare, or medicare advantage;
- (2) Accident only, credit, disability, long-term care, TRICARE supplement coverage, workers' compensation, motor vehicle, specified disease, hospital indemnity, vision, medicare supplement, or other limited benefit health insurance contract; and
- (3) Dental and hospital confinement indemnity.

(Additional language underscored.)

Honorable John Mizuno, Chair
Honorable Bertrand Kobayashi, Vice Chair
Committee on Health
February 6, 2019
Page 2

Thank you for your consideration of the foregoing.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read 'Peter J. Hamasaki', with a long horizontal flourish extending to the right.

Peter J. Hamasaki

PJH:fk



LATE

February 6, 2019

The Honorable John M. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair
House Committee on Health

Re: HB 1086 – Relating to Out-Of-Network Health Care Charges

Dear Chair Mizuno, Vice Chair Kobayashi, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1086, which requires health care facilities and health care professionals to disclose to patients whether they are in-network or out-of-network providers with respect to the patients' health benefits plans and the financial implications to the patients of that status. It also protects patients from charges in excess of any deductibles, copayment, or coinsurance when treated for medically necessary services on an emergency or urgent basis by any health care professional and at any health care facility.

HMSA appreciates the intent of this measure to promote disclosure and informed choice for patients. We believe that the issues raised are complicated and require more discussion before moving forward. However, as written Articles 6 through 9 would create many operational challenges and would be administratively burdensome for the health care system. In addition, parts of Article 5 include requirements that would be difficult to implement.

Thank you for the opportunity to provide testimony on this measure. Your consideration of our comments is appreciated.

Sincerely,

Pono Chong
Vice President, Government Relations

LATE

HB-1086

Submitted on: 2/6/2019 7:46:23 PM

Testimony for HLT on 2/7/2019 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Individual	Support	No

Comments:

Aloha Chair Mizuno, and members of the Health Committee,

I am writing in support of HB1086. This measure seeks to provide patient-consumer protection by notifying those receiving healthcare services whether their provider is in-network or out-network. Transparency for the purposes of protecting the patient's financial wellbeing is a laudible goal.

Thank you for considering this measure.

Mahalo,
Dylan P. Armstrong