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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Consumer Protection and Commerce  
Wednesday, February 13, 2019  
2:00 p.m.  
State Capitol, Conference Room 329**

**On the following measure:**

**H.B. 687, H.D. 1, RELATING TO HEALTH COVERAGE FOR PORT-WINE STAINS**

Chair Takumi and Members of the Committee:

My name is Colin 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 mandate coverage for medically necessary treatment of port-wine stains, including laser surgery, remediation, and any necessary post-acute medical services under accident and health or sickness policies and mutual benefit society policies.

This may be viewed as a new mandate. The addition of 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 the PPACA.

Additionally, any proposed mandate providing coverage for care 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 (HRS) section 23-51. Although page 2, lines 8-13 of this bill notes the State Auditor published Report No. 18-20, that report addressed H.B. 1705, H.D. 1 (Regular Session of 2018), a similar, but not identical, bill to this one.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 687, H.D. 1, RELATING TO HEALTH COVERAGE FOR PORT-WINE STAINS.

**BEFORE THE:**

HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

**DATE:** Wednesday, February 13, 2019      **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Clare E. Connors, 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 makes the following comments.

The purpose of this bill is to require insurance companies to provide coverage for medical procedures to eliminate or provide maximum feasible treatment of port-wine stains that are deemed necessary when a patient experiences or, with medical certainty substantiated from a licensed physician, will experience some functionality issues resulting from a port-wine stain.

Under section 1311(d)(3)(B) of the Affordable Care Act and 45 C.F.R. section 155.170, a state may only require a Qualified Health Plan to add benefits if the state defrays the cost of the additional benefits, unless the proposed new benefit is directly attributable to State compliance with Federal requirements to provide Essential Health Benefits after December 31, 2011.

This bill would require Qualified Health Plans to provide coverage for the cost of medical procedures relating to port wine-stains if the patient will experience some loss of functionality. Because this benefit was neither mandated by state law prior to December 31, 2011, nor directly attributable to compliance with Federal requirements after December 31, 2011, it may be considered an additional mandate. If so, the State would be required to defray the cost.

At this time, our department is unaware of a state that has been subjected to the obligation to defray the cost for additional 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 department's best understanding is 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 to distribute the money.

Thank you for the opportunity to comment.



Testimony of  
John M. Kirimitsu  
Legal & Government Relations Consultant

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

February 13, 2019  
2:00 pm  
Conference Room 329

**Re: HB 687, 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 would like to offer comments.**

Kaiser Permanente supports the intent of this bill to provide insurance coverage equality for port-wine stain treatments, but believes that this mandate is unnecessary. In the 2018 State Auditor's Report No. 18-20 "Study of Proposed Mandatory Health Insurance for Port-Wine Stains," it was reported that **All insurers surveyed responded that port-wine stain treatments that meet the statutory standard of 'medical necessity' are currently covered.** A copy of the state audit can be found at <http://files.hawaii.gov/auditor/Reports/2018/18-20.pdf>.

Thank you for the opportunity to comment.

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# MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

February 11, 2019

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: HOUSE BILL NO. 687, HOUSE DRAFT 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. 687, 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 13, 2019.

The purpose of House Bill No. 687, 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. 687, 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. 687, 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.

Honorable Roy M. Takumi, Chair  
Honorable Linda Ichiyama, Vice Chair  
Committee on Consumer Protection and Commerce  
February 11, 2019  
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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. 687, 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, 2019, other than an accident-only, specified disease, hospital indemnity, long-term care, disability, dental, vision, medicare supplement, or other limited benefit health insurance contract, shall provide coverage for medically necessary procedures 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 medically necessary procedures, including 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 medically necessary procedures, including 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



February 12, 2019

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

Re: HB 687, HD1 – Relating to Health Coverage for Port-Wine Stains

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

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 687, HD1, which mandates coverage for medically necessary treatment of port-wine stains including laser surgery, remediation, and any necessary post-acute medical services under accident and health or sickness and mutual benefit society's policies.

We appreciate the intent of this measure, however we feel that mandating coverage for port-wine stains is unnecessary. As cited in the 2018 Auditor's Study of Proposed Mandatory Health Insurance for Port-Wine Stains (Report No. 18-20), insurers are already providing coverage for medically necessary services associated with port-wine stains.

As we believe that this service is already being provided to our members, we ask that this bill be deferred. Thank you for allowing us to express our concerns on HB 687, HD1. Your consideration of our comments is appreciated.

Sincerely,

Jennifer Diesman  
Senior Vice-President-Government Relations