



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Tuesday, February 5, 2019 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Clare E. Connors, Attorney General, or
Daniel K. Jacob, Deputy Attorney General

Chair Mizuno 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.

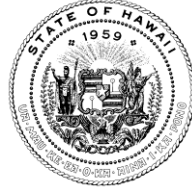
Under section 1311(d)(3)(B) of the Affordable Care Act and 45 C.F.R. section 155.170, a state may only require a Qualified Health Plan to add benefits if the state defrays the cost of the additional benefits, unless the proposed new benefit is directly attributable to State compliance with Federal requirements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



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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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Health
Tuesday, February 5, 2019
9:45 a.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 687, RELATING TO HEALTH COVERAGE FOR PORT-WINE STAINS**

Chair Mizuno 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

Testimony of DCCA

H.B. 687

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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), whose language deviates from this bill. Notably, this bill creates its own definition for “medically necessary” on page 4, lines 13-16 and page 6, lines 7-10. In addition, as this definition is inconsistent with “medical necessity” under HRS section 432E-1.4, the Department requests deleting the definition of “medically necessary” from this bill.

Thank you for the opportunity to testify on this measure.



LATE

February 5, 2019

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

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

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

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 687, 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.

Thank you for allowing us to testify on HB 687. Your consideration of our comments is appreciated.

Sincerely,

Pono Chong
Vice President, Government Relations



Testimony of
John M. Kirimitsu
Legal & Government Relations Consultant

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

February 5, 2019
9:45 am
Conference Room 329

Re: HB 687 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 would like to request an amendment.

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>.

However, if this Committee decides to move this bill forward, we ask for an amendment deleting its more restrictive definition of "medical necessity" which limits coverage only in those instances where a "licensed physician certifies, with medical certainty, that the patient will experience some loss of functionality resulting from a port-wine stain." This bill's narrower definition of "medical necessity", as compared to the broader industry standard allowing coverage "for the purpose of treating a medical condition" (see § HRS 432E-1.4, Medical Necessity), will make it more difficult for insurers to cover port wine stain treatments since medical providers cannot predict with "medical certainty" that there will be loss of functionality with port wine stains. It is a risk, but not a certainty. By the time there is loss of functionality it is often too late. Therefore, allowing this more restrictive definition of "medical necessity" defeats the purpose of this bill to provide insurance equality for port-wine stain treatments.

Thank you for the opportunity to comment.

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MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

February 4, 2019

LATE

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

Re: H.B. NO. 687 RELATING TO HEALTH COVERAGE FOR PORT-WINE STAINS

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. 687, relating to health coverage for port-wine stains, which is to be heard by your Committee on Health on February 5, 2019.

The purpose of House Bill No. 687, 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 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, 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. 687, 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 5, 2019

Rep. John Mizuno, Chair
Rep. Bertrand Kobayashi, Vice Chair
Committee Members

HB 687 RELATING TO HEALTH COVERAGE FOR PORT-WINE STAINS

I am presenting testimony in support of HB 687 on behalf of my 93-year old aunt who has a port-wine stain on her face.

During her school years there were no medical treatments for port-wine stains so my aunt suffered painful ridicule all her school years, a pain that remains with her to this day.

Something as innocent as a neighbor child coming to the door and grimacing when she sees my aunt's face brings back memories of how horribly she was treated by other children.

My aunt never leaves her house without makeup and the thought of having to move to a retire community where her "mark" would be seen unless she puts her makeup on everyday terrifies her. And of course the thought of putting on make up every day at the age of 93 is tiring and stressful by itself.

My aunt has tried several removal treatments but none were completely successful because her "mark" was not treated when she was younger.

Please pass HB 687 so that others with port-wine stains can get medical help and be spared years and years of mockery and pain.

Donna Wong
1525 Uluhao Street
Kailua 96734

LATE

HB-687

Submitted on: 2/5/2019 8:03:26 AM

Testimony for HLT on 2/5/2019 9:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments: