



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
cca.hawaii.gov

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 Finance  
Wednesday, March 27, 2019  
2:30 p.m.  
State Capitol, Conference Room 308**

**On the following measure:  
S.B. 1212, S.D. 1, H.D. 1, RELATING TO REGULATORY AUTHORITY  
OF THE INSURANCE COMMISSIONER**

Chair Luke 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 supports this administration bill.

The purpose of this bill is to license and regulate third-party administrators (TPAs) in accordance with the National Association of Insurance Commissioners' (NAIC) Registration and Regulation of Third Party Administrators Guidelines.

Section 1 provides for regulation of third-party administrators who collect charges or premiums from, or adjust or settle claims on, residents of this state in connection with: self-insurance; stop loss or life insurance coverage; or accident and health or sickness insurance coverage. This bill is based on the NAIC's Registration and Regulation of Third Party Administrators Guidelines.

NAIC guidelines, in general, differ from NAIC model acts and model rules in that NAIC accreditation for a state is not dependent on the state's adoption of guidelines. Rather, NAIC guidelines offer states opportunities to tailor bright lines of insurance law to guide states when they are adopting measures particular to their own needs and purposes.

Hawaii is one of eight states and jurisdictions that do not regulate TPAs. Currently, 19 states require TPA licenses from their respective departments of insurance, 16 states require certificates of registration, eight states require certificates of authority, and two states require either licenses or registrations. The differences in states' approaches reflect the flexibility of NAIC guidelines and the deference they give to states in knowing their own required needs. Regulation of TPAs, as proposed in this bill, will ensure adequate consumer protection and promote transparency of TPAs operating in Hawaii by: licensing and regulating TPAs; encouraging disclosure of contracts between insurers and TPAs; and promoting the financial responsibilities of TPAs.

The Department supports this administration bill and requests that it pass out of this committee with an effective date of January 1, 2020, or upon approval. Thank you for the opportunity to testify.

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: March 27, 2019, 2:30 p.m.  
State Capitol, Conference Room 308

Re: Testimony on S.B. No. 1212, S.D. 1, H.D. 1  
Relating to Regulatory Authority of the Insurance Commissioner

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Thank you for the opportunity to submit testimony on this bill, which would require third party administrators to be licensed and regulated by the Insurance Commissioner. The Office of Information Practices (OIP) takes no position on the substance of this bill, but recommends this Committee (1) make a technical fix to the exemption to chapter 92F, HRS, the Uniform Information Practices Act (UIPA), and (2) delete altogether, or at least specify what specific section of chapter 92, HRS, the exemption applies to, as the Sunshine Law (part I of chapter 92) and other provisions of chapter 92 seem irrelevant to disclosure or nondisclosure of the records at issue.

In previous drafts of this bill, proposed section 431:\_\_\_-106(b) provided confidentiality for “trade secrets . . . including the identity and addresses of insureds” in administrators’ books and records examined by the Insurance Commissioner. **The H.D. 1 version of the bill greatly broadened the confidentiality clause to apply to all records** provided by an administrator, payor, or insurance producer to the Insurance Commissioner in an investigation, and also added a statement that such records “shall not be subject to chapters 92

and 92F.” OIP has some concern regarding the greatly broadened scope of the confidentiality provision. But because it applies only to an administrator’s books and records furnished to the Insurance Commissioner in the course of an investigation (whether by the administrator, the payor, or the insurance producer, such as the records of a private business), OIP does not see it as impinging too greatly on the public interest in scrutiny of government processes, if this Committee believes blanket confidentiality is necessary for the Insurance Commissioner to fulfill its regulatory role. **However, the UIPA exemption from disclosure under chapter 92F still needs a technical fix, and the Sunshine Law exemption from chapter 92 is baffling as it is unclear what section of chapter 92 could otherwise be read to require disclosure of records.**

OIP recommends that **the exemption from disclosure under the UIPA at page 10, lines 6-7 be amended** to state that the information in question is “not **disclosable under** chapter 92F” rather than “not **subject to** chapter 92F.” Making this technical change will make clear that if an agency receives a record request for the information it should not just ignore the request, but instead **the agency should still respond** (as is required for government record requests) by advising the requester that it is denying access to the information based on the confidentiality statute and section 92F-13(4), HRS, the exception to disclosure for information made confidential by law.

Chapter 92 does not contain record disclosure provisions that OIP is aware of that could apply to the records at issue here. **Although the exemption from chapter 92 may have no real effect, it is confusing in that it suggests some part of chapter 92 might otherwise apply.** Part I of chapter 92 is the Sunshine Law, which has provisions requiring publication of notice, of minutes of public meetings, and of board packets (not including any confidential material) --

none of those provisions would apply here as neither the Insurance Commissioner nor the administrators being regulated are government boards subject to the Sunshine Law and the records being inspected are not notices or minutes of public meetings. OIP does not administer the remaining provisions of chapter 92, but notes that they appear likewise inapplicable to the records at issue. Thus, in addition to the UIPA technical amendment described above, **OIP recommends that this Committee either amend the bill (at page 10, lines 6-7) to specify what section of chapter 92 it is exempting the records from, or delete the reference to chapter 92 altogether, to avoid confusion.**

Thank you for the opportunity to testify.



March 26, 2019

The Honorable Sylvia Luke, Chair  
The Honorable Ty J.K. Cullen, Vice Chair  
House Committee on Finance

Re: SB 1212, SD1, HD1 – Relating to Regulatory Authority of the Insurance Commissioner

Dear Chair Luke, Vice Chair Cullen, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 1212, SD1, HD1, which requires third party administrators to be licensed and regulated by the Insurance Commissioner.

HMSA supports the intent of this bill, to establish standards and regulations for all third party administrators operating in this state. Additionally, this bill will ensure adequate protection of Hawaii consumers and promote transparency of administrator practices.

Thank you for allowing us to testify on SB 1212, SD1, HD1

Sincerely,

Pono Chong  
Vice President, Government Relations



**BEFORE THE**

**HOUSE COMMITTEE ON FINANCE**

Representative Sylvia Luke, Chair  
Representative Ty J.K. Cullen, Vice Chair

**SB1212 SD1 HD1 RELATING TO REGULATORY AUTHORITY OF THE INSURANCE  
COMMISSIONER**

**TESTIMONY OF  
TAMMY VITOLO**

**Vice President of Compliance,  
Hawaii-Western Management Group**

Wednesday, March 27, 2019, 2:30 p.m.  
State Capitol Conference Room 308

Chair Luke, Vice Chair Cullen, and Committee Members:

My name is Tammy Vitolo, the Vice President of Compliance for Hawaii-Western Management Group (HWMG). SB1212 SD1 HD1 is the companion bill to HB986. HWMG supports SB1212 SD1 HD1. HD1 of SB1212 conforms the bill to the model act promulgated by the National Association of Insurance Commissioners (NAIC).

By way of background, HWMG is a small, kama'aina third-party administrator providing health insurance management services for a wide range of organizations including Hawaii Medical Assurance Association (HMAA), Charter Communications, Hawaii Electricians Local Union 1186, and labor unions. HWMG is proud to be 100% employee-owned through its Employee Stock Ownership Plan (ESOP).

The purpose of SB1212 is to encourage disclosure of contracts between insurers and third-party administrators, promote financial responsibility of such administrators, and govern the qualifications and procedures for the licensing of such administrators. Prior to HD1, the proposed bill deviated in five material respects from the NAIC model bill, which presented challenges to administrators. Now, however, with HD1 of SB1212, these deviations and its challenges have been remedied.

First, Section 106 of SB1212 SD1 HD1 protects books and records examined by the Insurance Commissioner. Documents in the administrator's possession that may be protected by the attorney-client privilege will continue to be privileged if in the Commissioner's possession.

Second, Section 102 of SB1212 SD1 HD1 sets forth ascertainable standards as to when an administrator is considered "solvent" or "insolvent." HD1 sets forth a

specific, qualitative standard to prove “solvency” by requiring financial statements showing the applicant had a positive net worth.

Third, Section 102 of SB1212 SD1 HD1 does not place licensing requirements on individuals who adjust claims for the administrator, consistent with the NAIC model act. Requiring licensure for such adjusters is unnecessary and will be administratively and financially burdensome. There is also no precedent for the licensure of individuals who adjust claims for a third-party administrator in the insurance code, except as to adjusters who process either workers' compensation or crop insurance claims (HRS § 431:9-222.5), which model is wholly unsuitable and inapplicable to adjusters of health insurance claims. In addition, it may be discriminatory to focus solely on adjusters employed by administrators, when adjusters that are not employed by administrators would not be subject to a similar licensing requirement.

Fourth, Section 103 of SB1212 SD1 HD1 includes a \$100,000 surety bond requirement for administrators, which is consistent with the amount recommended by the NAIC. Prior to HD1 of SB1212, the proposed bill required a surety bond of \$300,000—three times the NAIC recommended amount.

Fifth, Section 109 of SB1212 SD1 HD1 addresses the compensation of an administrator and reflects the intent that an administrator should not benefit by reducing the amount of claims paid.

As drafted, SB1212 SD1 HD1 incorporates necessary amendments to conform SB1212 to the model NAIC law and ensures that third-party administrators are not adversely burdened by administrative licensing requirements. HWMG respectfully urges the passage of this measure as amended by HD1. Thank you for the opportunity to testify on this matter of critical importance.

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TO THE HOUSE COMMITTEE ON  
FINANCE  
THIRTIETH LEGISLATURE  
Regular Session of 2019  
Wednesday, March 27, 2019, 2:30 pm  
Conference Room 308  
State Capitol, 415 South Beretania Street

**TESTIMONY ON SENATE BILL NO. 1212, SD 1, HD 1, RELATING TO THE REGULATORY  
AUTHORITY OF THE INSURANCE COMMISSIONER**

To the Chair, Honorable Sylvia Luke, Vice Chair, Honorable Ty J.K. Cullen, and Members of the House Committee on Finance

TESTIMONY IN SUPPORT RELATING TO THE REGULATORY AUTHORITY OF THE  
INSURANCE COMMISSIONER

MDX Hawaii, Inc. recognizes the importance of and supports this measure relating to the regulation of third party administrators and we support this measure in its current form.

Thank you for the opportunity to submit this testimony.

**Date:** March 26, 2019

**To:** The Honorable Representative Sylvia Luke, Chair,  
House Committee on Finance

**From:** Mark H. Yamakawa, President & CEO

**Subject:** SB 1212 RELATING TO REGULATORY AUTHORITY OF THE INSURANCE  
COMMISSIONER.

**Hearing:** Wednesday, March 27, 2019 2:30 PM  
Conference Room 308, State Capitol

**Position:** Hawaii Dental Service Offers Comments on SB 1212 and Requests an  
Amendment

Aloha Chair Luke and Members of the Committee:

Hawaii Dental Service (“HDS”) appreciates the intent of SB 1212 to license and regulate entities that qualify as third party administrators. HDS offers the technical comments and requested amendment shown below.

The bill would define the term “Administrator” or “Third Party Administrator,” in relevant part, to mean “a person who collects charges or premiums from, or who adjusts or settles claims on, residents of this State in connection with self-insurance, stop-loss, or life insurance coverage, accident and health or sickness insurance coverage, or article 1 of chapter 432,” followed by a list of enumerated exceptions. One of the enumerated exceptions would be for “An insurer authorized to transact insurance in this State with respect to a policy lawfully issued and delivered in and pursuant to the laws of this State or another state.” The bill would define “insurer” to have the same meaning as in Hawaii Revised Statutes (“HRS”) section 431:1-202: “Insurer means every person engaged in the business of making contracts of insurance and includes reciprocal or interinsurance exchanges.”

The technical amendment shown below would clarify that entities that provide dental insurance and dental service corporations would be excepted from the definition of “Administrator” or “third party administrator.” This appears to be the intent of the bill, but this technical change would clarify the exception and ensure that the terminology used is consistent with the relevant HRS terminology. See HRS § 432G-1 (defining “dental insurer”); HRS § 423-1 (Dental service corporation, formation).

Given the above comments, HDS offers the following requested amendment to SB 1212:

March 26, 2019  
The Honorable Representative Sylvia Luke, Chair  
House Committee on Finance

**“§431: -101 Definitions.** For purposes of this article:

‘Administrator’ or ‘third party administrator’ means . . . except the following:

\* \* \*

(3) An insurer **or dental insurer** authorized to transact insurance in this State with respect to a policy lawfully issued and delivered in and pursuant to the laws of this State or another state;

**(4) A dental service corporation licensed under chapter 423;**”

(The numbering of the current enumerated exceptions would be re-designated accordingly.)

We appreciate your consideration of our requested amendment. Thank you for this opportunity to testify.

Mahalo,

Mark H. Yamakawa  
President and CEO

**SB-1212-HD-1**

Submitted on: 3/25/2019 10:12:10 PM

Testimony for FIN on 3/27/2019 2:30:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
JP Schmidt	HMA	Oppose	No

Comments:

HOUSE OF REPRESENTATIVES,

THE THIRTIETH LEGISLATURE, REGULAR SESSION OF 2019

COMMITTEE ON FINANCE

Chair Sylvia Luke

Vice Chair Ty J. K. Cullen

Rep. Stacelynn K.M. Eli Rep. Cedric Asuega Gates Rep. Troy N. Hashimoto Rep. Daniel Holt Rep. Lisa Kitagawa Rep. Bertrand Kobayashi Rep. Scot Z. Matayoshi  
DATE: TIME: PLACE: Rep. Nadine K. Nakamura Rep. Scott Y. Nishimoto Rep. Chris Todd Rep. Tina Wildberger Rep. Kyle T. Yamashita Rep. Bob McDermott

Hearing Date: Thursday, March 28, 2019 2:00 P.M. Conference Room 308

State Capitol 415 South Beretania Street

TESTIMONY ON SB 1212, RELATING TO THE REGULATORY AUTHORITY OF THE INSURANCE COMMISSIONER

To the Honorable Representative Sylvia Luke, Chair, Honorable Representative Ty J. K. Cullen, Vice Chair, and Members of the House Committee on Finance

TESTIMONY OPPOSING WITH COMMENTS ON SECTION 1 OF THE MEASURE RELATED TO THE REGULATION OF THIRD-PARTY ADMINISTRATORS.

NO POSITION ON SECTION 2 OF THE MEASURE, RELATING TO WAIVER AND VARIANCES.

Hawaii-Mainland Administrators (HMA) provides healthcare and medical management administrative services to prominent Hawaii companies' self-funded plans and almost all of the Hawaii Union Health and Welfare plans.

HMA opposes Section 1 of this measure relating to the regulation of third- party administrators (TPAs).

We initially question the need for this additional regulation. The Insurance Division in its testimony does not provide any statistics or examples of problems with TPAs that this regulation might address. An additional regulatory scheme such as this requires additional time and personnel for TPAs which are additional costs that must be passed along, ultimately in higher costs and premiums to our citizens. For these reasons, it is generally not a good idea to "regulate just to regulate".

In addition, there is no indication of how many additional positions and pay levels will be necessary to administer these new regulations.

However, if the committee determines that there is a need for this additional regulation, we respectfully offer the following comments and suggestions which other testifiers have also suggested for the committee's consideration with respect to Section 1 of the measure.

1. The term, "solvent", should be defined. TPAs need to know what financial standards they will be held accountable to.
2. Since the bill proposes new licensing requirements that will apply to current third party administrators, the bill's effective date should be established at a future date to allow current third-party administrators sufficient time to meet the significant new requirements.
3. The requirement that individuals who adjust claims for the TPA be licensed as claims adjusters should be deleted as overkill. The NAIC Guidelines don't include this requirement. Licensing and making the TPA responsible should be sufficient.
4. The amount of the surety bond should be reduced to \$100,000 to align with the NAIC guidelines.
5. The NAIC Guidelines language for protection of proprietary confidential information are not included in this bill. The NAIC protections should be included in an implementation of a TPA regulatory regime.

Sincerely,

Jack Borja

Hawaii-Mainland Administrators