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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Ways and Means
Tuesday, February 19, 2019
9:30 a.m.
State Capitol, Conference Room 211**

**On the following measure:
S.B. 493, S.D. 1, RELATING TO HEALTH CARE INSURANCE**

WRITTEN TESTIMONY ONLY

Chair Dela Cruz 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 prohibit a health care insurer from requiring an insured diagnosed with stage two cancer to undergo step therapy prior to covering the insured for the drug prescribed by the insured's health care provider, under certain conditions.

By prohibiting step therapy under certain conditions, this measure may create the potential for circumvention of medical necessity provisions in Hawaii Revised Statutes (HRS) section 432E-1.4. Section 432E-1.4(a) provides in relevant part, "A health intervention may be medically indicated and not qualify as a covered benefit or meet the definition of medical necessity. A managed care plan may choose to cover health

interventions that do not meet the definition of medical necessity.” This bill may be construed as prohibiting step therapy without considering whether it is medically necessary.

Further, the Department has concerns that language on page 2, line 4 to page 2, line 2; page 3, line 13 to page 4, line 11; page 5, lines 2-21; and page 6, line 12 to page 7, line 9 is vague and may be construed as creating a new mandate that requires coverage for drugs so long as a provider prescribes them. 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. In a similar measure, H.B. 216, H.D. 1, the Committee on Health amended the bill to require the State Auditor to perform an analysis to determine whether: (1) the benefits mandated by H.B. 216 warrant a report pursuant to HRS section 23-51; and (2) H.B. 216 would trigger defrayment provisions pursuant to section 1311(d)(3) of the PPACA.

We also note that in S.D. 1 of this bill, the list of items that qualifies when a prescribed drug is subject to the prohibition on step therapy has been amended in significant part by deleting investigational new drugs, inserting new items, and changing the “and” to “or” before the last item on page 2, line 21; page 4, line 9; page 5, line 18; and page 7, line 7.¹ This word substitution changes the nature of this list in a manner that may broaden the scope of the prohibition on step therapy.

Thank you for the opportunity to testify on this bill.

¹ Investigational new drugs have also been deleted in S.D. 1.

SB-493-SD-1

Submitted on: 2/18/2019 7:41:45 AM

Testimony for WAM on 2/19/2019 9:30:00 AM

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

Comments:



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To:

SENATE WAYS AND MEANS COMMITTEE

Sen. Donovan Dela Cruz, Chair

Sen. Gilbert S. C. Keith-Agaran, Vice Chair

Date: February 19, 2019

Time: 9:30 a.m.

Place: Room 211

From: Hawaii Medical Association

Jerry Van Meter, MD, President

Christopher Flanders, DO, Executive Director

Re: SB 493 SD 1 – Relating to Health Care Insurance

Position: SUPPORT

On behalf of Hawaii's physician and student members, the HMA supports SB 493 SD 1 which would prohibit health care insurers from requiring an insured diagnosed with Stage II and above cancer to undergo step therapy prior to covering the insured for the drugs prescribed by the insured's health care provider.

Step therapy, or "fail first" therapy is a form of prior authorization that requires preferred drugs be prescribed first until proven ineffective before physicians can try other, potentially higher cost agents. For cancer patients, selecting the proper personalized treatment as quickly as possible can be critical to survival. Delays in getting patients the right treatments at the right time many times leads to unnecessary complications in the physician-patient decision-making process.

Step therapy likewise places a significant administrative burden on physician practices. Physicians do not currently have ready access to patient benefit and formulary information, as there is currently no capability making this information available through electronic health records or other means at the point of prescribing. This lack of transparency makes it exceedingly difficult to determine what treatments are preferred by a particular payor at the point of care and places practices at financial risk for the cost of administered drugs if claims are later denied for unmet (yet unknown) step therapy requirements.

Furthermore, payor exemption and appeals processes can be complicated and lengthy, making them burdensome for both busy physician practices and patients awaiting treatment. It is our hope that another layer of administrative complication will not be added on to an already strained system.

Thank you for allowing testimony on this important issue.

HMA OFFICERS

President – Jerry Van Meter, MD President-Elect – Michael Champion, MD Secretary – Thomas Kosasa, MD
Immediate Past President – William Wong, Jr., MD Treasurer – Elizabeth A. Ignacio, MD
Executive Director – Christopher Flanders, DO

February 17, 2019

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means

Re: SB 493 SD1 – Relating to Health Care Insurance

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 493, which prohibits a health care insurer, mutual benefit society, or health maintenance organization from requiring an insured, subscriber, member, or enrollee diagnosed with stage two through stage four cancer to undergo step therapy prior to covering the insured for the drug prescribed by the insured's health care provider, under certain conditions.

HMSA plans ensure our members have the care and treatment that they need. We follow evidence-based clinical guidelines to ensure our members receive care that is safe and efficacious. Our policies are in line with national best practice guidelines issues by the ASCO (American Society of Clinical Oncology) and the NCCN (National Comprehensive Cancer Network). The ASCO is a professional organization representing physicians of all oncology subspecialties who care for people with cancer and the NCCN is a not-for-profit alliance of the 28 leading cancer centers including MD Anderson, Mayo Clinic Cancer Center, and Memorial Sloan Kettering Cancer Center. We also solicit input for our policies from local oncologists and provide a 90 day comment period for these policies.

We are concerned with the mandated coverage of off-label drugs. Off-labeling is the usage of a U.S. Food and Drug Administration (FDA) approved drug for an unapproved use. Off-label usage does not have any long-term data on safety and efficacy.

Finally, as this would be a new mandated benefit, we believe that it is subject to an impact assessment report by the State Auditor pursuant to Sections 23-51 of the Hawaii Revised Statutes.

Thank you for the opportunity to provide testimony on this measure.

Sincerely,



Pono Chong
Vice President, Government Relations

LATE

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
And Members of the Committee on Ways and Means
415 South Beretania Street
Honolulu, HI 96813

Subject: SB 493 SD1 Relating to Health Care Insurance; Step Therapy
Hearing: Monday, February 19, 2019, 9:30 am

This testimony is to convey my strong support for SB 493 SD1. This measure will prohibit a health care insurer from requiring an insured diagnosed with stage two cancer or greater to undergo step therapy prior to covering the insured for drugs prescribed by the insured's health provider.

This measure will save lives. Having recently experienced the loss of a very close friend, and colleague to breast cancer, I am convinced that had this step therapy requirement not been in place, she would still be alive today. As I tried to support her through each stage of her fight, we questioned why after being initially diagnosed with stage 3 aggressive cancer, the health care insurer refused to cover prescribed drugs. Coverage would only be authorized after the requirement of two failed chemo treatments were met.

It seemed that, by the time she satisfied this requirement, it was **too** late; the cancer had spread like wildfire. This measure would have given her a fighting chance and ensured that she received alternative/additional treatment in a timely manner. It is in her memory that I respectfully request your passage of SB 493 SD1.

Respectfully,

Janice "Jan" Salcedo