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**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
Thursday, March 12, 2020
9:00 a.m.
State Capitol, Capitol Auditorium**

**On the following measure:
S.B. 2284, S.D. 1, RELATING TO HEALTH CARE INSURANCE**

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 prohibit a health care insurer, mutual benefit society, or health maintenance organization from requiring an insured, a subscriber, a member, or an 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.

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.

The Department is in communication with the federal Department of Health and Human Services (HHS) to seek guidance on state-required benefits. The HHS recently proposed rulemaking to the Patient Protection and Affordable Care Act (PPACA) that addresses states’ defrayment and obligations. The HHS proposed rule would require states to annually report to HHS “any state-required benefits applicable to the individual and/or small group market that are considered in addition to [the essential health benefits].”¹

For the Committee’s information, HRS section 23-51 provides in part that “[b]efore any legislative measure that mandates health insurance coverage for specific health services, specific diseases, or certain providers of health care services as part of individual or group health insurance policies, can be considered, there shall be concurrent resolutions passed requesting the auditor to prepare and submit to the legislature a report[.]”

Thank you for the opportunity to testify on this bill.

¹ See Notice of Benefit and Payment Parameters for 2021; Notice Requirement for Non-Federal Governmental Plans (HHS Notice). This document was published on February 6, 2020 and has a comment period that ended on March 2, 2020. The PDF version is available at: <https://www.federalregister.gov/documents/2020/02/06/2020-02021/benefit-and-payment-parameters-notice-requirement-for-non-federal-governmental-plans>.



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HOUSE COMMITTEE ON HEALTH

Rep. John Mizuno, Chair

Rep. Bertrand Kobayashi, Vice Chair

Date: March 12, 2020

Time: 9:00 a.m.

Place: Auditorium

From: Hawaii Medical Association

Elizabeth A Ignacio, MD, Chair, HMA Legislative Committee

Christopher Flanders, DO, Executive Director

Re: SB2284 SD1 - Relating to Health Care Insurance

Position: SUPPORT

On behalf of Hawaii's physician and student members, the HMA supports SB2284 SD1 which would prohibit health care insurers from requiring an insured diagnosed with Stage II – IV cancer from undergoing step therapy prior to covering the insured for the drug 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 not the capability of 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 an already strained system.

Thank you for allowing the Hawaii Medical Association to testify on this issue.

HMA OFFICERS

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



March 10, 2020

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

Re: SB 2284, SD1 – Relating to Health Care Insurance

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

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2284, SD1, 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, for health insurance policies and contracts issued or renewed after 12/31/2020.

HMSA does not require step therapy for oncology treatment. HMSA works to ensure our members have the care and treatment they need that is safe and efficacious. We appreciate the sensitivity and skill necessary to treat cancer and defer treatment decisions to oncologists. We foster open discussion and dialogue with local oncologists whom we meet with annually for feedback on our internal policies and guidelines.

Our policies follow evidence-based clinical guidelines and are in line with national best practice guidelines issued by the American Society of Clinical Oncology (ASCO) and the National Comprehensive Cancer Network (NCCN). The ASCO is a professional organization representing physicians of all oncology sub-specialties 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**. Our medical policies are not intended to dictate to providers how to practice medicine in this area.

HMSA believes that this measure impedes our ability to continue to establish medical policies based on evidence-based medicine and best practices. Should this bill move forward, we respectfully ask that the measure be amended to remove the mandate and request the State Auditor to first conduct an impact assessment report pursuant to Section 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



Hawaii Association of Health Plans

March 10, 2020

LATE

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

Senate Bill 2284, SD1 – Relating to Health Care Insurance

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

The Hawaii Association of Health Plans (HAHP) appreciates the opportunity to testify on SB 2284, SD1, 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, for health insurance policies and contracts issued or renewed after 12/31/2020.

We would like to express concerns on this legislation as it goes against policies as determined by the health plan's medical director and generally accepted evidence based medical practice.

As this is a new mandated benefit, it is subject to an impact assessment report by the Legislative Auditor pursuant to Sections 23-51 of the Hawaii Revised Statutes.

Thank you for allowing us to testify expressing concerns on SB 2284, SD1.

Sincerely,

HAHP Public Policy Committee

The Honorable John M. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair
And Members of the Committee on Health
415 South Beretania Street
Honolulu, HI 96813

Subject: In Support of SB 2284, SD1 Relating to Health Care Insurance
Hearing: Thursday, March 12, 2020, 9:00 am, in the Capitol Auditorium

Mahalo nui loa for allowing me to submit testimony to convey my **strong support for SB 2284, SD1**. This measure will prohibit a health care insurer from requiring an insured person diagnosed with stage two cancer or greater to undergo step therapy prior to covering the insured person for drugs prescribed by the insured's health provider.

This measure will save lives! One year ago, I lost a very close friend and colleague to breast cancer. I am convinced that had this step therapy, "fail first," requirement not been in place, or if the physician could have overridden this requirement, 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, would the health care insurer refuse to cover prescribed drugs. Coverage would only be authorized after the requirement of two failed chemo treatments were met. This, to me, is not consistent with best practices for treatment. Instead, it took the decision from the physician and patient and placed it with the insurance companies. It was cruel to make her go through two grueling failed chemo treatments while giving her the false hope that she would finally be eligible for prescribed cancer drug treatment.

It seemed that, by the time she satisfied this requirement, it was **too** late; the cancer had spread throughout her body 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 SB2284, SD1, so that others may live.

Sincerely,

Janice Salcedo
3121 Ala Ilima Street
Honolulu, HI 96818