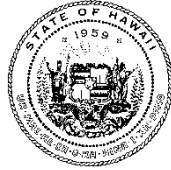


DAVID Y. IGE
GOVERNOR



BONNIE KAHAKUI
ACTING ADMINISTRATOR

STATE OF HAWAII
STATE PROCUREMENT OFFICE
P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
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TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
CONSUMER PROTECTION & COMMERCE
February 18, 2021 2:00 P.M.

HOUSE BILL 472, HD1
RELATING TO TELEHEALTH

Chair Johanson, Vice-Chair Kitagawa and members of the committee, thank you for the opportunity to submit testimony on HB 472 HD1. The State Procurement Office provides the following comments and recommendations.

Comments: Section 1. Chapter 103D, HRS, the Hawaii, Public Procurement Code (Code), should be used for general policy guidance. These specifications are particular to a subject-specific chapter and should be placed in that respective chapter. The Code is meant for general procurement methods and high-level guidance. It should not be a receptacle for all industry-specific specifications or goals as this will, over time, create a vast, and complicated Code that will confuse buyers because they will not be able to trust that specifications are in the respective chapter, and procurement-specific requirements are lost within the sea of specifications.

In addition, pursuant to HRS §103D-102, gifts are excluded from the Code for goods, services, and construction. On March 9, 2016, the Hawaii Department of the Attorney General opined on this matter, clearly stating on page 2 of the attached that "The Hawaii Public Procurement Code does not apply to the acceptance of gifts by the State."

Recommendation: Remove in its entirety the language on Section 2, page 3, lines 9 to 20, of HB 472, HD1.

Comments: The definition of telehealth services as described in Section 3, page 4, lines 13 –14 is ambiguous and may not fit within the confines of Chapter 103F, HRS. Health and Human Services under 103F, HRS, is direct services to clients and would not include gifts of broadband or WiFi services to the State.

Thank you.

Attachment

DAVID Y. IGE
GOVERNOR



DOUGLAS S. CHIN
ATTORNEY GENERAL

RUSSELL A. SUZUKI
FIRST DEPUTY ATTORNEY GENERAL

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
425 QUEEN STREET
HONOLULU, HAWAII 96813
(808) 586-1500

March 9, 2016

The Honorable David Y. Ige
Governor of Hawai'i
State Capitol, Fifth Floor
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Governor Ige:

Re: Applicability of the Hawaii Public
Procurement Code to Gifts Accepted by the State

In the process of reviewing the draft of your policy regarding the conditions under which the State may accept and manage gifts from non-governmental parties, a question arose as to whether the provisions of the Hawaii Public Procurement Code, chapter 103D of the Hawaii Revised Statutes (HRS), apply to the State's acceptance of gifts from private donors.¹ In order to continue the policy review, we address this issue.

QUESTION PRESENTED

Does the Hawaii Public Procurement Code apply to the State's acceptance of gifts from private donors?

¹ We previously opined in a formal Attorney General opinion that a state agency has "inherent authority to accept such gifts to assist in carrying out its duties and is also authorized to use those gifts in accordance with their terms." Haw. Att'y Gen. Op. No. 92-04 (June 26, 1992).

The Honorable David Y. Ige
March 9, 2016
Page 2

SHORT ANSWER

The Hawaii Public Procurement Code does not apply to the acceptance of gifts by the State. The Code expressly states that it applies to procurement contracts for goods, services, or construction.

DISCUSSION

At issue is the interpretation of the "Application" provision of the Hawaii Public Procurement Code, section 103D-102(a), HRS, which reads as follows (emphases added):

This chapter shall apply to all procurement contracts made by governmental bodies whether the consideration for the contract is cash, revenues, realizations, receipts, or earnings, any of which the State receives or is owed; in-kind benefits; or forbearance; provided that nothing in this chapter or rules adopted hereunder shall prevent any governmental body from complying with the terms and conditions of any other grant, gift, bequest, or cooperative agreement.

Section 103D-104, HRS, defines "procurement" as follows (emphasis added):

"Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any good, service, or construction. The term also includes all functions that pertain to the obtaining of any good, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

"Procurement" is defined to mean "buying, purchasing, renting, leasing, or otherwise acquiring." The words "otherwise acquiring" could have been intended to include acquiring by gift. Furthermore, although section 103D-102(a) provides that the chapter applies to "all procurement

contracts," the section goes on to set forth a proviso for compliance with terms and conditions of "any other grant, gift, bequest, or cooperative agreement," possibly meaning that these types of agreements were included within the reference to "all procurement contracts." On the other hand, the reference to "any other grant, gift, bequest, or cooperative agreement" may have been intended to distinguish these types of agreements from the "procurement contracts" that the Hawaii Public Procurement Code applied to.

The Legislature enacted the Hawaii Public Procurement Code by Act 8, Special Session Laws of Hawaii 1993, to create, as stated in section 1 of Act 8, "a single source of public procurement policy" that included the policy to "ensure fiscal integrity, responsibility, and efficiency" in expenditure of public funds in the acquisition of goods, services, or construction for the State. Section -102 of the new chapter added to the Hawaii Revised Statutes, by section 2 of Act 8, originally provided in subsection (b) that the new Hawaii Public Procurement Code "shall apply to every expenditure of public funds irrespective of their source by a governmental body . . . under any contract."

Section -301 of the new chapter originally provided for the methods of source selection as follows:

- § -301 **Methods of source selection.** Unless otherwise authorized by law, all contracts shall be awarded by competitive sealed bidding pursuant to section -302, except as provided in:
- (1) Section -303 (Competitive sealed proposals);
 - (2) Section -304 (Professional services procurement);
 - (3) Section -305 (Small purchases);
 - (4) Section -306 (Sole source procurement); and
 - (5) Section -307 (Emergency procurements)

Section -302(b) of the new chapter provided, "An invitation for bids shall be issued, and shall include a purchase description and all contractual terms and conditions

applicable to the procurement." Section -104 of the new chapter defined "purchase description" to mean "the words used in a solicitation to describe the goods, services, or construction purchased, and includes specifications attached to, or made a part of, the solicitation." These provisions remain unchanged in the current sections 103D-102 and 103D-302(b).

Section -309 of the new chapter in Act 8 provided, and the current section 103D-309 continues to provide, with revisions to the list of chief financial officers, that a procurement contract is not binding unless funds are available: "Contracts awarded pursuant to section 103D-302, 103D-303, or 103D-306, shall neither be binding nor have any force and effect of law unless the comptroller, the director of finance of a county, or the respective chief financial officers of the department of education, the judiciary, or the legislative branches of the State or county, as the case may be, endorses thereon a certificate that there is an appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract."

The Hawaii Public Procurement Code's provisions requiring competitive sealed bidding and other methods of the selection of the source of goods, services, or construction to be purchased and the provisions requiring the certification of the availability of funds to pay for the purchased goods, services, or construction literally apply to the expenditure of public funds under procurement contracts, not to the acceptance of gifts by the State.

The Supreme Court of Hawai'i has repeatedly recognized that "[w]hen construing a statute, our foremost obligation 'is to ascertain and give effect to the intention of the legislature' which 'is to be obtained primarily from the language contained in the statute itself.'" In re Hawaiian Telephone Co., 61 Haw. 572, 577, 608 P.2d 383, 387 (1980); accord Gorospe v. Matsui, 72 Haw. 377, 379, 819 P.2d 80, 81 (1991); Franks v. City & Cty. of Honolulu, 74 Haw. 328, 334-35, 843 P.2d 668, 671 (1993).

The Honorable David Y. Ige
March 9, 2016
Page 5

The legislative history of chapter 103D, HRS, supports the conclusion that gifts are not subject to the Hawaii Public Procurement Code. See State v. Entrekin, 98 Haw. 221, 227, 47 P.3d 336, 342 (2002) ("Legislative history may be consulted to confirm an interpretation of a statute."). The Legislature intended that the Hawaii Public Procurement Code "lay the foundation and set the standards for the way the government purchases will be made, but allows for flexibility and the use of common sense by purchasing officials to implement the law in a manner that will be economical and efficient and will benefit the people of this State." Stand. Comm. Rep. No. S8-93, in 1993 Senate Journal, at 39 (emphasis added). The Legislature also emphasized the government purchasing role of the State Procurement Office and its officials. "[T]he new procurement code proposed in the bill provides the legal foundation for a sound purchasing program We have also created an administrator of the Procurement Office who will be responsible for central purchasing for most of the Executive Branch agencies, as well as educating and overseeing all other purchasing officials." Stand. Comm. Rep. No. S3-93, in 1993, House Journal, at 42 (emphases added). The Code is meant to ensure the proper expenditure of public funds. See Carl Corp v. State, Dep't of Educ., 93 Haw. 155, 172, 997 P.2d 567, 584 (2000) (purpose of the Code is to "ensur[e] accountability, fiscal responsibility, and efficiency in the procurement process[.]"). Gifts, however, are not purchased and do not require the expenditure of public funds. Thus, the acceptance of gifts by the State does not run counter to the Legislature's purpose of ensuring fiscal responsibility and accountability in the expenditure of public funds.

CONCLUSION

For the reasons stated above, we believe the Hawaii Public Procurement Code applies to only contracts for the purchase of goods, services, or construction. Thus, the State's acceptance of gifts is not subject to chapter 103D, HRS. This opinion is not intended to address any other legal requirements for the receipt of gifts.

The Honorable David Y. Ige
March 9, 2016
Page 6

Should you have any questions regarding our conclusion,
please do not hesitate to contact us.

Very truly yours,



Lila C. A. King
Deputy Attorney General

APPROVED:



Douglas S. Chin
Attorney General

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
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MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 472, HOUSE DRAFT 1
RELATING TO TELEHEALTH.

By
Max N. Otani, Director

House Committee on Consumer Protection and Commerce
Representative Aaron Ling Johanson, Chair
Representative Lisa Kitagawa, Vice Chair

Thursday, February 18, 2021; 2:00 p.m.
Via Videoconference

Chair Johanson, Vice Chair Kitagawa, and Members of the Committee:

The Department of Public Safety (PSD) offers comments on House Bill (HB) 472, House Draft (HD) 1, which proposes to: 1) exempt telehealth-related gifts from procurement requirements; 2) codify the authorization of advanced practice registered nurses to use telehealth to assist a patient, including those advanced practice registered nurses who, under certain conditions, are not licensed in the State; and 3) make permanent certain telehealth-related exemptions for licensed health professions issued by recent gubernatorial proclamation. In general, PSD supports the use of telehealth to treat patients. However, the Department opposes the proviso in Section 5 of the bill (Page 11, Lines 14-19), which removes the requirement that practitioners be physically within the State of Hawaii when a controlled substance prescription is issued, if a physician or nurse is practicing telehealth. PSD respectfully requests that this proviso be deleted.

Working with the Office of the Governor and the Department of the Attorney General in response to the COVID-19 outbreak in 2020, PSD helped to craft the emergency exemption that would temporarily allow for the prescribing of controlled substances by prescribers who were not physically in the State of Hawaii. This temporary exemption was created to help ensure

that Hawaii would be well prepared to serve our people's health care needs during the pandemic and was never meant to be permanently codified.

Under normal circumstances, Chapter 329 of the Hawaii Revised Statutes (HRS) provides two very important community safeguards that do not permit the use of telehealth. First, Section 329-41(8)(b) requires an in-person, face-to-face history and physical examination be completed before any controlled substances may be administered, prescribed, or dispensed. Second, Chapter 329-41 (8) requires that a practitioner be physically in the State of Hawaii when a controlled substances prescription is issued. Both of these laws were created to address the problem of unscrupulous prescribers who operate "pill-mills" or "dial-a doc" operations, and to ensure that controlled substances in Hawaii are administered, prescribed, and dispensed for legitimate medical purposes.

The Department believes the measure's Section 5, enabling out-of-state physicians and APRNs to issue controlled substances prescriptions by telehealth without being physically in Hawaii when those prescriptions are issued, could result in the proliferation of illegal, out-of-state "pill-mills" and "dial-a-doc" operations that have little regard for the health and safety of Hawaii's people. PSD foresees jurisdictional and procedural issues that would dramatically complicate law enforcement. For example, the State's ability to obtain an out-of-state prescriber's records and other evidence for a criminal investigation would be severely limited, due to factors such as, location, distance, and cost, among others. This measure threatens to place criminal actors out of the reach of the State, creating an insurmountable problem for law enforcement.

For these important reasons, PSD respectfully requests the deferral of HB 472, HD 1.

Thank you for the opportunity to present this testimony.

Testimony of the Board of Nursing

**Before the
House Committee on Consumer Protection & Commerce
Thursday, February 18, 2021
2:00 p.m.
Via Videoconference**

**On the following measure:
H.B. 472, H.D. 1, RELATING TO TELEHEALTH**

Chair Johanson and Members of the Committee:

My name is Lee Ann Teshima, and I am the Executive Officer of the Board of Nursing (Board). The Board offers comments on section 4 of this bill and takes no position on the procurement sections of this bill.

The purposes of this bill are to: (1) exempt telehealth-related gifts to the State from procurement requirements; (2) codify the authorization of advanced practice registered nurses (APRNs) to use telehealth to assist a patient, including those APRNs who are not licensed in the State, under certain conditions; and (3) make permanent certain telehealth-related exemptions for licensed health professions issued by recent gubernatorial proclamations.

The Board has the following concerns with section 4 of H.D. 1:

- (1) Page 6, lines 16 through 20, allows an individual to provide services to a patient for any purpose via telehealth, even if that individual does not hold a current license to practice as an APRN;
- (2) Page 7, lines 1 through 4, allows an APRN with an active license in another state to use telehealth to assist a patient for any purpose, including consultation with a medical provider licensed in another state.
- (3) Subsection (f) on page 6, line 8 to page 7, line 6, authorizes activities that are overly broad and more suitable for inclusion in an emergency proclamation under Hawaii Revised Statutes chapter 127A, rather than in state law. Allowing an unlicensed or out-of-state practitioner to practice telehealth in the State without a Hawaii license should be limited to emergency situations, such as the current COVID-19 emergency. The scope of practice in other states' nursing laws may differ from Hawaii's

nurse practice act. An APRN who does not hold a current APRN license in Hawaii is regulated by the state in which the APRN holds a license.

The Board would not have jurisdiction over this out-of-state APRN, should he or she provide negligent care or harm the patient.

Thank you for the opportunity to testify on this bill.

Testimony of the Board of Pharmacy

**Before the
House Committee on Consumer Protection & Commerce
Thursday, February 18, 2021
2:00 p.m.
Via Videoconference**

**On the following measure:
H.B. 472, H.D. 1, RELATING TO TELEHEALTH**

Chair Johanson and Members of the Committee:

My name is Lee Ann Teshima, and I am the Executive Officer of the Board of Pharmacy (Board). The Board appreciates the intent of and offers comments on this bill.

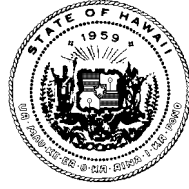
The purposes of this bill are to: (1) exempt telehealth-related gifts to the State from procurement requirements; (2) codify the authorization of advanced practice registered nurses (APRNs) to use telehealth to assist a patient, including those APRNs who are not licensed in the State, under certain conditions; and (3) make permanent certain telehealth-related exemptions for licensed health professions issued by recent gubernatorial proclamation.

The Board appreciates the bill's intent to codify certain laws that were suspended through Governor David Y. Ige's emergency proclamations to allow more access to health care via telehealth. However, section 5 of H.D. 1, which allows out-of-state healthcare providers who are not licensed in this state to write a prescription for a controlled substance for a Hawaii resident to be filled at a local pharmacy, will be problematic for both the pharmacist and the patient.

When filling prescriptions for controlled substances, pharmacists must ensure that the practitioner is authorized to prescribe controlled substances and determine if the prescription is valid. If the practitioner is not licensed in the State, pharmacists may not be able to verify the out-of-state prescriber's: (1) license; (2) authority to prescribe controlled substances; and (3) scope of practice of the prescriber. For this reason, the pharmacist may not be willing to fill the prescription at the detriment of the patient.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR



CATHY BETTS
DIRECTOR

JOSEPH CAMPOS II
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

February 17, 2021

TO: The Honorable Representative Aaron Ling Johanson, Chair
House Committee on Consumer Protection & Commerce

FROM: Cathy Betts, Director

SUBJECT: **HB 472 HD1 – RELATING TO TELEHEALTH.**

Hearing: Thursday, February 18, 2021, 2:00 p.m.
Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent and provides comments relative to Section 7 which revises the definition of telehealth for Medicaid.

PURPOSE: The purpose of the bill is to address procurement and telehealth-related gifts, codify the authorization of advanced practice registered nurses to use telehealth to assist a patient, including those advanced practice registered nurses who are not licensed in the State, under certain conditions; make permanent some telehealth-related exemptions issued by governor's emergency proclamations, including not explicitly excluding standard telephone contacts as an allowable telehealth.

The coronavirus pandemic has substantially altered how people access health care services. Use of telehealth has significantly expanded over the past year helping to address some gaps in care when in-person visits were not feasible.

Telehealth itself also expanded during the pandemic. Both federal and state rules and laws were suspended or changed allowing standard telephone calls to be considered a telehealth modality.

Standard telephone calls have been particularly valuable during the public health emergency (PHE) for the Medicaid population for health equity reasons given the population's lack of access to computers, smartphones, or broadband internet necessary for telehealth modalities such as videoconferencing. Standard telephone calls have been used in healthcare long before the PHE and will continue as an important modality for healthcare access.

However, audio-only patient/provider interactions are prohibited by the federal Office of Civil Rights (OCR) as a telehealth modality. During the national PHE, OCR has exercised "enforcement discretion," which allows audio-only to be used during the PHE without concern of being prosecuted for violating these rules. Defining standard telephone contact as telehealth would not comply with this federal rule.

Additionally, in Hawaii, telehealth is considered the equivalent of an in-person face-to-face visit. Although, supportive of standard telephone calls as one modality for care delivery, it may not always produce the equivalent clinical outcomes when compared to a face-to-face visit.

We appreciate the amendment that limits the financial parity that exists for other telehealth modalities. However, we note that this does not mean that care provided via the telephone would not be reimbursed, only that it may not be at the exact rate as a face-to-face visit.

Given the value of standard telephone contacts for healthcare access for the Medicaid population, the Med-QUEST (MQD) Division will continue to actively explore ways to support use of audio-only patient encounters after the PHE ends that would not violate the OCR rules, would provide reimbursement, but also not define telephone calls as the exact clinical equivalent of face-to-face visits.

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

Testimony of the Board of Psychology

**Before the
House Committee on Consumer Protection & Commerce
Thursday, February 18, 2021
2:00 p.m.
Via Videoconference**

**On the following measure:
H.B. 427, H.D. 1, RELATING TO TELEHEALTH**

WRITTEN TESTIMONY ONLY

Chair Johanson and Members of the Committee:

My name is Christopher Fernandez, and I am the Executive Officer of the Board of Psychology (Board). The Board offers comments on this bill.

The purposes for this bill are to: (1) exempt telehealth-related gifts to the State from procurement requirements; (2) codify the authorization of advanced practice registered nurses (APRNs) to use telehealth to assist a patient, including those APRNs who are not licensed in the State, under certain conditions; and (3) make permanent certain telehealth-related exemptions for licensed health professions issued by recent gubernatorial proclamation.

The Board discussed H.D. 1 at its meeting on February 17, 2021, and offers the following comments:

- The amendments to Hawaii Revised Statutes chapter 465 will increase accessibility to patients and will also prevent interruption of services to vulnerable populations that use the services of psychologists, including those transitioning to Hawaii from other states.
- Excluding standard phone contacts from reimbursement for telehealth services on page 12, line 15 of the bill will present difficulties to patients (e.g., blind patients) who have trouble using computer-based telehealth services and who could instead use telephone-based telehealth services.

Thank you for the opportunity to testify on this bill.

Testimony of the Hawaii Board of Veterinary Medicine
Before the
House Committee on Consumer Protection & Commerce
Thursday February 18, 2021
2:00 p.m.
Via Videoconference

On the following measure:
H.B. 472, H.D. 1, RELATING TO TELEHEALTH

Chair Johanson and Members of the Committee:

My name is Chelsea Fukunaga, and I am the Executive Officer of the Hawaii Board of Veterinary Medicine (Board). The Board offers comments on this bill.

The purposes of this bill are to: (1) exempt telehealth-related gifts to the State from procurement requirements; (2) codify the authorization of advanced practice registered nurses (APRNs) to use telehealth to assist a patient, including those APRNs who are not licensed in the State, under certain conditions; and (3) make permanent certain telehealth-related exemptions for licensed health professions issued by recent gubernatorial proclamation.

The Board's Legislative Committee will review this bill at its next meeting. In the meantime, the Board offers comments based on its prior discussions relating to telehealth. Hawaii Revised Statutes section 471-10(b)(12) prohibits "[c]onduct or practice contrary to the recognized principles of medical ethics of the veterinary profession as adopted by the Hawaii Veterinary Medical Association and the American Veterinary Medical Association." The American Veterinary Medical Association states that veterinary telemedicine should be conducted only within an existing veterinarian-client-patient-relationship (VCPR), except in cases where the veterinarian gives advice in an emergency until the veterinarian can see the patient. Accordingly, this bill may be violating that guidance by making permanent a telehealth-related exemption for veterinarians, without also requiring the existence of a VCPR.

Thank you for the opportunity to testify on this bill.

Testimony of the Hawaii Medical Board

**Before the
House Committee on Consumer Protection & Commerce
Thursday, February 18, 2021
2:00 p.m.
Via Videoconference**

**On the following measure:
H.B. 472, H.D. 1, RLEATING TO TELEHEALTH**

Chair Johanson and Members of the Committee:

My name is Ahlani Quiogue, and I am the Executive Officer of the Hawaii Medical Board (Board). The Board offers comments on this bill.

The purposes of this bill are to: (1) exempt telehealth-related gifts to the State from procurement requirements; (2) codify the authorization of advanced practice registered nurses (APRNs) to use telehealth to assist a patient, including those APRNs who are not licensed in the State, under certain conditions; and (3) make permanent certain telehealth-related exemptions for licensed health professions issued by recent gubernatorial proclamation.

The Board has concerns that this bill would make permanent certain telehealth-related exemptions for physicians, osteopathic physicians, and physician assistants that were established to address a specific need: an emergency. Of particular concern to the Board are the following:

- Section 5, page 11, lines 14 through 19, would allow an out-of-state physician, osteopathic physician, or physician assistant to prescribe controlled substances without obtaining the appropriate license and without first establishing an in-person, face-to-face practitioner-patient relationship as required. This may lead to inappropriate prescribing without this safety mechanism in place.
- Section 14, page 27, lines 17 through 21: Please refer to the comments provided for section 5, page 11, lines 14 through 19.
- Section 14, page 29, lines 6 through 10, authorizes physicians, osteopathic physicians, or physician assistants who previously held an unrevoked or unsuspended license to provide care to Hawaii-patients via

telehealth. This is concerning because the Board would not be afforded the appropriate recourse against these practitioners if they provided unsafe or negligent care.

- Section 14, page 29, lines 11 through 14: Please refer to the comments provided for section 14, page 29, lines 6 through 10.

Thank you for the opportunity to testify on this bill.



HB472 HD1 Telehealth Emergency Mode Made Permanent

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE:

- Rep Aaron Johanson, Chair; Rep. Lisa Kitagawa, Vice Chair
- Thursday, Feb. 18, 2021: 2:00: Videoconference

Hawaii Substance Abuse Coalition Supports HB472 HD1:

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization of over 30 substance use disorder and co-occurring mental health disorder treatment and prevention agencies.

HSAC is in full support to make permanent certain telehealth related exemptions for licensed health professions issued by recent gubernatorial proclamations, including the use of APRNs.

While telehealth doesn't replace the efficacy of face to face, especially for those who have more chronic conditions, it certainly allows us to treat more people who are in need of services that otherwise would not have access to services. In many cases, it's a more efficient use of time for those care givers and patients who could benefit well from the use of Telehealth.

We appreciate the opportunity to provide testimony and are available for questions.



KAPI'OLANI
PALI MOMI
STRAUB
WILCOX

Thursday, February 18, 2021; 2:00pm
Via Video Conference

House Committee on Consumer Protection & Commerce

To: Rep. Aaron Ling Johanson, Chair
Rep. Lisa Kitagawa, Vice Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

RE: Comments and Serious Concerns
HB 472 HD1 – Relating to Telehealth

My name is Michael Robinson, and I am the Vice President of Government Relations & Community Affairs at Hawai'i Pacific Health. Hawai'i Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapi'olani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawai'i.

HPH has comments and expressing serious concern with the amendments in HB 472 HD1 which exempts telehealth-related gifts from procurement requirements. Codifies the authorization of advanced practice registered nurses to use telehealth to assist a patient, including those advanced practice registered nurses who are not licensed in the State, under certain conditions. Makes permanent certain telehealth-related exemptions for licensed health professions issued by recent gubernatorial proclamation. .

We are particularly concerned with the amendments in the HD1 in Section 14 which would modify the "Practice of telehealth" under Section 453-1.3 and allow medical professionals (physicians or osteopathic physicians) –*unlicensed in the State of Hawai'i* - to establish a physician patient relation via telehealth. We are additionally concerned that various provisions in HB 472 HD1 would contradict the provisions stated in HB 473 that was developed in collaboration with health care providers, community stakeholders, and regulatory agencies and passed out by this Committee on February 12, 2021.

We ask that this committee carefully consider the impacts to the health care delivery system and oversight over patient safety that the provisions subsequent to Section 3 of HB 472 HD1 would have on our community.

Thank you for the opportunity to testify.



**Testimony to the House Committee on Consumer Protection and Commerce
Thursday, February 18, 2021; 2:00 p.m.
State Capitol, Conference Room 329
Via Videoconference**

RE: HOUSE BILL NO. 0472, HOUSE DRAFT 1, RELATING TO TELEHEALTH.

Chair Johanson, Vice Chair Kitagawa, and Members of the Committee:

The Hawaii Primary Care Association (HPCA) is a 501(c)(3) organization established to advocate for, expand access to, and sustain high quality care through the statewide network of Community Health Centers throughout the State of Hawaii. The HPCA **SUPPORTS** House Bill No. 0472, House Draft 1, RELATING TO TELEHEALTH.

The bill, as received by your Committee, would:

- (1) Clarify that a gift to the State not constitute a procurement contract and not require a procurement contract to be accepted so long as the gift is necessary for the State to provide telehealth services to members of the public and the agency accepting the gift promptly reports the gift to the State Procurement Office;
- (2) Clarify that the statute prohibiting a practitioner from facilitating the issuance or distribution of a written or oral prescription for a controlled substance not apply if the person is a physician practicing telehealth;
- (3) Authorize advance practice registered nurses to use telehealth to assist a patient, including those advanced practice registered nurses who are not licensed in the State, under certain conditions;
- (4) Codify the suspension of statutes that prohibit the use of telephone services under telehealth; and
- (5) Clarifying that the requirement that reimbursement for services provided through telehealth be equivalent for the same services provided via face-to-face contact between a health provider and a patient NOT apply to "standard phone contacts."

The would also take effect on July 1, 2050, to facilitate continued discussion on this issue.

By way of background, the HPCA represents Hawaii Federally-Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines in rural and underserved communities. Long considered champions for creating a more sustainable, integrated, and wellness-oriented system of health, FQHCs provide a more efficient, more effective and more comprehensive system of healthcare.

Following efforts on the federal level to relax regulations on telehealth in both Medicare and Medicaid, the Governor suspended various statutes that specifically prohibited the use of telephone services from telehealth coverage. Government agencies found that for many of the elderly -- especially in rural areas -- they do not have adequate access to computers, smart phones, and broadband connection to make traditional telehealth methods feasible. Also, because of geographic isolation, many find their land line telephone as their only link to health care providers. With the suspension of these statutes, the Department of Human Services has been able to establish procedures that allow for telephone services to be incorporated into the provision of health care services in Medicaid.

For people with adequate broadband access, telehealth was intended to be a lifeline for the provision of essential primary health care services. Yet, because rural and underprivileged communities lack adequate broadband access, they are effectively cut off from primary care. Many are forced to bear their maladies until it became necessary to go to the emergency room.

The Governor's suspension of statutes that prohibit the use of standard telephonic service in telehealth has temporarily eased this inequity. For those without adequate broadband, at least for now, they are able to obtain basic primary care services over landline telephones. But that is neither adequate, tenable, nor fair to the thousands of citizens who lack broadband access.

Unless the Legislature codifies this suspension into law, health care providers will only be able to use telephonic services in telehealth as long as the Governor's Emergency Proclamation is valid. It should also be noted that *In Re Certified Questions from the United States District Court, Western District of Michigan, Southern Division (Midwest Institute of Health, PLLC v. Governor)*, Docket No. 161492 (October 2, 2020), the Michigan Supreme Court determined that dozens of Michigan executive orders issued to fight the coronavirus pandemic were unconstitutional.

The ruling invalidated orders ranging from business restrictions to mask mandates, and forced the Michigan State Legislature to return from recess early to enact many of these directives into law. Ruling in the case, the Michigan Supreme Court held, among other things, that the law authorizing the Governor to act in times of public emergency violated the constitution **because it delegated to the executive branch the legislative powers of state government indefinitely.**

**Testimony on House Bill No. 0472, House Draft 1.
Friday, February 18, 2021; 2:00 p.m.
Page 3**

For these reasons, the HPCA urges your favorable consideration of this important measure.

Thank you for the opportunity to testify. Should you have any questions, please do not hesitate to contact Public Affairs and Policy Director Erik K. Abe at 536-8442, or eabe@hawaiiipca.net.



Government Relations

Testimony of
Jonathan Ching
Government Relations Manager

Before:
House Committee on Consumer Protection & Commerce
The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair

February 18, 2021
2:00 p.m.
Via Videoconference

Re: HB 472 HD1, Relating to the Telehealth

Chair Johanson, Vice Chair Kitagawa and committee members, thank you for this opportunity to provide testimony on HB 472 HD1, which exempt telehealth-related gifts from procurement requirements and makes permanent certain telehealth-related exemptions for licensed health professions issued by recent gubernatorial proclamations.

Kaiser Permanente Hawai'i offers the following COMMENTS on HB 472 HD1 and requests an amendment.

Kaiser Permanente Hawai'i is Hawai'i's largest integrated health system that provides care and coverage for approximately 260,000 members. Each day, more than 4,400 dedicated employees and more than 600 Hawai'i Permanente Medical Group physicians and providers come to work at Kaiser Permanente Hawai'i to care for our members at our 20 medical facilities, including Moanalua Medical Center, providing high-quality care for our members and delivering on our commitment to improve the health of the 1.4 million people living in the communities we serve.

Since the COVID-19 pandemic began in 2020, the use of telehealth in Hawai'i has dramatically increased as telehealth has been critical to limit the risk of person-to-person transmission while helping to avoid overwhelming our healthcare facilities. While Kaiser Permanente Hawai'i was already providing high-quality care through telehealth modalities, we saw a dramatic increase in the use of telehealth visits between 2019 and 2020. In 2019, approximately 1,000 of our outpatient visits were done as video visits and 458,000 as telephone visits. In stark contrast, in 2020, approximately 67,000 video visits were performed and 777,000 telephone visits. We expect this number to continue to increase in 2021.

Kaiser Permanente Hawaii also provides access to high-quality care through audio-only telephone visits as part of our integrated approach to care delivery, and we believe this modality is important to offer for individuals who do not have access to, or may not be comfortable with using, video

conferencing technology. **Therefore, we support the inclusion of audio-only telephone as part of the definition of “telehealth.”** However, we support appropriate payment for all telehealth modalities, given that the costs associated with different types of visits/encounters can vary substantially.

We offer the following amendments to HB 472 HD1. These amendments would further clarify what the previous committee did in amending HB472. These amendments have the effect of permitting health insurers and providers to negotiate appropriate reimbursement rates for audio-only telephone visits, remote monitoring services, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange.

Proposed amendments to HB 472 HD1:

1. In Section 8: Amend HRS §431:10A-116.3(c) to read:

(c) Reimbursement for services provided through telehealth, ~~but not through standard phone contact,~~ but not audio-only telephone, remote monitoring, secure interactive, and non-interactive web-based communication, and secure asynchronous information exchange, shall be equivalent to reimbursement for the same services provided via face-to-face contact between a health care provider and a patient. Nothing in this section shall require a health care provider to be physically present with the patient at an originating site unless a health care provider at the distant site deems it necessary.

2. In Section 9: Amend HRS §432:1-601.5(c) to read:

(c) Reimbursement for services provided through telehealth, ~~but not through standard phone contact,~~ but not audio-only telephone, remote monitoring, secure interactive, and non-interactive web-based communication, and secure asynchronous information exchange, shall be equivalent to reimbursement for the same services provided via face-to-face contact between a health care provider and a patient. Nothing in this section shall require a health care provider to be physically present with the patient at an originating site unless a health care provider at the distant site deems it necessary.

3. In Section 10: Amend HRS §432D-23.5(c) to read:

(c) Reimbursement for services provided through telehealth, ~~but not through standard phone contact,~~ but not audio-only telephone, remote monitoring, secure interactive, and non-interactive web-based communication, and secure asynchronous

information exchange, shall be equivalent to reimbursement for the same services provided via face-to-face contact between a health care provider and a patient. Nothing in this section shall require a health care provider to be physically present with the patient at an originating site unless a health care provider at the distant site deems it necessary.

We ask the committee to adopt our proposed amendments for HB 472 HD1. Mahalo for the opportunity to testify on this important measure.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Aaron Ling Johanson, Chair
The Honorable Lisa Kitagawa, Vice Chair
Members, House Committee on Consumer Protection & Commerce

From: Jacce S. Mikulanec, Manager, Government Relations, The Queen's Health Systems

Date: February 18, 2021

Re: Comments for HB472, HD1: Relating to Telehealth

The Queen's Health Systems (Queen's) is a nonprofit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, and more than 1,500 affiliated physicians and providers statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to submit comments on HB472, HD1 relating to telehealth, which would exempt telehealth-related gifts from procurement requirements and make permanent certain telehealth-related exemptions for licensed health professions issued by recent gubernatorial proclamation. While Queen's appreciates the intent of this bill to bring conformity to existing telehealth statutes, we do have concerns with provisions in the bill that could negatively impact our patients. In particular, we would ask that the committee consider keeping language in Section 14 requiring in-person consultation for prescribing opiates and/or certifying a patient for medical use of cannabis.

Furthermore, we strongly urge the committee to maintain licensing requirements for medical professionals practicing in the State of Hawai'i in order to protect the health and safety of our residents and anyone who utilizes our healthcare system. We concur with the testimony provided by the Healthcare Association of Hawai'i noting the preference for HB473, HD1 which has stakeholder buy-in and addresses deficiencies in HRS 453-1.3 which allows for a physician licensed in this state to establish a relationship with a patient via telehealth.

Thank you for allowing The Queen's Health Systems to express our concerns with HB472, HD1.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.



February 18, 2021 at 2:00 pm
Via Videoconference

House Committee on Consumer Protection and Commerce

To: Chair Aaron Ling Johanson
Vice Chair Lisa Kitagawa

From: Paige Heckathorn Choy
Director of Government Affairs
Healthcare Association of Hawaii

Re: **Submitting Comments**
HB 472 HD 1, Relating to Telehealth

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 member organizations who represent almost every aspect of the healthcare continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities, and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high-quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

Thank you for the opportunity to provide **comments** on this measure. In discussing this measure with our members, we have concerns regarding the breadth of this bill and its allowance of many different types of providers who are not licensed in the state to establish patient relationships and practice with few barriers in place—these changes are scattered throughout the measure, but we would point to sections 4 and 14 in particular for APRNs and physicians. A major concern we have heard from members in the past on allowing out-of-state providers to practice in this state is that no local regulatory body is able to intervene in the case of patient harm or poor outcomes.

We are also concerned that this measure (specifically, section 14 that runs from page 26, line 17 through page 31, line 14) would contradict and negate HB 473, which seeks to make a simple clarification in HRS 453-1.3 that a physician licensed in Hawaii can establish a relationship with a patient via telehealth. That measure was carefully crafted with input from providers, state agencies, insurers, and other key stakeholders to gain consensus on a measure that would benefit patients and increase appropriate access to care—and was passed favorably from this committee last week. As written, this alternate measure would potentially contradict that consensus bill.

There are also concerns regarding prescribing of controlled substances, particularly in section 5. This bill seems to allow the prescription of controlled substances—including opioids—via telehealth without first requiring an in-person consultation or a physical presence in the state. We would suggest that, similar to allowing out-of-state providers to practice in Hawaii without a license, this is not an area with wide consensus among providers, agencies, and other key stakeholder groups and could result in patient harm due to over- or inappropriate prescribing from actors not within the jurisdiction of state regulatory and oversight bodies.

Thank you for the opportunity to provide our comments and concerns on this measure.

Hawai'i Psychological Association

For a Healthy Hawai'i

P.O. Box 833
Honolulu, HI 96808

www.hawaiipsychology.org

Phone: (808) 521-8995

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Aaron Ling Johanson, Chair

Rep. Lisa Kitagawa, Vice Chair

Thursday, February 18, 2021 - 2:00pm - Conference Room 329 - videoconference
Testimony in Support of HB472 HD1 RELATING TO TELEHEALTH

The Hawai'i Psychological Association (HPA) strongly supports HB472 HD1 which, in part, makes permanent recent pandemic-related executive orders relating to telehealth.

The pandemic has had devastating effects not only to our public health system and economies, but to our collective mental health. The disruptions COVID created in our already personal lives have brought many in our community to the brink of emotional collapse. The need for mental health services could not be more apparent or pressing.

As we all pivoted to a socially distant way of life, the vast majority have come to appreciate the breadth and utility of telehealth services, even if their preference would be for face-to-face. HPA is therefore in strong support of this measure as we believe it promises the greatest therapeutic benefit to those clinically needing mental health services and promotes access to care.

HPA would also like to take this opportunity to **recommend that this committee also look to the language of HB384**, which includes preferable language in establishing parity between services provided through telehealth and that which is made through traditional face-to-face contact for purposes of insurance reimbursement.

HPA joins the American Psychological Association in supporting and advocating greater **access** to evidence-based health services, including mental and behavioral health services, within public and private healthcare delivery systems. Such **access requires regulation that ensures insurance reimbursement rates and scope of practice provisions are equitable** for the full range of psychologists' services - including psychotherapy, health and behavior, testing, and telehealth services. The language outlined in HB384 helps to secure this access by addressing: reimbursement coverage; deductible copayment requirements; annual or lifetime durational limits; lifetime maximum benefits for services; utilization reviews; electronic communications technology platforms requirements; and prescribing medications.

Our experience with the pandemic has clearly shown that appropriate telehealth services are also highly **effective** in increasing the accessibility of timely healthcare to our communities. Telehealth can be *just* as effective as face-to-face contact.

It is also imperative, HPA believes, that telehealth include audio-only telephone when no other means of telecommunications services are available or accessible to the patient. We note that HB1120, and its companion, SB1258 also addresses this.

HPA also recognizes the important role played by essential public health workers – including the services provided by Advanced Practice Nurse Practitioners through telehealth – not only in our response to the pandemic, but in general. We believe the language of HB384 will help ensure that the full range of health and behavioral health services will continue to be in place and be reimbursable by accident and health or sickness insurance plans beyond the current state of Public Health Emergencies.

Finally, HPA believes this bill helps to incentivize the use of telehealth over face-to-face meetings when appropriate, because it is currently safer and more consistent with social distancing protocols until we are on the other side of the pandemic.

Thank you for the opportunity to provide input on this important bill.

Sincerely,

A handwritten signature in cursive script that reads "Alex Lichton, Ph.D.".

Alex Lichton, Ph.D.

Chair, HPA Legislative Action Committee