

Testimony Presented Before the
House Committee on
Pandemic & Disaster Preparedness

February 9, 2021

By

Jerris R. Hedges, MD

HB 540 – RELATING TO LIABILITY.

Chair Ichiyama, Vice-Chair Eli and members of the committee:

My name is Jerris Hedges, and I serve as dean at the John A. Burns School of Medicine (JABSOM).

I am writing in **support** of HB 540 which affords immunity from civil or criminal liability to a health care provider who acts in good faith during a state of emergency or local state of emergency and adheres to crisis standards of care.

Health care providers in this state have been tasked with the daunting responsibility of caring for thousands of individuals exposed to or suffering from COVID-19. These health care providers are essential in combating the spread of the virus and at the same time looking after the health and wellbeing of our communities. Granting immunity to health care providers during a state of emergency or local state of emergency is both appropriate and necessary.

While certain categories of health care providers that care for COVID patients, such as those employed by the state or non-profit entities, are immune from liability, not all health care professionals are given immunity.

Governor Ige's Executive Order 20-05 mandates that all health care professionals render care to anyone affected by COVID-19 and grants civil immunity to those health care professionals. However, the Order does not provide immunity from criminal liability. HB 540 is a comprehensive and uniform approach to affording both civil and criminal immunity to all health care providers acting in good faith during a state of emergency or local state of emergency.

At times, difficult care decisions are required during a pandemic, especially given that facilities, equipment/supplies, medications and other resources may be in limited supply. Our health care providers deserve this degree of immunity.

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



**Testimony to the House Committee on Pandemic & Disaster Preparedness
Tuesday, February 9, 2021; 8:30 a.m.
State Capitol, Conference Room 309
Via Videoconference**

RE: HOUSE BILL NO. 0540, RELATING TO LIABILITY.

Chair Ichiyama, Vice Chair Eli, 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. 0540, RELATING TO LIABILITY.

The bill, as received by your Committee, would codify immunities from liability resulting from health care operations during the COVID pandemic that are currently in effect pursuant to the Governor's PROCLAMATION RELATED TO THE COVID-19 EMERGENCY.

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.

When COVID-19 hit our islands, Hawaii's health care providers were called upon to meet the needs of our citizenry under extremely difficult situations. First, providers were confronted with severe shortages of personal protection equipment, essential medical equipment and medications. As people got sick, FQHCs saw increased demands for our services requiring our staff to be creative and steadfast in the deliver of these services.

One of the reasons why we were able to do this was because of the immunity from liability provided by the Governor in his COVID Proclamation. [**See**, Exhibit A of SEVENTEENTH PROCLAMATION RELATED TO THE COVID-19 EMERGENCY, dated December 16, 2020, entitled, Rules Relating to Immunities for Health Care Practices.]. However, this immunity will last only as long as the Proclamation remains valid unless it is enacted into law by the Legislature.

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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.**

Like the Michigan Law that authorized the Governor's emergency powers that was invalidated, Hawaii's Law does not include a mechanism by which the Governor must obtain the Legislature's approval to continue using the emergency powers after a fixed period of time.

This bill will ensure that health care providers will be able to continue to provide essential services during times of emergency regardless of any possible challenge to the Governor's use of emergency powers moving forward.

Thus, we urge your favorable consideration of this 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.



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Linda Ichiyama, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
Members, House Committee on Pandemic & Disaster Preparedness

From: Colette Masunaga, Director, External Affairs, The Queen's Health Systems

Date: February 9, 2021

Re: Support for HB540: Relating to Liability

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 provide testimony in support of HB540, relating to liability. The measure provides for liability protection for health care providers who act in good faith during a state or local state of emergency and adheres to crisis standards of care. We support this measure because caregivers should not be in a position of liability when they are forced to make patient care decisions under the duress of a global pandemic and surge conditions. During a surge response to a catastrophic emergency event, where the demand for healthcare services substantially exceeds the supply, providers are forced to shift from normal standards of care to Crisis Standards of Care (CSC).

In April 2020, under the direction of the Hawaii Emergency Management Agency (HIEMA) and the Healthcare Association of Hawaii (HAH), intensive care unit physicians from across the major hospitals in the state, convened and developed the Hawaii State Crisis Standard of Care (CSC), Triage Allocation Framework. Throughout this pandemic, our caregivers have done tremendous, life changing work with skill and grace. As a system of hospitals, Queen's has successfully managed the majority of the COVID-19 hospitalizations in our state.

Queen's thanks the committee for hearing this important measure and we appreciate the opportunity to provide testimony in support.

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.

Testimony Presented Before the
House Committee on
Pandemic & Disaster Preparedness

February 9, 2021

By

Lee Buenconsejo-Lum, MD, FAAFP

HB 540 – RELATING TO LIABILITY.

Chair Ichiyama, Vice-Chair Eli and members of the committee:

My name is Lee Buenconsejo-Lum, and I serve as Associate Dean for Academic Affairs at the John A. Burns School of Medicine (JABSOM).

I am writing in **support** of HB 540 which affords immunity from civil or criminal liability to a health care provider who acts in good faith during a state of emergency or local state of emergency and adheres to crisis standards of care.

Health care providers in this state have been tasked with the daunting responsibility of caring for thousands of individuals exposed to or suffering from COVID-19. These health care providers are essential in combating the spread of the virus and at the same time looking after the health and wellbeing of our communities. Granting immunity to health care providers during a state of emergency or local state of emergency is both appropriate and necessary. The risk and number of hospitalizations, intensive care unit (ICU) and mechanical ventilator usage is significantly higher in older persons, as well as in younger persons with more than one concurrent chronic medical condition. In August-September 2020, and again in January 2021, some of Hawai'i's hospitals and ICUs were dangerously close to ~~their~~ reaching their maximum capacity. In the Fall of 2020, Federal staffing resources were needed to help provide nursing, respiratory therapist and other health care personnel assistance for those hospitals and nursing homes with high numbers of COVID-19 cases. Although Hawai'i's case numbers are presently better, the local presence of the highly transmissible B.1.1.7 variant SARS-CoV-2 virus is very concerning. Local modeling estimates by the [Hawai'i Pandemic Applied Modeling](#) group show our numbers of cases diagnosed per day could double by March 2021 (presuming a fair amount of non-adherence to group gathering restrictions on Super Bowl Sunday, similar to July 4, 2020). An [analysis just published online](#) by Dr. Nicole Washington, et al demonstrates this B.1.1.7 variant has been circulating in the US since November 2020 and has a transmission rate 30-40% higher than the currently predominant virus strains. Additionally, [another study from the UK](#) suggests the risk of dying from B.1.1.7 is 35% higher than it is for other variants. While both studies need to complete full peer review, they support the cautions being made by the Centers for Disease Control and Prevention and the Hawai'i Department of Health. Simply put, if Hawai'i is not able to control the spread of the SARS-CoV-2 virus, which now includes the B.1.1.7 variant, then difficult choices may need to be made if ventilators, ICU beds,

or health care personnel are insufficient for the numbers of patients with severe COVID-19 disease.

Governor Ige's Executive Order 20-05 mandates that all health care professionals render care to anyone affected by COVID-19 and grants civil immunity to those health care professionals. However, the Order does not provide immunity from criminal liability. HB 540 is a comprehensive and uniform approach to affording both civil and criminal immunity to all health care providers acting in good faith during a state of emergency or local state of emergency.

Hawai'i's health providers and health systems are doing their best to provide the most appropriate care for patients with COVID-19, in the care setting that is most appropriate for the severity of disease. With the sickest patients, difficult discussions about care at the end-of-life have been commonly occurring due to the toll of COVID-19. If Hawai'i's hospitals reach maximum ICU bed or mechanical ventilator capacity, experience severe shortages of medications, equipment, supplies, or health care personnel ~~shortages~~ due to COVID-19, then the Hawai'i State Crisis Standards of Care Triage Allocation Framework may need to be utilized. The allocation framework is grounded in the highest ethical standards and is consistent with current recommendations for how to allocate scarce critical resources during a public health emergency. The additional immunity proposed in this bill will help the health care providers who are providing care for COVID-19 patients during this very difficult pandemic.

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



THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Linda Ichiyama, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
Members, House Committee on Pandemic & Disaster Preparedness

From: Brent Tatsuno, MD, Critical Care Intensivists, The Queen's Medical Center

Date: February 8, 2021

RE: Support for HB540, Related to Liability

Thank you for giving me the opportunity to testify in support of HB540.

My name is Brent Tatsuno and I am an ICU physician at The Queen's Medical Center (Queen's) and have been working in the COVID ICU since the pandemic impacted our State of Hawai'i. I consider it an honor and a privilege to be able to care for our community in one of the best hospitals that I've worked in. Throughout the pandemic, I've learned that teamwork and collaboration are some of the most important factors in caring for COVID patients, especially as we continue to learn more about the disease and adapt to new therapies and practices.

In March 2020, our various ICUs came together to create a disaster plan for Queen's. Hearing about the surge of patients with COVID in places like China, Italy, and New York, we knew that we needed to be prepared for something similar to happen here, at home. Physicians, nurses, pharmacists, therapists, and our trainees came together and pledged to help in any way that they could. Anesthesiologists created our procedure team to intubate COVID patients, our ICUs expanded beyond their capacity, we purchased more supplies such as ventilators and medications, and we had a list of non-ICU colleagues who would come back to work with us in our COVID ICU.

Unfortunately, we surged in September 2020. To care for the more than 100 COVID patients at Queen's, we expanded our COVID units and came together to provide the best care that we could. We relied on each other, trusted each other, and pulled through the September surge as One Team.

Our friends, families, and the people of Hawai'i have worked tirelessly to put the needs of the community before their own. We mask, distance, and have adapted in ways that we would never have thought of. Virtual Christmas parties and drive-through baby showers are the new normal. And we are lucky that we haven't had a post-holiday surge like the one in California and many other states. But with the more contagious UK and South African variants in the community, I worry that we will again face a surge of patients.

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.



THE QUEEN'S HEALTH SYSTEMS

Every week, we've worked to adapt our surge protocols to provide the best care that we possibly can for as many patients as we can. If a surge happens where the need for medical care overwhelms our ability to provide it, we will need to enact the Crisis Standards of Care to guide us through unprecedented times. But our mission will remain the same: to care for as many patients as we can. We will expand past 100% capacity, and then expand even more. We will ask our colleagues to step-up and help us in the ICU. And we will come together again and continue to put patients first, because that's our commitment to this community.

At that point, we will need every bit of help that we can get. Just as we will support our community, we need the community to support us. HB540 will help ensure that we can focus solely on patient care in such a crisis situation and will encourage health care providers to join the fight against COVID and contribute to this cause.

We became healthcare providers because we want to do our best to help people achieve good health. Just as a teacher wants each of their students to be successful, and a firefighter would risk their lives to save as many people from a burning building, we've taken an oath to help as many patients as we possibly can. Support of HB540 will allow us to truly focus on taking care of our patients at such a critical time.

Thank you again for the opportunity to testify in support of this measure.

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.

**TESTIMONY OF NAHELANI WEBSTER ON BEHALF OF
THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO
H.B. NO. 540**

DATE: Tuesday, February 9, 2021

TIME: 8:30 am

To: Chair Linda Ichiyama, and Members of the House Committee on Pandemic & Disaster Preparedness, and Chair Richard Onishi, Chair and Members of the House Committee on Labor & Tourism:

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. 540, relating to Liability.

The purpose of this measure is to grant immunity of civil and criminal liability to a health care provider. While we greatly appreciate the work and efforts of our health care industry in response to any emergency including the current global pandemic, the language in this measure is overly broad and places our most vulnerable at risk.

It is during times of emergency when we need to protect our most vulnerable population. For example, our Kūpuna in senior nursing facilities impacted by the pandemic would not be able to protect their rights in court should this measure pass. Broad waivers of liability such as is being proposed in H.B. 540 creates a barrier to obtain redress when individuals are harmed or injured.

The term "Health care providers" is overly broad and it is unclear as to whom this includes in addition to our front line health care workers. The current language could also include health care providers practicing outside their scope of their

license. For instance, a dentist working on the front lines would be cloaked with immunity despite working outside the ordinary scope of their licensure. I do not believe it is the intent of the bill to grant all health care providers with a blanket immunity even when their acts are outside of what would be considered a direct response to emergency related pandemic care.

As a policy, the focus should be on protecting patients, trying to determine the causes of any medical errors and working to prevent any future harm from re-occurring. A state of emergency does not warrant the lessening of rights of patients in comparison to patients receiving care in non-emergency times. Understanding the need for heightened safety measures and providing support to health care providers so they may have the necessary protective measures in order to maintain a safe and reasonable standard of care would be a more beneficial approach than carving out an exception to holding them liable if their standards should fall short.

For these reasons, HAJ opposes this measure and urges the committee to look at alternative ways to provide additional support to our health care workers in times of emergency rather than reducing the rights of patients in need of treatment and care. Thank you for the opportunity to testify on this measure.

**Written Testimony Presented Before the
COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS
and the
COMMITTEE ON LABOR & TOURISM**

**DATE: Tuesday, February 09, 2021
TIME: 8:30 am.
PLACE: VIA VIDEOCONFERENCE**

**By
Laura Reichhardt, APRN, AGPCNP-BC
Director, Hawai'i State Center for Nursing
University of Hawai'i at Mānoa**

Testimony in Support for HB540

Chairs Ichiyama and Onishi, Vice Chairs Eli and Sayama, and members of the House Committee on Pandemic & Disaster Preparedness and the Committee on Labor & Tourism, thank you for the opportunity for the Hawai'i State Center for Nursing to provide testimony in support of this measure which aims to make immune from civil or criminal liability a health care provider who acts in good faith during a state of emergency or local state of emergency and adheres to crisis standards of care.

There are over 19,200 nurses currently licensed and living in Hawai'i and an additional 12,400 who are licensed in Hawai'i and reside outside of the state. At the start of the pandemic, Governor Ige established through Proclamations Related to the COVID-19 Emergency that out-of-state licensed practical nurses, registered nurses, advanced practice registered nurses, and advance practice registered nurses with prescriptive authority with a current and active license, or those previously licensed pursuant to HRS Chapter 457 but who are no longer current and active, to practice in Hawai'i without a license with conditions to ensure public safety and oversight. Through these proclamations, Governor Ige also waived the licensure and accompanying requirements to permit nursing graduates, after May 1, 2020, of nursing education programs approved by the State Board of Nursing or a national accrediting body, to be employed to practice nursing with conditions to ensure public safety and oversight.

In the height of the surge in August-September, state healthcare facilities sought support from the Hawai'i State Center for Nursing despite the nurses in Hawai'i and the Governor's waivers. As a result, the Center conducted a call for nurses, soliciting nearly 1,900 responses from Hawai'i, the nation, and the world. This information was provided to healthcare employers by county to support immediate and future surge staffing demands.

The mission of the Hawai'i State Center for Nursing is that through collaborative partnerships, the Center provides accurate nursing workforce data for planning, disseminates nursing knowledge to support excellence in practice and leadership development; promotes a diverse workforce and advocates for sound health policy to serve the changing health care needs of the people of Hawai'i.

Though nurses responded to the call for care, it did not go without a toll. Nationally, nurses reported higher rates of emotional and physical exhaustion, higher rates of exposure to COVID, and lower rates of emotional support compared to other healthcare workers ([Mental Health America, 2020](#)). An added challenge was determining how the ever-changing standards for providing care to COVID-positive patients and others would fall under civil or criminal liability despite health care providers acting in good faith and using the best evidence available for crisis standards of care. This measure will provide reassurance to healthcare workers, including nurses, that their care provided under crises will not subject them to undue liability.

The Hawai'i State Center for Nursing urges you to pass this measure through your committee. Thank you for the dedication and care for healthcare workers and the people in Hawai'i.

The mission of the Hawai'i State Center for Nursing is that through collaborative partnerships, the Center provides accurate nursing workforce data for planning, disseminates nursing knowledge to support excellence in practice and leadership development; promotes a diverse workforce and advocates for sound health policy to serve the changing health care needs of the people of Hawai'i.

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LATE

HB-540

Submitted on: 2/8/2021 5:48:08 PM

Testimony for PDP on 2/9/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Pcola_Davis	Individual	Oppose	No

Comments:

As a private citizen, I am STRONGLY OPPOSED, to this Bill.

Recently and article from California relayed that EMS were not to take any 911 callers to the ER if their survival chances were low. Even though EMS personnel were not doctors nor had the privileges to make that determination.

This bill is introducing a lower standard of care based on declarations of state/local emergencies and resources.

Lower standards of care for who, the elderly,

Healthcare providers immunity during a pandemic is unacceptable. Healthcare is healthcare. You cannot create a bill that goes against what we pay for in our healthcare insurance plans. The use of the term "crisis standards of care" has been created due to the pandemic, but could be used in the future for any event that fits the undefined criteria. Such as; any emergency proclamations of state emergencies or local state of emergency as declared by the governor or mayor, influenza, pandemic, earthquake, or hurricane or any "catastrophic disaster" which could be broadly interpreted.

The Department of Health may have reviewed and approved these "crisis standards of care," 1. When a patient enters the healthcare facility they are provided with the Patient Bill of Rights. The DOH cannot override these rights, nor can this bill.

2. Upon searching the DOH website, i cannot find anything related to "crisis standards of care."

"Crisis standards of care" means a substantial change in usual health care operations and the level of care it is possible to deliver, which is made necessary by a pervasive or catastrophic disaster, such as a pandemic influenza, earthquake, or hurricane.

The following definitions bare questioning as to "substantial change" and "level of care it is possible to deliver." The implication is that we have an excuse to lower the standard of care.

"Crisis standards of care" means a substantial change in usual health care operations and the **level of care it is possible to deliver**, which is made necessary by a pervasive or catastrophic disaster, such as a pandemic influenza, earthquake, or hurricane.

"Substantial change in usual health care operations" means a change in the level of care delivered that is justified by specific circumstances via a formal declaration by a state or county government that:

(1) a sustained period means _____

(2) Enables **specific powers and protections** for health care providers in the necessary tasks of **allocating and using scarce medical resources and implementing alternate care facility operations.**

LATE

HB-540

Submitted on: 2/9/2021 7:12:03 AM

Testimony for PDP on 2/9/2021 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Wesley Lo	Individual	Comments	No

Comments:

We are supportive of the intent for immunities for healthcare workers during a crisis or disaster; however discussion regarding the language and limits of exemptions should be encouraged to ensure that there is passage of an act to create acceptable immunities.

We encourage more dialogue on the limits of criminal liability to ensure passage of this bill