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DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, February 22, 2023
9:35 a.m.
State Capitol, Conference Room 229 and via Videoconference**

**On the following measure:
S.B. 1038, S.D. 1 RELATING TO TELEHEALTH**

Written Testimony Only

Chair Keohokalole and Members of the Committees:

My name is Gordon Ito, and I am the Insurance Commissioner for the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department offers comments on this bill.

The purpose of this bill is to clarify reimbursement for services provided through telehealth via an interactive telecommunications system and define "interactive telecommunications system".

By inserting the phrase "via an interactive telecommunications system" at p. 5, line 7; p. 8, line 5; and p. 11, line 2, this bill would exclude any telehealth services from reimbursement that do not meet the new definition of "interactive telecommunication system".

Moreover, the phrase "provided that, as used in the definition of 'interactive telecommunications system', 'two-way, real-time audio-only communication' is subject

to the same meaning and conditions as in title 42 Code of Federal Regulations § 410.78, as amended[.]" at p. 6, lines 13 to 17; p. 9, lines 8 to 12; and p. 12, lines 8 to 12, is vague and may lead to confusion. The phrase "subject to the same meaning and conditions" is unclear and suggests that 42 CFR § 410.78 includes a definition and list of conditions for the term "two-way, real-time audio-only communication"; however, no such definition or conditions appear in 42 CFR § 410.410.78. Additionally, these amendments may be unnecessary. The term "two-way, real-time audio-only communication" does not appear to be used in sections 3, 4, and 5 of this bill other than in this amendment nor does it appear in sections of the HRS providing for commercial health plan telehealth coverage mandates, which are amended by sections 3, 4, and 5 of this bill.

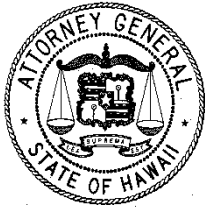
Further, the amendments to the definition of "telehealth" at p. 7, lines 17 to 21; p. 10, lines 13 to 17; and p. 13, lines 13 to 17, presume that the bill brings standard telephone contacts, facsimile transmissions, or electronic mail text into the definition of "telehealth". However, there are no such amendments in this bill. This may lead to confusion and statutory interpretation issues.

Additionally, because this bill does not bring standard telephone contacts within the scope of "telehealth", standard telephone contacts would continue to not be subject to reimbursement under HRS §§ 431:10A-116.3(c), 432:1-601.5(c), and 432D-23.5(c) under the amendments proposed.

Finally, we note that it is unclear whether current Medicare reimbursement policies for audio-only telehealth will continue indefinitely. The Consolidated Appropriations Act of 2023, in part, amends 42 U.S.C. 1395m(m) by providing that "the Secretary shall continue to provide coverage and payment under this part for telehealth services ... as of the date of the enactment of this paragraph that are furnished via an audio-only telecommunications system during the period beginning on the first day after the end of such emergency period and ending on December 31, 2024[.]"

We make no comment regarding section 2 of this bill.

Thank you for the opportunity to testify on this bill.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1038, S.D. 1, RELATING TO TELEHEALTH.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Wednesday, February 22, 2023 **TIME:** 9:35 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Erin N. Lau or
Lili A. Young, Deputy Attorneys General, at 587-3050)

Chair Keohokalole and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill amends a medical assistance statute and several insurance statutes to require reimbursement for services provided by a physician to a patient through the use of an "interactive telecommunications system." It includes audio-only technology for behavioral health services and defines "two-way, real-time audio-only communication" as the same definition with the same conditions for reimbursement as the Medicare federal regulations at title 42 Code of Federal Regulations (CFR) section 410.78. See page 6, lines 15-17, and page 9, lines 10-12. The bill has two problematic issues, namely that the amendments to the term "interactive telecommunications system" and the amendments to the term "telehealth" create ambiguities in the law that need clarification.

First, the bill amends four different statutory sections to add the same definition of "interactive telecommunications system" as follows:

"Interactive telecommunications system" has the same meaning as the term is defined in title 42 Code of Federal Regulations section 410.78(a), **as amended**; provided that, as used in the definition of "interactive telecommunications system", "two-way, real-time audio-only communication" is subject to **the same meaning** and conditions as in title 42 Code of Federal Regulations section 410.78, **as amended**.

Page 3, lines 12-18; page 6, lines 11-17; page 9, lines 6-12, and page 12, lines 6-12 (emphases added). The words "as amended" in reference to the federal law makes the definition ambiguous because 42 CFR § 410.78 has been amended several times, and the bill does not specify the amendment it relates to or whether it is intended to incorporate all prior and future amendments. Incorporating the future law of another jurisdiction has been subject to challenge as an unlawful delegation of legislative power. See State v. Tengan, 67 Haw. 451 (1984). In addition, the amendment to require that "two-way, real-time audio-only communication" has the same meaning as the federal regulation is ambiguous because the federal regulation does not specifically define this term. Moreover, any conditions for reimbursement should be included in the reimbursement section rather than within the definition of "interactive telecommunications system." To clarify the definition of "interactive telecommunications system," we recommend striking the words "as amended" and the proviso with the reference to "two-way real-time audio-only communication" so that the definition would read as follows:

"Interactive telecommunications system" has the same meaning as in title 42 Code of Federal Regulations section 410.78(a).

And with that change, we recommend revising the reimbursement amendments on page 2, lines 7-14; page 5, lines 6-13; page 8, lines 4-11; and page 11, lines 1-8, to insert the conditions for reimbursement of a "two-way, real-time audio-only communication," so that the reimbursement sections would read as follows:

Reimbursement for services provided through telehealth via an interactive telecommunications system shall be equivalent to reimbursement for the same services provided via face-to-face contact between a health care provider and a patient[;], provided that reimbursement for the diagnosis, evaluation, or treatment of a mental health disorder delivered through an interactive telecommunications system using two-way, real-time audio-only communication technology must meet the requirements of title 42 Code of Federal Regulations section 410.78. 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.

Second, the current definition of "telehealth" explicitly excludes the use of "standard telephone contacts, facsimile transmissions, or email text[.]" See sections 346-59.1, 431:10A-116.3, 432:1-601.5, and 432D-23.5, Hawaii Revised Statutes. This bill sets forth and amends the definition of telehealth in these four statutory sections as follows:

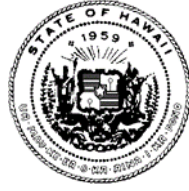
"Telehealth" means the use of telecommunications services, as defined in section 269-1, to encompass four modalities: store and forward technologies, remote monitoring, live consultation, and mobile health; and which shall include but not be limited to real-time video conferencing based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, for the purpose of delivering enhanced health care services and information while a patient is at an originating site and the health care provider is at a distant site. ~~[Standard] Except as otherwise provided for in this section, standard~~ telephone contacts, facsimile transmissions, or email text, in combination or ~~[by itself, does] alone, do~~ not constitute ~~[a] telehealth [service for the purposes of this section.] services.~~"

Page 4, line 7, through page 5, line 2; page 7, lines 5-21; page 10, lines 1-17; and page 13, lines 1-17. The addition of "[e]xcept as otherwise provided for in this section" makes the provisions ambiguous because it seems to reference an exception for the use of telephone contacts, facsimile transmissions, or e-mail text that are otherwise excluded. Yet neither the bill nor the statute provides a clear exception set out for these methods of communication. Instead, the bill adds a new term to the statutes, "interactive communications system" (as set out above), which includes a "two-way, real-time audio-only communication technology." Because different wording is used, it is not clear that "interactive communications system" includes telephone contacts, facsimile transmissions, or e-mail text, or whether those are things that should be included in reimbursement.

To address the ambiguity, we recommend revising the amendment in the definition of "telehealth" on page 4, lines 19-20; page 7, lines 17-18; page 10, lines 13-14; and page 13, lines 13-14, to read as follows: "~~[Standard] Except as provided through an interactive telecommunications system, standard~~ telephone contacts"

We respectfully ask the Committee to consider the recommended amendments.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 21, 2023

TO: The Honorable Senator Jarrett Keohokalole, Chair
Senate Committee on Commerce & Consumer Protection

FROM: Cathy Betts, Director

SUBJECT: [SB 1038 SD1](#) – RELATING TO TELEHEALTH.

Hearing: February 22, 2023, 9:35 a.m.
Conference Room 229 & Videoconferencing, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this measure and defers to the Department of Commerce & Consumer Affairs and the Department of the Attorney General.

PURPOSE: This bill clarifies reimbursement for services provided through telehealth via an interactive telecommunications system. Defines "interactive telecommunications system." Effective 12/31/2050. (SD1)

DHS appreciates the amendments of the Committee on Health & Human Services:

- (1) Clarifying that the definition of "interactive telecommunications system" is consistent with that used by the Centers for Medicare and Medicaid Services, as the term is defined in Title 42 Code of Federal Regulations section 410.78(a), as amended, relating to telehealth services; and
- (2) Inserting an effective date of December 31, 2050, to encourage further discussion.

DHS supports telehealth, including the Medicare definition and rules for "interactive telecommunication system."

As drafted, Hawaii's law will align with federal regulations, and Hawaii's Medicaid program has the same quality standards for its members as Medicare has for its beneficiaries.

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



UNIVERSITY OF HAWAII SYSTEM

‘ŌNAEHANA KULANUI O HAWAII

Legislative Testimony

Hō'ike Mana'o I Mua O Ka 'Aha'ōlelo

Testimony Presented Before the
Senate Committee on Commerce and Consumer Protection
Wednesday, February 22, 2023 at 9:35 a.m.

By

Lee Buenconsejo-Lum, MD, Acting Dean
John A. Burns School of Medicine

And

Michael Bruno, Provost
University of Hawai'i at Mānoa

SB 1038 SD1 – RELATING TO TELEHEALTH

Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Thank you for the opportunity to testify in **support** of SB 1038 SD1 which allows for the use of standard telephone contacts for telehealth purposes, consistent with the 2023 Medicare Physician Fee Schedule and defines “interactive telecommunications system”.

Since 1999, the use and expansion of telehealth services and technology in Hawai'i have been recognized as a way to increase access and reduce delays to health care, particularly in rural areas of the state. Many of the highest-risk patients reside in Medically Underserved Areas (MUA), are part of Medically Underserved Populations (MUP), or reside in federally-designated health professional shortage areas. Telehealth via telephonic communication benefits many in these communities. Elderly, as well as medically- and socially-complex patients often face transportation barriers and difficulty navigating our collective system of health care. Patients with behavioral health issues are especially vulnerable and frequently require immediate attention. The inability of behavioral health and other patients to access the internet or to navigate complicated video platforms presents an even greater barrier to much-needed health care.

We note that Medicare and Medicaid pay equally for telephonic and telehealth services, recognizing the importance of telephonic services. 42 CFR § 410.78 defines telehealth services provides as follows:

“(3) Interactive telecommunications system means, except as otherwise provided in this paragraph, multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. For services furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder to a patient in their home, **interactive telecommunications may include two-way, real-time audio-only communication technology if the**

distant site physician or practitioner is technically capable to use an interactive telecommunications system as defined in the previous sentence, but the patient is not capable of, or does not consent to, the use of video technology. A modifier designated by CMS must be appended to the claim for services described in this paragraph to verify that these conditions have been met.” Emphasis added.

One of the realities for Hawai'i is that many of those most in need of telephonic care (limited means to travel, poor or absent internet coverage or bandwidth, residence remote from care providers, infirm with limited cognition or digital literacy, immune compromise in the age of COVID, etc.) suffer the most from a lack of provider reimbursement for telephonic coverage. Without telephonic coverage, these at-risk individuals must travel from their residence to clinics and emergency departments at great personal expense or choose to do without care guidance altogether. This measure is a positive step toward ensuring that Hawai'i's most vulnerable patients are given equal access to the high-quality health care and health services they deserve.

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



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The State Legislature
The Senate Committee on Commerce and Consumer Protection
Wednesday, February 22, 2023
Conference Room 229
9:35 a.m.

TO: The Honorable Jarrett Keohokalole,, Chair
RE: Support for S.B. 1038, SD1 Relating to Telehealth

Aloha Chair Keohokalole, and Members of the Committee:

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a nonpartisan, social mission organization that advocates for individuals age 50 and older. We have a membership of nearly 38 million nationwide and nearly 140,000 in Hawaii. We advocate at the state and federal level for the issues that matter most to older adults and their families, including telehealth. **AARP supports S.B. 1038 SD1** which clarifies reimbursement for services provided through telehealth and that interactive telecommunications may include real time audio-only communication (telephone), and **respectfully offers amendments** for your consideration.

AARP believes that telehealth is an important tool that can help people access health care in new ways and can make it easier for family caregivers to care for their loved ones. More and more of our members, especially those aged 50-59, are using their mobile devices and tablets to access information about their health. The use of telehealth technologies (especially those that include family members in virtual visits with providers) has the potential to result in better access to care, reduced transportation barriers, and improved outcomes for the care recipient.

With the continued presence of COVID-19, many people are still reluctant to leave their homes for an in-person visit with their health provider. Some are not comfortable using telehealth even with access to a computer and internet connection, while a telephone remains the preferred mode for communication for many especially kupuna. Therefore, it is critical that audio-only is recognized as a valid telehealth modality.

AARP has been supporting this initiative along with local stakeholders/community partners such as the Hawaii Primary Care Association (HPCA), the Hawaii Psychological Association, the

National Association of Social Workers, and others in the “Hui” who want to ensure patient access to audio-only mental health services while establishing reasonable restrictions on loss costs. We appreciate the recent negotiations that the Hawaii Primary Care Association have reached with HMSA and support the amendments agreed upon between the parties as reflected in HPCA’s testimony for SB 1038, SD1. Amendments highlights include:

- 1) 80% cap on reimbursement for mental health services provided through audio-only telehealth services
- 2) Easing the requirement for private insurers that exists in Medicare that an in-person visit take place at least 6-months prior to an initial audio-only mental health telehealth visit and 12-months prior to a subsequent visit by allowing an audio-visual mental health telehealth visit be substituted for the in-person visit;
- 3) Clarifying the definition of "interactive telecommunications system" to include "two-way, real-time audio-only communication

Thank you very much for the opportunity to testify in support of the agreement, as specified in the draft proposed by HPCA and urge the Committee to approve the proposed draft as a Senate Draft 2.

Sincerely,

A handwritten signature in black ink that reads "Keali'i S. López". The signature is written in a cursive, flowing style.

Keali'i S. López
State Director

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LJ R. Duenas
*Executive Director
Alzheimer's Association*

Testimony to the Senate Committee on Commerce and Consumer Protection Wednesday, February 22, 2023, 9:35 a.m.

Hawaii State Capitol, Conference Room 229 and Videoconference

RE: Senate Bill No. 1038, RELATING TO TELEHEALTH

Chair Jarrett Keohokalole, Vice Chair Carol Fukunaga, and Members of the Committee:

I am Ron Shimabuku, Director of Public Policy and Advocacy with the Alzheimer's Association. We are testifying in support of **Senate Bill No. 1038**.

The Alzheimer's Association was established to assist those facing Alzheimer's disease and other dementias by providing local support groups and educational resources while advancing crucial research and public policy initiatives.

Although the Alzheimer's Association has not taken an official position on telehealth for patients with dementia, we recognize the significance of access to healthcare services, most especially in rural areas and vulnerable populations. We also acknowledge that certain communities throughout the state have limited to no broadband access. Telehealth via telephonic means has been a mode of access to bridge this digital divide, allowing individuals with limited broadband to receive healthcare services.

Furthermore, through a coalition of non-profit organizations that the Alzheimer's Association has participated in, we acknowledge the agreement reached between the lead stakeholders in this proposal, i.e. the Hawaii Primary Care Association (HPCA), and the Hawaii Medical Service Association (HMSA). It is our belief that this will assist with addressing access to healthcare services temporarily, and encourage further discussion on the need to resolve this issue permanently.

We respectfully urge your favorable consideration of this bill.

Thanks for the opportunity to testify. If you have questions, please contact me at 808.451.3410 or rkshimabuku@alz.org.

Mahalo,



Ron Shimabuku
Director, Public Policy and Advocacy
Alzheimer's Association – Hawaii



American Cancer Society
Cancer Action Network
2370 Nu'uuanu Avenue
Honolulu, HI 96817
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www.fightcancer.org

Senate Committee on Commerce and Consumer Protection
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Decision Making Date: Wednesday, February 22, 2023

ACS CAN SUPPORTS SB 1038 SD1 – RELATING TO TELEHEALTH.

Cynthia Au, Government Relations Director – Hawaii Guam
American Cancer Society Cancer Action Network

Thank you for the opportunity to **SUPPORT** SB 1038 SD1 – RELATING TO TELEHEALTH. American Cancer Society Cancer Action Network (ACS CAN) acknowledges the agreement between parties on this issue and confirm that the draft proposed by HPCA reflects this agreement. ACS CAN supports the agreement as specified in the draft proposed by HPCA and urges the Committee to approve the proposed draft as Senate Draft 2.

The American Cancer Society Cancer Action Network (ACS CAN), the nonprofit, non-partisan advocacy affiliate of the American Cancer Society advocates for public policies that reduce death and suffering from cancer. ACS CAN works with federal, state, and local government bodies to support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem.

ACS CAN recognizes that telehealth increases access to quality cancer care among populations that are underserved (e.g., residents of rural communities, individuals with limited income, patients with low health literacy, and people of color). It is especially important for access to healthcare services in rural areas or areas on the neighbor islands with limited broadband access. Audio only telehealth can also improve health equity.

A particular benefit of telehealth emerged during the coronavirus pandemic - cancer patients vulnerable to COVID-19 could conduct a video or audio visit with their providers from the safety of their home without risking additional exposure to the virus. The pandemic has demonstrated the importance of adaptable policies around telehealth that allow patients to reap the optimal benefits of telehealth.

ACS CAN, through the Survivor Views program, asked a cohort of cancer patients and survivors about their experience with and interest in telehealth. Overwhelming majorities of cancer patients and survivors who have had telehealth visits believed their issues and questions were well-addressed. 55% of respondents had a phone visit and 43% had a video visit with a telehealth provider about an issue related to their

cancer care that otherwise would have been an in-person office visit (not a prescription refill or appointment booking). In both cases, 94% said their issues and questions were addressed well.

Again, ACS CAN acknowledges the agreement between parties on this issue and confirm that the draft proposed by HPCA reflects this agreement. ACS CAN supports the agreement as specified in the draft proposed by HPCA and urges the Committee to approve the proposed draft as Senate Draft 2.

Thank you again for the opportunity to provide testimony in SUPPORT on this important matter. Should you have any questions, please do not hesitate to contact Government Relations Director Cynthia Au at 808.460.6109, or Cynthia.Au@Cancer.org.



Hawaii Medical Association

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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

Date: February 22, 2023
From: Hawaii Medical Association
Beth England MD, Co-Chair, HMA Public Policy Committee

Re: SD1038 SD1; RELATING TO TELEHEALTH. Position: Support with Comments

To allow for safer and easier patient-provider interactions during COVID-19, there was a dramatic increase in telehealth. Patients who are elderly, have public insurance, are of Asian, African-American, or Hispanic heritage, and/or of a lower socioeconomic status were more likely to use audio-only communication for medical appointments¹. Audio-only services provide an invaluable means for marginalized populations that may not have access to internet to receive the healthcare they need.

Reducing barriers to care enables patients to continue to see their providers, even in times of hardship. A large review study of federally qualified health centers (FQHC) during the pandemic found that the number of patient visits for behavioral health appointments, which used a larger proportion of audio-only visits, remained unchanged, while specialties using a higher percentage of video appointments had a 6.5% decrease in visits². This indicates that telephone-based visits allowed more patients to continue their care. Audio-only telemedicine visits are also associated with a reduced time to follow-up visits³.

As we work to address the complex socioeconomic factors that lead to health disparities, providing an accessible means for disadvantaged populations to receive care is a step in the right direction. This need has been recognized at the federal level; the Center for Medicare and Medicaid Services (CMS) covers audio-only services for established patients receiving mental health or substance abuse disorder treatment as long as certain conditions are met⁴.

Widespread use of audio-only telehealth services is a relatively new phenomenon that requires thorough research and risk assessment. There is data to support its use for behavioral health, but additional studies are needed to ensure its quality and safety in other settings. HMA appreciates the amendments made to update the definition of “Interactive telecommunications system” to align with the 42 CFR § 410.78.

2023 Hawaii Medical Association Officers

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2023 Hawaii Medical Association Public Policy Coordination Team

Elizabeth Ann Ignacio, MD, Chair • Beth England, MD, Co-Chair
Linda Rosehill, JD, Government Relations • Marc Alexander, Executive Director

Physicians have rapidly adopted telemedicine technologies to better serve our population. Payment parity for audio-only telemedicine care for treatment of a mental health disorder is fair and appropriate. This will increase access to care, improve health, and in doing so, reduce long-term costs.

Thank you for allowing Hawaii Medical Association to offer comments and testify in support of this measure.

REFERENCES

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2023 Hawaii Medical Association Officers

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2023 Hawaii Medical Association Public Policy Coordination Team

Elizabeth Ann Ignacio, MD, Chair • Beth England, MD, Co-Chair
Linda Rosehill, JD, Government Relations • Marc Alexander, Executive Director

Wednesday, February 22, 2023 at 9:35 AM
Via Video Conference; Conference Room 229

Senate Committee on Commerce and Consumer Protection

To: Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

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

**Re: Testimony in Support of SB 1038, SD1
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 writes in SUPPORT of SB 1038, SD1 which conforms existing Medicare requirements to health insurers, mutual benefit societies and health maintenance organizations to cover services provided by way of an interactive telecommunications system, and clarifies that for diagnosis, evaluation or treatment of a mental health disorder, interactive telecommunications may include audio-only communication in certain circumstances.

Since 1999, the use and expansion of telehealth services and technology in Hawaii has been recognized as a strategy to increase patient access to healthcare by overcoming the geographic challenges across our state. Many of Hawaii's geographically access challenged patients reside in Medically Underserved Areas (MUA), are part of Medically Underserved Populations (MUP), or reside in federally designated health professional shortage areas. Elderly, as well as medically- and socially complex patients often face transportation barriers, limited broadband access and personal difficulty navigating the technological requirements of accessing traditional video telehealth care services. In these instances, telephonic communication becomes a viable alternative for many in these communities to overcome barriers enabling them to access healthcare remotely.

HPH supports the development of a provider reimbursement system that also incorporates reimbursement for telephonic services. We have experienced challenges with our patients accessing acute care services (limited means to travel, poor or absent internet coverage, residence remote from care providers, infirm with limited mobility, immune compromise in the age of COVID, etc.) across our system. As a related example,

within HPH charges for telephonic services represent 12-15% of total charges for remote physician to patient acute care service charges indicating a need for telephonic services as an alternative care modality. In the absence of telephonic services being provided or available, these at-risk individuals would have had to resort to travel from their residence to clinics and emergency departments at great personal expense or choose to do without care guidance altogether. Therefore, we foster a telehealth environment in Hawaii that allows both patients today the ability to access behavioral health services remotely without unnecessarily foreclosing future opportunities to develop alternative reimbursement structures for other remote access modalities to flourish.

Thank you for the opportunity to testify.



**Testimony to the Senate Committee on Commerce and Consumer Protection
Wednesday, February 22, 2023; 9:35 a.m.
State Capitol, Conference Room 229
Via Videoconference**

RE: SENATE BILL NO. 1038, SENATE DRAFT 1, RELATING TO TELEHEALTH.

Chair Keohokalole, Vice Chair Fukunaga, 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** Senate Bill No. 1038, Senate Draft 1, RELATING TO TELEHEALTH, and offers **AMENDMENTS** for your consideration.

By way of background, the HPCA represents Hawaii's Federally Qualified Health Centers (FQHCs). FQHCs provide desperately needed medical services at the frontlines to over 150,000 patients each year who live 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.

This bill, as received by your Committee, would:

- (1) Require insurance reimbursement for services provided through telehealth by way of an "interactive telecommunications system" and
- (2) Define "interactive telecommunications system" to be consistent with 42 CFR 410.78, as amended.

This bill would apply to Medicaid (Chapter 346, Hawaii Revised Statutes (HRS)), accident an health or sickness insurance contracts (Article 10A of Chapter 431:10A, HRS), benefit societies (Article 1 of Chapter 432, HRS), and health maintenance organizations (Chapter 432D, HRS). It would also take effect on December 31, 2050.

Testimony on Senate Bill No. 1038, Senate Draft 1
Wednesday, February 22, 2023; 9:35 a.m.
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Over the past six weeks, the HPCA, on behalf of a Hui consisting of the Hawaii Psychological Association, the National Association of Social Workers, the Hawaii Island Association for Marriage and Family Therapists, the Hawaii Substance Abuse Coalition; the HPCA, AARP, the American Cancer Society Cancer Action Center, the Hawaii Parkinson's Association, the Epilepsy Foundation of Hawaii, and the Alzheimer's Association, among other organizations (HUI), conducted a series of discussions with the Hawaii Medical Service Association (HMSA) to determine whether a compromise could be reached that would ensure patient access to audio-only mental health services while establishing reasonable restrictions on loss costs.

After considerable work by all parties to achieve a compromise, the HPCA and HMSA was able to reach a tentative agreement that was presented to the participating organizations who in turn informed the HPCA that they were in support of the agreement. The terms of the agreement are presented for your consideration in the attached draft bill.

In summary:

- (1) The HUI AGREES to an 80% cap on reimbursement for mental health services provided through audio-only telehealth services [**NOTE:** All Medicaid benefits must be approved by the federal Center for Medicare and Medicaid Services in accordance with the State Medicaid Plan and federal law.];
- (2) HMSA AGREES to ease a requirement for private insurers that exists in Medicare that an in-person visit take place at least 6-months prior to an initial audio-only mental health telehealth visit and 12-months prior to a subsequent visit by allowing an audio-visual mental health telehealth visit be substituted for the in-person visit;
- (3) Both the HUI and HMSA AGREE to a sunset date of December 31, 2025, or exactly one year AFTER the sunset of the Consolidated Appropriations Act of 2023. This will allow Hawaii's Medicaid and insurance regulators to determine whether the reimbursement requirements in Medicare for audio-only mental health services are permanent or temporary. In 2025, the Legislature can reevaluate the need for a sunset and the 80% reimbursement cap; and
- (4) Both the HUI and HMSA AGREE to the amendments proposed by the Department of Human Services (DHS) to clarify the definition of "interactive telecommunications system" to include "two-way, real-time audio-only communications.

Testimony on Senate Bill No. 1038, Senate Draft 1
Wednesday, February 22, 2023; 9:35 a.m.
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We note that DHS and the Department of the Attorney General continue to deliberate over the definitional language of "interactive telecommunications system" and the specific references to Title 42 Code of Federal Regulations Section 410.78, and other citations of the Medicare regulations. To this, we assert that the Medicaid Administrator for the State of Hawaii is the expert on behalf of the State regarding how Medicaid and Medicare effect our State, and as such, the parties defer to her wisdom with consultation with the Attorney General.

As the organization that first brought this issue to the Legislature's attention in 2020 [See, Testimony to the Senate Committee on Ways and Means on House Bill No. 2502, Senate Draft 1, July 2, 2022.], the HPCA believes that the compromise reached between the parties is fair and reasonable. It will level the playing field between Medicare, Medicaid, and private health care insurance and ensure that basic essential mental health services are available to rural and isolated communities, our Kupuna and vulnerable constituencies, and to the general public.

For this reason, the HPCA strongly urges your favorable consideration of the proposed amendments to this bill.

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.

attachment

A BILL FOR AN ACT

RELATING TO TELEHEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 346-59.1, Hawaii Revised
2 Statutes, is amended as follows:
3 1. By amending subsection (b) to read:
4 "(b) Reimbursement for services provided through
5 telehealth by way of an interactive telecommunications
6 system shall be equivalent to reimbursement for the same
7 services provided via face-to-face contact between a
8 health care provider and a patient. Nothing in this
9 section shall require a health care provider to be
10 physically present with the patient at an originating
11 site unless a health care provider at the distant site
12 deems it necessary."
13 2. By amending subsection (g) to read:
14 "(g) For the purposes of this section:
15 "Distant site" means the location of the health care
16 provider delivering services through telehealth at the
17 time the services are provided.

1 "Health care provider" means a provider of services,
2 as defined in title 42 United States Code section
3 1395x(u), a provider of medical and other health
4 services, as defined in title 42 United States Code
5 section 1395x(s), other practitioners licensed by the
6 State and working within their scope of practice, and any
7 other person or organization who furnishes, bills, or is
8 paid for health care in the normal course of business,
9 including but not limited to primary care providers,
10 mental health providers, oral health providers,
11 physicians and osteopathic physicians licensed under
12 chapter 453, advanced practice registered nurses licensed
13 under chapter 457, psychologists licensed under chapter
14 465, and dentists licensed under chapter 448.

15 "Interactive telecommunications system" has the same
16 meaning as in title 42 Code of Federal Regulations
17 section 410.78, as amended. For purposes of this
18 definition, "two-way real-time audio-only communication"
19 has the same meaning and is subject to the same
20 conditions as in title 42 Code of Federal Regulations
21 section 410.78, as amended.

22 "Originating site" means the location where the
23 patient is located, whether accompanied or not by a

1 health care provider, at the time services are provided
2 by a health care provider through telehealth, including
3 but not limited to a health care provider's office,
4 hospital, critical access hospital, rural health clinic,
5 federally qualified health center, a patient's home, and
6 other non-medical environments such as school-based
7 health centers, university-based health centers, or the
8 work location of a patient.

9 "Telehealth" means the use of telecommunications
10 services, as defined in section 269-1, to encompass four
11 modalities: store and forward technologies, remote
12 monitoring, live consultation, and mobile health; and
13 which shall include but not be limited to real-time video
14 conferencing-based communication, secure interactive and
15 non-interactive web-based communication, and secure
16 asynchronous information exchange, to transmit patient
17 medical information, including diagnostic-quality digital
18 images and laboratory results for medical interpretation
19 and diagnosis, for the purpose of delivering enhanced
20 health care services and information while a patient is
21 at an originating site and the health care provider is at
22 a distant site. [~~Standard~~] Except as otherwise provided
23 for in this section, standard telephone contacts,

1 facsimile transmissions, or [~~e-mail~~] electronic
2 mail text, in combination or by itself, does not
3 constitute a telehealth service [~~for the purposes of this~~
4 ~~section~~]."

5 SECTION 3. Section 431:10A-116.3, Hawaii Revised
6 Statutes, is amended as follows:

7 1. By amending subsection (c) to read:

8 "(c) Reimbursement for services provided through
9 telehealth by way of an interactive telecommunications
10 system shall be equivalent to reimbursement for the same
11 services provided via face-to-face contact between a
12 health care provider and a patient; provided that for
13 two-way, real-time audio-only communication technology
14 for purposes of diagnosis, evaluation, or treatment of a
15 mental health disorder to a patient in their home shall
16 be 80% of the same services provided by face-to-face
17 contact between a health care provider and a patient;
18 provided further that the health care provider has
19 conducted an in-person or telehealth visit with the
20 patient no longer than six months prior to the audio-only
21 service, and at least twelve months prior to any
22 subsequent audio-only visit. Nothing in this section
23 shall require a health care provider to be physically

1 present with the patient at an originating site unless a
2 health care provider at the distant site deems it
3 necessary."

4 2. By amending subsection (g) to read:

5 "(g) For the purposes of this section:

6 "Distant site" means the location of the health care
7 provider delivering services through telehealth at the
8 time the services are provided.

9 "Health care provider" means a provider of services,
10 as defined in title 42 United States Code section
11 1395x(u), a provider of medical and other health
12 services, as defined in title 42 United States Code
13 section 1395x(s), other practitioners licensed by the
14 State and working within their scope of practice, and any
15 other person or organization who furnishes, bills, or is
16 paid for health care in the normal course of business,
17 including but not limited to primary care providers,
18 mental health providers, oral health providers,
19 physicians and osteopathic physicians licensed under
20 chapter 453, advanced practice registered nurses licensed
21 under chapter 457, psychologists licensed under chapter
22 465, and dentists licensed under chapter 448.

1 "Interactive telecommunications system" has the same
2 meaning as in title 42 Code of Federal Regulations
3 section 410.78, as amended. For purposes of this
4 definition, "two-way real-time audio-only communication"
5 has the same meaning and is subject to the same
6 conditions as in title 42 Code of Federal Regulations
7 section 410.78, as amended.

8 "Originating site" means the location where the
9 patient is located, whether accompanied or not by a
10 health care provider, at the time services are provided
11 by a health care provider through telehealth, including
12 but not limited to a health care provider's office,
13 hospital, health care facility, a patient's home, and
14 other nonmedical environments such as school-based health
15 centers, university-based health centers, or the work
16 location of a patient.

17 "Telehealth" means the use of telecommunications
18 services, as defined in section 269-1, to encompass four
19 modalities: store and forward technologies, remote
20 monitoring, live consultation, and mobile health; and
21 which shall include but not be limited to real-time video
22 conferencing-based communication, secure interactive and
23 non-interactive web-based communication, and secure

1 asynchronous information exchange, to transmit patient
 2 medical information, including diagnostic-quality digital
 3 images and laboratory results for medical interpretation
 4 and diagnosis, for the purpose of delivering enhanced
 5 health care services and information while a patient is
 6 at an originating site and the health care provider is at
 7 a distant site. [~~Standard~~] Except as otherwise provided
 8 for in this section, standard telephone contacts,
 9 facsimile transmissions, or [e-mail] electronic
 10 mail text, in combination or by itself, does not
 11 constitute a telehealth service for the purposes of this
 12 chapter."

13 SECTION 4. Section 432:1-601.5, Hawaii Revised
 14 Statutes, is amended as follows:

15 1. By amending subsection (c) to read:

16 "(c) Reimbursement for services provided through
 17 telehealth by way of an interactive telecommunications
 18 system shall be equivalent to reimbursement for the same
 19 services provided via face-to-face contact between a
 20 health care provider and a patient; provided that for
 21 two-way, real-time audio-only communication technology
 22 for purposes of diagnosis, evaluation, or treatment of a
 23 mental health disorder to a patient in their home shall

1 be 80% of the same services provided by face-to-face
2 contact between a health care provider and a patient;
3 provided further that the health care provider has
4 conducted an in-person or telehealth visit with the
5 patient no longer than six months prior to the audio-only
6 service, and at least twelve months prior to any
7 subsequent audio-only visit. Nothing in this section
8 shall require a health care provider to be physically
9 present with the patient at an originating site unless a
10 health care provider at the distant site deems it
11 necessary."

12 2. By amending subsection (g) to read:

13 "(g) For the purposes of this section:

14 "Health care provider" means a provider of services,
15 as defined in title 42 United States Code section
16 1395x(u), a provider of medical and other health
17 services, as defined in title 42 United States Code
18 section 1395x(s), other practitioners licensed by the
19 State and working within their scope of practice, and any
20 other person or organization who furnishes, bills, or is
21 paid for health care in the normal course of business,
22 including but not limited to primary care providers,
23 mental health providers, oral health providers,

1 physicians and osteopathic physicians licensed under
2 chapter 453, advanced practice registered nurses licensed
3 under chapter 457, psychologists licensed under chapter
4 465, and dentists licensed under chapter 448.

5 "Interactive telecommunications system" has the same
6 meaning as in title 42 Code of Federal Regulations
7 section 410.78, as amended. For purposes of this
8 definition, "two-way real-time audio-only communication"
9 has the same meaning and is subject to the same
10 conditions as in title 42 Code of Federal Regulations
11 section 410.78, as amended.

12 "Originating site" means the location where the
13 patient is located, whether accompanied or not by a
14 health care provider, at the time services are provided
15 by a health care provider through telehealth, including
16 but not limited to a health care provider's office,
17 hospital, health care facility, a patient's home, and
18 other nonmedical environments such as school-based health
19 centers, university-based health centers, or the work
20 location of a patient.

21 "Telehealth" means the use of telecommunications
22 services, as defined in section 269-1, to encompass four
23 modalities: store and forward technologies, remote

1 monitoring, live consultation, and mobile health; and
 2 which shall include but not be limited to real-time video
 3 conferencing-based communication, secure interactive and
 4 non-interactive web-based communication, and secure
 5 asynchronous information exchange, to transmit patient
 6 medical information, including diagnostic-quality digital
 7 images and laboratory results for medical interpretation
 8 and diagnosis, for the purpose of delivering enhanced
 9 health care services and information while a patient is
 10 at an originating site and the health care provider is at
 11 a distant site. [~~Standard~~] Except as otherwise provided
 12 for in this section, standard telephone contacts,
 13 facsimile transmissions, or [e-mail] electronic
 14 mail text, in combination or by itself, does not
 15 constitute a telehealth service for the purposes of this
 16 chapter."

17 SECTION 5. Section 432D-23.5, Hawaii Revised
 18 Statutes, is amended as follows:

19 1. By amending subsection (c) to read:

20 "(c) Reimbursement for services provided through
 21 telehealth by way of an interactive telecommunications
 22 system shall be equivalent to reimbursement for the same
 23 services provided via face-to-face contact between a

1 health care provider and a patient; provided that for
2 two-way, real-time audio-only communication technology
3 for purposes of diagnosis, evaluation, or treatment of a
4 mental health disorder to a patient in their home shall
5 be 80% of the same services provided by face-to-face
6 contact between a health care provider and a patient;
7 provided further that the health care provider has
8 conducted an in-person or telehealth visit with the
9 patient no longer than six months prior to the audio-only
10 service, and at least twelve months prior to any
11 subsequent audio-only visit. Nothing in this section
12 shall require a health care provider to be physically
13 present with the patient at an originating site unless a
14 health care provider at the distant site deems it
15 necessary."

16 2. By amending subsection (g) to read:

17 "(g) For the purposes of this section:

18 "Distant site" means the location of the health care
19 provider delivering services through telehealth at the
20 time the services are provided.

21 "Health care provider" means a provider of services,
22 as defined in title 42 United States Code section
23 1395x(u), a provider of medical and other health

1 services, as defined in title 42 United States Code
2 section 1395x(s), other practitioners licensed by the
3 State and working within their scope of practice, and any
4 other person or organization who furnishes, bills, or is
5 paid for health care in the normal course of business,
6 including but not limited to primary care providers,
7 mental health providers, oral health providers,
8 physicians and osteopathic physicians licensed under
9 chapter 453, advanced practice registered nurses licensed
10 under chapter 457, psychologists licensed under chapter
11 465, and dentists licensed under chapter 448.

12 "Interactive telecommunications system" has the same
13 meaning as in title 42 Code of Federal Regulations
14 section 410.78, as amended. For purposes of this
15 definition, "two-way real-time audio-only communication"
16 has the same meaning and is subject to the same
17 conditions as in title 42 Code of Federal Regulations
18 section 410.78, as amended.

19 "Originating site" means the location where the
20 patient is located, whether accompanied or not by a
21 health care provider, at the time services are provided
22 by a health care provider through telehealth, including
23 but not limited to a health care provider's office,

1 hospital, health care facility, a patient's home, and
2 other nonmedical environments such as school-based health
3 centers, university-based health centers, or the work
4 location of a patient.

5 "Telehealth" means the use of telecommunications
6 services, as defined in section 269-1, to encompass four
7 modalities: store and forward technologies, remote
8 monitoring, live consultation, and mobile health; and
9 which shall include but not be limited to real-time video
10 conferencing-based communication, secure interactive and
11 non-interactive web-based communication, and secure
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13 medical information, including diagnostic-quality digital
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15 and diagnosis, for the purpose of delivering enhanced
16 health care services and information while a patient is
17 at an originating site and the health care provider is at
18 a distant site. [~~Standard~~] Except as otherwise provided
19 for in this section, standard telephone contacts,
20 facsimile transmissions, or [~~e-mail~~] electronic
21 mail text, in combination or by itself, does not
22 constitute a telehealth service for the purposes of this
23 chapter."

1 SECTION 6. Statutory material to be repealed is
2 bracketed and stricken. New statutory material is
3 underscored.

4 SECTION 7. This Act shall take effect upon its
5 approval and be repealed on December 31, 2025.

6
7

Report Title:

Telephonic Telehealth Insurance Reimbursement

Description:

Conforms the State's law regarding telehealth to the medicare standards by clarifying that telehealth services provided by way of an interactive telecommunications system be reimbursed. (SD2 DRAFT)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



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Community Health
Worker Initiative

COVID-19 Response

Hawai'i Drug & Alcohol-Free
Coalitions

Hawai'i Farm to School Hui

Hawai'i Oral Health Coalition

Hawai'i Public Health Training Hui

Healthy Eating + Active Living

Kūpuna Collective

Date: February 22, 2023

To: Senator Jarrett Keohokalole, Chair
Senator, Vice Chair
Members of the Committee on Commerce & Consumer Protection

Re: Support SB 1038 SD1 Relating to Telehealth

Hrg: Wednesday, February 22, 2023, at 9:35 AM, Conf Rm 229

The Hawai'i Public Health Instituteⁱ (HIPHI) is in **Support of SB 1038 SD1**, which clarifies reimbursement for services provided through telehealth via an interactive telecommunications system. It also defines the term "interactive telecommunications system." HIPHI strongly supports policies that increase access to health care.

Hawai'i faces a continued shortage of health care providers, particularly on Neighbor Islands and rural areas. By ensuring that the definition of "interactive telecommunications" includes audio-only communication in certain circumstances, it will be much easier for particular populations to better utilize the telehealth option. There are areas that do not have reliable, consistent WiFi throughout the state. Those residents need the same opportunities to access care through telehealth as others.

HIPHI supports increased access to healthcare services through telehealth services. Telehealth is especially beneficial for Neighbor Islands and rural areas, where access may be more limited. Furthermore, it helps to provide care to those who have mobility challenges or are unable to leave their homes.

This measure will help to strengthen health in our state.

Mahalo,

A handwritten signature in black ink that reads 'Peggy Mierzwa'.

Peggy Mierzwa
Director of Policy & Advocacy
Hawaii Public Health Institute

ⁱ Hawai'i Public Health Institute is a hub for building healthy communities, providing issue-based advocacy, education, and technical assistance through partnerships with government, academia, foundations, business, and community-based organizations.



The Hawaiian Islands Association
for Marriage and Family Therapy
(HIAMFT)

We know systems.
We know relationships.
We know FAMILY MATTERS.

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

February 22, 2023 9:35 A.M. - VIA VIDEO CONFERENCE – Rm 229

Testimony in STRONG SUPPORT of SB1038 SD1 RELATING TO TELEHEALTH

The Hawaiian Islands Association for Marriage and Family Therapy (HIAMFT) strongly supports SB1038 HD1, which promises an overall improvement and increased access to quality mental health services by incorporating the federal Centers for Medicare and Medicaid Services definition of “interactive telecommunications system” to allow:

“services furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder to a patient in their home, [where] interactive telecommunications may include two-way, real-time audio-only communication technology if the distant site physician or practitioner is technically capable to use an interactive telecommunications system but the patient is not capable of, or does not consent to, the use of video technology . . .”

HIAMFT believes this language achieves a well-reasoned balance based on robust research, analysis, and deliberation on audio-only telehealth conducted at a federal level.

COMPROMISE DRAFT:

Our organization agrees to and supports the compromise draft presented in the testimony given by the Hawaii Primary Care Association; and encourages this committee to pass this agreed upon language out in an SD2. We believe this agreement may be the best chance Hawaii currently has to advance access and utilization of critical treatment through audio-only telehealth.

RESEARCH SHOWS AUDIO-ONLY WORKS

HIAMFT also appreciates the clinical outcomes achieved by audio-only mental health treatment through “talk therapy”, such as frequently provided by Marriage and Family Therapists. Not only does audio-only talk therapy help our patients just as effectively, (and sometimes more effectively) than in-person or video meetings, the telephonic services allowed in this proposal will increase access to and utilization by several marginalized and/or remote populations who otherwise would not seek or be able to maintain service. In one study published in *Clinical Psychology: Science and Practice* (v15 n3, September 2008), researchers concluded that: **“telephone- administered psychotherapy can produce significant reductions in depressive symptoms. Attrition rates were considerably lower than rates reported in face-to-face psychotherapy.”**

In a 2006 study published in the *British Medical Journal* entitled “*Telephone administered cognitive behaviour therapy for treatment of obsessive compulsive disorder: randomized controlled non-inferiority trial*,” researchers concluded **“[t]he clinical outcome of cognitive behaviour therapy delivered by telephone was equivalent to treatment delivered face to face and similar levels of satisfaction were reported.”**

Further, in the *Journal of Neurotrauma* 32:45-57 (January 1, 2015), researchers concluded that **“In-person and telephone-administered CBT [Cognitive Behavioral Therapy] are acceptable and feasible in persons with TBI [Traumatic Brain Injury] . . . [T]elephone CBT holds particular promise for enhancing access and adherence to effective depression treatment.”**

Phone: (808) 291-5321 **Email:** hawaiianislandsmfts@gmail.com **Address:** PO Box 698 Honolulu, HI 96709 **Website:** www.hawaiimft.org **Social Media:** FB - @mfthawaii, IG - @hawaiimft

In another study published in American Journal for Geriatric Psychiatry in 2012, entitled “A Randomized Controlled Trial of Telephone-Delivered Cognitive-Behavioral Therapy for Late-Life Anxiety Disorders,” doctors used audio-only therapy and concluded **“These results suggest that CBT-T [cognitive behavioral therapy delivered by telephone] may be efficacious in reducing anxiety and worry in older adults.”**

In 2011, the American Psychological Association’s Journal, Professional Psychology: Research & Practice Vol. 42, no. 6, 543-549, published a study entitled “Benefit and Challenges of Conducting Psychotherapy by Telephone” concluded that with audio-only therapies: **“Results of randomized, controlled trials indicate high client acceptance and positive outcomes with this method of delivering psychotherapy.”**

“TELEHEALTH” INNOVATION SHOULD NOT FORFEIT ACCES TO THOSE INCAPABLE OF USING THIS TECHNOLOGY

While devastating to public health and our economy, the COVID 19 Pandemic has spurred revolutionary developments in telehealth. However, as much as we need to embrace change, we should not turn our back on old reliable tools for meeting our most vulnerable where they are. Across the country multiple jurisdictions are making permanent many of the pandemic-prompted changes to the way health care is provided. However, certain measures have been necessary to assure access and connection to those who are otherwise out-of-reach from this quickly-advancing technology.

As is confirmed by recent research, telephonic service is critical to improving access to several **vulnerable groups of patients: (1) the elderly; (2) low-income; (3) mobility- challenged; (4) limited English proficient; and (5) rural residents.** The disparities evident between the patients who use audio-only/telephone calls vs. the video-conferencing technologies of telehealth – during the pandemic - has been thoroughly researched and recognized by DHHS. The DHHS policy brief (entitled [“National Survey Trends in Telehealth Use in 2021: Disparities in Utilization and Audio vs. Video Services”](#)) reported:

“[O]ur study findings are consistent with research studies that show **disparities in audio-only vs. video- enabled telehealth modalities by race/ethnicity, age, education, income, and health insurance coverage.** In a recent survey study, patients with a household income of \$50,000 or more were 34 percent more likely to choose a telehealth visit than those making less than \$50,000. . . . Although research shows that video visits offer some additional benefits compared with telephone visits, they require more complex setup, video-enabled devices, and broadband internet access, which may present **barriers for older adults, lower income households, and those with limited English proficiency.** In addition to these factors, patients with lower incomes may be more likely to use audio-only services because they are at work during appointments or lack privacy at home. Consistent with these concerns, **we also found lower use of video-enabled telehealth services among adults with low-incomes and those without a high school degree.”**

FOLLOWING THE FEDS ASSURES BEST PRACTICES:

HIAMFT believes if we “follow the feds,” we benefit from the research and deliberations determined by CMS to be best practices; and incorporate these best practices in Hawaii’s private insurance plans. If it’s good enough for Medicare and Medicaid, it is good enough for private insurance. We therefore support any amendment executive agencies request to ensure this proposal is unambiguous and consistent with federal law.

Nevertheless, we believe audio-only treatment is a critical measure in reaching vulnerable groups who do not have access to digital telehealth, either because they: lack of the financial means to obtain the necessary equipment or broad band service; live in rural and remote areas; do not have an adequate command of the English language to navigate the online platforms; or maybe because they are uncomfortable using high technology.

Thank you for the opportunity to testify in STRONG SUPPORT on this critical access to care legislation.

Sincerely,



Dr. John Souza, Jr., LMFT, DMFT, President
The Hawaiian Islands Association for Marriage and Family Therapy



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 COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

February 22, 2023 9:35 A.M. - VIA VIDEO CONFERENCE – Rm 229

The Hawai'i Psychological Association (HPA) strongly supports SB1038 SD1 RELATING TO TELEHEALTH

Compromise Draft

Our organization agrees to and supports the compromise draft presented in the testimony given by the Hawaii Primary Care Association; and encourages this committee to pass this agreed upon language out in an SD2. We believe this agreement may be the best chance Hawaii currently has to advance access and utilization of much-needed mental health services through telephonic telehealth.

Conclusive Research on Disparities in Access to Telehealth Access without Audio-only

Recent research indicates strong disparities between those who use audio versus video health and mental health services – particularly along racial, ethnic, linguistic, financial, and age-specific lines. On February 2, 2022, the United States Department of Health and Human Services (DHHS) issued a policy brief entitled “National Survey Trends in Telehealth Use in 2021: Disparities in Utilization and Audio vs. Video Services”¹ which reported:

“[O]ur study findings are consistent with research studies that show **disparities in audio-only vs. video-enabled telehealth modalities by race/ethnicity, age, education, income, and health insurance coverage**. In a recent survey study, patients with a household income of \$50,000 or more were 34 percent more likely to choose a telehealth visit than those making less than \$50,000. . . . Although research shows that video visits offer some additional benefits compared with telephone visits, they require more complex setup, video-enabled devices, and broadband internet access, which may present **barriers for older adults, lower income households, and those with limited English proficiency**. In addition to these factors, patients with lower incomes may be more likely to use audio-only services because they are at work during appointments or lack privacy at home. Consistent with these concerns, **we also found lower use of video-enabled telehealth services among adults with low-incomes and those without a high school degree.**”

This bill recognizes these disparities and adopts the solution adopted by the Federal Centers for Medicare and Medicaid Services (CMS) in its definition of “interactive telecommunications system.” The CMS approach promises to expand access and improve patient outcomes.

Conclusive Research on the Strong Efficacy of Audio-only Treatment for Mental Health

It is well-established in the research that behavioral health services administered over the telephone is not only as effective, but **sometimes more effective than face-to-face therapy**. For example, in one study published in *Clinical Psychology: Science and Practice* (v15 n3, September 2008), researchers concluded that: “**telephone-administered psychotherapy can produce significant reductions in depressive symptoms. Attrition rates were considerably lower than rates reported in face-to-face psychotherapy.**”

¹ <https://aspe.hhs.gov/sites/default/files/documents/4e1853c0b4885112b2994680a58af9ed/telehealth-hps-ib.pdf>

In a 2006 study published in the British Medical Journal entitled “*Telephone administered cognitive behaviour therapy for treatment of obsessive compulsive disorder: randomized controlled non-inferiority trial*,” researchers concluded “**[t]he clinical outcome of cognitive behaviour therapy delivered by telephone was equivalent to treatment delivered face to face and similar levels of satisfaction were reported.**”

Further, in the Journal of Neurotrauma 32:45-57 (January 1, 2015), researchers concluded that “**In-person and telephone-administered CBT [Cognitive Behavioral Therapy] are acceptable and feasible in persons with TBI [Traumatic Brain Injury] . . . [T]elephone CBT holds particular promise for enhancing access and adherence to effective depression treatment.**”

In another study published in American Journal for Geriatric Psychiatry in 2012, entitled “A Randomized Controlled Trial of Telephone-Delivered Cognitive-Behavioral Therapy for Late-Life Anxiety Disorders,” doctors used audio-only therapy and concluded “**These results suggest that CBT-T [cognitive behavioral therapy delivered by telephone] may be efficacious in reducing anxiety and worry in older adults.**”

In 2011, the American Psychological Association’s Journal, Professional Psychology: Research & Practice Vol. 42, no. 6, 543-549, published a study entitled “Benefit and Challenges of Conducting Psychotherapy by Telephone” concluded that with audio-only therapies: “**Results of randomized, controlled trials indicate high client acceptance and positive outcomes with this method of delivering psychotherapy.**”

Following Federal Legislation in Telehealth Policy Assures Best Practices in Hawaii

Based on the foregoing, we believe it prudent to “follow the Feds” – as the research, analysis, and advocacy at the Federal level are ongoing and robust. Whatever best practices CMS ultimately determines are necessary for meeting the mental health needs of our most vulnerable; these practices should likewise be incorporated into Hawaii State statutes for private plans.

If it’s good enough for Medicare and Medicaid, it is good enough for private insurance. In this regard, we have no objection to amendments that may be recommended by State Executive Agencies to avoid ambiguities or conflicts in law.

Nevertheless, we believe this bill is crucial to improving patient outcomes, expediting timely service, and ultimately reducing costs and unnecessary administrative functions. HPA greatly appreciates legislative action to ensure old tools, like the standard telephone, are available to keep lines of communication open to provide necessary treatment to those who are: not comfortable with video-conferencing platforms; not equipped with the necessary technology or equipment due to expense; or those who live on more remote neighbor islands or in rural areas - out of reach of necessary broadband network capabilities.

Thank you for the opportunity to provide testimony in strong support of this important bill.

Sincerely,



Alex Lichten, Ph.D.
Chair, HPA Legislative Action Committee



February 22, 2023

The Honorable Jarrett Keohokalole, Chair
The Honorable Carol Fukunaga, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re: SB 1038 – Relating to Telehealth

Dear Chair Keohokalole, Vice Chair Fukunaga, and Members of the Committee:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to provide comments on SB 1038, which clarifies reimbursement for services provided through telehealth via an interactive telecommunications system and defines "interactive telecommunications system".

HMSA supports the intent of this legislation and has been working diligently on a compromise version of the bill with community health care providers since the bill was heard in the Senate Health Committee to ensure appropriate access.

The amendments noted below have been agreed to already and we respectfully request your consideration of amending the bill to reflect these changes that we have worked on together:

Page 5, Section 3, line 6: Section 431:10A-116.3, Hawaii Revised Statutes, subsection (c),
Page 8, Section 4, line 4: Section 432:1-601.5, Hawaii Revised Statutes, subsection (c), and
Page 11, Section 5, line 1: Section 432D-23.5, Hawaii Revised Statutes, subsection (c) will be amended to say:

Reimbursement for services provided through telehealth via an interactive telecommunications system shall be equivalent to reimbursement for the same services provided via face-to-face contact between a health care provider and a patient; provided that for two-way, real-time audio-only communication technology for purposes of diagnosis, evaluation, or treatment of a mental health disorder to a patient in their home shall be paid at 80% of the same services provided via face-to-face contact between a health care provider and a patient; provided further that the health care provider has conducted an in-person or telehealth visit with the patient no longer than six months prior to the audio-only service and at least twelve months prior to any subsequent audio-only visit. 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.

Page 15, Section 7, line 9: is amended by adding: *"This Act shall take effect upon its approval and be repealed on December 31, 2025."*

Thank you for the opportunity to provide comments on SB 1038 and for your consideration on the proposed amendments.

Sincerely,

Jennifer A. Diesman
Senior Vice President
Government Policy and Advocacy

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair

February 22, 2023 9:35 A.M. - VIA VIDEO CONFERENCE – Rm 229

Testimony in Strong Support on SB1038 SD1 RELATING TO TELEHEALTH

The National Association of Social Workers – Hawai'i (NASW- HI) strongly supports this measure, which incorporates the definition of “interactive telecommunications system” from the federal telehealth regulations adopted by the Centers for Medicare and Medicaid Studies for audio-only mental health treatment.

Under Title 42 Code of Federal Regulations section 410.78:

“Interactive telecommunications system means, except as otherwise provided in this paragraph, multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner. For services furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder to a patient in their home, interactive telecommunications may include two-way, real-time audio-only communication technology if the distant site physician or practitioner is technically capable to use an interactive telecommunications system as defined in the previous sentence, but the patient is not capable of, or does not consent to, the use of video technology. A modifier designated by CMS must be appended to the claim for services described in this paragraph to verify that these conditions have been met.” [Underlining added.]

As we pivoted to a socially distant way of life over the last few years, we’ve come to appreciate the breadth and utility of telehealth services. However, several members of our community are unable to avail themselves of these services because they may not live in an area equipped with broadband coverage; or they may lack the resources to purchase a smartphone, tablet, or computer; or they are elderly or disabled and cannot operate equipment that require technological know-how or manual dexterity.

COMPROMISE DRAFT:

Our organization agrees to and supports the compromise draft presented in the testimony given by the Hawaii Primary Care Association; and encourages this committee to pass this agreed upon language out in an SD2. We believe this agreement may be the best chance Hawaii currently has to advance access and utilization of much-needed mental health services through telephonic telehealth.

RESEARCH:

This bill removes barriers to access for so many disenfranchised members of our society who do not use the video technology required for telehealth. Recent studies have indicated that several vulnerable populations prefer audio-only treatments; and that expanding coverage in this way will meet the needs of the elderly, disabled, low-income, disenfranchised racial, ethnic, and linguistic groups, and many others who may simply utilize and respond better to telephonic treatment. On this access matter, the Dept. of Health and Human Services recently issued policy brief (entitled “National Survey Trends in Telehealth Use in 2021: Disparities in Utilization and Audio vs. Video Services”), reporting that:

*“[O]ur study findings are consistent with research studies that show **disparities in audio-only vs. video-enabled telehealth modalities by race/ethnicity, age, education, income, and health insurance coverage.** In a recent survey study, patients with a household income of \$50,000 or more were 34 percent more likely to choose a telehealth visit than those making less than \$50,000. . . . Although research shows that video visits offer some additional benefits compared with telephone visits, they require more complex setup, video-enabled devices, and broadband internet access, which may present **barriers for older adults, lower income households, and those with limited English proficiency.** In addition to these factors, patients with lower incomes may be more likely to use audio-only services because they are at work during appointments or lack privacy at home. Consistent with these concerns, **we also found lower use of video-enabled telehealth services among adults with low-incomes and those without a high school degree.**”*

Likewise, the research indicates strong efficacy of Audio-only treatment. It is well-established in the research that behavioral health services administered over the telephone is not only as effective, but **sometimes more effective than face-to-face therapy**. For example, in one study published in *Clinical Psychology: Science and Practice* (v15 n3, September 2008), researchers concluded that: **“telephone-administered psychotherapy can produce significant reductions in depressive symptoms. Attrition rates were considerably lower than rates reported in face-to-face psychotherapy.”**

In a 2006 study published in the *British Medical Journal* entitled *“Telephone administered cognitive behaviour therapy for treatment of obsessive compulsive disorder: randomized controlled non-inferiority trial,”* researchers concluded **“[t]he clinical outcome of cognitive behaviour therapy delivered by telephone was equivalent to treatment delivered face to face and similar levels of satisfaction were reported.”**

Further, in the *Journal of Neurotrauma* 32:45-57 (January 1, 2015), researchers concluded that **“In-person and telephone-administered CBT [Cognitive Behavioral Therapy] are acceptable and feasible in persons with TBI [Traumatic Brain Injury] . . . [T]elephone CBT holds particular promise for enhancing access and adherence to effective depression treatment.”**

In another study published in *American Journal for Geriatric Psychiatry* in 2012, entitled *“A Randomized Controlled Trial of Telephone-Delivered Cognitive-Behavioral Therapy for Late-Life Anxiety Disorders,”* doctors used audio-only therapy and concluded **“These results suggest that CBT-T [cognitive behavioral therapy delivered by telephone] may be efficacious in reducing anxiety and worry in older adults.”**

In 2011, the American Psychological Association’s *Journal, Professional Psychology: Research & Practice* Vol. 42, no. 6, 543-549, published a study entitled *“Benefit and Challenges of Conducting Psychotherapy by Telephone”* concluded that with audio-only therapies: **“Results of randomized, controlled trials indicate high client acceptance and positive outcomes with this method of delivering psychotherapy.”**

THE FEDERAL APPROACH ASSURES BEST PRACTICES:

By “following the feds,” and using CMS’s definition to help administer telephonic telehealth in Hawaii, NASW- Hawaii believes we can ensure best practices will be followed. If it’s good enough for Medicare and Medicaid, it is good enough for private plans.

Accordingly, we support any amendments state agencies deem necessary to assure this bill’s language is clear, unambiguous, consistent with the legislative purpose of expanding audio-only access, and avoids conflicts of law.

There is such great demand and such a limited supply of providers, we want to enable and bolster all the methods that can be employed in addressing Hawaii’s mental health needs. We therefore strongly support this proposal as it improves access to quality mental health services – especially to our vulnerable populations. If they prefer and respond most favorably to treatment administered via the telephone, we should be removing barriers to such care.

Thank you for the opportunity to provide this testimony in support.

Sincerely,

 MSW, LCSW

Sonja Bigalke-Bannan, MSW, LCSW

Executive Director,

National Association of Social Workers- Hawaii’s Chapter

February 21, 2023

Committee on Commerce and Consumer Protection
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair



Working together for Kapolei

Wednesday, February 21, 2023, 9:35 a.m.
Conference Room #415 and Videoconference

RE: SB1038 SD1, Relating to Telehealth

Dear Chair Keohokalole, Vice Chair Fukunaga and members of the Committee,

My name is Kiran Polk, and I am the Executive Director of the Kapolei Chamber of Commerce. The Kapolei Chamber of Commerce is an advocate for businesses in the Kapolei region and West O'ahu. The Chamber works on behalf of its members and the entire business community to improve the regional and State economic climate and help Kapolei businesses thrive.

The Kapolei Chamber of Commerce **supports SB1038**, which clarifies reimbursement for services provided through telehealth via an interactive telecommunications system. Defines "interactive telecommunications system". Clarifies that, for services furnished for purposes of diagnosis, evaluation, or treatment of a mental health disorder to a patient in the patient's home, interactive telecommunications may include audio-only communication in certain circumstances.

We recognize that our health care community adjusted services during the COVID-19 pandemic including services in behavioral health. **Telehealth is now a means to assure the provision of proper continuing care to patients especially those in underserved areas and vulnerable populations who either do not have the technology or internet access to access mental health services.**

The Kapolei Chamber also is a strong voice of advocacy for digital equity and broadband for these same populations. **Not everyone has access to smart phones and broadband service to utilize telehealth as it was intended, especially in underserved areas such as ours. There is a digital divide.** According to the U.S. Census Quick Facts data, accumulated between 2015 – 2019, 77% of households in Wai'anae had internet subscription service while 91.3% of households in East Honolulu had broadband subscriptions. The number of persons living in poverty in East Honolulu is 3.3% while in Wai'anae the number is 24.4%.

While we await the day for fully universal broadband access across our State including West O’ahu, **the Kapolei Chamber supports this bill to ensure that our vulnerable and underserved populations will be able to continue to utilize telehealth services via standard telephonic contact even after the end of the public health emergency in May 2023.**

Thank you for this opportunity to provide testimony.

Best,

A handwritten signature in black ink on a light gray rectangular background. The signature is cursive and appears to read "K. Polk".

Kiran Polk
Executive Director

Kevin L. Johnson, Kapolei, Hawai'i

**The State Legislature
Senate Committee on Commerce and Consumer Protection
Wednesday, February 22, 2023, Conference Room 229, 9:35 a.m.**

TO: The Honorable Jarrett Keohokalole, Chair
RE: Support for S. B. 1038, SD 1 Relating to Telehealth

Thank-you for this opportunity to offer my full throated **support of S. B. 1038, SD1**. I testify today, as a former healthcare practitioner and a current patient but most importantly as a citizen with a belief that everyone deserves access to comprehensive healthcare.

Much of my time as a pharmacist, was spent on the telephone, counseling patients. We often delivered or mailed prescriptions to shut-ins and we had to use telecommunication to provide counseling and answer their questions. When I started, in 1979, we of course accomplished this with no face-time or zoom.

I now have a chronic condition that while relatively minor, does require annual labs and monitoring to maintain control. Along with these tests comes a visit with my physician to discuss the test results and address plans going forward. Nothing about my condition is visually apparent. It only makes sense that this visit could be done over the phone and nothing about that makes it any less of my physician's practice than if I was physically or visually present.

I'm sure it is not lost on you, that many Hawai'i residents do not have adequate broadband service. There are also many who may have the service but are unable to use it. If we learned anything during the pandemic, it was assuming newer communication methods in healthcare are not adequate to reach everyone. Logging into the internet to report an illness, receive care or get a vaccination was simply a non-starter for countless folks. Requiring face-to-face communication for these people relegates them to second-class patients in the healthcare system.

In order for all Hawai'i citizens to have equal access to the highest quality of healthcare, I would ask you to compassionately **support S. B. 1038, SD1**.

Sincerely,

Kevin L. Johnson

SENATE COMMITTEE ON HEALTH & HUMAN SERVICES
Senator Joy A. San Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair

Senate Bill 1038, Senate Draft 1 - RELATING TO TELEHEALTH
Wednesday, February 22, 2023 at 9:35am
State Capitol Conference Room 229 & Videoconference

IN SUPPORT of S.B. No. 1038, S.D. 1

Aloha Chair San Buenaventura, Vice Chair Aquino, and Members of the Committee:

I am Rayen Rooney, a Master of Social Work student at the University of Hawai'i at Mānoa. The views expressed in this testimony are my own personal thoughts and do not express the views and opinions of the University I attend. I am testifying in support of S.B. No. 1038, S.D. 1, Relating to Telehealth.

This legislation will be able to support people in Hawai'i by providing access to necessary and vital mental healthcare services. Given the diverse backgrounds of our population and various geographical locations in Hawai'i there are Medically Underserved Areas (MUA) and Medically Underserved Populations (MUP) that benefit from having healthcare via "interactive telecommunications system" which includes "two-way, real-time audio-only communication." Individuals who may reside in MUA, individuals who are part of the MUP, and kūpuna face various barriers at higher rates to accessing in-person healthcare.

Currently, my practicum experience is working with a behavioral mental health agency that serves individuals who live in MUA, part of the MUP, kūpuna, and children. I provide care management to kūpuna and caregivers via telephonic communication and can see the great support this method of care provides to our communities here in Hawai'i. I also see how "audio only communication" is a good option for clients as there can be issues with video telehealth due to internet connection issues, in addition to the barriers of transportation to in-person facilities.

With my scope of practice and education thus far, I am in support of S.B. No. 1038, S.D. 1, Relating to Telehealth because of the important access and continuity of care it provides to the people of Hawai'i while also ensuring pay parity to our mental health and healthcare providers.

The following sections highlight the verbiage in this bill that I find important to have as it upholds pay parity to providers so that our behavioral mental health and healthcare providers will be reimbursed appropriately and provide these necessary and "same services."

- Section 2, page 2, line 7: Section 346-59.1, Hawai'i Revised Statutes, subsection (b)
- Section 3, page 5 line 6: Section 431:10A-116.3, Hawai'i Revised Statutes, subsection (c)

- Section 4, page 8, line 4: Section 432: 1-601.5, Hawai'i Revised Statutes, subsection (c), and
- Section 5, page 12, line 4: Section 432D-23.5, Hawai'i Revised Statutes, subsection (c)

"Reimbursement for services provided thorough telehealth via an interactive telecommunications system 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." [Underlining added.]

Thank you so much for this opportunity to testify and I greatly appreciate your folks' consideration in support of S.B. No. 1038, S.D. 1, Relating to Telehealth.

Me ka ha'aha'a,
Rayen Rooney



SB1038 SD1 Use Telehealth and Telephone

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Jarrett Keohokalole, Chair
Senator Carol Fukunaga, Vice Chair
Tuesday, Feb 22 2023: 9:35 : Room 229 Videoconference

Hawaii Substance Abuse Coalition supports SB1038 SD1:

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 for substance use disorder and co-occurring mental health disorder treatment and prevention agencies and recovery services.

Telehealth

Telehealth is not meant to totally replace face to face for those who have more chronic conditions, but it certainly allows us to treat more people who are in need of services that otherwise would not have access to services, especially for rural areas.

U.S. Congress has stated that preliminary evaluations have demonstrated that telehealth and when needed telephonic practices does save money and improve care:

- Especially for the elderly and behavioral health,
- For checkups for both specialty care and primary care.
- In certain cases, it's a more efficient use of time for care givers and patients.

Telephone services are an integral part of Medicaid and Medicare and with this legislation it can be for commercial plans too, subject to financing and authorizations.

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