DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Health
Thursday, March 12, 2020
9:00 a.m.
State Capitol, Capitol Auditorium

On the following measure:
S.B. 2423, S.D. 1, RELATING TO MEDICAL SERVICE BILLING

Chair Mizuno and Members of the Committee:

My name is Colin Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department appreciates the intent and offers comments on this bill.

The purposes of this bill are to: (1) establish billing requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers; and (2) require the Insurance Commissioner to refer certain disputes between insurers and non-participating providers to an independent dispute resolution entity for binding arbitration.

Patients sometimes do not have the time or ability to ensure that all emergency treatments they seek and receive fall within their medical plan coverages, thereby resulting in their receipt of surprise balance billings. The Department appreciates the efforts of this bill to relieve consumers of the economic burden arising from these billings.

However, the Department has concerns about the potentially vague language on page 2, line 17 to page 3, line 2 of S.D. 1. To provide clarity, the Department respectfully proposes the following revision: "[T]he non-participating provider shall not be entitled to bill the enrollee any amount in excess of any applicable charges the enrollee would be responsible for if they had received the services from a participating provider, including, but not limited to, any copayment, coinsurance, or deductible amount."

Additionally, the Department recommends striking the following language on page 3, lines 16 to 20: "Nothing in this section shall be construed to prohibit non-participating providers from seeking the uncovered cost of services rendered from enrollees ***who have consented to receive the health care services*** provided by the non-participating provider" (emphasis added). This language appears to be inconsistent with the intent of the bill, as it could be construed to permit balance billing so long as a consumer agrees to receive services, without regard for whether the consumer is made aware that a provider is non-participating.

Finally, page 6, lines 7 to 10 states: "***For disputes involving an enrollee***, when the dispute resolution entity determines the managed care plan's payment is reasonable, payment for the dispute resolution process shall be the responsibility of the non-participating provider" (emphasis added). The Department respectfully requests striking the phrase "for disputes involving an enrollee" if the intent of this bill is to remove consumers from balance billing disputes. Contemplating an "enrollee" being involved in an arbitration dispute appears inconsistent with removing consumers altogether from balance billing disputes. Additionally, this phrase creates uncertainty as to who will pay arbitration costs when a managed care plan prevails and an enrollee is ***not*** involved.

Thank you for the opportunity to testify on this bill.

HAWAII HEALTH SYSTEMS
C O R P O R A T I O N
Quality Healthcare For All

COMMITTEE ON HEALTH
Representative John M. Mizuno, Chair
Representative Bertrand Kobayashi, Vice Chair

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

Comments
Senate Bill 2423, S.D. 1
RELATING TO MEDICAL SERVICE BILLING

Establishes billing requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers. Requires the Insurance Commissioner to refer certain disputes between insurers and non-participating providers to an independent dispute resolution entity for binding arbitration.

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

The Hawaii Health Systems Corporation (HHSC) provides **comments** on SB 2423, SD1.

HHSC is deeply concerned about the effect of unanticipated medical bills on Hawaii's patients for care they thought was covered by their health plan which could impact their out-of-pocket costs and undermine their trust and confidence in their caregivers and Hawaii's hospitals. Consumers are best served when both plans and providers are incentivized so there are not any nonparticipating providers. Passing statutory protections in state law to address this issue is challenging, yet is worthy of our collective efforts to address.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR

STATE OF HAWAII
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
201 MERCHANT STREET, SUITE 1700
HONOLULU, HAWAII 96813
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TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON HEALTH
ON SENATE BILL NO. 2423 S.D. 1

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

RELATING TO MEDICAL SERVICE BILLING

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

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees supports the financial protection of the individual from balance billing and the intent to develop a reasonable basis for determining reimbursement of nonparticipating providers by insurers (health plans) contained in this bill. The EUTF does not provide an opinion on the method for determining the nonparticipating provider reimbursement.

Thank you for the opportunity to testify.

March 12, 2020 at 9:00 am
Capitol Auditorium

House Committee on Health

To: Chair John M. Mizuno
Vice Chair Bertrand Kobayashi

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

Re: Submitting Comments
SB 2423 SD 1, Relating to Health Insurance

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

Thank you for the opportunity to provide **comments**. We support the intent of this measure. From the hospital perspective, we strongly agree that patients should be protected from gaps in coverage that result in surprise bills that arise when a patient receives unanticipated out-of-network care from a nonparticipating provider for medical services. We also agree that any policy solution should remove patients from payment negotiations between managed care plans and providers. With that as a guiding principle, the task before providers, managed care plans, and policy makers in how to best reach an agreement on payment for services provided out-of-network.

We support many of the elements of this measure. We appreciate that there are no problematic rate-setting provisions tied to Medicare or another non-transparent rate. Further, we appreciate that there is an independent dispute resolution process laid out in this measure.

Ultimately, HAH and its members do not want patients to bear the burden of being an intermediary between plans and providers and be caused undue stress over a surprise bill. We will commit to continuing discussions on this issue and working with stakeholders on finding a solution. Thank you for your consideration of our comments and amendments.

Phone: (808) 521-8961 | Fax: (808) 599-2879 | HAH.org | 707 Richards Street, PH2 - Honolulu, HI 96813

BEFORE THE

HOUSE COMMITTEE ON HEALTH

Representative John M. Mizuno, Chair
Representative Bertrand Kobayashi, Vice Chair

SB 2423, SD1 RELATING TO MEDICAL SERVICE BILLING

TESTIMONY OF
WILLIAM C. McCORRISTON
President and Chief Executive Officer,
Hawaii Medical Assurance Association

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

Chair Mizuno, Vice Chair Kobayashi, and Committee Members:

My name is William C. McCorriston, President and Chief Executive Officer of Hawaii Medical Assurance Association (HMAA). HMAA supports the intent of SB 2423 SD1, but offers comments.

By way of background, HMAA is a non-profit mutual benefit society that provides health insurance to over 30,000 Hawai‘i residents. HMAA occupies about three percent of Hawaii's health insurance market. As a small kama‘aina insurer, HMAA takes special pride in providing health insurance to sole-proprietors and small businesses, a segment of Hawaii's market that often has a difficult time obtaining affordable health-related insurance.

The intent behind SB 2423 SD1 is to provide strong protections to Hawaii's consumers against "surprise billing" and removing these consumers from the middle of billing disputes. An independent dispute resolution established by and facilitated by the Insurance Commissioner, however, would be detrimental to consumers.

In a recent September 26, 2019 article by Forbes entitled *How Arbitration for Surprise Medical Bills Leads to Runaway Costs & Higher Premiums*, Forbes noted that arbitration provisions included in other "surprise billing" legislation has led to higher overall medical costs for consumers. As the article noted:

> [Arbitration] leads to higher prices. In New York, the largest state where arbitration is used for surprise bills, arbitrators are instructed to use the 80th percentile of hospital list prices as the benchmark for their decision. These hospital list

> prices are a lot like paying full fare for an airline ticket; they often come out to *10 or 20 times* what Medicare pays emergency rooms for the same services. By benchmarking out-of-network prices at such a high rate, the New York law incentivizes ER doctors to raise their prices even higher, knowing that by doing so, the benchmark for arbitration will also go up.[1]

Unlike the New York law, California's "surprise billing" law does not include an arbitration provision. The Forbes article notes, "a study of 23 million claims by the USC-Brookings Schaeffer Initiative for Health Policy found that the California law reduced the share of out-of-network billing in affected specialties by 17 percent, on average. Surprise bills in the ER dropped by 5 percent."[2]

In light of the financial impact that the arbitration provision of SB 2423 SD1 would have on consumers, HMAA supports the proposed SB 2423 SD1 **without** the mandatory arbitration provision. Instead, HMAA believes that implementing a proper benchmark of the average in-network rates paid by carriers to contracted in-network providers or an equivalent percentage of the Medicare reimbursement rate is key to ensuring fair reimbursement while preventing further escalation of healthcare costs and premiums.

Thank you for the opportunity to testify on this matter of critical importance.

*****

[1] Avik Roy, *How Arbitration for Surprise Medical Bills Leads to Runaway Costs & Higher Premiums* (Sep. 26, 2019), available at https://www.forbes.com/sites/theapothecary/2019/09/26/how-arbitration-for-surprise-medical-bills-leads-to-runaway-costs-higher-premiums/#54cdc0df4442 (emphasis in original).

[2] *Id.*

MAUI HEALTH SYSTEM

Community hospitals affiliated with KAISER PERMANENTE®

Chair John Mizuno
Vice Chair Bertrand Kobayashi
Members of the House Committee on Health

RE: Testimony of Michael Rembis, CEO
March 12, 2020

Aloha Chair Mizuno, Vice Chair Kobayashi and members of the committee,

My name is Michael Rembis, and I am the Chief Executive Officer of Maui Health Systems ("MHS"). Thank you for the opportunity to provide comments on S.B. 2423, S.D. 1 relating to medical service billing. MHS supports the intent of this measure.

MHS agrees that patients should be protected from gaps in coverage that result when a patient receives unanticipated out-of-network care from a nonparticipating provider for emergency or other medical services. We also agree that any policy solution should remove patients from payment negotiations between managed care plans and providers.

We appreciate and support this measure in that there are no problematic rate-setting provisions tied to Medicare or to other non-transparent rates. Further, we have and continue to advocate for an independent dispute resolution process and are supportive of the process outlined in this measure. For these reasons, we respectfully ask the Chair and committee members to utilize S.B. 2423, S.D. 1 as the vehicle to move forward.

MHS will continue to work with Healthcare Association of Hawaii, its other members, and other stakeholders on this issue. Thank you for your consideration of our comments.

Mahalo for your consideration,

Michael Rembis, FACHE
Chief Executive Officer

HAWAII / ACEP
AMERICAN COLLEGE OF EMERGENCY PHYSICIANS

March 11, 2020

Representative John Mizuno
Chair, House Committee on Health

Representative Bertrand Kobayashi
Vice Chair, House Committee on Health

SB2423 SD1: Relating to Medical Services Billing

Submitting Comments

Thank you for the opportunity to submit testimony on SB2423 SD1. The Hawaii College of Emergency Physicians represents 152 practicing emergency physicians in Hawaii. We agree that patients should be left out of billing disputes between providers and insurers, and we are committed to helping Hawaii find a comprehensive solution to the out of network billing issue.

Out of network billing uniquely affects emergency physicians because we are mandated to care for patients by federal statute without regard for their ability to pay. We agree that all patients should be cared for in our emergency departments and are proud of our position as the safety net of the health care system. However, because we do not refuse care to anyone, we have no leverage in negotiation with insurance providers for fair rates of reimbursement.

We support many of the provisions of this bill. We appreciate the removal of an unfair benchmarking rate that would tilt leverage in reimbursement negotiations to insurers. Further, we appreciate the inclusion of an independent dispute resolution process. We believe there is a workable solution in this bill and we will continue to work with legislators and stakeholders to find a fair process that protects patients and access to care in Hawaii.

Sincerely,

William Scruggs, MD
President-Elect, Hawaii College of Emergency Physicians

KAISER PERMANENTE®

Government Relations

Testimony of
Jonathan Ching
Government Relations Manager

Before:
House Committee on Health
The Honorable John H. Mizuno, Chair
The Honorable Bertrand Kobayashi, Vice Chair

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

Re: SB2423 SD1, Relating to Medical Service Billing.

Chair Mizuno, Vice Chair Kobayashi, and committee members, thank you for this opportunity to provide testimony on SB2423 SD1, which establishes billing requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers.

Kaiser Permanente Hawai‘i supports the intent of SB2423 SD1 and offers the following COMMENTS.

Kaiser Permanente Hawai‘i is Hawai‘i’s largest integrated health system that provides care and coverage for approximately 259,000 members. Each day, more than 4,500 dedicated employees and more than 600 Hawai‘i Permanente Medical Group physicians and providers come to work at Kaiser Permanente Hawai‘i to care for our members at our 21 medical facilities, including Moanalua Medical Center, providing high-quality care for our members and delivering on our commitment to improve the health of the 1.4 million people living in the communities we serve.

As a not-for-profit health plan, Kaiser Permanente does not answer to shareholders. Our duty is to our members — firefighters, police officers, teachers, bus drivers, shipyard workers, and all the hard-working people of Hawai‘i — who depend on us for affordable, high-quality care.

SB2423 SD1 seeks to provide a solution to address certain billing practices that can have an immensely negative financial impact on consumers when they are at their most vulnerable -- when they are receiving emergency care from a non-participating (sometimes called an out of network) provider. In Hawaii, there is **no limit to what these out-of-network providers or facilities can charge for emergency services**. As a result, the patient may be billed for the remaining charges after their insurer pays. These “balance bill” put consumers at significant financial risk of medical debt from bills they should not owe. This burden can prolong patient suffering long after their health has been restored. SB2423 SD1 aims to **protect consumers and remove them from the middle of billing disputes** between providers and insurance companies.

Kaiser Permanente Hawai‘i supports removing patients from the middle of balance and surprise billing disputes between plans and providers and ensuring providers get paid a fair and reasonable

market-based rate. As such, we prefer legislation that allows for providers to get paid a market-based rate. We also support protecting patients in surprise billing situations where consumers unknowingly receive care from an out of network provider in an in-network facility.

We request the committee consider SB2278 SD2 Proposed HD1, which protects consumers from balance and surprise bills, and provides a reasonable market-based rate for payment for out of network providers. The Proposed HD1 also includes language that allows for dispute between an insurer and provider that arises to be submitted to mandatory mediation to be overseen by the insurance division to determine whether there is a gross disparity between the fee charged by the health care provider or hospital for services rendered. We look forward to continuing to work with stakeholders and the committee to shape SB 2278 SD2.

The payment benchmark in SB2278 SD2 for non-emergency services, in contrast to SB2423 SD1, ensures that the costs of the services are covered, without driving up costs to the healthcare system and to health insurance premiums. Additionally, we believe any payment solution must not be based on charges that are billed by the provider ("billed charges") or any database that uses "billed charges," because there is no limit to what a facility or provider may bill. Instead, by basing the benchmark on average in-network rates paid by carriers to contracted in-network providers or an equivalent percentage of the Medicare reimbursement rate, we ensure a fair and reasonable reimbursement rate for patients, providers, health plans and the healthcare system as a whole.

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

HAWAIʻI PACIFIC HEALTH | KAPIʻOLANI PALI MOMI STRAUB WILCOX

Thursday, March 12, 2020 at 9:00 AM
Capital Auditorium

House Committee on Health

To: Representative John Mizuno, Chair
Representative Bertrand Kobayashi, Vice Chair

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

Re: Comments on SB 2423, SD1
Relating to Medical Service Billing

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

I write to provide comments on SB 2423, SD1 which establishes billing requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers. The measure also specifies the circumstances in which health care providers and facilities can bill insurers and enrollees for health intervention services.

Hawaiʻi Pacific Health (HPH) has experience working with a variety of insurers and providers. We believe in maintaining the integrity of the contracting process between health providers and health insurers in determining fair and adequate reimbursement methodologies for health care services that have already been delivered to patients/insureds. As a provider organization, we also assume that both health care insurers and health care providers have a *shared* responsibility to protect patients from financial burdens to ensure access to medically necessary care.

We note that setting reimbursement on Medicare rates for non-participating providers will not adequately cover the entire range of medical services for billing that a patient may encounter. For example, there is no applicable Medicare reimbursement methodology for most pediatric procedures and services for women of child-rearing age who are not disabled. Utilizing Medicare as a basis for reimbursement for these populations could potentially be incalculable.

HPH will continue to have dialogue with the other stakeholders in order to resolve this issue in a reasonable and fair manner.

Thank you for the opportunity to testify.

SB-2423-SD-1
Submitted on: 3/11/2020 6:18:40 PM
Testimony for HLT on 3/12/2020 9:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Terri O'Connell	UHA Health Insurance	Support	No

Comments:

Chair Mizuno, Vice Chair Kobayashi, and Members of the Committee on Health:

UHA Health Insurance ("UHA") supports the intent of SB2423 SD1 to protect Hawaii patients from "balance billing" or "surprise billing" for emergency services by out-of-network health care providers.

The bill, however, supports arbitration as a method to resolve payment issues between what the health plan pays and what the out-of-network provider charges. UHA would prefer the establishment of payment benchmarks as opposed to arbitration to resolve payment disputes. UHA's preferences are based on the belief that surprise bills are important to resolve but the resolutions must be done without driving up health insurance premiums for Hawaii's employers and employees.

UHA Health Insurance appreciates the opportunity to submit this testimony.

Terri O'Connell, VP, UHA Health Insurance

An Independent Licensee of the Blue Cross and Blue Shield Association

LATE

March 11, 2020

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

Re: SB 2423, SD1 – Relating to Medical Service Billing

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2423, SD1, which establishes billing requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers. Additionally, this measure requires the Insurance Commissioner to refer certain disputes between insurers and non-participating providers to an independent dispute resolution entity for binding arbitration.

We support the intent of this measure, to extend protections to patients that unknowingly receive services from a provider outside of their network, but we have serious concerns with the requirement that a health care plan and an out-of-network provider settle any reimbursement issues through an independent dispute resolution (IDR) process. Networks are established to provide access, quality and predictable costs to our members. IDR could create an incentive for providers to not be part of a health plans network. As we have seen in other states that have implemented an independent resolution process, this type of resolution has added costs to the entire health care system.

Nationally this issue is being discussed as an important consumer protection issue. We understand the issues that this measure tries to address are complicated, and therefore we remain open to more discussions and working with all stakeholders.

Thank you for the opportunity to provide testimony on this measure. Your consideration of our comments is appreciated.

Sincerely,

Pono Chong
Vice President, Government Relations