



LINDA LINGLE  
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LAWRENCE M. REIFURTH  
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DEPUTY DIRECTOR

TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE  
AND JUDICIARY

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, February 23, 2009  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 808 – RELATING TO HEALTH.**

TO THE HONORABLE ROBERT N. HERKES AND JON RIKI KARAMATSU, CHAIRS,  
AND MEMBERS OF THE COMMITTEES:

My name is J.P. Schmidt, State Insurance Commissioner (“Commissioner”),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
(“Department”). The Department supports this bill.

The purpose of this bill is to support the expanded use of telemedicine services  
and technology in the state by adding a new section to Hawaii Revised Statutes (“HRS”)  
chapter 453 and amending HRS §§ 431:10A-116.3, 432:1-601.5, and 432D-23.5.

This bill is intended to address the State’s shortage of physicians and to improve  
access to health care services and certain medical specialists, particularly in rural  
areas.

Although it may not be appropriate for all medical situations, telemedicine  
provides a cost-effective and convenient alternative in certain circumstances. This is  
especially important in rural areas where access to any medical care is difficult.

Medical reports from telemedicine services include a documented patient  
evaluation, which will become part of the patient’s health record and be made available

to the patient. The Department has been encouraging implementation of electronic medical records to reduce costs and errors.

This bill is also consistent with the Legislature's and Administration's efforts to enhance broadband capability, as reflected in House Bill No. 984.

We thank the Committees for the opportunity to present testimony on this matter and ask for your favorable consideration.



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PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION, 2009

MONDAY, FEBRUARY 23, 2009  
2:00 P.M.

TESTIMONY ON HOUSE BILL NO. 808 – RELATING TO HEALTH

TO THE HONORABLE ROBERT N. HERKES, CHAIR,  
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR  
AND TO THE HONORABLE GLENN WAKAI, VICE-CHAIR,  
AND TO THE HONORABLE KEN ITO, VICE-CHAIR,  
AND MEMBERS OF THE COMMITTEES:

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs appreciates the opportunity to testify on House Bill No. 808, Relating to Health. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer. RICO offers the following comments.

House Bill No. 808 clarifies that telemedicine is within a physician's scope of practice and is authorized when practiced by a licensed physician. The bill provides that "telemedicine" means telecommunication services, which includes real-time video or web conferencing communication, or secure interactive or non-interactive web-based communication used to establish a physician-patient relationship or for the evaluation or treatment of a patient.

RICO notes that the definition of "telehealth" in §§432:1-601.5(e)(coverage for telehealth), 431:10A-116.3(e)(coverage for telehealth), and 432D-23.5(e)(coverage for telehealth), Hawaii Revised Statutes ("HRS"), states that "telecommunications" is as defined in §269-1, HRS, but excludes standard telephone contacts, facsimile transmissions or email text, in combination or by itself. To promote consistency with these other statutory provisions, as well as more effective enforcement, the same language specifying what does not constitute telecommunications services is needed in Chapter 453, HRS. As such, RICO respectfully requests adding the following language to the definition of "telemedicine" on page 4:

(b) For purposes of this section, telemedicine means the use of telecommunication services, as defined in section 269-1, including real-time video or web conferencing communication, or secure interactive or non-interactive web-based communication, for the purposes of establishing a physician-patient relationship, or evaluating or treating a patient. Standard telephone contacts, facsimile transmissions, or email text, in combination or by itself, does not constitute a telemedicine service for purposes of this chapter.

RICO also notes that it is unclear whether House Bill No. 808 permits a licensee located out-of-state to treat a patient located in Hawaii and requests

Testimony on House Bill No. 808  
February 23, 2009  
Page 3

amendments to clarify this issue. The bill at page 3 lines 5-7 suggests that the bill is intended to apply to physicians located in Hawaii, but the revisions proposed in the bill do not preclude interstate telemedicine.

Thank you for the opportunity to testify on House Bill No. 808. I will be happy to answer any questions the members of the Committees may have.

**PRESENTATION OF THE  
HAWAII MEDICAL BOARD**

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

AND

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Monday, February 23, 2009  
2:00 p.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON HOUSE BILL NO. 808, RELATING TO HEALTH.**

TO THE HONORABLE ROBERT N. HERKES, CHAIR,  
TO THE HONORABLE JON RIKI KARAMATSU, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

Thank you for the opportunity to provide written testimony on H.B. No. 808, Relating to Health. The purpose of this bill is to make amendments to clarify the support and expansion of new technology in the use of telemedicine and to clarify that telehealth is within the scope of a physician's practice.

The companion bill, S.B. No. 1676, was heard by the Senate Committee on Health and passed out with amendments on February 11, 2009.

The Board understands that there were prior bills resulting in amendments to the Insurance Code which recognized telemedicine. However, the Board was not aware of these measures until December 2008, after an entity brought an issue with telemedicine to the Board in September 2008. Having been made aware of these recent amendments to the Insurance Code, the Board has been in discussion with the entity that raised the telemedicine issue with the Board in September 2008, to find common ground as to the circumstances in which a physician may treat a patient safely over the internet without having to perform a physical examination or take vital signs.

The Board recognizes that telemedicine fills a certain niche in health care and therefore, is not opposed to it. Given that the Board is in ongoing discussions with the entity that raised this issue to work toward a resolution on the safe use of the internet, the Board takes no position on this bill.

Thank you for the opportunity to provide written comments on this bill.

**Testimony to the House Committees on  
Consumer Protection & Commerce and Judiciary  
Monday, February 23, 2009 at 2:00 p.m.  
Conference Room 325, State Capitol**

**RE: HOUSE BILL NO. 808 RELATING TO HEALTH**

Chairs Herkes and Karamatsu, Vice Chairs Wakai and Ito, and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). The Chamber supports House Bill 808 relating to Health.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure makes amendments to clarify the support and expansion of new technology in the use of telemedicine and clarifies that telehealth is within the scope of a physician's practice.

Quality health care is critical to the people and economy of Hawaii. However, the quality that Hawaii has enjoyed for years is now in jeopardy. Some of the prevalent problems include the lack of access to healthcare, especially on the neighbor islands, and the shortage of acute beds.

The Chamber believes this measure will help alleviate some of these problems by allowing residents, especially in rural areas, to gain access to a physician for less than serious ailments, thus freeing up acute beds for more serious and dire situations.

Therefore, The Chamber supports improvements which can assist in promoting the quality of our health care system. This includes legislation that will clarify that physicians have the ability to engage in telemedicine.

In light of the above, The Chamber of Commerce of Hawaii supports HB 808. Thank you for the opportunity to testify.

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 23, 2009

The Honorable Robert N. Herkes, Chair  
The Honorable Jon Riki Karamatsu, Chair

House Committees on Consumer Protection and Commerce and Judiciary

**Re: HB 808 – Relating to Health**

Dear Chair Herkes, Chair Karamatsu and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in strong support of HB 808 which would ensure that Hawaii is able to remain a leader in the realm of telemedicine by adding statutory language that clarifies a physician's scope of practice in relation to the provision of telehealth services.

Hawaii is on its way to becoming a national leader in the field of health care technology. Our unique geographic location necessitates that cutting edge ideas and technologies are fostered to help overcome issues regarding access to medical care especially in rural areas.

Earlier this month, HMSA launched its Online Care program, aimed at improving access to care throughout the Islands. Residents can speak with a local physician from HMSA's network of credentialed participating physicians 24 hours-a-day, 7 days-a-week. We believe that this program will benefit all the people of Hawaii and can serve as a model as we look for solutions to improve the health care system across the nation.

The language contained in HB 808 is meant to clarify existing state law that allows physicians to engage in telemedicine. Thank you for the opportunity to testify today. We would respectfully urge the Committee to support HB 808.

Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read "JD", with a long horizontal flourish extending to the right.

Jennifer Diesman  
Assistant Vice President  
Government Relations



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Executive Director

February 23, 2009, 2:00 p.m., Conference Room 325

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE  
Rep. Robert N. Herkes, Chair  
Rep. Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY  
Rep. Jon Riki Karamatsu, Chair  
Rep. Ken Ito, Vice Chair

From: Hawaii Medical Association  
Gary A. Okamoto, MD, President  
Philip Hellreich, MD, Legislative Co-Chair  
Linda Rasmussen, MD, Legislative Co-Chair  
April Donahue, Executive Director  
Richard C. Botti, Government Affairs  
Lauren Zirbel, Government Affairs

Re: HB 808 RELATING TO HEALTH

Chairs & Committee Members:

Hawaii Medical Association favors the concept of telemedicine, with a note of caution. We believe telemedicine will help form the future of medicine. But it is also vulnerable to major pitfalls, so this bill would require amendments.

The major concern we have with the wording of this bill is that it allows for the establishment of a physician-patient relationship without the physician actually seeing the patient.

Once a physician-patient relationship has been established with a person-to-person visit, the physician will have records of the patient, creating a history of the patient. Only then should telemedicine be acceptable.

What we do not want to see is a physician creating a practice of virtual patients that are never seen in person, and could actually be a forgery. Additionally, there is concern that online consultation opens physicians to an additional liability by allowing them to make decisions about a patient's health without actually examining the patient.

Thus, we strongly recommend that the measure be amended to specifically require that telemedicine only be allowed after the traditional physician-patient relationship has been established. The only exception to the requirement that a physician needs to have personally examined the patient would be when a primary care physician needs immediate help from a specialist, and no specialist is available in that geographic location.

Thank you for the opportunity to provide this testimony.

Hawaii Medical Association  
1360 S. Beretania St.  
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Honolulu, HI 96814  
(808) 536-7702  
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Written testimony for the House Committee on Consumer Protection & Commerce  
and the House Committee on Judiciary  
HOUSE BILL 808 and HSCR 57  
Monday, February 23, 2009  
2:00 PM

Deborah P. Birkmire-Peters, PhD  
Chair, Hawai'i Telehealth Collaborative  
Telehealth Research Institute  
John A. Burns School of Medicine  
University of Hawai'i at Mānoa

Thank you, Chair Robert Herkes, Chair Jon Riki Karamatsu, and members of the CPC and Judiciary committees for this opportunity to present written testimony on HB No. 808, Relating to Health.

I am presenting this testimony on behalf of the Hawai'i Telehealth Collaborative, which represents a consortium of stakeholders interested in the future of telehealth in the state of Hawai'i, including representatives of the medical community, academia, and industry.

There is a critical and growing shortage of available, affordable healthcare throughout the State of Hawai'i. Telehealth has the potential to leverage scarce healthcare resources across geographic and other barriers that limit access to healthcare services. Telehealth can play a critical role for the imperative to improve access to care in Hawai'i, while at the same time improving clinical outcomes and lowering costs.

While the bill clarifies the practice of telehealth as within the scope of practice of medicine for physicians in the State of Hawai'i, the requirement for licensure in the State of Hawai'i to practice telehealth will restrict and potentially contradict the intent of the bill. It is essential that the following be removed: "SECTION 2. (f) A physician shall not practice telemedicine in this State without a license to practice medicine in Hawai'i." The issue of licensure is addressed in other existing statutes. As stated, this requirement places a new burden upon patients seeking expertise that does not exist within the State.

In recognition of the need to take full advantage of the potential of telehealth, the Hawai'i Telehealth Collaborative supports the intent of the proposed legislation with the deletion of the section on licensure.

Thank you for the opportunity to provide this testimony.

Sincerely,  
Deborah P. Birkmire-Peters



February 20, 2009

The Honorable Robert Herkes, Chair  
The Honorable Glenn Wakai, Vice Chair  
House Committee on Consumer Protection and Commerce

**Re: HB 808 – Relating to Telemedicine**

Dear Chair Herkes, Vice Chair Wakai and Members of the Committee:

My name is Rick Jackson and I am Chief Operating Officer of MDX Hawai'i, a third party administrator of Hawai'i health benefit plans since 1985. Our health care clients include The Queen's Health Systems, Longs Drug, Aetna, Cigna, Deseret Mutual, United Healthcare and Wellpoint.

MDX Hawai'i appreciates the opportunity to testify in support of HB 808 which would broaden access to physicians for patients in rural areas, potentially impact unnecessary emergency room visits and utilize proven internet and telecommunications technology familiar to Hawai'i residents in a patient-friendly fashion. We agree that it is important to clarify the definition of the practice of medicine in Hawai'i statute in order to accomplish this. Many Hawai'i physicians are unwilling to participate in the HMSA pilot program because of the issues dealt with in this bill and their effect on medical malpractice risk.

HMSA decided early on in its service delivery design for telemedicine services that it should not matter which Health Plan the patient belonged to...that their new service was open to patients from any insurer. Several local health plans, MDX Hawai'i included, have discussed with HMSA the idea of incorporating telemedicine services proposed in this bill into various of their own health plan benefit designs. We believe HMSA is taking a critical, correct step on behalf of the entire community.

Thank you for the opportunity to offer comments today.

Sincerely,

A handwritten signature in black ink that reads "Rick Jackson". The signature is written in a cursive, flowing style.

Rick Jackson  
President