DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, April 8, 2015
2:00 p.m.

TESTIMONY ON SENATE BILL NO. 1028, S.D. 2, H.D. 1 – RELATING TO THE HAWAII HEALTH CONNECTOR.

TO THE HONORABLE SYLVIA J. LUKE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department supports the intent of this bill to provide for other revenue options for the Connector, but submits the following comments on this bill.

The purposes of this bill are to ensure that group health plans offered through the Hawaii Health Connector ("Connector") are in compliance with federal network adequacy requirements by requiring that insurers contract with federally-qualified health centers and utilize payment methodology, and to facilitate the Connector's financial self-sustainability by authorizing it to develop revenue streams through providing enrollment, implementation, and benefit administration services for non-qualified health plans or other ancillary products and services.

The Department notes that an amendment to section 435H-3, HRS, during the last legislative session addressed concerns regarding the Connector's financial self-sustainability by adding subsections allowing the Connector to sell or lease its information technology infrastructure and services to other separate non-connector

programs, as well as charge fees for displaying advertisements for ancillary services on the Connector's website, in compliance with federal law. While the Department supports the intent of this bill to provide for other revenue options, given the different potential inconsistences between this bill's provisions and the Patient Protection and Affordable Care Act ("PPACA") and existing Hawaii law, as well as redundancies, we would ask the Committee to closely consider the impact of this measure on the State's compliance with various PPACA's requirements and existing Hawaii law.

For example, health insurers are currently required to conform to the PPACA, and the Commissioner has the power to enforce the consumer protections and market reforms under the PPACA. Section 432:1-107, HRS, section 432D-28, HRS, and section 431:10A-105.5, HRS.

Thus, under 45 CFR 156.235, qualified health issuers are already required to have essential community providers, the payment of which is set by federal regulation. Under 45 CFR 156.230, a qualified healthcare plan issuer must already ensure that the provider network of each of its qualified plans includes essential community providers in accordance with 45 CFR 156.35 and PPACA section 2702(c). As such, the provisions in the bill that address insurer treatment of federally-qualified health plans are redundant, as well as potentially inconsistent with existing federal law.

Moreover, the Commissioner notes that the Commissioner determines network adequacy standards under Hawaii law (section 435H-11, HRS), and not the Connector. In addition, the Department notes that PPACA Section 1301 defines the term "qualified health plan" and that PPACA Section 1311(d)(2)(B)(i) prohibits an exchange from making available any health plan that is not a qualified health plan.

We thank the Committee for the opportunity to present testimony on this matter.

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Finance
Wednesday, April 8, 2015 at 2:00 P.M.
Conference Room 308, State Capitol

RE: SENATE BILL 1028 SD2 HD1 RELATING TO THE HAWAII HEALTH CONNECTOR

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 1028 SD2 HD1, which among other things enhance the availability of services through the connector.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

We understand the need for the Health Connector to derive other sources of revenue. However, as we read the bill, it appears that the Connector can now function as a benefits administrator. If this is the intent, we are opposed to having a government created, government funded organization, now able to compete against other private companies. This places the Connector at an advantage over other private sector companies.

We ask that this provision be removed or the bill be deferred.

Thank you for the opportunity to testify.

1132 Bishop Street, Suite 2105 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369

An Independent Licensee of the Blue Cross and Blue Shield Association

April 8, 2015

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. .Nishimoto, Vice Chair
House Committee on Finance

Re: SB 1028, SD2, HD1 – Relating to Hawaii Health Connector

Dear Chair Luke, Vice Chair Nishimoto and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 1028, SD2, HD1, HMSA opposes a portion of this Bill because it raises serious Constitutional concerns, and we take no position of the remainder of the Bill.

H MSA opposes the provision in this Bill mandating issuers to offer to contract with any willing federally qualified health center (FQHC) for the following reasons:

(1) This portion of the Bill seeks to amend Section 431:2-201.5, governing conformity to federal law, which implies that the Affordable Care Act (ACA) requires plans to contract with FQHCs. While the ACA requires plans to have essential community providers in their networks, it does not require plans to contract with the FQHCs. If a plan does contract with an FQHC, however, the plan may pay the FQHC a mutually agreed upon rate or the federal Prospective Payment System (PPS) rate.

(2) Given that, requiring plans to offer contracts to any willing FQHC raises Constitutional concerns. Specifically, this provision is a substantial impairment of an issuer's contract rights under the Contracts Clause of the U.S. Constitution

HMSA has existing contracts with FQHCs that are the product of previous negotiations for services based on mutually agreed upon rates. The essential terms of these contracts include specific financial terms that set forth the reimbursement rates to FQHCs. Our contracts are in compliance with the ACA.

To address the Constitutional question raised in this Bill, a referral to and review by the House Committee on Judiciary may be appropriate.

Thank you for the opportunity to testify in opposition to SB 1028 SD2, HD1. Your consideration of our concerns is appreciated.

Sincerely,

...
Jennifer Diesman
Vice President, Government Relations

HAWAI'I LODGING & TOURISM ASSOCIATION

Testimony of George Szigeti
President & CEO
HAWAIʻI LODGING & TOURISM ASSOCIATION
House Committee on FINANCE
Hearing on April 08, 2015, 2:00 p.m.
SB 1028 SD 2 HD 1 Relating to the Hawai'i Health Connector

Dear Chair Luke, Vice Chair Nishimoto, and Members of the Committee. My name is George Szigeti and I am the President and CEO of the Hawaiʻi Lodging & Tourism Association.

The Hawaiʻi Lodging & Tourism Association (HLTA) is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms that benefit from and strengthen Hawai`i's visitor industry. Our membership includes over 150 lodging properties, representing over 50,000 rooms, and over 400 other Allied members. The visitor industry was responsible for generating $14.9 billion in visitor spending in 2014 and supported 170,000 jobs statewide – we represent one of Hawai`i's largest industries and a critical sector of the economy.

On behalf of HLTA, permit me to offer this testimony regarding SB 1028 SD2 HD1 relating to the Hawai'i Health Connector which implements federal requirements for provider network adequacy through requiring insurer contracts with federally-qualified health centers. Authorizes generation of revenue through provision of benefits administration services.

The Hawai'i Lodging and Tourism Association **opposes** SB 1028 SD 2 HD 1. We understand the need for the Health Connector to derive other sources of revenue. However, as we read the bill, it appears that the Connector can now function as a third party benefits administrator. If this is the intent, we are opposed to having a government created, government funded organization, now able to compete against other private companies. This would place the Connector at an advantage over other private sector companies.

We respectfully ask that this provision be removed or the bill be deferred.

Thank you for this opportunity to testify.

Hawai`i Lodging & Tourism Association
2270 Kalakaua Avenue, Suite 1506, Honolulu, Hawaiʻi 96815 · Phone: (808) 923-0407 · Fax: (808) 924-3843
info@hawaiilodging.org · www.hawaiilodging.org

LATE

HPCA
HAWAI'I PRIMARY CARE ASSOCIATION

House Committee on Finance
The Hon. Sylvia Luke, Chair
The Hon. Scott Y. Nishimoto, Vice Chair

Testimony on Senate Bill 1028 SD 2 HD1

Relating to the Hawaii Health Connector
Submitted by Nani Medeiros, Public Affairs and Policy Director
April 8, 2015, 2:00 pm, Room 308

The Hawaii Primary Care Association (HPCA), which represents the federally qualified community health centers (FQHC) in Hawaii, supports Senate Bill 1028, which calls for a number of measures to strengthen the Hawaii Health Connector.

The HPCA strongly supports section 3 of the bill, which calls for an amendment to HRS §431 to state:

> (e) All group health issuers shall:
>
> > (1) Offer to enter into a contract with any federally-qualified health center that serves the same geographic area as at least one qualified health plan of the issuer to provider all covered ambulatory services offered by the federally-qualified health center to ensure reasonable and timely access to services for medically underserved individuals in the qualified health plan's service area in accordance with the network adequacy standards of the Hawaii health connector; and
> >
> > (2) Reimburse each federally-qualified health center for services provided under the contract at a rate that is not less than:
> >
> > > (A) The amount that would have been paid to federally-qualified health centers for the same service pursuant to section 1902(bb) of the Social Security Act, 42 USC section 1396a; or
> > >
> > > (B) A rate that is mutually agreed upon by the federally-qualified health center and the group health issuer and that is not less than issuer's generally-applicable payment rate for the same service.

This language serves to codify several key factors for community health centers. First, it affirms payment methodology for health centers providing services to qualified health plan enrollees. Second, it protects continuity of care for enrollees, including the 7,500 legal COFA migrants recently removed from the

Medicaid program. Finally, it helps to ensure financial sustainability for an essential community provider moving forward.

The HPCA would ask that as a point of clarity though that language in section 3, subsection (1), "…that serves the same geographic area as at least one qualified health plan of the issuer…" be removed. Given the unique geographic format of Hawaii and the presence of various health centers throughout the islands, this could lead to confusion moving forward.

The HPCA strongly supports this bill and thanks you for the opportunity to testify.

ADD 735 BISHOP STREET, SUITE 230 HONOLULU, HI 96813 TEL 808.536.8442 FAX 808.524.0347 WEB WWW.HAWAIIPCA.NET

KAISER PERMANENTE®

LATE

Testimony of Phyllis Dendle
Director, Government Relations

Before:
House Committee on Finance
The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair

April 8, 2015
2:00 pm
Conference Room 308

Re: SB 1028, SD2 HD1 Relating to Hawaii Health Connector

Chair and committee members thank you for this opportunity to provide testimony on this bill relating to the Hawaii Health Connector and federally-qualified health centers (FQHC).

Kaiser Permanente Hawaii opposes this bill.

While we appreciate the effort to improve the Hawaii Health Connector through legislation there is one element of this bill that we oppose completely. On page 6 starting at line 6 the bill proposed to mandate health plans to contract with any willing Federally Qualified Health Center (FQHC).

This testimony is not even suggesting that FQHC do not provide excellent service to their patients and the communities they serve. We know they do and KPHI contracts with some FQHC's to serve in areas where they are the primary provider of care. We are also working closely with FQHC's in carefully transitioning COFA patients from Medicaid to the PAP program and care at KPHI.

However, Kaiser Permanente already meets the essential community provider (ECP) requirement through its integrated delivery system under the "alternate standard" approach of the ACA.

The ACA requires that all "Qualified Health Plans" (QHP) include an "adequate network of primary care providers, specialists, and other ancillary health care providers." In meeting this "adequate network" standard, QHPs are required to contract with ECPs to service medically underserved areas. However, there is an "alternate standard" for QHPs that "provides a majority of covered professional services through physicians employed by the issuer or through a single contracted medical group." See 45 C.F.R. §156.235, Essential community providers. To be eligible under this "alternate standard," a QHP must have a sufficient number and geographic distribution of employed providers and hospital facilities, or providers of its contracted medical group and hospital facilities, to ensure reasonable and timely access for medically underserved areas within the plan's service area. This "alternate standard" was established based on

711 Kapiolani Blvd
Honolulu, Hawaii 96813
Telephone: 808-432-5224
Facsimile: 808-432-5906
Mobile: 808-282-6642
E-mail: John.M.Kirimitsu@kp.org

arguments that a broad-based requirement that health plans contract with all ECPs in a plan's service area would have a particularly negative impact on integrated delivery systems like Kaiser Permanente. Integrated health systems generally arrange for the appropriate mix of providers and facilities to provide care through a collaborative network of functionally linked providers. Allowing any provider to enter into a plan network interferes with an integrated health plan's efforts to create provider networks that deliver greater efficiency and higher quality. Therefore, as an integrated delivery system under the "alternate standard" approach, Kaiser Permanente should not be required to contract with any FQHC, which would undermine its efforts to promote quality care for its patients.

We offer the following amendment to this bill which would permit this alternate standard under Hawaii state law the ways it does under federal law. Thank you for your consideration.

Beginning on Page 6 Line 6 section (e):

(e) (i) All group health issuers, except those described in subsection (ii), shall:

(1) Offer to enter into a contract with any federally-qualified health center that serves the same geographic area as at least one qualified health plan of the issuer to provide all covered ambulatory services offered by the federally-qualified health center to ensure reasonable and timely access to services for medically underserved individuals in the qualified health plan's service area in accordance with the network adequacy standards of the Hawaii health connector; and

(2) Reimburse each federally-qualified health center for services provided under the contract at a rate that is not less than:

(A) The amount that would have been paid to federally-qualified health center for the same service pursuant to section 1902(bb) of the Social Security Act, 42 United States Code section 1396a; or

(B) A rate that is mutually agreed upon by the federally-qualified health center and the group health issuer and that is not less than issuer's generally-applicable payment rate for the same service.

(ii) A group health issuer that provides a majority of covered professional services through physicians employed by the issuer or through a single contracted medical group may instead demonstrate that it has a sufficient number and geographic distribution of employed providers or providers in its contracted medical group to ensure reasonable and timely access for low-income, medically underserved individuals in the service area, in accordance with the network adequacy standards of the Hawaii health connector.

Nothing in this subsection shall be construed to require the group health issuer to contract with any entity that refuses to accept the issuer's generally applicable payment rate or other generally applicable terms and conditions of the issuer's contract, including provisions relating to member access, information sharing and quality oversight. Nothing in this subsection shall be construed to affect any contract entered into by a group health issuer that is in effect as of the effective date of Act , Session Laws of Hawaii 2015.

For purposes of this section, "federally-qualified health center" has the same meaning as in section 1905 (1) (2) (B) of the Social Security Act, title 42 United States Code section l396d.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015

ON THE FOLLOWING MEASURE:
S.B. NO. 1028, S.D.2, H.D.1, RELATING TO THE HAWAII HEALTH CONNECTOR.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

LATE

DATE: Wednesday, April 8, 2015 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lili A. Young, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General offers the following comment.

The stated purpose of this measure, in relevant part, is to "[e]nsure that group health plans offered through the [Hawaii Health] Connector are in compliance with federal network adequacy requirements through requiring that insurers contract for [sic] with federally-qualified health centers in relevant service areas to provide covered services," by amending chapters 431:2 and 435H of the Hawaii Revised Statutes (HRS). The network adequacy requirements are set forth in the Code of Federal Regulations (C.F.R.) at 45 C.F.R. part 156.

Section 2, on page 6, lines 6-21, through page 7, lines 1-18, amends section 431:2-201.5, HRS, by adding a new subsection (e) that, in relevant part, requires all group health plan issuers to offer to contract with any federally qualified health centers (FQHC) in the relevant service area, to provide all covered ambulatory services offered by the FQHC in accordance with network adequacy standards of the Connector.

The Affordable Care Act addresses the network adequacy standards in the federal regulations at 45 C.F.R. section 156.230(a), and provides that a qualified health plan issuer must ensure that its provider network includes essential community providers. 45 C.F.R. §156.230(a)(1). "Essential community providers" is defined by the federal regulations as follows:

> (c) *Definition*. Essential community providers are providers that serve predominantly low-income, medically underserved individuals, including providers that meet the criteria of paragraph (c)(1) or (2) of this section, and providers that met the criteria under paragraph (c)(1) or (2) of this section on the publication date of this

> regulation unless the provider lost its status under paragraph (c)(1) or (2) of this section thereafter as a result of violating Federal law:
>
> (1) Health care providers defined in section 340B(a)(4) of the PHS Act; and
>
> (2) Providers described in section 1927(c)(1)(D)(i)(IV) of the Act as set forth by section 221 of Public Law 111-8.

45 C.F.R. §156.235(c). An FQHC is just one provider in this category of essential community providers, but as worded, the new subsection (e) appears to narrow the federal requirement to FQHCs only. Since the stated purpose of the measure is to ensure that the group health plan issuers comply with the federal requirement for network adequacy, we would suggest using the broader term "essential community providers," rather than "federally-qualified health center" in new subsection (e), paragraph (1). If this suggestion is adopted, changes to section 6, page 11, lines 4-16, amending chapter 435H, HRS, will also need to be made for consistency with use of the term "essential community providers."

We respectfully request that this Committee consider our comments.