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STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on HB 1147 HD1
Relating To Health

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Hearing Date: Thursday, March 5, 2015 10:30 AM Room Number: 308

Fiscal Implications: Appropriates an unspecified amount of general funds in fiscal years 2015-2016 and 2016-2017. The Department respectfully defers to the Governor's Executive Budget request for the Department of Health's appropriations and personnel priorities.

HB1147 HD1 would require the Department of Health to establish a two-year pilot failsafe program of two hospitals that provides 24 hours per day, seven days per week, and 365 days per year consultation services to emergency room physicians and nursing staff. It would also require the Department to provide patients and their family members, upon request, an opinion of another physician, including a senior emergency room physician regarding the diagnosis or treatment plan prescribed by an emergency room physician. The measure would also require the Department to convene a committee to create a forum to facilitate the sharing of best practices and benchmarking data for patient advocacy in the emergency department setting.

Department Testimony: The Department is concerned about the cost-benefit and the feasibility of implementing the proposed emergency services failsafe pilot program. We respectfully defer to the findings and recommendations of the task force established per the passage of House Concurrent Resolution 112, HD1, SD1: Urging the Director of Health to Convene a Task Force to Assess the Scope and Feasibility of Establishing an Emergency Services Patient Advocate Program during the 2014 legislative session. The report was submitted to the twenty-eight legislature in December, 2014, and may be viewed electronically at http://co.doh.hawaii.gov/sites/LegRpt/2015/Reports/1/HCR%20122.pdf

The Department facilitated meetings of highly qualified and diverse emergency department experts and healthcare consumers. Consensus was reached on recommendations for HCR122, HD1, SD1, including:

1. Emergency Department (ED) care in Hawaii, for the most part, is quite good. It would not be prudent to implement changes that have the potential to disrupt the system currently in place.
2. A nurse practitioner would probably not have sufficient stature to persuade and ED physician to re-evaluate the management plan.
3. Many of the apparent conflicts between patient/families stem from inadequate communication.
4. Because the patient advocate (PA) would not have the benefit of direct contact with the patient or the results of the clinical workup, the value of the "second opinion" would be limited.
5. On occasion, the management plan might be altered for the better, but the ED professionals on the task force could not offer a meaningful estimate of how often this would occur, except to say that it would probably be rare.
6. On the other hand, more tests would be ordered, more consultations would be obtained, and more patients would be placed in observation or admitted to the hospital. Costs would rise and patients would be subjected to increased risk of adverse reactions to tests and procedures.
7. To provide this service 24/7/365 using realistic salary estimates: $1,300,000.00 per year in salary alone. $850,000.00 per year in salary, if the service was provided only nights and weekends.

The task force recommended deferring the implementation of a centralized Department of Health program and strongly supported the utilization of existing hospital resources to support the objectives of a statewide patient advocacy program. The Task Force recommendations also asks the Healthcare Association of Hawaii to develop an appropriate, on-going forum that would facilitate the sharing of best practices and benchmarking data for patient advocacy in the emergency department setting.

Thank you for the opportunity to testify.

March 04, 2015

To: Representative Sylvia Luke, Chair,
Representative Scott Y. Nishimoto, Vice Chair, and
Members of the House Committee on Finance

DATE: Thursday, March 05, 2015
TIME: 10:30 A.M.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

From: Quinne Custino, MSW Student at the University of Hawai'i at Manoa

RE: H.B. NO. 1147 HD1 RELATING TO HEALTH

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

I am submitting this testimony in support of HB1147 HD1. As a Master of Social Work student with a concentration in Health at the University of Hawai'i at Manoa, we are taught that it is our responsibility to advocate for some of the most vulnerable and disenfranchised in our communities. I cannot think of a more vulnerable population than those who are seeking medical attention in an emergency room for what are sometimes life-threatening situations.

In social work, concepts of person-centered planning and the right to self-determination are fundamental to the work that we do, and I think that in order for us to see these concepts come to fruition it is important to be able to give individuals and their families' options that will enable them to make the most informed choices possible. Should a patient or family disagree with a diagnosis or treatment plan, they should be empowered to express their concerns and be informed about their rights, which should include information on seeking a second opinion from another physician.

While I understand that there would be many expenses to the implementation of this pilot program, I think that the benefits would outweigh the costs in a lot of ways. I think in the long run, it would save pricey lawsuits and litigation when actions taken and recommendations made may come into question by individuals or families who felt pressured into agreeing to treatment that they were not well informed of or have reservations about. I think that traditionally, healthcare has taken the framework of treating a problem instead of trying to prevent it from occurring. I think that it is time for us to take a proactive approach to healthcare and try to initiate change that will be a benefit to all stakeholders involved.

In closing, I would again like to reiterate my support for HB1147 HD1. I think that we all have the right to comprehensive healthcare and seeking a second opinion not only safeguards the patient, but also the healthcare providers. Thank you for the opportunity to provide testimony on this bill, and for your time and consideration.

George S. Massengale
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March 4, 2015

House Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Nishimoto, Vice Chair

Re: HB1147, HD1, Relating to Health
Date: Thursday, March 5, 2015
Time: 10:30 a.m.
Place: Conference Room 308

Testimony in Support

Chair Luke and Vice Chair Nishimoto and members of the Committee on Finance. I am writing this testimony as an individual who is very familiar with many of the issues surrounding HB1147, HD1, which if enacted would establish a two year pilot emergency services failsafe program to assist both emergency room physician as well as patients and their family members in obtaining a second opinion where there is a difference of opinion regarding diagnosis and treatment.

To begin with, I would like to mention as to how I became involved in helping Senator Rohfling in passing this bill predecessor SB666 which was introduced in 2013, and would have created an emergency room advocate program in Hawaii. In late 2012 Senator Rohfling met with Senator Josh Green to obtain his support in introducing what was to become SB666. At that time I was Senator Green committee clerk and he had asked that I work closely with Fred and help if necessary with his bill. As I worked with Fred, I came to realize how important the need was to establish some type of emergency room patient advocate program, and that Fred situation was not an isolated incident as other individuals contacted me with their ER story.

SB666 made through both houses and was the very next bill to be heard in conference committee when “time ran out.” What eventually did pass the legislature was a resolution instructing the Department of Health to for a working group to study the need for an ER patient advocate program. Subsequently a report was generated and submitted to the legislature just prior to this year’s session. During the meeting that were held by the working group it was learned that HPH as part of their ER department’s risk management program, had adopted a successful “failsafe” program to minimize its ER risk.

So what is “failsafe”? Failsafe provides ER physicians with 24/7 phone access to an experienced, senior EM physician for discussion of high-risk cases or situations which may arise. Needless to say this program has saved many lives, and hospitals have avoided litigation cost because of it. I’m sure that if a “failsafe” program had been in place several years Senator Rohlfing’s wife Patty would be with us today. Establishing a failsafe program in all our hospitals would be a cost effective and prudent thing to do. It will save lives, while at the same time reducing liability exposure.

In closing I would also point out that HB1147, HD1 has no Senate companion, thus it would be in everyone’s interest that this measure be passed so that the Senate could further discuss and consider the merits of this bill. Let us err on the side of caution, it can’t hurt, and it could prevent tragic occurrences from happening.

I’ve also taken the liberty of attaching federal appellate court summary from the 6 th Circuit outlining an emergency rooms obligation to a patient once they have been admitted.

Respectfully submitted,

George S. Massengale

In *Moses v. Providence Hosp. & Med. Ctrs., Inc.*, the court considered whether a non-patient has standing to sue under EMTALA and what a hospital's obligations are upon discovering an emergency medical condition. 8 The court held that any individual, including non-patients, who suffered direct personal harm from a hospital's violation of the EMTALA provisions, has standing to sue. 59 Additionally, the court ruled that the requirement to stabilize a patient's condition before discharging or transferring the patient is not satisfied by merely admitting a patient to an inpatient unit and then releasing the patient. 60 Rather, appropriate treatment must be rendered such that the patient's condition has *actually* been stabilized prior to discharge, regardless of whether treatment occurs in the emergency department or elsewhere in the hospital. 61 Though susceptible to criticism for expanding the law and creating compliance ambiguity, the court appropriately and logically looked to the plain language of the EMTALA statute where no cases on point existed regarding standing, as well as ruled according to precedent on the issue of stabilization. 62 With precedent now established, other appellate courts should feel comfortable following the Sixth Circuit's lead in ruling that injured non-patients have standing to sue, particularly in cases like *Moses* where the facts precisely fit the plain language and meaning of EMTALA.63

Journal of Health & Biomedical Law, Vol. V (2009): ***345-360 0*** *2009 Journal of Health & Biomedical LawSuffolk University Law School, p.360.*

FIN-Jo

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 02, 2015 7:47 PM
To: FINTestimony
Cc: anthony_orozco@yahoo.com
Subject: Submitted testimony for HB1147 on Mar 5, 2015 10:30AM

HB1147
Submitted on: 3/2/2015
Testimony for FIN on Mar 5, 2015 10:30AM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Anthony Orozco	Individual	Oppose	No

Comments: Waste of money.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Rep. Sylvia Luke, Chair – Finance
Rep. Della Au Belatti, Chair – Health

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Testimony COMMENTING on HB 1147 HD 1, RELATING TO HEALTH
Emergency Services Failsafe Program; Medical Services; Emergency Room; Forum for Patient Advocacy

March 5, 2015 in front of Health and Finance in Conference Room # 308

Aloha Chairs, Vice Chairs, and Members of the Committee:

Mahalo for the opportunity to submit testimony in strong support of HB 1147 HD 1. My name is Ilima Ho-Lastimosa. I am a masters candidate at the Myron B. Thompson School of Social Work at the University of Hawai`i at Manoa.

I am in strong support of HB 1147 HD 1 because I believe patients need a voice when they are in the emergency room. As a social work student we learn about the value of a team approach to patient care; meaning that doctors, nurses, pharmacists, social workers and other caregivers are in consultation to support the best interests of the patient.

To that end I believe the helping profession, social workers, are an important asset in the care of patients, especially in the emergency room. Supplying the needed resources to pilot this effort, HB 1147 HD 1, is a necessary first step.

Your consideration is greatly appreciated. Mahalo nui loa for your time.

BARBARA MARUMOTO

1438 Ihiloa Loop

Honolulu, HI 96821

LATE

5 March 2015

House Finance Committee

TESTIMONY IN FAVOR OF HB 1147 HD1

The genesis of this measure was the situation faced by former Senator Fred Rohlfing a few years ago when his wife was mistakenly sent home from an Emergency Room. A Failsafe program might have prevented the tragic outcome.

If HB 1147 HD 1, if enacted, would institute a Failsafe Program that would assist physicians in reducing mistakes that might occur in pressure-cooker emergency rooms. It might reduce litigation that arises from errors or misdiagnoses with high risk cases. It definitely would create a friendlier "patient-centered" service.

Sen. Rohlfing and his wife Patty of Kula, Maui, were visiting relatives on Oahu during Christmas. When Patty suffered abdominal pains, she was taken to an Emergency Room. She was not admitted, but, instead, sent back to her hotel room. She was in severe pain and heavily medicated. Sen. Rohfling unsuccessfully argued that he would have a hard time helping Patty walk and that she should be admitted – all to no avail. The Rohflings returned to their hotel, but recurring pain required that Patty go again to an ER. Never had been diagnosed properly, Patty died that night.

A Failsafe program might have prevented her death. If instituted, it could prevent similar tragedies. Please give yourselves the opportunity to further study this measure, and consider a pilot project at one or two hospitals in Hawaii. Mahalo nui loa!

Frederick W. Rohlfing
600 Queen Street #2504
Honolulu, Hawaii 96813-5169

March 3, 2015

The Honorable Sylvia Luke, Chair
House Finance Committee
Hawaii State Capitol, Room 306
415 S. Beretania Street
Honolulu, Hawaii 96813
Email: repluke@capitol.hawaii.gov

LATE TESTIMONY

Re: HB 1147, HD 1 – Strong Support

Dear Chair Luke and Members of the Committee:

My name is Fred Rohlfing. I served as a state legislator and federal judge. I am now a commissioner on the Statewide Health Coordinating council.

It is now roughly 4 years since I lost my wife at Kuakini Hospital while here on Oahu at a family Christmas get-together. Kuakini was the second hospital we went to. First was the Emergency Room at Kapiolani, where she was discharged over my objection at 4 in the morning.

By 7 that morning it was obvious she needed more medical attention and we took her to a clinic in Kapahulu, which treated her but said she should go to ER. She was dispatched by ambulance headed for Queen's, but because Queen's was overcrowded, she was sent to Kuakini. By the next afternoon she had undergone two surgeries and had passed away. Causes of death were ischemic bowel disease, sepsis, and septic shock.

From then on I have dedicated myself to a cause: To find a way so that no one else has to suffer such a loss. We could have filed a lawsuit, but chose instead to turn to you for broader relief.

Our first effort was via a bill introduced in the Senate in 2013 by Senator Josh Green, SB 666, which would have created a corps of patient advocates in state emergency facilities. SB 666 passed both houses of the Legislature without a negative vote, but because some language was different was sent to conference committee for

reconciliation. It failed when an arbitrary time deadline took effect. Because of its breadth, SB 666 had financial effects that the current bill does not have.

As Mr. Massingale points out in his comprehensive testimony of HB 1147, the obligations of ER services do not end at the door to ER. It is too late now for my Patty but not for others.

The fail-safe pilot designed by House Health Committee members Creagan and Kobayashi will do the job. It is a responsible way of saving lives by applying expertise at the point it is needed.

Passage of this bill will go well with the adoption of the recommendations of the task force on HCR 122, which will be pending before you soon.

Conclusion: This bill will help us build a comprehensive strategy to attack difficult cases in ER showing Hawaii as a leader of the nation in this field.

Sincerely,

Fred Rohlfing

Fred Rohlfing

Thank you for hearing this bill. It must pass so that many a life will be saved.