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

ON THE FOLLOWING MEASURE:
H.B. NO. 1283, RELATING TO THE HAWAII HEALTH CONNECTOR.

BEFORE THE:
HOUSE COMMITTEE ON HEALTH

DATE: Wednesday, February 11, 2015 **TIME:** 8:35 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Lili A. Young and Randall S. Nishiyama, Deputy Attorneys General

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Chair Belatti and Members of the Committee:

The Department of the Attorney General raises the following issues.

This bill, in part, supports the self-sustainability of the State's health insurance exchange known as the Hawaii Health Connector (Connector), authorizing it to issue debentures by amending chapter 435H, Hawaii Revised Statutes (HRS). It makes other changes to the Connector's authority as well.

Section 4 on page 5, lines 18-21, and page 6, lines 1-2, amends section 435H-2.5, HRS, by deleting the mandate that the Connector meet the requirements of chapter 42F, HRS, in order to qualify for receipt of state funds. Deleting this provision does not mean that any state appropriations to fund the Connector are exempt from the requirements of chapter 42F because section 4 of article VII of the Hawaii State Constitution prohibits a "grant of public money or property . . . except pursuant to standards provided by law." Chapter 42F provides those standards. If this requirement is deleted as applied to the Connector, the Constitution requires either that chapter 42F requirements nonetheless be followed, or that alternative standards be developed and provided by law in order for the Connector to receive state funds. The Department of the Attorney General would be happy to work with the Legislature to achieve its intent.

Section 5 on page 6, lines 5-19, amends section 435H-3(a) by changing the date by which the Connector must be self-sustaining from January 1, 2015, to January 1, 2023. This is problematic because, if passed, the state law would conflict with section 1311(d)(5) of the federal Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and

Education Reconciliation Act of 2010 (collectively ACA) that mandates that state based health insurance exchanges be self-sustaining by January 1, 2015. The Connector may receive state funds and generate other funding allowed under federal and state law, to support its operations.

To address this inconsistency, we propose replacing the contents of section 5 on page 6, lines 5-19, with the following material, which would comport with the federal law:

> **§435H-3 Funding.** (a) The connector may receive contributions, grants, endowments, fees, or gifts in cash or otherwise from public and private sources including corporations, businesses, foundations, governments, individuals, and other sources subject to rules adopted by the board. The State may appropriate moneys to the connector. As required by section 1311(d)(5)(A) of the Federal Act, the connector shall be self-sustaining by January 1, 2015[~~, and~~] . To achieve self-sustainability, the connector may charge assessments or user fees to participating [~~health and dental~~] carriers, or may otherwise generate non-insurer based funding to support its operations. Moneys received by or under the supervision of the connector shall not be placed into the state treasury and the State shall not administer any moneys of the connector nor be responsible for the financial operations or solvency of the connector.

Section 5 on page 7, lines 15-21, and page 8, lines 1-2, amends section 435H-3 by adding a new subsection (f) authorizing the Connector to issue debentures that shall be guaranteed by the State but issued in the name of the Connector and not in the State's name. A debenture is a type of debt instrument that is not secured by physical assets or collateral, but is instead backed by the general credit of the issuer.

We see three issues with this section.

First, section 4, article VII, of the Hawaii State Constitution provides that the public credit shall not be used, directly or indirectly, except for a public purpose. A guarantee of the debentures by the State would use the State's credit. For that reason, we recommend that a statement of public purpose be included in the bill.

For example:

> SECTION . The legislature finds that the sale of debentures by the Hawaii health connector can only be secured through the use of a guarantee of those debentures by the State.

> The legislature finds and declares that the issuance of the guarantees of the debentures under this Act is in the public interest and for the public health, safety, and general welfare of the State.
>
> The purpose of this Act is to assist the Hawaii health connector to continue operations by authorizing the State of Hawaii to guarantee debentures issued by the Hawaii health connector.

Second, the State should approve the terms of the debentures because it would ultimately be held liable as the guarantor. To that end we recommend adding after the first sentence in the new subsection (f) on page 7, line 18: "The State of Hawaii shall approve the terms of the debentures before they are issued." We recommend that the Legislature also identify the state agency that will be authorized to guarantee, approve, and oversee the issuance of the debentures by the Connector.

Third, clause 8, section 13, article VII, of the Hawaii State Constitution provides that where the State incurs a contingent liability on debt, a reasonable reserve must be established. The reasonableness of the reserve would be determined by the Legislature. In addition, this reserve must be funded by either the Hawaii Health Connector or the State. While this bill authorizes the State to incur a contingent liability, it does not require or establish the constitutionally required reserve.

To effectuate the reasonable reserve requirement, we suggest the following:

> SECTION . There is created a trust fund in the state treasury to be known as the Hawaii health connector debenture guarantee trust fund which shall serve as the reserve for all debentures guaranteed under this Act.

If funding for the reserve comes from the State, please consider the following language:

> SECTION . There is appropriated out of the general revenues of the State of Hawaii the sum of $, for fiscal year 2015-2016, to be deposited into the Hawaii health connector debenture guarantee trust fund. This sum, when and if necessary, shall be expended by the [name of expending agency to be inserted] for the purposes of this Act.

Section 5 on page 7, lines 8-12, amends section 435H-3 by adding a new subsection (d) allowing the Connector to "conduct enrollment, implementation, and benefit administration services for employers and their employees for non-qualified health plans or other ancillary products and services." We would suggest that the Legislature explore whether the Connector's system is capable of achieving the functions set forth in new subsection (d), and to determine whether it will require federal funding and federal approval to achieve this end.

Finally, as this bill seeks to amend chapter 435H by the addition of revenue-generating authority for the Connector that will require compliance with state laws related to funding, we propose the following wording at section 5 on page 7, lines 13-14, to ensure compliance with state laws, in addition to federal laws:

> [(~~d~~)] (e) All plans to generate revenue for the connector shall be in compliance with federal [~~law~~] and state laws, rules, and regulations.

We respectfully request that this Committee consider our comments.

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 HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, February 11, 2015
8:35 a.m.

TESTIMONY ON HOUSE BILL NO. 1283 – RELATING TO THE HAWAII HEALTH CONNECTOR.

TO THE HONORABLE DELLA AU BELATTI, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”).

The purpose of this bill is to retain the current financial and service benefits of the Hawaii Health Connector ("Connector"), enhance the availability of services through the Connector, and support the self-sustainability of the Connector by 2023 by enabling the Connector to issue debentures issued in the name of the Connector.

The Department supports the intent of this bill to provide for other revenue options for the Connector.

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

HAWAIʻI HEALTH
CONNECTOR

The Honorable Della Au Belatti
Chair, House Committee on Health

The Honorable Justin H. Woodson
Vice Chair, House Committee on Health

Re: Testimony regarding H.B. 1283 and H.B. 1467, Relating to the Hawaii Health Connector.

Hearing scheduled for February 11, 2014, at 8:35 a.m.

Chair Belatti, Vice Chair Woodson, and members of the Committee on Health,

My name is Jeff Kissel, Executive Director of the Hawaiʻi Health Connector (the "Connector"), speaking on behalf of the Connector and its Board of Directors.

It is a pleasure to be with you today to discuss H.B. 1283 and H.B. 1467.

H.B. 1283

At the end of 2014, the Connector submitted its Annual Report and Sustainability Plan. The report shows that the Connector is a viable, sustainable resource. The Connector is already earning a significant return on our investment as millions of dollars of federal tax subsidies are paid to many of our 19,500 clients now. As enrollment grows, the Connector has the potential to earn an additional $500 million in federal tax subsidies for the residents of our community. The Connector is proving itself as a more valuable resource as the provisions of the ACA are better understood. The Connector was able to implement a program to transfer about $30 million in annual costs from the Basic Health Hawaii program to the federal government ,while providing additional coverage and choice of plans for the recipients.

The Connector works in conjunction with state government and private industry to achieve our goal of harmonizing the benefits of Hawaii's forward-thinking Prepaid Healthcare Act of 1974 with the Affordable Care Act to deliver access to health, wellness and preventive care to every resident of our state.

In testimony I provided to the Legislative Oversight Committee on December 29, 2014, I discussed how the State of Hawaii provided support for HEMIC, in part to address an inability for Hawaii's business to secure Workers Compensation insurance. I was working as a commercial insurance agent in Hawaii and remember the vigorous public discussion and debate, including significant opposition. That debate centered on the presumption, that without substantiation, there weren't enough uninsured or at-risk employers to justify the cost of HEMIC. In the end, the enabling legislation was passed.

Today, HEMIC not only provides workers compensation insurance at competitive rates, while earning a profit, it actually supports the overall profitability of the commercial insurance industry.

For the record, it is important that we point out that we recognize that the actual method the State used to bring HEMIC into existence differs from the proposal for the Connector. The concept, however, is the same. HEMIC received relief from a requirement to maintain reserves, contribute to the Hurricane Relief Fund, and was not required to comply with other financial requirements imposed on new insurance companies for up to 10 years. During that time, if HEMIC failed to perform financially, the State would have had to assume responsibility for the financial losses associated with those commitments. If memory serves, HEMIC achieved its goals and relieved the State of the risks and obligations it assumed in about 5 years. Today it is earning a profit and has accumulated the requisite surplus to achieve an "A" rating from AM Best, the largest rating agency for the insurance industry.

Even though the Connector is not an insurance company, and is committed to operate as a non-profit, it has the potential to bring those same economic, and health benefits to our community. While H.B. 1283 is similar to the legislation that made HEMIC a reality, there is one important difference; the Connector offers all of the people of the State of Hawaii an opportunity to benefit from direct federal subsidy of hundreds of millions of dollars, while at the same time enjoying healthier, longer and more productive lives.

Today, more than 19,500 Hawaii residents are enrolled in plans through the Hawaii Health Connector. This compares with just over 2,000 at the same time last year. Momentum is building, daily enrollments are increasing as more and more of our citizens experience a better quality enrollment process supported by improved technology, better trained staff and faster access to lower the cost of health insurance plans.

In addition, by establishing a State Based Exchange (SBE), Hawaii has been able to participate in the expanded Medicaid program that is now providing Medicaid benefits to more than

HAWAI'I HEALTH
CONNECTOR

50,000 new participants at virtually no cost to the State. In fact, by expanding Medicaid and offering access to health care through the Connector, our community is not just saving many millions of dollars each year in unreimbursed health care costs, but also providing for a healthier more productive population.

The federal government through the Affordable Care Act funded the development and initial operation of our State Based Exchange. It did not provide the "startup" capital necessary to support operations until the Connector insures sufficient lives to start to pay its own operating expenses. Like most businesses, it will take time to develop sufficient revenue to cover the cost of operation. We provided detailed financial information in our Annual Report and Sustainability Plan that shows when the Connector is likely to break even and generate surplus revenue.

It is important to recognize the difference between generating a surplus and sustainability. Nearly all enterprises require operating capital to pay expenses until they can turn a profit. The Connector is no exception. There is an important difference, however. While investors in start-up enterprises must usually wait to achieve a return on investment, the people of Hawaii are already receiving a substantial return on the Connector. In its first 3 years of operation, as our Annual Report shows, health insurance purchased through the Connector generated more than $55 million in direct federal tax subsidies to businesses and the residents of Hawaii. The expanded Medicaid program together with the insured enrollment on the Connector is already reducing the uncompensated costs that are passed along to the rest of us.

Also, as we complete the Basic Health Hawaii transition, there is an added benefit. Effective March 1st, about $30 million per year in the medical costs for just one group of 7,500 individuals will be transferred from our community to the Federal Government through the Connector under the terms of the Affordable Care Act.

Honorable Members of the House of Representatives, this is not a discussion of funding a loss for an indeterminate period of time. It is choice about whether or not to facilitate a commitment of up to $28 million over the next six years, that will be repaid, to continue to return the immediate benefits I just discussed and then generate not just half a billion dollars in direct federal tax payments but also the substantial return to each and every family, our businesses and the community resulting from a healthier, more productive population.

H.B. 1467

With transitional or “grandmothered plans,” individuals and small businesses must chose from among 40 plans on the Connector. The array of plans from which an individual or small businesses must chose is overwhelming. It causes unnecessary confusion and adds very little value to Hawaii’s already robust options under Prepaid Care Act of 1974. Based on the Connector’s experience with customers over the last two enrollment periods, and for the purpose of simplifying choices, we would support a reduction in the number of offerings as proposed by the legislation. We feel this would be beneficial to our customers and all Hawaii residents.

Considering Hawaii’s economy has an unusually large economy of employers with 100 employees or fewer, we would like to offer them the opportunity to select from the plans on the Connector. We believe our efforts to attract more insurance companies to the Small Business Health Options Program (SHOP), combined with the fully functional technology in SHOP ,will be beneficial to the business community.

With nearly 30,000 individuals on unemployment, and presumably a very high percentage of those individuals with families, it is imperative that they become aware of the potential savings through the programs that provide tax credits (advanced premium tax credits) and other cost-sharing reductions which lower the overall price of health care when an individual’s income declines. We support notification of all recipients of unemployment benefits that they may be eligible so that they may be able to move from the high cost of COBRA coverage to an ACA plan, while they continue to search for employment.

Thank you for providing an opportunity to testify on these bills.

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Health
Wednesday, February 11, 2015 at 8:35 A.M.
Conference Room 329, State Capitol

RE: HOUSE BILL 1283 RELATING TO THE HAWAII HEALTH CONNECTOR

Chair Belatti, Vice Chair Creagan, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") would like to **express serious concerns** regarding HB 1283, which retains current financial and service benefits of the Hawaii health connector and enhances the availability of services through the connector. Also supports the self-sustainability of the connector by 2023 by enabling the connector to issue debentures issued in the name of the connector.

The Chamber is the largest business organization in Hawaii, representing over 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 third party benefits administrator. If this is the intent, we have some concerns on having a government created, government funded non-profit, now able to compete against other private companies. This places the Connector at an advantage over other private sector companies.

Thank you for the opportunity to testify.

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

HPCA

HAWAI'I PRIMARY CARE ASSOCIATION

House Committee on Health
The Hon. Della Au Belatti, Chair
The Hon. Richard P. Creagan, Vice Chair

Testimony on House Bill 1283

<u>Relating to the Hawaii Health Connector</u>
Submitted by Nani Medeiros, Public Affairs and Policy Director
February 11, 2015, 8:35 am, Room 329

The Hawaii Primary Care Association (HPCA), which represents the federally qualified community health centers (FQHC) in Hawaii, supports House Bill 1283 and offers amendments.

Under the Affordable Care Act (ACA), the intent behind creating state health insurance exchanges was to have a venue for competitive insurance plan comparison so as to provide for better premium rates to consumers. As such, the HPCA supports this measure, finding that a sustainable connector with a robust availability of services furthers these goals.

Additionally, Section 1302(g) of the ACA requires qualified health plans (QHP) in state exchanges to pay FQHCs for services provided at an amount no less than that defined in Section 1902(bb) of the Social Security Act (42 USC 1396a(bb).)

Given the recent decision to remove 7,500 legal COFA migrants from the Medicaid program and enroll them in the Hawaii Health Connector, Hawaii should consider statutory language that protects the continuity of care, and the provider-patient relationship, by mirroring federal ACA law in state law and requiring QHPs in the Connector to contract with FQHCs and utilize the payment methodology in the Section 1902(bb) of the Social Security Act.

The HPCA suggests the following amendment to House Bill 1283:

> The insurance commissioner shall require that each qualified health plan, as a condition of certification, shall (1) offer to any willing Federally-qualified health center (as defined in Section 1905(l)(2)(B) of the Social Security Act (42 USC 1396d(l)(2)(B)) providing services in geographic areas served by the plan, the opportunity to contract with such plan to provide to the plan's enrollees all ambulatory services that are covered by the plan that the center offers to provide and (2) reimburse each such center for such services as provided in Section 1902(bb) of the Social Security Act, 42 U.S.C. § 1396a(bb).

Thank you for the opportunity to testify and we look forward to further discussion on this important matter.

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

An Independent Licensee of the Blue Cross and Blue Shield Association

February 11,, 2015

The Honorable Della Au Belatti, Chair
The Honorable Richard P. Creagan, Vice Chair
House Committee on Health

Re: HB 1283 – Relating to the Hawaii Health Connector

Dear Chair Au Belatti, Vice Chair Creagan and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1283, which authorizes additional revenue generating authority for the Hawaii Health Connector (Connector). It also authorizes the Connector to issue up to $28 million in State-guaranteed debentures. HMSA has a comment on this Bill.

HMSA believes it important to have a sustainable, efficient Connector for Hawaii's uninsured. And, we understand the intent of this Bill to broaden the revenue-generating capacity of the Connector. That said, we are concerned that this Bill would allow the Connector to sell "non-qualified" health plans. That provision seems to violate the Affordable Care Act mandate that only "qualified" plans be available thru a state's health insurance exchange.

Thank you for the opportunity to comment on HB 2183.

Sincerely,

Jennifer Diesman
Vice President
Government Relations