HB1467 HD2

Measure Title:	RELATING TO THE HAWAII HEALTH CONNECTOR.
Report Title:	Hawaii Health Connector; Large Group Coverage; Small Employers; Transitional Renewal Policies; Notification
Description:	Enables the Hawaii health connector to offer large group coverage. Requires health insurers with greater than 20 percent share of the State's small group health insurance market to offer gold and platinum level qualified health plans as a condition of participation in the individual market of the Hawaii Health Connector. Ends transitional renewal policies effective 1/1/2016. Amends state small market parameters to comport with federal law. Adds notification requirements. (HB1467 HD2)
Companion:	SB1338
Package:	None
Current Referral:	CPN, JDL/WAM
Introducer(s):	MCKELVEY, BELATTI, CREAGAN, WOODSON

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

ON THE FOLLOWING MEASURE:
H.B. NO. 1467, H.D. 2, RELATING TO THE HAWAII HEALTH CONNECTOR.

BEFORE THE:

SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

DATE: Tuesday, March 17, 2015 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Daniel K. Jacob, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General raises the following two concerns.

The purposes of this bill are to: (1) enable the Hawaii health connector to offer large group coverage to insurers; (2) require insurer participation in the connector pursuant to Small Business Health Options Program polices set under 45 C.F.R. § 156.200(g); (3) expand the potential small businesses market in the connector by amending the current definition of "small employer" under section 431:2-201.5, Hawaii Revised Statutes (HRS); (4) end transitional renewal policies, beginning January 1, 2016; (5) require health insurers to provide notice to group health plans offering continuation coverage about options to secure affordable coverage under the Hawaii health connector; and (6) establish certification criteria for health plan issuers for implementation by the State's health insurance exchange known as the Hawaii Health Connector (Connector).

Section 4, page 8, lines 1-12, amends chapter 435H, HRS, by adding a new section that requires a health plan issuer to offer to contract with any willing federally qualified health center (FQHC) for the provision of services, and requires the issuer to reimburse the FQHC at Medicaid rates pursuant to the Social Security Act section 1902(bb) [42 U.S.C. § 1396a], as a condition of certification by the insurance commissioner.

ACA section 1311(d)(4) requires that the Connector implement procedures for certification consistent with guidelines developed by the U.S. Secretary of Health and Human Services (Secretary). Pursuant to ACA section 1311(c), the Secretary is responsible for

establishing, via regulations, minimum criteria for the certification of health plans as qualified health plans (QHP). The minimum certification standards are found at 45 C.F.R. part 156, subpart C, and require that a health plan issuer's provider network include essential community providers. FQHCs fall within this category of listed providers.

In relevant part, 45 C.F.R. § 156.235 provides:

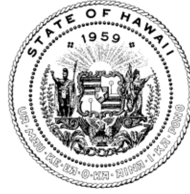
> (a) *General requirement*. (1) A QHP issuer must have a sufficient number and geographic distribution of essential community providers, where available, to ensure reasonable and timely access to a broad range of such providers for low-income, medically underserved individuals in the QHP's service area, in accordance with the Exchange's network adequacy standards.
>
> . . . .
>
> (d) *Payment rates*. Nothing in paragraph (a) of this section shall be construed to require a QHP issuer to contract with an essential community provider if such provider refuses to accept the generally applicable payment rates of such issuer.
>
> (e) *Payment of federally-qualified health centers.* If an item or service covered by a QHP is provided by a federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act) to an enrollee of a QHP, the QHP issuer must pay the federally-qualified health center for the item or service an amount that is not less than the amount of payment that would have been paid to the center under section 1902(bb) of the Act for such item or service. Nothing in this paragraph (e) would preclude a QHP issuer and federally-qualified health center from mutually agreeing upon payment rates other than those that would have been paid to the center under section 1902(bb) of the Act, as long as such mutually agreed upon rates are at least equal to the generally applicable payment rates of the issuer indicated in paragraph (d) of this section.

First, as worded, it appears that the bill establishes criteria for certification of a QHP that do not allow the flexibility for a health plan issuer to choose which FQHC it would offer to contract with, or to negotiate and mutually agree upon rates other than the Medicaid reimbursement rate, inconsistent with the federal law.

Any criteria established should include a provision that these amendments do not affect the rights and duties of parties for contracts or agreements already in existence prior to the

effective date of this Act, and include wording that any criteria established shall be in compliance with federal law.

Second, section 4, page 8, lines 1-2, indicates that the criteria, as discussed above, will be determined by the Insurance Commissioner before a plan is certified as a QHP. Pursuant to section 1301 of the ACA, the Connector is the only entity that is permitted to certify a plan as being a QHP. Accordingly, we recommend making the Connector the responsible entity to determine compliance with the requirements of a QHP.



DAVID Y. IGE
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SHAN S. TSUTSUI
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TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Tuesday, March 17, 2015
9:00 a.m.

TESTIMONY ON HOUSE BILL NO. 1467, H.D. 2 – RELATING TO THE HAWAII HEALTH CONNECTOR.

TO THE HONORABLE ROSALYN H. BAKER, 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 takes no position on the bill, and submits the following comments on this bill.

The purposes of this bill are to: enable the Hawaii Health Connector ("Connector") to offer large group coverage to insurers beginning on January 1, 2017; end transitional renewal health insurance policies beginning January 1, 2016; require health insurers to provide notice to group health plans offering continuation coverage about options to secure coverage through the Connector; amend the current definition of "small employer" under section 431:2-201.5, Hawaii Revised Statutes ("HRS"); require insurer participation in the Connector with at least one gold level plan and one platinum level plan if an insurer has a share of the small group Hawaii market that exceeds 20 percent; and require qualified health plan issuers to contract with federally qualified health centers.

The Department notes that amending the definition of small employer to increase it to 100 employees, and ceasing transitional renewal health policies will subject certain businesses to rate increases due to the elimination of the use of loss experience in rating. These increases could be significant.

The Department further notes that as drafted, the 20% mandate would apply to all insurers of accident and health or sickness policies, not only health insurers, mutual benefit societies, and health maintenance organizations. The statute should exclude limited benefit health insurance as set forth in section 431:10A-102.5, HRS.

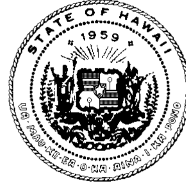
The Department notes that Section 1301 of the Patient Protection and Affordable Care Act ("PPACA") defines the term "qualified health plan." A qualified health plan means a health plan that is offered by a health insurance issuer that agrees to offer at least one qualified health plan at the 'silver' level and at least one plan at the 'gold' level. The proposed bill would appear to conflict with the PPACA.

Additionally, health insurers are 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. Under 45 CFR 156.235, qualified health issuers are already required to have essential community providers payment of which is set by federal regulation.

Furthermore, the proposed language regarding health centers may be in conflict with federal law under PPACA section 1301 in that the exchange certifies qualified health plans and not the Commissioner. In addition, PPACA Section 1311 and other federal regulations set forth the requirements for the Connector. Finally, the Insurance Division and the Commissioner do not regulate or oversee the contractual provisions or requirements between health insurers and medical providers.

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

DAVID Y. IGE
GOVERNOR



RACHAEL WONG, DrPH
DIRECTOR

PANKAJ BHANOT
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

March 15, 2015

MEMORANDUM

TO: The Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce & Consumer Protection

FROM: Rachael Wong, DrPH, Director

SUBJECT: **H.B. 1467 HD2 – RELATING TO THE HAWAII HEALTH CONNECTOR**

Hearing: Tuesday, March 17, 2015; 9:00 a.m.
Conference Room 229; State Capitol

PURPOSE: The purpose of this measure is to amend policy and insurer requirements for the Hawaii Health Connector (the Connector) by, among other things:

(1) Authorizing the Connector to offer large group coverage to insurers, beginning January 1, 2017;

(2) Requiring insurers with a small group market share that exceeds twenty percent of the State's market to offer specified gold and platinum level qualified health plans coverage through the Connector;

(3) Encouraging full participation in the Connector by prohibiting the issuance of transitional renewal policies beginning January 1, 2016, and expanding notice requirements for group health plans offering continuation coverage;

(4) Expanding the small business market in the Connector by increasing the maximum number of employees to qualify as a "small employer" from 50 to 100, pursuant to federal law; and

(5) Requiring health insurers offering qualified plans to offer federally-qualified health centers the opportunity to contract for services covered by the qualified plan.

HPCA

HAWAI'I PRIMARY CARE ASSOCIATION

Senate Committee on Commerce and Consumer Protection
The Hon. Rosalyn H. Baker, Chair
The Hon. Brian T. Taniguchi, Vice Chair

Testimony on House Bill 1467 HD 2

Relating to the Hawaii Health Insurance Exchange
Submitted by Nani Medeiros, Public Affairs and Policy Director
March 17, 2015, 9:00am, Room 229

The Hawaii Primary Care Association (HPCA), which represents the federally qualified community health centers (FQHC) in Hawaii, supports House Bill 1467, which calls for a number of measures to strengthen the Hawaii Health Connector.

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. The HPCA finds House Bill 1467 to be very much in line with that goal, mandating that all plans in the state carrying a 20% market share of the SHOP program or better participate in the exchange.

The HPCA supports changing the definition of "small employers" in Hawaii from 50 to the nationally accepted threshold of 100 employees. Such measures will encompass a greater number of businesses in the state, providing a stronger Connector and a better marketplace for consumers.

Finally, the HPCA strongly support section 4 of the bill, which calls for an amendment to HRS §435H-6(b) to state:

> (b) The commissioner shall require that each qualified plan, as a condition of certification, shall:
>
> > (1) Offer to any willing federally-qualified health center providing services in geographic areas served by the qualified plan, the opportunity to contract with the qualified plan to provide to the qualified plan's enrollees all ambulatory services that are covered by the qualified plan that the federally-qualified health center offers to provide; and
> >
> > (2) Reimburse each federally-qualified health center for services as provides in 42 USC §1396a(bb).

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.

For these reasons we strongly support this bill and thank you for the opportunity to testify.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) takes no position on the measure and offers the following information for the Committee's consideration.

On March 1, 2015, the DHS Premium Assistance Program (PAP) went into effect. The PAP is for low-income individuals who purchase a **silver** level qualified health plan through the Hawaii health insurance exchange and receive advanced premium tax credit and maximum cost sharing reduction. The DHS will pay the eligible individual's share of the premium to the qualified health plan in which the eligible individual is enrolled. Additional eligibility requirements exist.

The Premium Assistance Program is a completely state funded program and is limited to qualified silver level plans for eligible individuals.

The DHS defers to the opinion of the State Insurance Commissioner Gordon Ito, Department of Commerce and Conusmer Affairs, as expressed in his testimony on the measure submitted to the House Committee on Finance.

The DHS defers to the opinion of the Department of the Attorney General on constitutional issues.

Thank you for the opportunity to provide testimony on this bill.

An Independent Licensee of the Blue Cross and Blue Shield Association

March 17, 2015

The Honorable Rosalyn H. Baker, Chair
The Honorable Brian T. Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re: HB 1467, HD2 – Relating to Hawaii Health Connector

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1467, HD2. HMSA opposes this Bill.

Constitutional Concern: Impermissible Interference with Contracts
HMSA opposes the provision in this Bill mandating issuers to offer to contract with any willing federally qualified health center (FQHC) and to reimburse that FQHC at PPS rates. We believe this requirement 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. By requiring HMSA to pay Medicaid PPS rates to FQHCs, HB 1467, HD2, substantially impairs HMSA's Constitutional contract rights by precluding the performance of an essential term of the existing contracts with FQHCs and by attempting to alter a specific financial term.

Appropriation Required
Reimbursements at the PPS level are higher than our contracted commercial reimbursement level. The provision in this Bill requiring reimbursement to the FQHCs at the PPS level will drive up costs. And, it requires a General Fund appropriation to cover the additional cost that will accrue for the COFA-subsidized plans.

SHOP Participation Required
This Bill requires a health insurer that has at least 20 percent of the market to sell qualified plans thru the Health Connector, to both qualified individual and quailed small businesses (SHOP). As such, HB 1467, HD2, would require HMSA, and HMSA alone, to return to participate in the SHOP. In so doing, it would place us in a competitive disadvantage with other issuers who are not subject to the 20 percent market share threshold and are able to offer health insurance coverage without being encumbered by the administrative, technical, and financial burdens of participating in the SHOP.

"Small Employer" Definition and Large Employers
The Bill changes the definition of a "small employer" to include a company with up to 100 employees. And, the Bill mandates large group coverage thru the Connector beginning January 1, 2017. We believe that these provisions should not be mandated in statute. Rather, to the extent allowed under the Affordable Care Act, the Insurance Commissioner should be afforded the flexibility in determining the markets that the Connector serves. Contemporaneous consideration must be given to overall market conditions in 2017 to determine (1) whether a change would disrupt and undermine an already successful

large employer market; and (2) whether the required investment in time and money needed to accommodate any changes is appropriate.

Termination of Transitional Plans
We also are concerned with the provision in this Bill that calls for the termination of the transitional "grand-mothered" plans on January 1, 2016. The President's decision to authorize grand-mothered plans was to honor his commitment to allow people to continue to have the health insurance plans they had prior to the implementation of the ACA. It gave people the option to continue the plans they already enjoyed or to purchase an ACA plan. HB 1467, HD2, is not consumer friendly in that it reduces the number of options available, particularly to small businesses.

Thank you for the opportunity to testify in opposition to HB 1467, HD2. Your consideration of our concerns is appreciated.

Sincerely,

Jennifer Diesman
Vice President
Government Relations

Testimony to the Senate Committee on Commerce and Consumer Protection
Tuesday, March 17, 2015 at 9:00 A.M.
Conference Room 229, State Capitol

RE: HOUSE BILL 1467 HD2 RELATING TO THE HAWAII HEALTH CONNECTOR

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 1467 HD2, which enables the Hawaii health connector to offer large group coverage and requires health insurers with greater than 20 percent share of the State's small group health insurance market to offer gold and platinum level qualified health plans as a condition of participation in the individual market of the Hawaii Health Connector. Also ends transitional renewal policies effective 1/1/2016 and amends state small market parameters to comport with federal law.

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.

The Chamber believes that private companies should have a choice of whether or not to participate in the health connector, rather than being required to participate due to their control of shares. Furthermore, we are concerned that the requirement of health insurers with greater than 20 percent share of the State's small group health insurance market is written to target one specific company within the industry. We believe that no company should be forced to participate in a government program.

Additionally, this bill would change the definition of a "small employer" from a company with 50 employees to 100 employees as well as mandate large group coverage through the Connector. We believe that this will adversely affect many small businesses as they will not be forced away from their existing plan.

Thank you for the opportunity to testify.

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From: mailinglist@capitol.hawaii.gov
To: CPN Testimony
Cc: teresa.parsons@hawaii.edu
Subject: *Submitted testimony for HB1467 on Mar 17, 2015 09:00AM*
Date: Sunday, March 15, 2015 11:14:43 PM

HB1467
Submitted on: 3/15/2015
Testimony for CPN on Mar 17, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments:

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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