TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:
H.B. NO. 2740, H.D. 1, S.D. 1, RELATING TO LIABILITY.

BEFORE THE:
SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, April 1, 2016 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.** (For more information, contact Daniel K. Jacob, Deputy Attorney General, at 586-1180)

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General submits comments regarding legal concerns about this bill's compliance with article III, section 14, of the Hawaii State Constitution.

The purpose of this bill is to establish preauthorization standards that shall apply to all health insurers in the State, including health benefits plans under chapter 87A, Hawaii Revised Statutes.

Article III, section 14, of the Hawaii State Constitution provides in pertinent part that "Each law shall embrace but one subject, which shall be expressed in its title." The Hawaii Supreme Court has held that this provision prohibits "an act which contains provisions neither suggested by the title, nor germane to the subject expressed therein." Schwab v. Ariyoshi, 58 Haw. 25, 34 (1977), quoting Territory v. Dondero, 21 Haw. 19, 29 (1912).

In this case, the title of this bill is "Relating to Liability." As originally introduced, this bill provided that an insurer would be liable for damages caused by any undue delay in preauthorizing medical services. Senate Draft 1 of this bill, however, removed all the wording regarding an insurer's liability, and the bill now solely establishes preauthorization standards. Preauthorization standards alone are neither suggested by the title nor germane to the subject of liability. Accordingly, if the legislature wants to pass a bill in the current form of this bill, we recommend that another vehicle with a more appropriate title be found.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Friday, April 1, 2016
9:30 a.m.

Written Testimony Only

TESTIMONY ON HOUSE BILL NO. 2740, H.D. 1, S.D. 1– RELATING TO LIABILITY.

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, 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 purpose of this bill is to establish preauthorization standards that apply to all health insurers, including plans under chapter 87A, Hawaii Revised Statutes ("HRS"). The Department submits the following comments.

This bill would add new sections to chapter 431, HRS, applicable to health insurers and limited benefit health insurance, and chapter 432, HRS, applicable to mutual benefit societies, as well as amend section 432D-23, HRS, applicable to health maintenance organizations.

Medical determinations, such as preauthorization standards, are complex, and not conducive to blanket regulation by the Insurance Code. These medical decisions seek to balance patient safety, effectiveness, and medical appropriateness. The Affordable Care Act, as well, recognizes that services, except in the case of emergency and patient access to obstetrical and gynecological care, may require preauthorization.

The Department notes potentially conflicting provisions within each section; for example, subsection (c) prohibits preauthorization for emergency medical services for all health plans while subsection (g) does not prohibit implementing preauthorization. Further, the standards set forth on page 4, lines 8 – 13, and page 7, lines 12 – 17 ("known, published, and current evidence-based appropriate-use criteria or guidelines for the appropriate specialty or subspecialty"), page 5, lines 1 – 3, and page 8, lines 3 - 6 ("consult with health care providers"), page 5, lines 8 – 11, and page 8, lines 11 -14 ("completed in a timely manner and do not result in undue delay") are vague and not defined, and may create challenges to statutory enforcement by the Commissioner.

In addition, subsection (f) of the proposed sections mandates that complaints must be filed with the Commissioner, but inquiries must be filed with the Medical Inquiry and Conciliation Panel ("Panel"). However, the Panel is responsible for conducting informal conciliation hearings on inquiries regarding services rendered by health care providers before a lawsuit may be filed based on such inquiries, and the proposed language may be outside the scope and authority of the Panel.

As noted in previous testimony, there may be a subject-title problem with the bill in violation of Article III, section 14, of the Hawaii State Constitution. The title of this bill is "Relating to Liability." The bill's contents, however, address several subjects not relating to liability, thereby possibly exceeding the scope of the bill's title. "Liability" is only mentioned on page 7, line 12, as part of a section title.

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

An Independent Licensee of the Blue Cross and Blue Shield Association

April 1, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Re: HB 2740, HD1, SD1 – Relating to Liability

Dear Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2740, HD1, SD1, which seeks to establish preauthorization standards for all health plans. HMSA opposes this Bill.

HMSA appreciates the efforts of the prior committee to delete from this legislation a provision which would hold health plans solely liable for any diminution in a member's health condition potentially due to delays caused by a preauthorization requirement. That said, we still have grave concerns with the remaining provisions of the Bill that embed preauthorization standards into law.

We believe those standards should not be circumscribed in statute, but best are left to health plans consulting with medical professionals, medical specialty organizations, and accrediting agencies. As medical research progresses and new and improved methods of testing gain acceptance, the preauthorization standards and guidelines accordingly should be altered. The process is fluid and should not be encumbered by statutory limitations.

We also are concerned about the provision in the Bill that mandates health plans to use "evidence-based software, if available to a specialty or subspecialty...." In requiring plans to use specific software already prescribes the standards by which a treatment, drug, or durable medical equipment will be reviewed. Health plans must have the flexibility to adopt appropriate technology that best analyzes the requested service against standards that the plans have adopted.

We additionally are concerned about the provision requiring a third party reviewer to be available 24 hours a day, seven days a week. This requirement is unreasonable since preauthorizations already are not required in emergency situations. Physician offices, radiology suites, and elective operating suites are not open 24/7 and, consequently, would not be requesting a preauthorization during those hours. Preauthorization is not required for those emergency cases when a doctor's office is closed.

For the Committee's edification, we have attached an outline of HMSA's preauthorization program. It describes the program generally and also specifically discusses the advanced imaging preauthorization project which has been the subject of recent interest.

Thank you for allowing us to testify on HB 2740, HD1, SD1. Your consideration of our concerns is appreciated.

Sincerely,

Jennifer Diesman
Vice President, Government Relations

Attachment

An Independent Licensee of the Blue Cross and Blue Shield Association

Attachment

HMSA's Preauthorization Program

1. Preauthorizations protect the health and well-being of patients

- We use guidelines that are firmly based in evidence and nationally accepted and created by radiologists, orthopedists, neurologists and other physician specialty societies.
- **We immediately and automatically authorize any case that a doctor deems an emergency or urgent. Emergency rooms and hospitals do not need to authorize and physicians from their offices need only attest the case is urgent to receive an automatic approval.**
- We chose National Imaging Associates as our vendor as NIA has similar programs in 30 states and have experience and a deep roster of board certified physicians. All physician reviewers are board certified and of appropriate specialties.
- We verified that 98 percent of Hawaii providers, totaling 2300 providers, order less than one imaging test per day so the additional administrative work would not widely impact patient care. More than 50 percent of providers order less than one test per month. We began an extensive physician education program three months prior to launching this program.

2. Preauthorization programs are essential to use member premiums responsibly

- Mutual benefit associations and non-profit health insurers including HMSA are dedicated to responsibly using premiums from members and employers for the benefit of the member population.
- Improving the health and well-being of our State means that we must spend our premium dollars on medically necessary services, including preventative services, and we must use some of our resources to address upstream determinants of health including the very important social determinants of health. To have the resources to do this, a plan must have the ability to prevent unnecessary and even potentially harmful medical services.
- HMSA's Māhie 2020 initiative that strives to be a catalyst to create a sustainable community system that advances the health and well-being goals of consumers, providers, employers, communities, and government. We have already started working with agencies such as the state Department of Education, Department of Human Services, and Med-Quest, along with other private partnerships to build infrastructure that can address the State's social determinants of health.
- These require resources and hence preauthorization programs to eliminate wasteful spending are essential.
- Preauthorization programs do not prevent physician and patients from getting any particular service. They prevent the public represented by the association from paying for it when it falls outside the guidelines of medical necessity so that those dollars can be allocated to resources meaningful to the entire population.

3. Preauthorization programs for advanced imaging are used by virtually every health insurer in the nation

- Advanced imaging has become one of the most over-utilized services within the medical field with national estimates that 30 percent of tests fall outside of evidence based national guidelines. In addition, unnecessary imaging can cause harm by exposing patients to unnecessary but harmful radiation or occasionally causing false positive results that lead to more invasive testing.
- Accordingly, government payers such as Medicare and Medicaid, and virtually every health insurer in the country including 37 Blue Cross and Blue Shield Association plans, Aetna, Humana, Cigna and Kaiser have advanced imaging pre-authorization programs.
- "Choosing Wisely" guidelines developed by the national specialty societies have focused more on limiting unnecessary advanced imaging testing than any other physician activity.

4. Because of specific circumstances in Hawaii, it made sense for HMSA to modify its preauthorization program for advanced imaging

- Our preauthorization program for advanced imaging has been in place for nearly 10 years.
- Our more robust preauthorization program for Medicare and Medicaid programs is one of the reasons for lower utilization numbers in these populations.
- Our program had waived preauthorizations for 80 percent of the physicians caring for members who get their HMSA insurance through work.
- In that group, utilization of advanced imaging services exceeded national utilization by 9 percent. Because 80 percent of these cases were waived from preauthorization, we could not identify the problem sources for the overutilization problem and therefore it made sense to temporarily pause the waiver program for all physicians.

5. Results of our preauthorization program for advanced imaging services

- Our overall approval rate for these preauthorizations started at 80 percent and has increased to 83 percent.
- 58 providers order more than one imaging test day and 22 of them have received a waiver to exempt them from pre-authorization. These exempt providers are following national guidelines for testing.
- We've met all timeliness requirements established by Medicare, Medicaid, Federal plans, commercial lines of business.
- In the first three months of the program, average approval processing time has been 24 hours and one minute, and average denial processing time (longer due to requests for additional information prior to proceeding with a denial) has been 49 hours and 56 minutes.
- Requests for advanced imaging from emergency rooms are down eight percent compared to this time last year. Anecdotal claim that many physicians are sending patients to the ER for imaging to avoid the program does not appear to be supported.

Friday April 1, 2016
9:30 AM.
Capitol Rm. 016

To: SENATE COMMITTEE ON JUDICIARY
Sen. Gilbert Keith-Agaran, Chair
Sen. Maile Shimabukura, Vice Chair

From: Hawaii Medical Association
Dr. Scott McCaffrey, MD, President
Dr. Linda Rasmussen, MD, Legislative Co-Chair
Dr. Ronald Keinitz, MD, Legislative Co-Chair
Dr. Christopher Flanders, DO, Executive Director
Lauren Zirbel, Community and Government Relations

Re: HB 2740 HD1 SD1 – RELATING TO LIABILITY

IN SUPPORT, WITH COMMENTS

Chair, Vice Chair, and Committee Members:

The Hawaii Medical Association supports this legislation.

In medicine, moments matter. This bill is a common sense measure and should be enacted as soon as possible to ensure patient safety and encourage health plans approve appropriate care. The HMA believes prior authorization, and the delays and health risks that come with it, should only be performed when utilization and quality issues are in question.

The necessity of extensive, far reaching prior authorization scrutiny at this time is not founded on the part of the insurers. **The HMA can find no identifiable data to demonstrate overutilization or quality issues. Actually, quite the opposite is true.** According to data from the Centers for Medicare and Medicaid Services (CMS), Hawaii providers lead the nation in controlling costs and providing quality care.

Information compiled from CMS by the commonwealth Fund (commonwealthfund.org) demonstrates that overall, as of February 2015, **Hawaii leads the nation in the lowest spending**

per capita (37% below the national average), with the highest quality scores (43% above the national average). No other state is even close!

In regard to imaging specifically, CMS reports similar data with imaging expenditures being approximately 40% lower than the national average in Hawaii. Additionally, Hawaii demonstrated a dramatic decrease in imaging expenditures between 2004 and 2012, placing the state in the 8th lowest expenditure rate in the nation.

In medicine moments matter. **The HMA would like to comment** that it is only fair that a licensed health care provider should be immune from civil liability for injury to a patient caused by undue or unreasonable delay subsequent to the unilateral placement of the provider in an impossible position by the insurer's clear interference with the provider's duty of care. The insurer should be held accountable, and civilly liable, for any damage that occurs to a patient because of undue delay in medical treatment.

Thank you for the opportunity to provide this testimony.

Medicare Part B All Imaging Spending per 1000 Beneficiaries

CHANGE SERI

Category: Spending on Radiology Services Source: CMS 5% Research Identifiable Files

Refine Series Results

From 2004

To 2013

Show national data?

Select states: All | None

- Connecticut
- Delaware
- District Of Columbia
- Florida
- Georgia
- Hawaii
- Idaho
- Illinois
- Indiana

Map Graph

Share Data Series Toggle filters Save gra

Medicare Part B All Imaging Spending per 1000 Beneficiaries

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Show national data?

Select states: All | None

- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan

Map Graph

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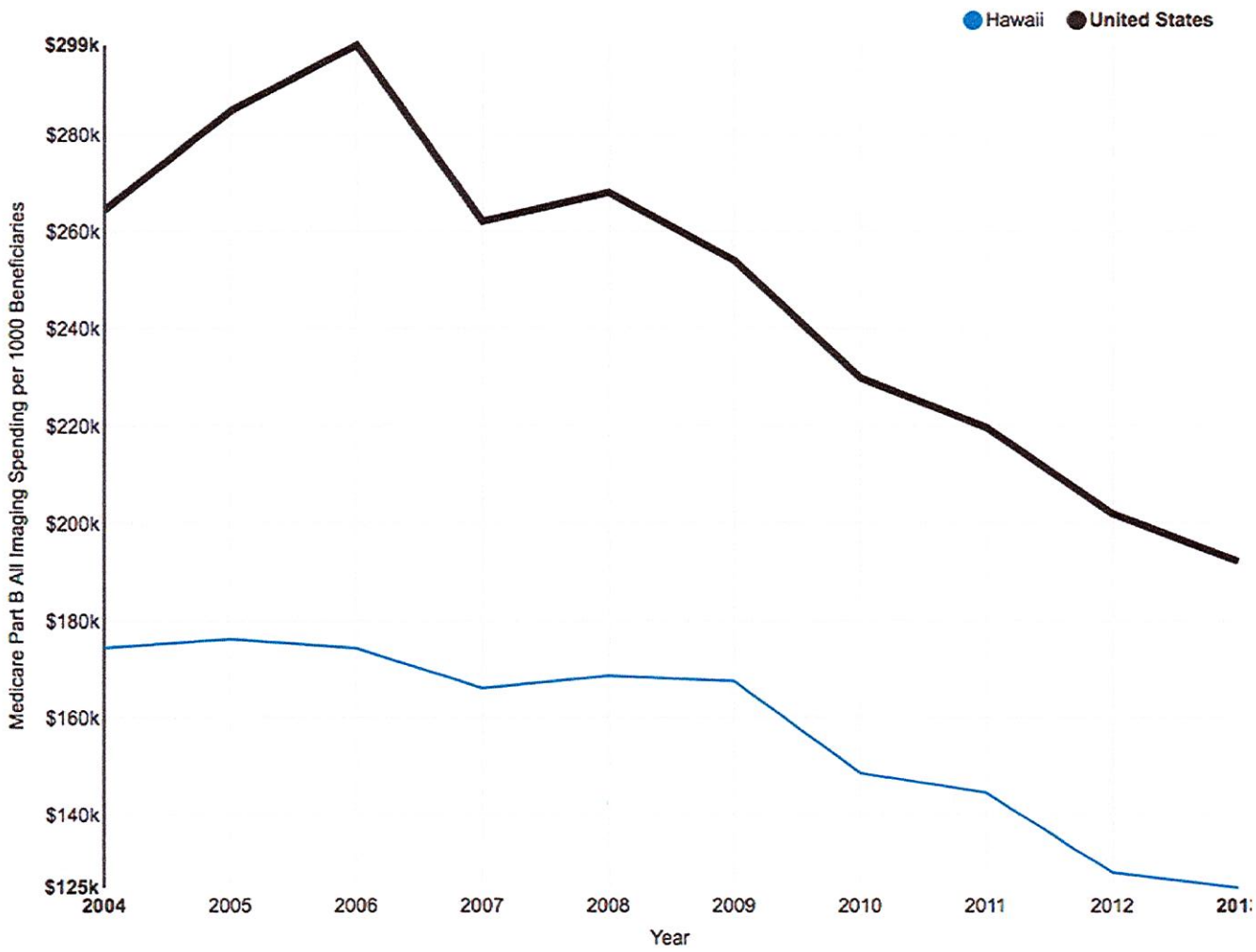


TABLE 2: Ten States With Lowest Medicare Imaging Spending per Beneficiary in 2004 and 2012

Rank	2004		2012	
51	Vermont	112.58	Ohio	67.08
50	New Hampshire	121.98	Vermont	72.78
49	North Dakota	141.86	Idaho	110.66
48	Oregon	147.56	Kansas	110.97
47	Wyoming	149.73	North Carolina	115.53
46	South Dakota	150.47	North Dakota	121.50
45	District of Columbia	151.53	Maine	127.47
44	Montana	163.08	Hawaii	128.10
43	Missouri	164.79	New Hampshire	132.31
42	North Carolina	167.19	Utah	137.60

Note—Values are U.S. dollars.

The COMMONWEALTH FUND

Quality-Spending Interactive

See the relationship between Medicare quality and spending in your state or local area

(/publications/blog/2015/jul/quality-spending-interactive)

Medicare Quality and Spending Comparisons Explained

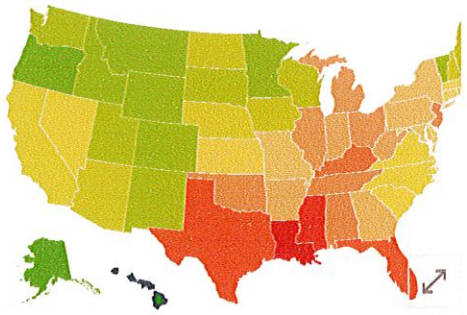
To view the relationship between health care quality and spending in your state or local area, use the graph, known as a scatter plot, or map. Choose a health care setting, such as hospitals, and then a quality measure to view performance. Curious about how your region compares to someplace else? Click on your selected location and then drag your mouse to the state or local area you want to compare it to and hover. You can see which location has lower spending and higher quality relative to the U.S. median. Use what you learn to motivate improvement toward higher levels of performance. Share your views of it with us at webeditor@cmwf.org (mailto:webeditor@cmwf.org). For information about methodology and scoring, read our FAQ (/~/media/files/infographics/quality-spend-methods-faq.pdf?la=en).

OVERALL | HOSPITALS | DOCTORS' OFFICES | NURSING HOMES | HOME HEALTH

Total Medicare spending per capita vs. Overall quality score

View location type: States HRRs

better — *worse* — *median*



SELECTED LOCATION:

Hawaii

37% lower spending **41%** higher quality

relative to the US median

Total spending per capita: **$5,421**

The COMMONWEALTH FUND

Quality-Spending Interactive

See the relationship between Medicare quality and spending in your state or local area

(/publications/blog/2015/jul/quality-spending-interactive)

Medicare Quality and Spending Comparisons Explained

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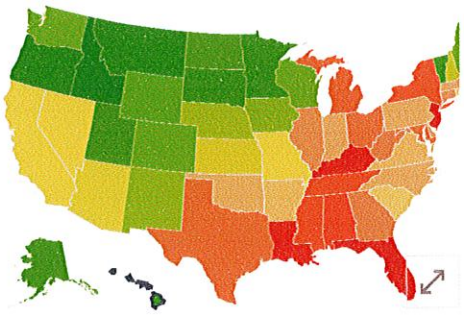
OVERALL | HOSPITALS | DOCTORS' OFFICES | NURSING HOMES | HOME HEALTH

Medicare spending per capita for doctors' office visit vs. Doctors' office quality score

View location type: States HRRs

better — worse — median



SELECTED LOCATION:

Hawaii

13% lower spending **71%** higher quality

relative to the US median

Doctors' office visit spending per capita: **$736**

Melvin H.C. Yee, MD*
General neurology,
EMG&NCV, Parkinson's disease

Brandon K. Hirota, MD*
General neurology,
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EMG&NCV, neuromuscular diseases

Terry K Shimamoto, MD*
General neurology,
Epilepsy

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March 30, 2016

Dear Sir or madam

My name is Dr. Melvin Yee. I am a practicing physician, part of a group of 4 neurologists based at Kuakini Medical Center. I am the chief of the division of neurology at the John A. Burns School of Medicine. I am writing you to express my concern's regarding House Bill 2740 and its amendments. I treat patients with diseases involving the central nervous system, the brain and spinal cord. I treat serious neurologic conditions such as stroke, Alzheimer's disease, Parkinson's disease, encephalitis, spinal cord compression and nerve impingement syndromes. Such disorders require advanced imaging technology such as MRI,PETand CT scans to be able to adequately diagnose and manage these complex problems.

When HMSA instituted imaging authorization I found that it severely limited my ability to quickly and efficiently evaluate manage my patients. I found that many of the standards were not actually evidence-based. I found some of the standards capricious and contrary to what I would consider was standard of care practices. The preauthorization requirements and guidelines were set up by a for profit company contracted by HMSA. The local physician community was not consulted regarding these guidelines. The nurse reviewers and the physician reviewers inconsistently apply the standards. They have even made decisions which are contrary to their standards and are only corrected when taken to other authorities.

House Bill 2740 as originally written appropriately to "prohibit the insurer from requiring preauthorization that causes undue delay in the patient's receipt of medical treatment or services and clarify the insurer and license health providers liability for patient injuries caused by preauthorization delays.". This seems only fair that if and insurance his company causes delay of treatment diagnosis then it should be responsible for any consequences.

The new version House Bill 2740 has essentially been gutted of its original intent. It now reads as if it is written for the benefit of the insurance company rather than for the protection of patient's rights.

1. "The legislature concludes that establishing basic standards for preauthorization of medical treatment and services is appropriate ". If the legislature decides that

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*Board Certified in Neurology
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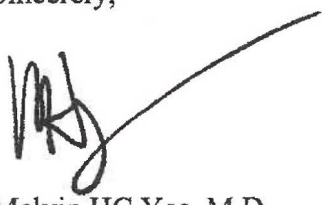
preauthorization of medical treatment standards is appropriate, then the legislature should specify that the standards be established by the healthcare community, not by the insurance companies alone.

2. "Complaints arising pursuant to this section shall be filed with the Commissioner. Inquiries associated with preauthorization denial or undue delay disputes pursuant to this section shall be filed with the medical inquiry and conciliation panel pursuant to section 671-11 ". Section 671-11 refers to medical support claims which therefore places any liability for delay back upon the physician and medical malpractice. If the insurance company wishes to practice medicine by interfering with the diagnosis and management of patient problems than it should be held liable.
3. "Any insurer that requires preauthorization for medical treatment or service shall:... Consult with healthcare providers in the insurer's network to ensure that evidence-based appropriate use criteria or guidelines are known and used ". As noted above the community was not consulted about the standards. The Hawaii Neurologic Society has come out strongly against these standards.

I urge legislature to return to the original wording of House Bill 2740. Our legislature needs to keep in mind its primary function is to protect the health and well-being of our states population rather than the financial interests of insurance companies.

Sincerely,



Melvin HC Yee, M.D.

HAWAII / ACEP
AMERICAN COLLEGE OF EMERGENCY PHYSICIANS

March 16, 2016

Senator Gilbert Keith-Agaran
Chair, Senate Committee on Judiciary and Labor

HB2740 HD1 SD1: Relating to Liability

Letter in SUPPORT

Dear Senator Keith-Agaran and Committee Members:

In late 2015, HMSA reconfigured its preauthorization program for non-emergency imaging studies. Time has not allowed for well-designed research to demonstrate the effects of the policy change. However, informal polling of our Hawaii emergency physician members indicate a widespread increase in patients presenting to our emergency departments seeking testing that their primary care physicians were not able to order because authorization was delayed or denied.

Insurance companies site the importance of preauthorization in their efforts to decrease negative effects of imaging and to decrease costs for their members. First, physicians are the true advocates for patient safety in imaging and patient safety is considered in the ordering of any test or treatment. Second, left out of the equation as related to health care economics are the increased administrative costs and time absorbed by physician practices due to overly burdensome preauthorization processes.

Furthermore, very little attention is given to the dubious view that preauthorization does not constitute the practice of medicine. Health care plans and those that they contract with are directly determining whether or not tests and procedures are being provided to patients after a physician who has examined a patient first-hand has ordered said test or procedure. Yet if an untoward event occurs because of that delay or denial, only the provider may face civil liability claims.

The current system has resulted in more patients presenting to our emergency departments and increased administrative burdens to health care providers. Preauthorization is direct patient care. As such, we should require that health care plans prove that their actions are truly in our patient's best interest and end its civil liability protections.

Sincerely,

William Scruggs, MD, RDMS, FACEP
President, Hawaii College of Emergency Physicians

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 30, 2016 1:20 PM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2740 on Apr 1, 2016 09:30AM

HB2740
Submitted on: 3/30/2016
Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Douglas Moore	Hawaii Injured Workers Association	Support	No

Comments: Aloha: the Hawaii Injured Workers Association (HIWA) respectfully supports this proposed legislation. Injured workers tell us about their treating physicians who want to get diagnostic testing of the injured workers quickly, like CT scans & MRI's, so that necessary and appropriate medical treatment and therapy can be administered asap to assist their medical rehabilitation and return them to work. Instead, their doctors are second guessed by insurance companies who delay or even deny the diagnostic testing by requiring pre-authorization. This hurts our injured workers when they really need the medical testing and treatment the most. Unnecessary delays can cause hardship or harm to our injured workers. When this happens, civil liability should be imposed to deter the harmful conduct. The sooner we can get our injured workers medically rehabilitated, the sooner they can return to the workplace which benefits employers and reduces costs. Please pass this bill. mahalo, Douglas Moore, HIWA President

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

Senator Gilbert S.C. Keith-Agaran
Senator Maile S.L. Shimabukuro
Committee on Judiciary and Labor

Brandon K. Hirota, M.D.
Neurology Associates, Inc.
321 N. Kuakini St., Suite 810
Honolulu, HI 96817

March 31, 2016

Opposition to HB2740 HD1 SD1, Relating to Liability.

I am a practicing neurologist in a group practice with 3 other neurologists here in Honolulu. I appreciate the opportunity to voice my opposition to HB2740 HD1 SD1 in its current form.

In its initial submission, this bill sought to curb the delays in health care delivery caused by the preauthorization process and to hold health insurance companies responsible for any harm done to its members. However, in its revised format the bill has taken a 180 degree turn. The bill now codifies the preauthorization process and does nothing to hold the insurance companies responsible for damages.

My opposition to the preauthorization process is as follows:

1. **Unnecessary administrative burden**: I have personally spent 30 minutes on hold seeking authorization for an imaging study. Within the past couple of weeks, I overheard my partner and staff on the phone trying to obtain authorization for about an hour. This time delay is detrimental to patient care, and is financially unsustainable for any practice.
2. **Liability provisions**: If the insurer is requiring the preauthorization process that results in a critical delay in care then they should be held liable. When the preauthorization process is initiated, all relevant clinical notes are sent. Therefore, any delays in obtaining a study lie with the insurer and/or their third party vendor. To say that they are free of any responsibility for harm caused by such a delay is irresponsible and inappropriate.
3. **Guidelines**: Guidelines are meant to be guidelines and not hard and fast rules. Especially in subspecialties, there may not be any national or standardized guidelines. This requires knowledge of and experience with complex disorders which cannot be evaluated with simple checklists.

In summary, the preauthorization process threatens the health of our population by causing delays in the delivery of high quality care. I agree that cost containment and financial responsibility is needed, however preauthorization is a flawed solution. Hawaii's population already faces a physician shortage. Adding another administrative burden upon physicians who are already drowning in administrative busy

work will further delay timely access to professional care for our populace. It is not the role of the health insurance company to dictate the standards of healthcare. The most appropriate, evidence based guidelines and recommendations on standards of care should come from national and local medical societies. I urge the legislature to either reject or revise HB2470 back to its original writing. Thank you very much for this opportunity to testify.

Sincerely,

Brandon K. Hirota, M.D.

Neurology Associates Inc.
321 N. Kuakini St., 605
Honolulu, HI 96817
Dr. Terry K. Shimamoto

March 31, 2016

Dear Sir or Madam:

My name is Terry K. Shimamoto M.D., I am a practicing physician, part of a group of 4 neurologist based at Kuakini Medical Center. I am writing you to express my concern are regarding House Bill 2740 and its amendments. I treat patients with diseases involving the central nervous system, the brain and spinal cord. I treat serious neurologic conditions such as stroke, Alzheimer's disease, Parkinson's disease, encephalitis, spinal cord compression and nerve impingement syndromes. Such disorders require advanced imaging technology such as MRI, PET and Ct Scans to be able to adequately diagnose and manage these complex problems.

When HMSA instituted imaging authorization I found that it severely limited any ability to quickly and efficiently diagnose and treat my patients. I found that many of the NIA guidelines were no actually evidence-base. I found some of the standards capricious and contrary to what I would consider were standard of care practices. The preauthorization requirements and guidelines were set up by a for profit company contracted by HMSA. The local physician community was not consulted regarding these guidelines. The nurse reviewers and the physician reviewers inconsistently apply the standards. They have even made decisions which are contrary to their standards and are only corrected when taken to other authorities. They have even denied test that have met the NIA guidelines.

House Bill 2740 as originally written appropriately to "prohibit the insurer form requiring preauthorization that causes undue delay in the patients receipt of medical treatment or services and clarify the insurer and license health providers liability for patient injuries caused by preauthorization delays". This seems only fair that if an insurance company causes delay of treatment or diagnosis, then it should be the responsible for any consequences.

The new version House Bill 2740 has essentially been gutted of its original intent. It now reads as if it is written for the benefit of the insurance company rather than for the protection of patient's rights.

1. "The legislature concludes that establishing basic standards for preauthorization of medical treatment and services is appropriate". IF the legislature decides that preauthorization of medical treatment standards is appropriate, then the legislature should specify the standards to be established by the healthcare community, not by the insurance companies alone.

2. "Complaints arising pursuant to this section shall be filed with the Commissioner. Inquiries associated with preauthorization denial or undue delay disputes pursuant to this section shall be filed with the medical inquiry and conciliation panel pursuant to section 671-11". Section 671-11 refers to medial tort claims which; therefore places any liability for delay back upon the physician and medical malpractice. If the insurance company wishes to practice medicine by interfering with the diagnosis and management of patient problems, than it should be held liable.

I urge legislature to return to the original wording house bill 2740. Our legislature needs to keep in mind its primary function is to protect the health and well being of our states population rather than the financial interests of insurance companies. HMSA and NIA should be held accountable if they delay or deny test inappropriately, this is directly jeopardizing the well being of our patients!

Sincerely,

MD

Terry K. Shimamoto, M.D.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 30, 2016 1:41 PM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2740 on Apr 1, 2016 09:30AM

HB2740
Submitted on: 3/30/2016
Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Douglas Moore	Individual	Support	No

Comments: Aloha: I strongly support passage. Recently my wife Kalena fractured her upper arm and then experienced undue delay in having authorization for an MRI. It took five (5) days from physician request to approval and this was after I contacted HMSA and threatened to sue them. The undue delay caused critical medical care (surgery with internal fixation) to be unnecessarily delayed which exacerbated my wife's severe injury and worsened her pain causing her prolonged unnecessary suffering. The undue delay was wrong and only the threat of liability brought approval. Please protect our citizens from undue wrongful delays with receiving critical medical care by passing this bill containing, unfortunately as a necessity, the threat of liability. Mahalo

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 31, 2016 11:10 AM
To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2740 on Apr 1, 2016 09:30AM

HB2740
Submitted on: 3/31/2016
Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
edward peskin,MD	Individual	Support	No

Comments: The neighbor islands, including the East Side of the Big Island, have a severe shortage of physicians. The pre-authorization requirements of HMSA concerning imaging have created a barrier which has reduced the availability of care because physicians are being taken away from direct patient care in order to deal with the pre-authorization requirements for imaging created by HMSA, including appealing inappropriate denials. There is also a risk that patients will be delayed or denied receiving imaging which could have significant negative impacts upon their health. Hilo Medical Center does not have a problem with the concept of reducing unnecessary imaging and recognizes HMSA's need to do so. However, we do have a problem with the way it is currently occurring. We support this bill in order to improve the current situation. Ted Peskin, MD Chief Medical Officer Hilo Medical Center

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From: mailinglist@capitol.hawaii.gov
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To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2740 on Apr 1, 2016 09:30AM

HB2740
Submitted on: 3/31/2016
Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Gina M. Factora	Individual	Comments Only	No

Comments: Upon review of the newest version of HB2740, I have found the changes made here have completely altered the design of the original bill, which was to protect patient care and the providers who provide this care. This new version is completely in favor of making Insurance “Policy” into law. Can you take a moment to reconsider this language? Lets keep in mind the safety of all involved! Sincerely, Gina Factora

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To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2740 on Apr 1, 2016 09:30AM

HB2740
Submitted on: 3/31/2016
Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
John T. McDonnell, M.D.	Individual	Support	No

Comments: Dear Chair Keith-Agaron, and members of the senate committee on J and L, I am a practicing physician in Hawaii. I support this Bill and urge its passage with the following change. Please restore the provision that the entity that create a delay in diagnosis of a condition, i.e. the entity denying a diagnostic study becomes medical legally responsible for any damage that occurs because of that delay. Thank you, John T McDonnell, MD

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To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2740 on Apr 1, 2016 09:30AM

HB2740
Submitted on: 3/31/2016
Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Kore Liow, MD	Individual	Comments Only	No

Comments: Dear Chair Keith-Agaron, and members of the senate committee on J and L, I am a practicing physician in Hawaii. I support this Bill and urge its passage with the following change. Please restore the provision that the entity that create a delay in diagnosis of a condition, i.e. the entity denying a diagnostic study becomes medical legally responsible for any damage that occurs because of that delay. Thank you,

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HB2740
Submitted on: 3/30/2016
Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Panida Piboolnurak	Individual	Support	No

Comments: The Bill should add back the sentence stating that insurance companies will be responsible for the harm/danger that might occur to the patients because of the delay in preauthorization process.

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To: JDLTestimony
Cc:
Subject: Submitted testimony for HB2740 on Apr 1, 2016 09:30AM

HB2740
Submitted on: 3/31/2016
Testimony for JDL on Apr 1, 2016 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Roger Kimura	Individual	Support	No

Comments: I support HB2740 to regulate prior authorization(PA) processes of health insurance companies. The requirements for PAs should be transparent and based on guidelines or standards that are validated by medical science. The process should be made as simple and efficient as possible to limit the administrative burden of practicing medicine. Mahalo for the opportunity to submit this testimony.

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Dear Senator Keith-Agaran,

As the Chairman of the Radiology Department at Hilo Medical Center, I hear the concerns of many of my fellow physicians about the delays in care and adverse outcomes with prior authorization services.

A few examples include:

The well documented unwarranted rejection of imaging orders from many HHSC employed physicians;
The delay of former Mayor's Harry Kim's CT exams for over two weeks;
The delay in approval for a CT scan in a young man with a rapidly growing abdominal tumor for six weeks. Finally severe pain brought this patient to the emergency room, where an immediate CT confirmed a huge lymphoma completely filling his abdominal cavity;
Harvard trained orthopedic surgeon Dr. Jay Boughenem had over a third of his advanced imagining tests rejected by mainland radiology business manager (RBM), National Imaging Associates (NIA), but on review these medical orders were rated most appropriate by the nationally recognized American College of Radiology Appropriateness Criteria. All ten of these rejections were approved on appeal by HMSA clinical reviewers, who, ironically, are using the Appropriateness Criteria in rendering their adjudication.
Hilo has only a single overworked cardiologist, and many of her cardiac imaging tests have been denied. Local HMSA rules preclude noncardiologists from ordering cardiac CT angiograms, a restriction apparently unique to our state.

We have a critical shortage of both primary care and specialists on the Big Island. Patients often wait weeks or months to see a medical provider. Now, increasingly, the artificial roadblocks to care with prior authorization services mean that even when the patient finally sees a specialist, they must wait again for a second appointment because prior authorization prevents the doctors from having the test results available needed to prescribe treatment or surgery. RBMs have been shown by the Congressional Budget Office (CBO) in a 2013 study to be ineffective in controlling medical expenses, frequently shifting administrative expenses to already overburdened physicans. Our local physicians support HB2740, which requires timely appropriateness screening in Hawaii.

Timely appropriateness screening for imaging tests is already the standard of care in a growing number of U.S. States and European countries using advanced clinical decision support (CDS) software. CDS would enable Hawaii providers and their local imaging specialist to make an immediate decision about which imaging test is most appropriate using the criteria of the ACR, which have been constantly improved and revised over 25 years, and which are highlighted as an example of a "standard of care" for provider led entities under the Federal protecting Access to Medicare Act passed by Congress. The CEO of the ACR has written physicians inn Hawaii encouraging the use of these national standards. Currently the various mainland RBMs, who do not typically have any license to practice medicine in Hawaii, use many different imaging criteria making it impossible for local providers
to determine which tests to routinely order for their patients. Their application of their own opaque guidelines are typically varied, with little reason given for denied services.

Thank you for considering support for Hawaii's physicians as we strive to care for our patients. Local physicans should decide what is best for their patients with CDS tools, not mainland agents of insurance companies, who basically are hired under a fee for denial of service model

Aloha,

Scott Grosskreutz, M.D.