SB2668

Measure Title:	RELATING TO INSURANCE.
Report Title:	Insurance; Out-of-Network Providers; Balance Bills; Surprise Bills; Independent Dispute Resolution; Emergency Services; Health Care Providers; Health Care Facilities; Disclosure; Network Adequacy
Description:	Establishes a dispute resolution process by which a dispute for a bill for emergency services or a surprise bill may be resolved. Specifies disclosure requirements for health care professionals and health care facilities, including estimated costs for health care services and information on participating provider networks. Specifies that an insured shall not be liable to a health care provider for any sums owed by an insurer. Specifies that an insurer who receives emergency services from a nonparticipating provider shall not incur greater out-of-pocket costs for the emergency services than the insured would have incurred with a participating provider. Specifies additional disclosure requirements for health insurance plans, including payment methodologies and updated participating provider directories. Requires health insurance plans to provide at least one option for coverage for at least eighty per cent of the usual and customary cost of each out-of-network health care service in inadequate network situations.
Companion:	HB1952
Package:	None
Current Referral:	CPH/JDL, WAM
Introducer(s):	BAKER, CHUN OAKLAND, English, Kidani, Nishihara, Tokuda

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

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TO THE SENATE COMMITTEES ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH AND
JUDICIARY AND LABOR

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Friday, February 12, 2016
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2668 – RELATING TO INSURANCE.

TO THE HONORABLE ROSALYN H. BAKER AND GILBERT S.C. KEITH-AGARAN, CHAIRS, AND MEMBERS OF THE COMMITTEES:

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

The Department supports the intent of this bill and submits the following comments.

Consumers should not be receiving unexpected follow-up provider billings when it is their belief and understanding that those services are covered by their health insurance. Insurer notification and education of policies' benefits to consumers will help address some of the problems but there will be inevitable billing disputes between providers and insurers with consumers being caught in the middle.

We understand the structure this bill establishes is to take effect on July 1, 2016, through a process established by the Commissioner and with the adoption of rules. Currently, because of numerous rulemaking steps which must be adhered to, the rulemaking and adoption process takes anywhere from 12 – 18 months depending on

the complexity of the rules and public input. It is unlikely that the process contemplated by this bill will be in place on July 1, 2016.

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

From:	mailinglist@capitol.hawaii.gov
To:	CPH Testimony
Cc:	otc@chikamotolaw.com
Subject:	*Submitted testimony for SB2668 on Feb 12, 2016 09:00AM*
Date:	Wednesday, February 10, 2016 3:29:03 PM

SB2668
Submitted on: 2/10/2016
Testimony for CPH/JDL on Feb 12, 2016 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Oren T. Chikamoto	American Council of Life Insurers	Oppose	Yes

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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February 6, 2016

Senator Rosalyn Baker
Chair
Senate Committee on Commerce, Consumer Protection, and Health

SB 2668: Relating to Insurance

Letter in OPPOSITION

Dear Senator Baker and Committee Members:

Thank you for the opportunity to comment on SB 2668. On behalf of our 150 emergency physician members providing care in Hawaii, I am writing in opposition to the bill.

The Emergency Medical Treatment and Labor Act (EMTALA) requires that all patients presenting to an emergency department be medically stabilized without regard to their ability to pay for services. We wholeheartedly agree with the premise of EMTALA; that all people deserve emergency medical care regardless of their ability to pay. However, we ask that the committee consider how balance billing prohibitions uniquely harm physicians providing emergency care, including emergency physicians and specialists providing call coverage for our emergency departments.

When negotiating with managed care organizations, the ONLY leverage emergency providers have is the threat of balance billing patients for charges not covered by insurers. Physicians not bound by EMTALA simply walk away from unacceptable contracts. Those of us providing emergency care are legally required to continue to see the patients covered by such contracts. We recognize that the practice of balance billing may surprise patients and is not ideal for any party, but it is a necessary evil when managed care organizations reimburse below the cost of providing care. Removing balance billing essentially allows managed care organizations to set market rates for emergency care and strips the rights of emergency providers to independently set fees for their services.

We do not have data related to balance billing complaints in Hawaii, and we would welcome a review of that data. The vast majority of emergency care in Hawaii is provided by participating providers, and those patients do not routinely receive balance bills by virtue of provider contracts in Hawaii. Almost all balance bills sent by

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emergency physicians from Hawaii involve non-residents of Hawaii and out of state insurance coverage. Even when emergency providers send a balance bill, it is generally for relatively small amounts. An analysis by Thomas Reuters for the California HealthCare Foundation in 2006 found that the average potential balance bill for an emergency physician was $27[1].

We ask that the committee also consider that many bills that surprise patients are actually related to the structure of their health care coverage. High deductible plans are now commonplace, and patients may not understand the scope of their cost sharing. Such 'surprise' bills related to copays and deductibles are inarguably appropriate and are specifically allowed in SB 2668.

The proposed independent dispute resolution process also threatens to negatively impact emergency providers. The definition of 'usual and customary' cost does not identify the benchmark from which the 80th percentile would be derived. In explaining the dispute resolution process, the bill allows the health care plan to pay "an amount that the health care plan determines is reasonable." What is reasonable is determined solely by the health care plan without transparency and without regard to provider charges. Further, dispute resolution programs in California and Florida are little used, generally favor the managed care organizations, and are considered overly burdensome for providers. Experts suggest policymakers limit their expectations of their usefulness[1,2].

We would welcome efforts to improve the transparency in the process by which health care plans set rates, which would lead to reduced need for balance billing and dispute resolution. The lack of transparency by health care plans has long been a problem and has recently been the source of settled litigation brought by providers in New York. The American College of Emergency Physicians advocates for fair pay practices determining 'usual, customary, and reasonable' by way of an independent charge database. We feel such a practice, if established appropriately, would lead to a more stable emergency care environment for both patients and providers.

We sympathize with the concerns of our patients, but we should be clear about who balance billing prohibitions really benefit. *Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans*. Without balance billing, negotiating power will be stripped from physicians providing emergency care in Hawaii. Efforts to limit reimbursement to emergency physicians and specialist physicians providing emergency care threaten to further limit access to emergency health care in Hawaii.

Sincerely,

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

1. Hoadley J, Lucia K, Schwart S. Unexpected Charges: What States Are Doing About Balance Billing. California Health Care Foundation.[Accessed June 30, 2013].

2. Florida Agency for Health Care Administration. Statewide Provider and Health Plan Claim Dispute Resolution Program [Internet]. 2015 [cited 2016 Feb 6];:1–4. Available from: http://ahca.myflorida.com/mchq/Health_Facility_Regulation/Commercial_Managed_Care/docs/SPHPClaimDRP/AnnualReportFeb-2015.pdf

February 12, 2016 at 9:00 AM
Room 229

Senate Committee on Commerce, Consumer Protection, and Health
Senate Committee on Judiciary and Labor

To: Chair Rosalyn H. Baker
Vice Chair Michelle N. Kidani

Chair Gilbert S.C. Keith-Agaran
Vice Chair Maile S.L. Shimabukuro

From: George Greene
President and CEO
Healthcare Association of Hawaii

Re: Submitting comments
SB 2668, Relating to Insurance

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 180 member organizations who represent almost every aspect of the health care continuum in Hawaii. Members include acute care hospitals, skilled nursing facilities, home health agencies, hospices, assisted living facilities and durable medical equipment suppliers. In addition to providing access to appropriate, affordable, high quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing over 20,000 people statewide.

We would like to thank Chair Baker, Chair Agaran, and members of the Senate committees for the opportunity to **submit comments** with concerns on SB 2668. The issue of balance billing has gained national attention as states consider initiatives to mitigate or ban the practice. We appreciate the intent of this legislation to address balance billing in Hawaii but would respectfully request that your committees create a task force to discuss and better understand the issue of balance or surprise billing in Hawaii to ensure that any solution addresses the distinct problems that consumers in this state may be experiencing.

It would be particularly helpful to discuss the extent of this problem and determine the prevalence and particularities of balance billing in Hawaii. The task force would also be able to discuss different policies related to balance billing and could provide recommendations best suited to the needs of consumers. For example, the National Association of Insurance Commissioners provides model language on this issue that could be tailored to the needs of both patients and providers in this state.

Working on producing a policy on this issue that is attuned to the distinct needs of patients in Hawaii would be consistent with how balance billing is addressed across the country. Every state has varying policies on balance billing, including disclosure requirements, mediation or arbitration requirements, and if the policies apply to individuals in emergency situations.

The variation is necessary considering how different each state's health care market is. New York, for example, is much larger in population size, has many times the hospital providers and has a less concentrated insurance market than smaller states like New Mexico or Hawaii. Other states that have grappled with this issue, such as Texas and Pennsylvania, have engaged all stakeholders in a deliberative process to ensure that the concerns of consumers, providers and state agencies are fully addressed.

The task force could also address some of the concerns we have regarding disclosure requirements in the bill. First, the bill would require all hospitals to disclose their charges through a website. This information is generally considered proprietary and used in private negotiations between hospitals and insurers. Another requirement in the bill would require facilities to track and update the carriers that all physicians contract with, which would impose a considerable time burden. Lastly, there are concerns about how this would affect contracted physicians, who are often on-call specialists needed in particularly difficult or acute cases. Our members worry that the legislation as written could limit the availability of these specialists by making it less attractive to practice in the state.

Therefore, we would respectfully request that your committee defer this measure in favor of establishing a task force to ensure that we fully understand this issue, hear from all viewpoints and ensure that unnecessary requirements for physicians, providers and insurers are not levied. Thank you for your time and consideration of this matter.

February 12, 2016 at 9:00 AM
Room 229

Senate Committee on Commerce, Consumer Protection, and Health
Senate Committee on Judiciary and Labor

To: Chair Rosalyn H. Baker
Vice Chair Michelle N. Kidani

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To:
COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Senator Rosalyn H. Baker, Chair
Senator Michelle N. Kidani, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

DATE: Friday, February 12, 2016
TIME: 9:00am
PLACE: Conference Room 229

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: SB 2668

Position: OPPOSE

Hawaii Medical Association opposes this legislation.

This issue particularly impacts emergency medical care but it has a harmful impact on the ability for all medical providers to have any control over the payment they receive from insurance companies. Since Hawaii's market is essentially an insurance monopoly, physicians already have almost no bargaining power. This bill will take away what little is left. Please consider that Hawaii must compete with all other states to attract physicians. Hawaii already has some of the lowest reimbursement rates in the nation coupled with some of the highest costs to practice medicine. Hawaii is currently not an attractive place to practice medicine. Passing a bill such as SB 2668 would drive many of the remaining doctors out of the State and make if very difficult to attract any new physicians to practice here.

The Emergency Medical Treatment and Labor Act (EMTALA) requires that all patients presenting to an emergency department be medically stabilized without regard to their ability to pay for services. We wholeheartedly agree with the premise of EMTALA; that all people deserve emergency medical care regardless of their ability to pay. However, we ask that the committee consider how balance billing prohibitions uniquely harm physicians providing emergency care,

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including emergency physicians and specialists providing call coverage for our emergency departments.

When negotiating with managed care organizations, the ONLY leverage providers have is the threat of balance billing patients for charges not covered by insurers. Physicians not bound by EMTALA simply walk away from unacceptable contracts. Those of us providing emergency care are legally required to continue to see the patients covered by such contracts. We recognize that the practice of balance billing may surprise patients and is not ideal for any party, but it is a necessary evil when managed care organizations reimburse below the cost of providing care.

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We ask that the committee also consider that many bills that surprise patients are actually related to the structure of their health care coverage. High deductible plans are now commonplace, and patients may not understand the scope of their cost sharing. Such 'surprise' bills related to copays and deductibles are inarguably appropriate and are specifically allowed in SB 2668.

The proposed independent dispute resolution process also threatens to negatively impact emergency providers. The definition of 'usual and customary' cost does not identify the benchmark from which the 80th percentile would be derived. In explaining the dispute resolution process, the bill allows the health care plan to pay "an amount that the health care plan determines is reasonable." What is reasonable is determined solely by the health care plan without transparency and without regard to provider charges. Further, dispute resolution programs in California and Florida are little used, generally favor the managed care organizations, and are considered overly burdensome for providers. Experts suggest policymakers limit their expectations of their usefulness[1,2].

We would welcome efforts to improve the transparency in the process by which health care plans set rates, which would lead to reduced need for balance billing and dispute resolution. The lack of transparency by health care plans has long been a problem and has recently been the source of settled litigation brought by providers in New York. The American College of Emergency Physicians advocates for fair pay practices determining 'usual, customary, and reasonable' by way of an independent charge database. We feel such a practice, if established appropriately, would lead to a more stable emergency care environment for both patients and providers.
We sympathize with the concerns of our patients, but we should be clear about who balance

billing prohibitions really benefit. Banning balance billing is not a patient protection initiative; it is a profit protection initiative for health care plans. Without balance billing, negotiating power will be stripped from physicians providing emergency care in Hawaii. Efforts to limit reimbursement to emergency physicians and specialist physicians providing care threaten to further limit access to health care in Hawaii.

Thank you for the opportunity to provide testimony

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Government Relations

Testimony of
John M. Kirimitsu
Legal and Government Relations Consultant

Before:
Senate Committee on Commerce, Consumer Protection and Health
The Honorable Rosalyn H. Baker, Chair
The Honorable Michelle N. Kidani, Vice Chair
and
Senate Committee on Judiciary and Labor
The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair

February 12, 2016
9:00 am
Conference Room 016

Re: SB 2668 Relating to Insurance

Chair, Vice Chair and committee members, thank you for this opportunity to provide testimony on SB 2668 that attempts to address balance billing and surprise bills.

Kaiser Permanente supports the intent of this measure but offers amendments.

Kaiser Permanente Hawaii's customary practice is to prohibit balance billing from its contracted participating providers. It goes without saying that consumers should not be subjected to balance billing by out-of-network providers, since the onus should be on health care professionals, not consumers, to know which providers are covered under what insurance plan. This in-network or out-of-network dilemma should be managed amongst the health care professionals themselves, i.e. providers and health plans, and not assigned to the consumer.

In 2015, the National Association of Insurance Commissioners ("NAIC") adopted an updated version of its Network Adequacy Model Act ("Model Act") as a model to help states enact provider access standards for private health insurance plans , i.e., ensure that consumers can get access to the right health care, at the right time, without unreasonable delay. In both emergency and non-emergency situations, the NAIC recommends holding patients harmless for unexpected bills. Even for out-of-network emergency service providers, the NAIC holds the member only responsible for his or her in-network cost- sharing amount and nothing else.

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To add stronger protections against unreasonable "surprise" charges, Kaiser Permanente Hawaii requests the adoption of an objective benchmark defining "usual and customary costs" to nonparticipating providers. *See Page 10, line 1, of the bill.* To assist in setting this benchmark, the NAIC Model Act specifies that states should either set a benchmark *at the carrier's contracted rate, or some percentage (set by the state) of Medicare's payment rate for those services in that geographic area.*

Additionally, following the above rationale that consumers should not be in the middle of a balance billing issue given that the insurance coverage is managed amongst the health care professionals, i.e. providers and health plans, Kaiser Permanente Hawaii requests that all references to the consumer as a participant in the dispute resolution process be deleted. *See Page 16, Par. 6(b), of the bill.* Clearly, the out-of-network provider and health plan, and not the consumer, are the ones most qualified to discuss and negotiate disputed professional charges. That being said, Kaiser Permanente Hawaii would support a mandatory binding dispute resolution process between the out-of-network provider and health plan. The dispute resolution process set forth in the bill seems overly complicated and cumbersome.

Lastly, Kaiser Permanente Hawaii requests that all references allowing an assignment be deleted. *See Page 13, beginning on line 4, of the bill.* Allowing such an assignment may be inconsistent with the typical anti-assignment of benefits language that is included in most health plan agreements. Therefore, to be consistent with health plan's benefit agreements, we ask that this assignment language be removed.

In conclusion, it appears that the NAIC Model Act may be a useful model to consider as it is meant to serve as draft legislation that states can enact into law, and includes useful definitional provisions to clarify such terms as "usual and customary costs" and "emergency services."

Thank you for your consideration.

Senator Rosalyn Baker
Chair
Senate Committee on Commerce, Consumer Protection, and Health

SB 2668: Relating to Insurance

Letter in OPPOSITION

Dear Senator Baker and Committee Members:

Thank you for the opportunity to comment on SB 2668. As an emergency physician who cares for thousands of patients in Hawaii every year, I am writing in opposition to the bill.

The proposed legislation, among other things, would prohibit balance billing of patients by emergency physicians and specialist physicians who provide call coverage, and create a dispute resolution process for bills related to emergency care.

Banning balance billing is not a patient protection initiative. It is a profit protection initiative for health care plans. The Emergency Medicine Treatment and Labor Act (EMTALA) requires the emergency providers provide stabilizing medical care without regard to the patient's ability to pay. While EMTALA appropriately protects access to emergency care, it inadvertently negates leverage of emergency providers in negotiating rates for their care. We cannot walk away from unacceptable contracts because we are legally bound to care for any patient who comes to the emergency department. Our only leverage in such negotiations is the threat to bill patients for the uncovered costs of care. Stripping emergency physicians and specialists providing emergency care of the right to set our own rates for our services will further limit access to emergency care in Hawaii.

The proposed dispute resolution process lacks transparency. The criteria for dispute resolution would effectively allow health care plans to set market rates for emergency services, further limiting the ability of emergency and specialist physician to charge rates that would fully cover the cost of care.

Please strike down SB 2668. Rather than protecting patients, it will harm patients by further limiting their access to essential emergency care in Hawaii.

Sincerely,

Suprina Dorai