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GOVERNOR

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STATE OF HAWAII
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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Testimony of the Department of Commerce and Consumer Affairs

Before the
Senate Committee on Commerce, Consumer Protection, and Health
Wednesday, February 19, 2020
9:00 a.m.
State Capitol, Conference Room 229

On the following measure:
S.B. 2423, RELATING TO MEDICAL SERVICE BILLING

Chair Baker and Members of the Committee:

My name is Colin Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department supports this bill.

The purpose of this bill is to protect patient access to health care by addressing unanticipated medical coverage gaps for patients who receive emergency services from non-participating providers. This is done by adding a new section to Hawaii Revised Statutes (HRS) chapter 432E (Patients' Bill of Rights and Responsibilities Act).

Patients sometimes do not have the time or ability to ensure that all emergency treatments they seek and receive fall within their medical plan coverages, thereby resulting in their receipt of surprise balance billings. The Department appreciates the efforts of this bill to relieve consumers of the economic burden arising from these billings.

HRS section 432E-8 currently gives the Insurance Commissioner enforcement power as applied through HRS chapter 431, articles 2 and 13, over managed care plans in HRS chapter 432E. As the Insurance Commissioner does not have any authority over non-participating providers in this chapter, the Department respectfully suggests amending HRS section 432E-8 to read: "**[[]§432E-8[]] Enforcement.** All remedies, penalties, and proceedings in articles 2 and 13 of chapter 431 made applicable hereby to managed care plans and non-participating providers under §432E- shall be invoked and enforced solely and exclusively by the commissioner."

Thank you for the opportunity to testify on this bill.

HAWAII MEDICAL ASSOCIATION
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SENATE COMMITTEE ON CONSUMER PROTECTION AND HEALTH
Sen. Rosalyn Baker, Chair
Sen. Stanley Chang, Vice Chair

Date: February 19, 2020
Time: 9:00 a.m.
Place: Conference Room 229
From: Hawaii Medical Association
Elizabeth A. Ignacio, MD, Chair, HMA Legislative Committee
Christopher Flanders, DO, Executive Director

Re: SB 2423 Relating to Medical Service Billing
Position: OPPOSE

The Hawaii Medical Association feels strongly that patients should not be caught up in what, in many cases, should be contractual arrangements between parties. While this is not the larger issue it is on the mainland, Hawaii does experience rare payment disagreements between health systems, health systems and providers, and insurers and health systems or providers.

The position of the Hawaii Medical Association is that statutory setting of payment rates is an unsatisfactory method of resolving disputes. The setting of statutory fee rates to is problematic in that inflationary adjustments, for example, would need to occupy legislative time annually. Additionally, Medicare rates are not designed to be a benchmark for rates over large geographic areas, nor are they designed for regional insurers to tie their rates. Medicare rates are an especially poor benchmark in that, according to a HMA study, Hawaii providers are underpaid by 35% as compared to mainland rates.

The Hawaii Medical Association supports the establishment a fair arbitration system in which to mediate disputes, such as the arbitration system enacted by New York, whereby each side presents their settlement figure and a decision is made between submitted figures by the Insurance Commissioner.

Thank you for allowing the Hawaii Medical Association to testify on this issue.

HAWAII / ACEP
AMERICAN COLLEGE OF EMERGENCY PHYSICIANS

February 18, 2020

Senator Rosalyn Baker
Chair, Commerce, Consumer Protection, and Health

Senator Stanley Chang
Vice Chair, Commerce Consumer Protection and Health

SB2423: Relating to Medical Services Billing

Testimony in **OPPOSITION**

Dear Senator Baker and Committee members,

Hawaii ACEP represents 152 emergency physicians in Hawaii. I am writing on their behalf in opposition of SB2423. While we agree that legislation is needed to resolve the surprise billing issue, SB2423 would be devastating to emergency providers in the state and negatively impact access to quality emergency services, especially on the neighbor islands and at our critical access hospitals. We are proposing solutions to end surprise billing that would be fair to providers and create more transparency in health care.

Medicare was not designed to set rates of reimbursement for commercial health care services. Rather, both Medicaid and Medicare are intended to assure health care services to the underprivileged. Neither cover the cost of medical services in Hawaii. An unintended consequence of capping non-participating provider services at Medicare rates would be an effective cap on reimbursement all emergency services. As a health care insurer, why would you negotiate a higher rate of reimbursement when non-participating providers cannot bill you above Medicare rates?

The immediate impact of a Medicare cap on rates of reimbursement would be a sudden and significant loss of income for all providers of emergency care in Hawaii. Long term, the legislation would make it very difficult for Hawaii to recruit and retain emergency physicians. Reimbursement rates for emergency physicians in Hawaii already rank among the bottom five states in the country and all of our emergency physician groups in the state struggle to recruit high quality emergency physicians, especially to the neighbor islands and at our critical access facilities.

As emergency physicians, we are bound by EMTALA to see any patient who comes to our emergency department without regard to their ability to pay. We have no leverage in that negotiation once balance billing has been taken out of the equation, and we would in effect be forced to accept the rate that non-participating providers are allowed. We want to be part of the solution and we have suggested a plan based on successful laws in other states, such as New York, that would keep patients out of the middle of billing disputes and create a fair environment for physicians to negotiate rates with insurers. SB2423 would drive emergency providers from our state and leave the people of Hawaii vulnerable when they need our help the most.

Sincerely,

William Scruggs, MD
President-Elect, Hawaii College of Emergency Physicians
Chief of Staff, Adventist Health Castle

February 19, 2020 at 9:00 am
Conference Room 329

Senate Committee on Commerce, Consumer Protection, and Health

To: Chair Rosalyn H. Baker
Vice Chair Stanley Chang

From: Paige Heckathorn Choy
Director of Government Affairs
Healthcare Association of Hawaii

Re: Submitting Comments
SB 2423, Relating to Medical Service Billing

The Healthcare Association of Hawaii (HAH), established in 1939, serves as the leading voice of healthcare on behalf of 170 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.

Thank you for the opportunity to provide **comments**. We support the intent of this measure. From the hospital perspective, we strongly agree that patients should be protected from gaps in coverage that result in surprise bills that arise when a patient receives unanticipated out-of-network care from a nonparticipating provider for emergency or other medical services. We also agree that any policy solution should remove patients from payment negotiations between managed care plans and providers. With that as a guiding principle, the task before providers, managed care plans, and policy makers in how to best reach an agreement on payment for services provided out-of-network.

As drafted, this measure puts the burden of resolving balance billing issues on providers and sets rates at Medicare. This is problematic because the rates that Medicare pays generally cover only 80-90% of costs. Insufficient payment for services is a factor some providers have noted as reasons it is difficult to practice in Hawaii and, as we consider other measures on addressing our physician shortage, we believe that any rate-setting could make the issue worse. Further, there are some service lines (e.g., pediatrics and certain women's services) that Medicare does not pay for, which would create issues for determining payments. We are offering amendments to Section 2 and suggest a new Section 3 to create a binding arbitration process that many other states have used to address balance bills for emergency services, which this bill is seeking to address.

Ultimately, HAH and its members do not want patients to bear the burden of being an intermediary between plans and providers and be caused undue stress over a surprise bill. Thank you for your consideration of our comments.

Phone: (808) 521-8961 | Fax: (808) 599-2879 | HAH.org | 707 Richards Street, PH2 - Honolulu, HI 96813

Proposed Amendments to Section 2

SECTION 2. Chapter 432E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§432E- Emergency services; billing.** (a) When an enrollee in a managed care plan receives emergency services from a non-participating provider, the non-participating provider shall not be entitled to bill the enrollee[~~, managed care plan, or any other entity~~] any amount in excess of any applicable charges the enrollee would be responsible for if they had received the services from a participating provider. This includes, but is not limited to, [~~the provider would be entitled to charge a medicare enrollee who receives such services, including, without limitation,~~] any copayment, coinsurance, or deductible amount[~~that would be owed by a medicare enrollee to the non-participating provider for the services~~].

[~~(b) The non-participating provider shall accept payment of the amounts under subsection (a) as payment in full for the emergency services rendered.~~]

[~~(c) To the extent that the emergency services are covered under the enrollee's managed care plan, any liability the managed care plan may have for the services shall not exceed the amount the non-participating provider is entitled to bill under this section.~~]

[~~(d) A health care provider or facility shall bill a health carrier only for a health intervention service that is a medical necessity. The health care provider or facility shall not bill or otherwise attempt to collect from an enrollee any amount not paid by a health carrier for a health intervention service that is a medical necessity, other than an applicable copayment, coinsurance, or deductible.~~]

(b) When an enrollee receives emergency services from a non-participating provider, a managed care plan shall be responsible to fulfill its obligation to the enrollee and shall enter into negotiation with the non-participating provider to resolve any sums owed by the managed care plan. If the managed care plan and the non-participating provider cannot come to an agreement on a payment amount within 45 days of a non-participating provider notifying an managed care plan that they disagree with the payment amount, either party may elect to enter into an independent dispute resolution process, as established in §432E- .

(c) Nothing in this section shall be construed to require a managed care plan to cover services not required by law or by the

terms and conditions of the managed care plan. Nothing in this section shall be construed to prohibit non-participating providers from seeking the uncovered cost of services rendered from enrollees who have consented to receive the health care services provided by the nonparticipating provider.

(d [~~e~~]) For the purposes of this section, "non-participating provider" means a facility, health care provider, or health care professional that is not subject to a written agreement with the enrollee's health carrier governing the provision of emergency services."

Proposed New Section 3

SECTION 3. Chapter 432E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§432E- Dispute resolution.** (a) If an insurer and a non-participating provider are unable to reach an agreement as to the amount to be billed for emergency services provided by a non-participating provider within 45 days of a non-participating provider notifying an insurer that they disagree with the payment amount, the matter may be submitted to the commissioner, who will refer the matter to an independent dispute resolution entity for binding arbitration.

(b) In determining the appropriate amount to pay a nonparticipating provider for an emergency service, an arbitrator shall consider all relevant factors, including:

(1) Whether there is a gross disparity between the fee charged by the health care provider or hospital for services rendered as compared to:

(A) The fees paid to the involved health care provider or hospital for the same services rendered by the health care provider or hospital to other patients in plans in which the health care provider or hospital is not participating; and

(B) In the case of a dispute involving a managed care plan, fees paid by the managed care plan to reimburse similarly qualified health care providers or hospitals for the same services in the same region who are not participating with the managed care plan;

(2) The level of training, education, and experience of the provider, and in the case of a hospital, the teaching staff, scope of services, and case mix;

(3) The provider's usual billed charge for comparable services with regard to patients in plans in which the health care provider or hospital is not participating;

(4) The circumstances and complexity of the particular case, including time and place service; and

(5) Individual patient characteristics.

(c) A provider may bundle multiple claims in a single mediation if the disputed charges involve:

(1) The identical plan or issuer and provider;
(2) Claims with the same or related current procedural codes; and
(3) Claims that occur within one hundred eighty days of each other.

(d) For disputes involving an enrollee, when the dispute resolution entity determines the plan's payment is reasonable, payment for the dispute resolution process shall be the responsibility of the non-participating provider. When the dispute resolution entity determines the non-participating provider's fee is reasonable, payment for the dispute resolution process shall be the responsibility of the plan. When a good faith negotiation directed by the dispute resolution entity results in a settlement between the plan and non-participating provider, the plan and the non-participating provider shall evenly divide and share the prorated cost for dispute resolution.

(e) The arbitrator shall issue a decision on a submitted case no later than 45 days from the commencement of binding arbitration.

(f) The commissioner may adopt rules pursuant to chapter 91 on this part.

HAWAIʻI PACIFIC HEALTH | KAPIʻOLANI PALI MOMI STRAUB WILCOX

Wednesday, February 19, 2020 at 9:00 AM
Conference Room 229

Senate Committee on Commerce, Consumer Protection and Health

To: Senator Rosalyn Baker, Chair
Senator Stanley Chang, Vice Chair

From: Michael Robinson
Vice President, Government Relations & Community Affairs

Re: Comments on SB 2423
Relating to Medical Service Billing

My name is Michael Robinson, Vice President, Government Relations & Community Affairs at Hawaiʻi Pacific Health. Hawaiʻi Pacific Health is a not-for-profit health care system comprised of its four medical centers – Kapiʻolani, Pali Momi, Straub and Wilcox and over 70 locations statewide with a mission of creating a healthier Hawaiʻi.

I write to provide comments on SB 2423 which establishes billing requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers. The measure also specifies the circumstances in which health care providers and facilities can bill insurers and enrollees for health intervention services.

HPH agrees with the amendments proposed by the Health Care Association of Hawaii which amends Section 2 and suggests a new Section 3 to create a binding arbitration process that many other states have successfully used to address balance billing for emergency services, which this measure seeks to address. Placing the burden on the provider to resolve balance billing issues overlooks the fact that the insurer shares an equal responsibility in protecting patients from being caught in the middle of the dispute.

Hawaiʻi Pacific Health (HPH) has experience working with a variety of insurers and providers. We believe in maintaining the integrity of the contracting process between health providers and health insurers in determining fair and adequate reimbursement methodologies for health care services that have already been delivered to patients/insureds. As a provider organization, we also assume that both health care insurers and health care providers have a *shared* responsibility to protect patients from financial burdens to ensure access to medically necessary care.

We note that setting reimbursement on Medicare rates for non-participating providers will not adequately cover the entire range of medical services for billing that a patient may encounter. For example, there is no applicable Medicare reimbursement methodology for most pediatric procedures and services for women of child-rearing age who are not disabled. Utilizing Medicare as a basis for reimbursement for these populations could potentially be incalculable.

Thank you for the opportunity to testify.

BEFORE THE

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

SB 2423 RELATING TO MEDICAL SERVICE BILLING

TESTIMONY OF
WILLIAM C. McCORRISTON
President and Chief Executive Officer,
Hawaii Medical Assurance Association

February 19, 2020, 9:00 a.m.
State Capitol Conference Room 229

Chair Baker, Vice Chair Chang, and Committee Members:

My name is William C. McCorriston, President and Chief Executive Officer of Hawaii Medical Assurance Association (HMAA). HMAA strongly supports the intent of SB 2423.

By way of background, HMAA is a non-profit mutual benefit society that provides health insurance to over 30,000 Hawai‘i residents. HMAA occupies about three percent of Hawaii’s health insurance market. As a small kama‘aina insurer, HMAA takes special pride in providing health insurance to sole-proprietors and small businesses, a segment of Hawaii’s market that often has a difficult time obtaining affordable health-related insurance.

The intent behind SB 2423 is to protect patients who unknowingly receive emergency care services from a non-participating provider. Hawai‘i does not currently impose any limitations on the charges that non-participating emergency care services providers can assess on patients, resulting in patients being billed for any remaining charges after charges paid by his or her insurer. Patients are thereafter balance billed for the remaining charges, which can put these patients through significant financial hardship. SB 2423 provides these patients with important protections that eliminates these potential financial burdens.

HMAA looks forward to working with all stakeholders on SB 2423. Thank you for the opportunity to submit written testimony on this matter of critical importance.

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737 Bishop Street Suite 1200, Honolulu Hawai‘i 96813 Phone (808) 591-0088 FAX (808) 591-0463

THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Rosalyn H. Baker, Chair
The Honorable Stanley Chang, Vice Chair
Members, Committee on Commerce, Consumer Protection, and Health

From: Mich Riccioni, Executive Vice President and Chief Financial Officer, The Queen's Health Systems
Colette Masunaga, Manager, Government Relations & External Affairs, The Queen's Health Systems

Date: February 17, 2020
Hrg: Senate Committee on Commerce, Consumer Protection, and Health Hearing; Wednesday, February 19, 2020 at 9:00 AM in Room 229

Re: **Support for the Intent with Comments SB2423, Relating to Medical Service Billing**

The Queen's Health Systems (Queen's) is a not-for-profit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, 66 health care centers and labs, and more than 1,600 physicians statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to offer comments with concerns for SB2423, which establishes billing requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers. Specifies the circumstances in which health care providers and facilities can bill health carriers and enrollees for health intervention services that are medical necessities.

Queen's is committed to protecting patients from balance bills that result from unexpected gaps in insurance coverages, inadequate networks, and medical emergencies. While we support the intent of the bill, as written, we do not believe the measure improves upon the current system. The bill ties provider reimbursement to Medicare, which does not cover the cost of care. In FY2019, Queen's absorbed over $35.7 million in health care costs when Medicare reimbursement did not fully cover the cost of care. In total that year, Queen's absorbed over $82.8 million in reimbursement shortfall from both Medicaid and Medicare. Providers deserve to receive fair payment for the medical services they provides to patients. Any attempts to benchmark payment to Medicare rates would jeopardize patient access to hospital care, especially for those in rural communities.

Reimbursement for non-contracted health plans should be set at a higher rate than those who are contracted, otherwise contracted health plans will have no incentive to contract or renew contracts on services. Thus, no incentive to provide an adequate network for their insured and ultimately limits access to care.

To best serve the interests of our patients, Queen's concurs with the amendments offered by the Healthcare Association of Hawaii (HAH), which removes reference to harmful Medicare rate setting language and takes patients out of the middle between provider and health plan disputes by establishing a dispute resolution process. The proposed amendments also recognize the duty and obligation a health plan has to their insured to satisfy and resolve claims with out-of-network providers.

We would also note that the Congress is currently considering measures to address out-of-network billing and is expected to address this issue by the end of May. Thank you for the opportunity to testify on this measure and your consideration of the HAH amendments.

HAWAII HEALTH SYSTEMS
C O R P O R A T I O N
Quality Healthcare For All

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, and HEALTH
Senator Rosalyn H. Baker, Chair
Senator Stanley Chang, Vice Chair

February 19, 2020
Conference Room 229
9:00 a.m.
Hawaii State Capitol

Comments
Senate Bill 2423
RELATING TO MEDICAL SERVICE BILLING
Establishes billing requirements for unanticipated medical billing and unanticipated coverage gaps of patients for out-of-network emergency services received from non-participating providers. Specifies the circumstances in which health care providers and facilities can bill health carriers and enrollees for health intervention services that are medical necessities.

Linda Rosen, M.D., M.P.H.
Chief Executive Officer
Hawaii Health Systems Corporation

The Hawaii Health Systems Corporation (HHSC) provides **comments** on SB 2423.

HHSC is deeply concerned about the effect of unanticipated medical bills on Hawaii's patients for care they thought was covered by their health plan which could impact their out-of-pocket costs and undermine their trust and confidence in their caregivers and Hawaii's hospitals. Consumers are best served when both plans and providers are incentivized so there are not any nonparticipating providers. Passing statutory protections in state law to address this issue is challenging, yet is worthy of our collective efforts to address.

Thank you for the opportunity to testify on this measure.