

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII  
**DEPARTMENT OF CORRECTIONS  
AND REHABILITATION**  
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Programs

No. \_\_\_\_\_

**TESTIMONY ON SENATE BILL 2013  
RELATING TO HEALTH CARE FEES OF DETAINEES AND  
COMMITTED PERSONS**

by  
Tommy Johnson, Director

Senate Committee on Public Safety and Intergovernmental and Military Affairs  
Senator Glenn Wakai, Chair  
Senator Brandon J.C. Elefante, Vice Chair

AND

Senate Committee on Health and Human Services  
Senator Joy A. San Buenaventura, Chair  
Senator Henry J.C. Aquino, Vice Chair

Wednesday, January 24, 2024; 3:00 p.m.  
State Capitol Conference Room 225 and via Video Conference

Chair Wakai, Chair San Buenaventura, Vice Chair Elefante, Vice Chair Aquino, and  
Members of Both Committees:

The Department of Corrections and Rehabilitation (DCR) opposes Senate Bill (SB) 2013 due to the prohibitive costs implied by the inclusion of "elective medical and dental procedures". The current medical definition of elective procedures would include *all* cosmetic surgeries and procedures. Currently all medically indicated assessments and procedures are paid for by the DCR without any cost to the incarcerated individuals. This includes prosthetics necessary for activities of daily life (ADL's).

As written, this measure would include elective medications and procedures not medically indicated and not currently covered by Medicaid. It is our stance that it is imperative that the rehabilitation and medical care provided to incarcerated persons mirror community standards including nominal fees accrued as co-payments for medically indicated procedures and assessments. Additionally, it is an important part of an individual's self-agency to be selective and judicious in the care they receive, whether elective or medically indicated. This includes weighing the actual cost and benefits of all treatment. Except for lifestyle changes, all medications and procedures have the risk of side effects, some permanent. The restriction against DCR to outline policies and procedures may unintentionally allow an overabundance of impulsive and unproven medical treatment and care for an already fragile population.

As an example, our Health Care Division recently received a request from an inmate, who believed the department was required to pay for laser hair removal. Luckily, the statute he quoted was written for insurance carriers to cover the procedure. As written, if SB 2013 were to be enacted, these are the types of requests our health care staff will be buried with. It will be difficult to find any licensed medical providers to practice in our facilities.

We do however recognize that the perception is that the DCR may have created barriers to medical care for those in our custody and care. However, this is not the case. DCR's current practices do *not* require inmates to pay for any medical, dental, or mental health treatments that would be covered by Medicaid whether due to self-injury or otherwise. We intend to continue to diminish any real or perceived barriers to care for the good of those in our custody and care. The previous practice of charging a nominal three-dollar fee for co-payment has been suspended for over 2 years to eliminate such barriers. The previous practice yielded approximately \$10,000 per month; a deficit that is currently being absorbed by our current and previous budgets. Large facilities like OCCC and HCF yield approximately 13 to 15 physical nursing assessments and 30-40 written medical

requests per day, which has increased since suspension of the co-payment. To continue the suspended co-pay model which is similar Medicaid, DCR will require funding for the loss of fee's collected as well as for additional nursing staff to manage the increase in requests which require responses within 24 hours per our current policy.

The current statute, as written to include rights afforded to the DCR, make detainees accountable for unnecessary medical expenses, is written to safeguard against serial malingering that commandeer vital limited resources. Malingering diverts physician and nursing time away from detainees with acute and chronic conditions that do require medical resources. It is not uncommon for inmates to report medical conditions to temporarily be removed from their current housing and be escorted to medical or to the hospital for evaluation. One example is an inmate who reports chest pain every night while being housed in the special holding unit (SHU). Despite numerous assessments by state physicians, community cardiologists, and emergency room physicians excluding cardiac involvement, time is allotted for this patient to be assessed every night, including EKG's, in the medical unit or the ER. Detainee's being housed in special holding units (SHU) require two ACO's and require all other inmates to be locked down when moving. This is one example of an inmate's misuse of medical resources that happens frequently. It utilizes staff time and hinders other acutely ill inmates from being treated. Although this inmate has never been charged personally, as this statute allows, the statute could be used to dissuade this type of misuse of critical resources.

Finally, if the goal of SB 2013 is truly to remove barriers to care, then greater consideration needs to be taken in identifying such barriers to care. Misuse of resources is one of those hindrances that too often frequently occur. The second would be to increase such resources such as staffing that increases nurses, direct health care providers, and additional Adult Corrections Officers.

Thank you for the opportunity to provide testimony in opposition to SB 2013.

STATE OF HAWAII  
**OFFICE OF THE PUBLIC DEFENDER**

**Testimony of the Office of the Public Defender, State of Hawai‘i to  
the Senate Committee on Public Safety and Military Affairs and  
the Senate Committee on Health and Human Services**

January 24, 2024

**S.B. No. 2013: RELATING TO HEALTH CARE FEES OF DETAINEES AND  
COMMITTED PERSONS**

Chair Wakai and Vice Chair Elefante, Chair Buenaventura and Vice Chair Aquino,

The Office of the Public Defender (“OPD”) strongly supports this bill.

When persons are incarcerated, they become involuntary wards of the State committed to the custody of the Director of the Department of Corrections and Rehabilitation. Because they are held by the State against their will, ensuring that incarcerated persons receive basic health services and treatment becomes the responsibility of the State.

It is unconstitutional to deprive an incarcerated person of medical care. The U.S. Supreme Court has held that failing to provide an incarcerated person with medical care violates the prohibition against cruel and unusual punishment embodied in the Eighth Amendment to the U.S. Constitution.<sup>1</sup> Making medical, dental and health care services available but limiting access to only those who can afford to pay fees is the equivalent of denial of those services to the indigent and is no less a violation of the Eighth Amendment.

Incarcerated persons lose their access to medical, dental, or health services and treatment (referred to collectively herein as “basic health services”). On top of that, many incarcerated persons have to rely on friends or family and jobs within the prison pay far less than the minimum wage<sup>2</sup> for funds. Even those who were receiving benefits through government assistance have those benefits suspended while they are incarcerated. Assessing fees for a doctor’s visit or dental care forces incarcerated persons to choose between basic medical or dental services and other

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<sup>1</sup> See Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976).

<sup>2</sup> See HRS § 353-19, “Compensation for labor or training by committed persons.”



necessities such as soap, toothpaste or commissary items. It will likely result in many incarcerated persons foregoing basic health services. This can lead to unforeseen and terrible consequences. For example, during the height of the pandemic, some incarcerated persons declined doctor's visits because of the fee and were not timely treated for COVID. The lack of timely intervention and treatment was almost certainly one of the factors which contributed to the rapid spread and persistence of COVID in prisons and jails.

Even as a strictly practical matter, allowing the physical and mental conditions of incarcerated persons to deteriorate while incarcerated due to their inability or decision not to pay a fee for health services is only robbing Peter to pay Paul. Requiring incarcerated persons to pay for medical, dental, or health services and treatment makes no sense. Incarcerated persons whose physical, mental, or emotional conditions are exacerbated due to the inability to pay for basic health services could sue and cost the State millions in legal fees and damages. Moreover, when incarcerated persons are released and return to the community in poor health, they will require government assistance for basic health services. If the incarcerated person's condition has deteriorated due to inability to pay, the long-term costs of treating that condition falls on Medicaid or other government agencies. In addition, releasing persons from incarceration suffering from physical or mental conditions exacerbated or caused by the lack of treatment in custody severely hampers their reintegration into society. Persons with poorly treated or untreated physical or mental conditions will have less ability to access jobs and housing cannot support themselves or their families. Once again, they will turn to government assistance.

In recent years, correctional systems have moved away from a strictly punitive, carceral model. The name change of the Department of Public Safety to the Department of Corrections and Rehabilitation reflects the paradigm switch from viewing incarceration as punishment and instead focusing on rehabilitation and restoration of those in the government's custody and care.<sup>3</sup> This bill abolishing most fees for basic medical services reflects that paradigm switch.

In sum, conditioning access to basic health services on incarcerated persons on payment of a fee is self-defeating, leads to more government spending, and is unconstitutional. Abolishing these fees can limit the State's exposure to civil

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<sup>3</sup> New Department of Corrections and Rehabilitation focused on custody and care, Maui Now, January 2, 2024. <https://mauinow.com/2024/01/02/new-department-of-corrections-and-rehabilitation-focused-on-custody-and-care/>

liability, decrease long-term costs, and advance the progressive approach to incarceration which favors rehabilitation and restoration over punishment.

We thank you for the opportunity to comment on S.B. No. 2013.



Committees: Committee on Public Safety and Intergovernmental and Military Affairs and Health and Human Services  
Hearing Date/Time: Wednesday, January 24 , 2024 at 3:00pm  
Place: Room 225 & Videoconference

Re: ***Testimony of the ACLU of Hawai'i in SUPPORT of SB 2013 Relating to Health Care Fees of Detainees and Committed Persons***

Aloha Chairs Wakai and San Buenaventura, Vice Chairs and Committee Members:

The ACLU of Hawai'i supports Senate Bill 2013, which prohibits the assessment of fees upon inmates for medical, dental or mental health services or treatment that is provided within a public correctional institution in the State.

ACLU of Hawai'i is committed to achieving our Smart Justice goals of reducing the number of people in our jails and prisons by 50%, as well as racial disparities in our carceral systems.<sup>1</sup> While we advocate for the State to divert people from our jails and prisons by shifting resources to housing, education, employment training and health and human services in our communities, we also advocate for the civil rights and liberties of incarcerated people.

Incarcerated persons, as wards of the state, must be supplied with health care. In 1976, the U.S. Supreme Court ruled in the *Estelle v. Gamble*<sup>2</sup> decision, that deprivation of health care constituted cruel and unusual punishment, a violation of the Eighth Amendment to the Constitution. This interpretation created a de facto right to health care for all persons in custody, whether convicted (prisoners) or not (pretrial detainees).

In most states, people incarcerated in jails and prisons pay medical co-pays for physician visits, medications, dental treatment, and other health services. The intention behind these fees is to partially reimburse the states and counties for the high costs associated with medical care for the populations they serve, which are among the most [at-risk](#) for both chronic and infectious diseases. These fees are also imposed to deter people from frivolous doctor's visits.

**Unfortunately, high fees may be doing more harm than good: deterring sick people from getting the care they really do need.**

The [National Commission on Correctional Health Care](#) (NCCHC) argues that abuses of sick call can be managed with "a good triage system," without imposing fees that also deter *necessary* medical services. And although providers must treat people regardless of their ability to pay, incarcerated people with "low health literacy" may not understand this right. The NCCHC warns that co-pays may actually jeopardize the health of incarcerated populations, staff, and the public.

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<sup>1</sup> [https://www.acluhi.org/sites/default/files/SJ-Blueprint-HI\\_1.pdf](https://www.acluhi.org/sites/default/files/SJ-Blueprint-HI_1.pdf)

<sup>2</sup> <https://supreme.justia.com/cases/federal/us/429/97/>

As noted by Prison Policy Initiative, the steep cost of medical co-pays in prison puts the health of incarcerated people at risk. “*When we consider the relative cost of medical co-pays to incarcerated people who typically earn 25 cents<sup>3</sup>, it's clear they can be cost-prohibitive. Co-pays that take a large portion of your paycheck make seeking medical attention a costly choice.*”  
<https://www.prisonpolicy.org/blog/2017/04/19/copays/>

Out-of-reach co-pays in jails and prisons have unintended consequences which make them counterproductive and even dangerous. First, when sick people avoid seeking care from health professionals, disease is [more likely to spread](#) to others in the facility – and into the community, when people are [released](#) before being treated.

Second, illnesses are likely to worsen as long as people avoid the doctor, which means more aggressive (and expensive) treatment when they can no longer go without it.

A handful of states recognize the counterproductive and dangerous consequences of health care related fees and have eliminated co-pays within their correctional facilities. These states include Massachusetts, Montana, Nebraska, New Mexico, New York, Oregon, Vermont, Wyoming, California and Illinois.

It's time for the State of Hawai'i to accept responsibility for the health of persons in its jails and prisons as recognized by federal and state law, and prohibit the assessment of fees upon incarcerated persons for medical, dental or mental health services or treatment.

For all these reasons, we respectfully request that your Committees move this bill forward.

Sincerely,

## **Carrie Ann Shirota**

Carrie Ann Shirota  
Policy Director  
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*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

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<sup>3</sup> In 2017, incarcerated people in Hawai'i earned 25 cents an hour and had to pay \$3.00 for a co-pay.  
<https://www.prisonpolicy.org/blog/2017/04/19/copays/>



**SB-2013**

Submitted on: 1/22/2024 9:53:01 PM

Testimony for PSM on 1/24/2024 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Barbara Polk	Individual	Support	Written Testimony Only

Comments:

I strongly support passage of SB2013 which will ensure that incarcerated persons are not charged fees for health and related services. When the State of Hawaii assumes control of a person, it should be responsible for that person's welfare, including health care and related services. To charge a fee is to withhold such services from those who cannot pay, thus violating the State's responsibility.