



GOV. MSG. NO. 632

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

April 29, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 1676 SD2

On April 28, 2009, Senate Bill No. 1676, entitled "A Bill for an Act Relating to Health" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to clarify that telemedicine is within the scope of a physician's practice and sets requirements and standards for the practice of telemedicine services. Telemedicine means the use of telecommunications services, such as video or web conferencing, telephone, or internet links between a physician and a patient to evaluate or treat a patient.

Modern technology has given us the ability to perform activities not imagined just a few years ago. The advent of telemedicine is a recent phenomenon that now allows patients to contact their doctor outside of the normal medical office arrangements. This technology also allows doctors to provide services to remote or hard to reach locations, as well as consult in real time video conferences with colleagues and specialists out of state who can help diagnose a disease or recommend a specific treatment program not available locally.

Senate Bill No. 1676 attempts to foster the use of telemedicine by better defining the practice, setting forth the circumstances under which treatment recommendations can be made, clarifying the medical licensing requirements for telemedicine practices, and reaffirming that medical insurance covers this technique for delivering medical services.

Modern technology also brings new issues and concerns that have not been adequately addressed in this bill. Three areas in particular are of concern to the medical community and deserve further attention in forthcoming legislative sessions.

First, there remains an understandable concern that a face-to-face relationship should be developed first between a primary care physician and a patient before the doctor is allowed to

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and Members of the Senate  
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provide diagnoses or treatments via telemedicine. The Hawaii Medical Board has acknowledged this preference and believes it is fundamental to the delivery of appropriately provided medical services within generally accepted community standards of care.

Second, as written, the bill appears to allow both an individual patient, as well as that patient's doctor, to consult with and obtain treatments from an out-of-state physician or other non-Hawaii-based medical services provider. It would appear more prudent for these out-of-state consultations to be restricted to doctor-to-doctor discussions where the Hawaii-based physicians know their consulting colleague and can ensure the discussions are technically and medically accurate.

Third, enforcement oversight issues for out-of-state physicians have not been adequately addressed in this bill. Neither the Hawaii Medical Board nor the Regulated Industries Complaints Office of the State Department of Commerce and Consumer Affairs has jurisdiction over out-of-state practitioners and cannot sanction them for actions that may not meet Hawaii's standards of medical care. As the medical community seeks out and uses specialists and medical providers outside of Hawaii, it is important that states like Hawaii work with other jurisdictions to address how best to ensure that the out-of-state individuals providing medical advice meet the educational, licensing, and ethical standards we have established for our own medical community.

For the foregoing reasons, I allowed Senate Bill No. 1676 to become law as Act 20, effective April 28, 2009, without my signature.

Sincerely,



LINDA LINGLE

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# A BILL FOR AN ACT

RELATING TO HEALTH.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Since 1999, the legislature has supported the  
2 use and expansion of telehealth services and technology in  
3 Hawaii. In the past, telehealth services were primarily  
4 facility-based without a consumer driven component. With  
5 internet-based technology revolutionizing the way consumers  
6 acquire goods and services today, it is now possible to apply  
7 this technology to health care. Hawaii is poised to become the  
8 first state in the nation to provide statewide consumer access  
9 to local physicians via the Internet and telephone. Individuals  
10 will be able to interact with local physicians in a real time,  
11 secure, and private online environment.

12           Supporting this expanded use of technology for telemedicine  
13 services will increase access to health care in rural areas of  
14 the State. People living in Hawaii's rural areas often find it  
15 more difficult to access specialty physician care. The use of  
16 new and improved technologies to deliver effective and prompt



1 health care will allow residents to promptly consult with a  
2 specialist.

3       Difficulty or inability to visit a specialist often forces  
4 individuals to delay appropriate health care. These delays may  
5 ultimately lead to worsened health outcomes which could have  
6 been avoided. New technology will provide additional options to  
7 access care through discussion with a local physician live via  
8 the Internet or telephone twenty-four hours a day, seven days a  
9 week.

10       Expansion of telemedicine services may also assist in  
11 containing rising health care costs. The availability of  
12 immediate access to physicians may prevent inappropriate and  
13 expensive trips to the emergency room. Those without health  
14 care coverage who currently access non-emergent care in the  
15 emergency room would be able to visit a physician online. As  
16 consumers become more comfortable receiving care through  
17 telemedicine, hospitals could see a decrease not only in  
18 inappropriate emergency room usage, but also a decrease in  
19 uncompensated care.

20       In addition, since rural areas locally and across the  
21 nation find it increasingly difficult to attract and retain  
22 physicians, particularly specialists, expansion of telemedicine



1 services may attract physicians to practice in these areas.  
2 Telemedicine will provide physicians with greater flexibility  
3 and freedom within their practices wherever they are physically  
4 located in Hawaii. The resulting lifestyle improvement without  
5 sacrifice of income may prove to be an attractive incentive for  
6 physicians to practice in rural areas.

7 Despite the legislature's clear and consistent support of  
8 expanded use of telemedicine to improve access to health care  
9 services throughout the State, questions have recently been  
10 raised by the Hawaii medical board about the appropriate use of  
11 this technology to establish the physician-patient relationship.  
12 Therefore, the purpose of this Act is to reinforce the  
13 legislature's support of online care services through  
14 telemedicine by:

15 (1) Clarifying that telemedicine is within a physician's  
16 scope of practice and is authorized in Hawaii when  
17 practiced by a licensed physician providing services  
18 to patients; and

19 (2) Further clarifying the current laws regarding  
20 telehealth to ensure compliance with changes made to  
21 the law regulating the practice of medicine.



1 SECTION 2. Chapter 453, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§453- Practice of telemedicine. (a) Nothing in this  
5 section shall preclude any physician acting within the scope of  
6 the physician's license to practice from practicing telemedicine  
7 as defined in this section.

8 (b) For the purposes of this section, "telemedicine" means  
9 the use of telecommunications services, including real-time  
10 video or web conferencing communication or secure web-based  
11 communication to establish a physician-patient relationship, to  
12 evaluate a patient, or to treat a patient. "Telehealth" as used  
13 in chapters 431, 432, and 432D, includes "telemedicine" as  
14 defined in this section.

15 (c) Telemedicine services shall include a documented  
16 patient evaluation, including history and a discussion of  
17 physical symptoms adequate to establish a diagnosis and to  
18 identify underlying conditions or contra-indications to the  
19 treatment recommended or provided.

20 (d) Treatment recommendations made via telemedicine,  
21 including issuing a prescription via electronic means, shall be  
22 held to the same standards of appropriate practice as those in



1 traditional physician-patient settings that do not include a  
2 face to face visit but in which prescribing is appropriate,  
3 including on-call telephone encounters and encounters for which  
4 a follow-up visit is arranged. Issuing a prescription based  
5 solely on an online questionnaire is not treatment for the  
6 purposes of this section and does not constitute an acceptable  
7 standard of care. For the purposes of prescribing a controlled  
8 substance, a physician-patient relationship shall be established  
9 pursuant to chapter 329.

10 (e) All medical reports resulting from telemedicine  
11 services are part of a patient's health record and shall be made  
12 available to the patient. Patient medical records shall be  
13 maintained in compliance with all applicable state and federal  
14 requirements including privacy requirements.

15 (f) A physician shall not use telemedicine to establish a  
16 physician-patient relationship with a patient in this State  
17 without a license to practice medicine in Hawaii. Once a  
18 provider-patient relationship is established, a patient or  
19 physician licensed in this State may use telemedicine for any  
20 purpose, including consultation with a medical provider licensed  
21 in another state, authorized by this section, or as otherwise  
22 provided by law."



1 SECTION 3. Section 431:10A-116.3, Hawaii Revised Statutes,  
2 is amended by amending subsection (d) to read as follows:

3 "(d) Notwithstanding chapter 453 or rules adopted pursuant  
4 thereto, [In] in the event that a health care provider-patient  
5 relationship does not exist between the patient and the health  
6 care provider to be involved in a telehealth interaction between  
7 the patient and the health care provider, a telehealth mechanism  
8 may be used to establish a health care provider-patient  
9 relationship."

10 SECTION 4. Section 432:1-601.5, Hawaii Revised Statutes,  
11 is amended by amending subsection (d) to read as follows:

12 "(d) Notwithstanding chapter 453 or rules adopted pursuant  
13 thereto, [In] in the event that a health care provider-patient  
14 relationship does not exist between the patient and the health  
15 care provider to be involved in a telehealth interaction between  
16 the patient and health care provider, a telehealth mechanism may  
17 be used to establish a health care provider-patient  
18 relationship."

19 SECTION 5. Section 432D-23.5, Hawaii Revised Statutes, is  
20 amended by amending subsection (d) to read as follows:

21 "(d) Notwithstanding chapter 453 or rules adopted pursuant  
22 thereto, [In] in the event that a health care provider-patient





1 relationship does not exist between the patient and the health  
2 care provider involved in a telehealth interaction between the  
3 patient and the health care provider, a telehealth mechanism may  
4 be used to establish a health care provider-patient  
5 relationship."

6 SECTION 6. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 7. This Act shall take effect upon its approval.

APPROVED this                      day of                      , 2009

GOVERNOR OF THE STATE OF HAWAII