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TO THE HOUSE COMMITTEES ON
CONSUMER PROTECTION & COMMERCE AND JUDICIARY

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Monday, March 29, 2010
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 2491, S.D. 2, H.D. 1 – RELATING TO
TELEMEDICINE.**

TO THE HONORABLE ROBERT N. HERKES AND JON RIKI KARAMATSU, CHAIRS,
AND MEMBERS OF THE COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department limits its testimony to sections 2, 3 and 4 of the bill and offers the following comments.

The purpose of this bill is to clarify telemedicine as the practice of medicine and to allow medical malpractice insurers to include coverage for the practice of telemedicine by amending the statutory definitions of: (1) malpractice insurance in paragraph (13) of Hawaii Revised Statutes ("HRS") § 431:1-209; (2) "medical malpractice insurance" in HRS § 435C-2; (3) "physician or surgeon" in HRS § 435E-1; and (4) "practice of medicine" in HRS § 453-1.

The Department cannot speculate how insurers will respond to or assess the impact of requiring coverage for telemedicine under medical malpractice insurance.

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

Hawaii State Rural Health Association
Testimony for SB2491 regarding health

The Hawaii State Rural Health Association would like to express our strongest support for SB2491. We have conducted published research on the rural health care needs across the State and found that while all communities are unique, there are some themes that are common throughout the state. Needs that are commonly identified in our rural and underserved communities include:

1. Financial assistance (insurance coverage, medication, free services)
2. Expanding services that are available to rural communities (**including telehealth/telemedicine services**)
3. Improving access to available services (Long term care, primary care, specialty care, mental health care, substance abuse treatment, health care training and other services)
4. Decreasing drug use
5. Increasing health education and training opportunities for community members
5. Increasing the number of health care providers working in rural areas
6. Increasing cultural sensitivity of providers

The most recent assessment of physicians in the State of Hawaii performed by my office at JABSOM estimates that we have **500** providers less than we need to meet the demand estimated by population mix. Furthermore, this deficit may grow to **1,500** providers by 2020 if no action is taken. Many things can be done to meet the growing demand for health care providers and SB2491 is essential for making telemedicine a viable option for meeting the need for medical services. Hawaii, as an island state, should have one of the finest telemedicine networks in America. But we have almost no providers participating. Part of the cause may be the lack of malpractice insurance coverage. If telemedicine is not covered under malpractice insurance, no providers will participate. Therefore it must be made clear that telemedicine visits are covered.

The Hawaii State Rural Health Association supports legislation that will increase services to rural communities, including legislation that supports expanding the health workforce, developing assistance programs for rural areas, and expanding the facilities available to rural citizens. We expect this to be done in culturally appropriate ways with significant grass roots community involvement at all steps of the process.

Therefore the Hawaii State Rural Health Association fully supports SB2491 because it will improve health in our rural areas. Without interventions such as these, the growing health crisis will get worse and lives will be lost that need not be.

Sincerely,

Kelley Withy, MD, PhD
President, Hawaii State Rural Health Association

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 29, 2010

The Honorable Robert Herkes, Chair
The Honorable Jon Riki Karamatsu, Chair
House Committees on Consumer Protection and Commerce and Judiciary

Re: SB 2491 SD2 HD1 – Relating to Telemedicine

Dear Chair Herkes, Chair Karamatsu and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2491 SD2 HD1 which would clarify telemedicine as a practice of medicine and recommend insurers offering medical malpractice insurance coverage also cover telemedicine services. We strongly support the intent of SB 2491 SD2 HD1 with a small amendment which would ensure the measure meets its intended goal.

The original intent of SB 2491 SD2 HD1 was to require medical malpractice insurance cover a physician regardless of the treating environment in which they are practicing. Accessing care through HMSA's Online Care is just another tool available to physicians to expand access to health care much like email and telephone calls. Current medical malpractice coverage includes these more traditional care settings but some carriers have made the decision to explicitly exclude telehealth services. We believe that this is a disservice to those in the medical community who are interested in exploring new ways of assisting their patients.

Unfortunately, through changes made by the previous Committee the measure will not change the current status of malpractice coverage in relation to telehealth. We also believe that as currently drafted, two sections within the measure itself seem to be at odds with one another. To ensure SB 2491 SD2 HD1 is able to accomplish its original goal, we would respectfully request making a one word amendment to Page 6, line 6, changing the word "may" back to "shall". This change will also ensure that all sections within the measure are aligned.

As health technology advances the government, both state and federal, need to examine outdated barriers that restrict true reform from occurring. SB 2491 SD2 HD1 would take small steps towards ensuring that barriers to care do not exist whether a patient is seeing a provider in their office or via telehealth means. We would request the Committees see fit to pass this measure with our suggested amendment.

Thank you for the opportunity to provide testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "JD".

Jennifer Diesman
Vice President
Government Relations

Hawaii Medical Service Association

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March 27, 2010

Committee on Consumer Protection & Commerce
Representative Robert Herkes, Chair
Representative Glenn Wakai, Vice Chair

Committee on Judiciary
Representative Jon Riki Karamatsu, Chair
Representative Ken Ito, Vice Chair

Hearing:

2:00 P.M. Monday, March 29, 2010
Hawaii State Capitol, Room 325

RE: SB2491, SD2, HD1 - Relating to Telemedicine

Testimony in Support

Chairs Herkes and Karamatsu, and members of the joint Committees. Thank you for the opportunity to offer testimony in support of SB2491, SD2, HD1 which provides for telemedicine to be included in the practice of medicine. It also amends liability insurance provisions to require telehealth coverage under medical malpractice insurance.

As the Committees are aware, the American Cancer Society Hawaii Pacific is a community-based, voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer and effectively treating cancer through the use of various treatment modalities including surgery, radiation, and chemotherapy. We also strongly advocate for improved patient care access which minimizes the disruption of treatment for patients, their family, and caregivers. This is a particularly critical concern to our neighbor island cancer patients.

We believe that telemedicine should become another alternative for patients to interact with their treating physician or physicians especially in cases in which individuals are undergoing active chemotherapy. Telemedicine will reduce the burden many patients experience traveling from the neighbor islands to Oahu.

In closing, the Society appreciates the benefits of telemedicine and sees this as a viable tool that patients can use to interface with their physician without having to travel great distances. We would urge the Committees to pass SB2491, SD2, HD1. Thank you for the opportunity to offer this testimony here today.

Respectfully,

A handwritten signature in black ink, appearing to read "George S. Massengale".

George S. Massengale, J.D.
Director of Government Relations



HAWAII MEDICAL ASSOCIATION

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Monday, March 29, 2010, 2:00 p.m., Conference Room 325

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

From: Hawaii Medical Association
Gary A. Okamoto, MD, Legislative Co-Chair
Linda Rasmussen, MD, Legislative Co-Chair
April Donahue, Executive Director
Lauren Zirbel, Government Affairs
Dick Botti, Government Affairs

Re: SB2491 RELATING TO TELEMEDICINE

Chairs & Committee Members:

Hawaii Medical Association recommends that the committee defer this legislation. While we appreciate the amendments recently made in the House Health Committee, it would be prudent to postpone this legislation given the current variability in standards of care for telemedicine, and the unknown effect telemedicine coverage would have on malpractice premium rates. It is premature at this time to pass SB2491, until extensive research on issues with malpractice coverage and further development of standards of care have been completed.

Should the committee feel it necessary to pass some form of SB2491, HMA strongly urges retaining the Health Committee amendments, and making an additional change. It is critical, in order to protect patient access to care, that the legislation make it optional to cover telemedicine, not mandatory. We suggest changing the following existing language "8431:l-209 General casualty insurance defined.(13):

(13) ... provided that liability insurance covering the professional services of a physician or surgeon shall include coverage for claims or losses relating to the practice of telemedicine meeting the requirements of section 453-1.3;

to the following language:

(13) ... provided that liability insurance covering the professional services of a physician or surgeon may include coverage for claims or losses relating to the practice of telemedicine meeting the requirements of section 453-1.3;

Mandating coverage for a relatively new type of care before a clear standard has been developed would hinder malpractice carriers in Hawaii. It could also make it difficult for physicians to afford coverage, especially those who are already struggling with low reimbursements and high overhead, which would further exacerbate Hawaii's physician shortages.

Thank you for your consideration and the opportunity to provide this testimony.

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Hal Dasinger
Director
Government Relations Services

Monday, March 29, 2010, 2:00 p.m., Conference Room 325

To: COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Rep. Robert N. Herkes, Chair
Rep. Glenn Wakai, Vice Chair

COMMITTEE ON JUDICIARY
Rep. Jon Riki Karamatsu, Chair
Rep. Ken Ito, Vice Chair

Re: SB 2491 RELATING TO TELEMEDICINE

Chairs & Committee Members:

The Doctors Company urges you to postpone action on Senate Bill 2491, or, if you decide to pass the bill out of your committee, we ask that you retain the recent amendments making coverage permissive rather than mandatory.

Expanding the use of telemedicine may prove to be important in increasing access to health care in Hawai'i. However, the bill does not do enough to ensure high-quality health care or protect patient safety. The bill encompasses both telemedicine as practiced by some providers—for example, in-person evaluations by medical personnel followed by specialist consultation via electronic media—as well as providing prescriptions over the Internet without in-person contact with the patient. I appreciate that Hawai'i Revised Statutes § 453-1.3 requires the establishment of a physician-patient relationship, but considering that the bill deals with providing insurance for the risk presented by telemedicine, § 453-1.3 encompasses a wide spectrum of conduct.

The Doctors Company already covers responsible telemedicine as practiced by our insureds in Hawai'i, with appropriate safeguards worked out between our insureds, underwriters, and patient safety experts. A mandate to cover all telemedicine is unnecessary and may have unintended consequences. I hope you will consider holding the bill in your committee, or at least maintaining the amendments made in the Committee on Health.

The Doctors Company's opposition to this bill has been tempered by recent amendments to SECTION 3, amending the definition of medical malpractice to read "may include coverage," and SECTION 5, amending the definition of the practice of medicine so that it "may include" telemedicine.

We remain concerned that SECTION 2 of the bill amends the definition of general casualty insurance to read that medical malpractice insurance "shall include coverage" for telemedicine. This section ought to be changed to "may include coverage" to match the rest of the bill.

Thank you for your consideration of this testimony.

Sincerely,

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