

SB 2494



LINDA LINGLE
GOVERNOR

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RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE
AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Tuesday, February 23, 2010
10:00 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 2494, SD1 – RELATING TO INSURANCE.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is J.P. Schmidt, Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department opposes this bill which requires any insurer issuing a prescription drug policy to conform the benefits to the coverage offered under the insured's previous health plan.

The long term effect of this bill will be to require a uniform benefits package for prescription drugs in Hawaii. Uniformity in coverage may not be a good thing in that it reduces choices for consumers. In addition, even if uniform coverage were a good goal, the transition period in which an insurer will have to conform to various non-conforming policies issued by different insurers could be rocky, particularly since a given insurer may have policies under various drug regimes. It could also complicate premium rating for prescription drugs, particularly if it results in segmentation of the risk pool.

It would also be prudent to research the question of whether this amendment is a de facto amendment of the Prepaid Health Care Act that would jeopardize the Act's exemption from ERISA.

We thank this Committee for the opportunity to present testimony on this matter and ask that this bill be held.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 23, 2010

MEMORANDUM

TO: Honorable Rosalyn H. Baker, Chair
Senate Committee on Commerce & Consumer Protection

FROM: Lillian B. Koller, Director

SUBJECT: **S.B. 2494, S.D. 1 – RELATING TO INSURANCE**

Hearing: Tuesday, February 23, 2010, 10:00 A.M.
Conference Room 229, State Capitol

PURPOSE: The purpose of this bill is to require health insurers and like entities to offer at least the same drug coverage to the insured that the insured had under the insured's previous policy with a different insurer or like entity.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) opposes this bill because of its impact on increasing health care expenditures and requiring a new appropriation at a time the State faces a substantial budget deficit. Additionally, for some of our programs, implementation of the bill's provisions would be subject to Federal approval.

Prescription drugs are the fastest growing healthcare expenditure. Formularies are a widely used approach to control those expenditures. A formulary works to control costs by increasing use of certain preferred medications that have a lower cost and/or

higher rebate. Requiring a health plan to cover medications not on its formulary will increase that health plan's costs.

Drug coverage, not defined in the bill, might extend beyond a formulary and include criteria for prior-authorization and step therapy, for example. A health plan's being required to know and provide potentially numerous other health plans' criteria will add tremendous complexity and cost.

In the private sector, these increased health plan expenditures would be expected to be passed on through increased premiums, further taxing businesses trying to survive the current economic crisis. In the public sector, DHS would require a substantial new appropriation which is unrealistic given the State's revenue shortfall.

Because prescription drug coverage is included as a benefit in our QUEST and QUEST Expanded Access programs, this expansion of drug coverage would have to be done by each health plan contracted with DHS. Having the drug coverage expansion be excluded from the health plans could be done, but only if 100% State funded. Otherwise, the risk of duplicate billing of the federal government would prevent federal approval. And if State-only funded, it would be very difficult to ensure that each claim was for a medication not covered by the individual's new DHS contracted health plan.

Other DHS programs, namely QUEST-ACE and QUEST-Net, have a limited drug benefit defined in the 1115 waiver approved by the Federal government. This bill would substantially expand that benefit, at yet another substantial additional cost, and would require an 1115 waiver amendment approved by the Federal government.

Thank you for this opportunity to provide testimony.



Hawaii Association of Health Plans

February 23, 2010

The Honorable Rosalyn Baker, Chair
The Honorable David Ige, Vice Chair
Senate Committee on Commerce and Consumer Protection

Re: SB 2494 SD1– Relating to Insurance

Dear Chair Baker, Vice Chair Ige and Members of the Committee:

My name is Howard Lee and I am President of the Hawaii Association of Health Plans (“HAHP”). HAHP is a non-profit organization consisting of seven (7) member organizations:

AlohaCare
Hawaii Medical Assurance Association
HMSA
Hawaii-Western Management Group, Inc.

MDX Hawai‘i
University Health Alliance
UnitedHealthcare

Our mission is to promote initiatives aimed at improving the overall health of Hawaii. We are also active participants in the legislative process. Before providing any testimony at a Legislative hearing, all HAHP member organizations must be in unanimous agreement of the statement or position.

HAHP appreciates the opportunity to testify in opposition to SB 2494 SD1 which would require health plans allow members to receive prescription drug benefits which are identical to those offered by their previous plan.

This bill would put a tremendous burden on employers and union groups since they will end up with multiple drug plans, different premium rates, and different benefit coverage for their employees. We believe that this level of administrative burden could altogether discourage employers and unions from continuing to provide prescription drug benefits to their employees.

We also feel that it would be nearly impossible for a health plan to determine the benefits offered by the member’s previous plan (which is often not readily available) and to provide a timely premium quote to the group. These delays will make it difficult for health plans to market to employers and to enroll members in a timely fashion. The accounting for the different coverage being offered would also be a tremendous administrative burden, ultimately causing premium rates to increase. For the reasons above we would respectfully request the Committee see fit to hold this measure. Thank you for the opportunity to provide testimony.

Sincerely,



Howard Lee
President

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

February 23, 2010

The Honorable Rosalyn Baker, Chair
The Honorable David Ige, Vice Chair

Senate Committee on Commerce and Consumer Protection

Re: SB 2494 SD1 – Relating to Insurance

Dear Chair Baker, Vice Chair Ige and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2494 SD1 which would require a health plan provide prescription drug coverage to a member which is identical to the prescription drug coverage the member had been offered by their previous health plan. We oppose this measure.

After examining this proposal further, we believe that the language contained in SB 2494 SD1 may constitute an Employee Retirement Income Security Act (ERISA) violation. This is because it contains a portability requirement of the drug benefit of an individual's previous health plan which is then mandated to be covered by "any insurer" issuing a plan with prescription drug benefits that the member may choose. ERISA preempts any state law that relates to an employee benefit plan including "all laws, decisions, rules, regulations, or other State action having the effect of law."

In addition to the potential issues with ERISA, the language contained within SB 2494 SD1 could end up being extremely burdensome for plans to implement, employers to manage and consumers to figure out. Some other concerns we have include:

- There is no timeframe under which a consumer has to make a decision regarding the maintenance of prescription drug benefits from their previous plan. Plans could be left in limbo if consumers do not make their choice in a timely fashion. Also, there is no mechanism for the new plan to obtain all the information necessary from the previous plan
- Administering prescription drug benefits on a member-by-member basis may be impossible to manage
- Plans determine premiums based on a known set of benefits. When members choose their prior plans' prescription drug benefit, which will differ from that being offered by their HMSA plan, rates may not be adequate to cover costs
- Employers will be left to figure out how to manage employees under the same medical plan receiving differing prescription drug benefits. Issues of equity may arise

- Consumers are not adequately versed in their benefits and don't have a full understanding about which prescription drug plan would be best for them. They may make a poor choice and end up with coverage that does not suit their needs

Despite the good intentions of this measure, we believe that it raises more issues than it answers. We respectfully request the Committee see fit to hold SB 2494 SD1.

Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal flourish extending to the right.

Jennifer Diesman
Vice President
Government Relations



The Official Sponsor of Birthdays

February 22, 2010

Committee on Commerce and Consumer Protection
Senator Rosalyn Baker, Chair
Senator David Ige, Vice Chair

Hearing:

10:00 A.M. Tuesday, February 23, 2010
Hawaii State Capitol, Room 229

RE: SB2494, SD1 – Relating to Insurance

Testimony in Strong Support

Chair Baker, Vice Chair Ige, and members of the Committee on Commerce and Consumer Protection. Thank you for the opportunity to testify in strong support of SB2494, SD1, which requires health insurance companies and entities to offer the same drug coverage to an insured that was offered by a previous health insurer.

We have previously testified in strong support of this measure in the Health Committee as well as for its House companion measure HB2461.

One of the primary reasons we strongly endorse this measure is that it would provide continuity of care for prescribed medications should patients change health plans. **This is critical in cases in which an individual is currently undergoing active chemotherapy which, depending upon the type of cancer being treated, requires a cocktail of anticancer drugs that could include both brand name and generic drugs. To change a patient's anticancer drugs, to adhere to the prescription formulary of the new carrier could be life-threatening.**

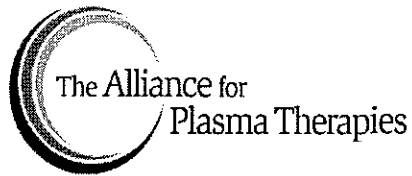
There could also be the unintended consequence of forcing cancer patients to pay full price for medications they require at a time when their financial resources are limited. We would point out that in 2007, 62.1% of the 1.5 million bankruptcy filings were a result of medical bills. Of the 62.1% slightly over three-quarters of them had health insurance, but were bankrupted anyway because there were gaps in their coverage like co-payments, deductibles, out-of-pocket prescription drug cost, and other uncovered services.

We believe that this measure is extremely beneficial for patients undergoing active chemotherapy and will offer assurance that they could expect no changes in their drug regimen. We urge you to pass SB2494, SD1.

Thank you for your consideration.

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

George Massengale, J.D.
Director of Government Relations



1100 New York Avenue, NW Suite 630 Washington, DC 20005 (202) 331-2196

February 21, 2010

The Honorable Rosalyn Baker
Hawaii State Capitol, Room 231
415 South Beretania Street
Honolulu, HI 96813

RE: SB 2494 - SUPPORT

Dear Senator Baker,

The Alliance for Plasma Therapies, a national non-profit organization established to provide a unified, powerful voice of patient organizations and healthcare providers to educate about the diseases that rely on plasma derived therapies and advocate for fair access to plasma therapies for patients who benefit from their lifesaving effects, strongly supports SB 2494. SB 2494 requires health insurers to offer at least the same drug coverage to the insured that the insured had under the insured's previous policy with a different insurer or like entity. In other words, the bill will provide for continuity of drug coverage when a patient either switches health plans or renews their existing plans.

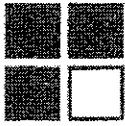
On an annual basis, the Alliance receives approximately 250 insurance cases from patients who have been denied access to their lifesaving therapy intravenous immune globulin therapy (IVIG) throughout the U.S. IVIG is a plasma-derived therapy used to treat patients with autoimmune diseases, cancer, primary immune deficiencies and neuropathies. SB 2494 is very important for the thousands of Hawaiians who suffer from these diseases. Many Hawaiians affected by rare and chronic disorders, when diagnosed and receiving lifesaving therapies such as IVIG are put in danger when they do not receive their therapy on a timely basis. Patients and providers alike expect to be protected by having continuity of medically necessary drugs when they switch from one health plan to another or when they renew plans during open enrollment periods.

The Alliance receives a lot of calls from Hawaii residents informing us that they are not allowed to continue to use their prescribed medications after they switch or re-enroll in their health plans. Oftentimes these treatments are lifesaving from severe and chronic infections for primary immune deficient patients to paralysis for autoimmune and neuropathy patients when relying on therapies such as IVIG. Many patients have been successfully taking these drugs and/or treatments for years and depend on them to function and take care of their families. SB 2494 would allow Hawaiians to continue using medically necessary medications and treatments prescribed prior to enrollment in their plan, whether or not the drug is covered by the plan, until the prescribed therapy is no longer prescribed by the patient's provider.

Please help all patients who suffer from chronic and rare disorders by supporting this patient protection bill that directly strengthens the doctor patient relationship. Should you have any questions please contact me at 888-331-2196.

Regards,

Michelle Vogel
Executive Director



GBS/CIDP Foundation International

Serving patients of GBS, CIDP and Variants with support, education and research

Guillain-Barré Syndrome • Chronic Inflammatory Demyelinating Polyneuropathy

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*Deceased

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The Honorable Rosalyn Baker
Hawaii State Capitol, Room 231
415 South Beretania Street
Honolulu, HI 96813
Email: senbaker@Capitol.hawaii.gov
RE: SB 2494 – SUPPORT

February 20, 2010

Dear Senator Baker,

The Guillain-Barre Syndrome / Chronic Inflammatory Demyelinating Polyneuropathy (GBS/CIDP) Foundation International, which is dedicated to ensuring our patients obtain the necessary resources and tools to access individualized treatment to improve their quality of life, strongly supports SB 2494. SB2494 requires health insurers to offer at least the same drug coverage to the insured that the insured had under their previous policy with a different insurer or like entity. In other words, the bill will provide for continuity/portability of drug coverage when a patient either switches health plans or renews their existing plans.

Guillain-Barré Syndrome (GBS) is a rare inflammation of the nerves, caused by the patient's body producing antibodies against the peripheral nerves. The syndrome affects each patient differently and so the course of the disease differs for each patient. One of the more effective treatments includes infusion of the biological drug intravenous immune globulin (IVIG). How and why one contracts GBS is as yet unknown. The syndrome is typically observed after an infection in the lungs, diarrhea, surgery, vaccination or pregnancy.

CIDP is the chronic form of this debilitating illness. Recovery time from GBS/CIDP, on average, is six to 12 months of intense physical therapy. Thankfully, early diagnosis and treatment allows many patients to live normal lives. CIDP requires prolonged treatment in order for patients to live full productive lives.

Patients and providers alike expect to be protected by having continuity of medically necessary drugs and follow on treatment when they switch from one health plan to another or when they renew plans during open enrollment periods.

SB 2494 would allow Hawaii residents to continue using medically necessary medications and treatments prescribed prior to enrollment in their plan, whether or not the drug is covered by the plan, until the prescribed therapy is no longer prescribed by the patient's provider.

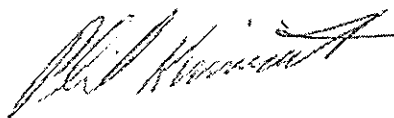
The Holly Building • 104½ Forrest Avenue • Narberth, PA 19072

(610) 667-0131 • 1 (866) 224-3301 (toll free) • Fax: (610) 667-7036 • www.gbs-cidp.org • e-mail: info@gbs-cidp.org

The official registration and financial information of GBSFI may be obtained from the PA Dept. of State by calling toll free, within PA, 1-800-732-0999. Registration does not imply endorsement.

Please help GBS/CIDP patients and others who suffer from chronic illnesses by supporting this patient protection bill that directly strengthens the doctor patient relationship. Should you have any questions please contact me at 808-254-4534. Please visit us at www.gbs-cidp.org

Aloha and mahalo nui loa !

A handwritten signature in black ink, appearing to read "Phil Kinnicutt". The signature is fluid and cursive, with a large initial "P" and "K".

Phil Kinnicutt
341 Iliaina Street
Kailua, Oahu, HI 96734-1807
808-254-4534 LEAFISHING@AOL.COM

cc: Senate Commerce and Consumer Protection Committee

February 20, 2010

The Honorable Rosalyn Baker
Hawaii State Capitol, Room 231
415 South Beretania Street
Honolulu, HI 96813
Email: senbaker@Capitol.hawaii.gov

RE: SB 2494 - SUPPORT

Dear Senator Baker,

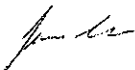
The Neuropathy Action Foundation (NAF), which is dedicated to ensuring neuropathy patients obtain the necessary resources and tools to access individualized treatment to improve their quality of life, strongly supports SB 2494. SB 2494 requires health insurers to offer at least the same drug coverage to the insured that the insured had under the insured's previous policy with a different insurer or like entity. In other words, the bill will provide for continuity of drug coverage when a patient either switches health plans or renews their existing plans.

SB 2494 is very important for the thousands of Hawaiians who suffer from neuropathy. Many affected by neuropathic pain are oftentimes high users of the health care system as they search for relief from persistent pain. However, once a medication or treatment that actually works is discovered many patients are able to live normal lives. Patients and providers alike expect to be protected by having continuity of medically necessary drugs when they switch from one health plan to another or when they renew plans during open enrollment periods.

The NAF receives a lot of calls from Hawaii residents informing us that they are not allowed to continue to use their prescribed medications after they switch or re-enroll in their health plans. Oftentimes these treatments are limb saving like plasma derived IVIG. Many patients have been successfully taking these drugs and/or treatments for years and depend on them to function and take care of their families. SB 2494 would allow Hawaiians to continue using medically necessary medications and treatments prescribed prior to enrollment in their plan, whether or not the drug is covered by the plan, until the prescribed therapy is no longer prescribed by the patient's provider.

Please help neuropathy patients and others who suffer from chronic illnesses by supporting this patient protection bill that directly strengthens the doctor patient relationship. Should you have any questions please contact me at 877-512-7262.

Regards,



James D. Lee
Treasurer and Public Affairs Chair

cc: Senate Commerce and Consumer Protection Committee

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™



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February 22, 2010

02-23-10 10:00AM in conference room 229.

To: Commerce and Consumer Protection Committee
Senator Roz Baker, Chair

Re: **Support- SB2494**
Prescription drug coverage; medically necessary; continuation of coverage

Dear Senator Baker:

The American Academy of Pediatrics, Hawaii Chapter is in **SUPPORT** of SB2494.

As pediatricians we work hard on getting our children with chronic diseases to accept and use medication to optimize their health. We frequently have issues with needing syrups or chewable tablets as many children are not able to swallow whole tablets or capsules. In addition we frequently must manipulate the syrups in order to find a brand that is palatable for the individual.

The health of the child is potentially compromised when medications need to be changed solely to accommodate changes in health plan and drug coverage.

For these reasons we are in full support of SB2494.

Respectfully,

A handwritten signature in black ink that reads "Galen YK Chock, MD".

Galen YK Chock, MD
President, The American Academy of Pediatrics, Hawaii Chapter



HAWAII MEDICAL ASSOCIATION

1380 S. Beretania Street, Suite 200, Honolulu, Hawaii 96814
Phone (808) 536-7702 Fax (808) 528-2376 www.hmaonline.net

Tuesday, February 23, 2010, 10:00 a.m., Conference Room 229

To: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, 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: SB2494 RELATING TO INSURANCE

Chairs & Committee Members:

Hawaii Medical Association appreciates the intent of SB2494 as a measure to protect patients, particularly those with chronic conditions. Currently, however, the language of the measure is too broad and we recommend amendments.

It may be more appropriate to state that in no case shall a continuously enrolled subscriber of a specific carrier be required by the carrier to change benefits, services or copayments. Each carrier shall only be permitted to require newly enrolled members to be subject to changes in coverage and rates for any given enrollment period.

Ideally, a health insurer or like entity should continue to offer the same prescription drug benefits to insured individuals who continue to be enrolled in a plan with that same health insurer, unless the insured should personally elect to change plans.

Thank you for the opportunity to testify.

OFFICERS

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