

LATE TESTIMONY



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
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KEALI' I.S. LOPEZ
DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Tuesday, March 15, 2011
11:20 a.m.

TESTIMONY ON SENATE BILL NO. 1274, S.D. 2 – RELATING TO HEALTH INSURANCE.

TO THE HONORABLE RYAN I. YAMANE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department supports this Administration bill which replaces the existing external review process for deciding health insurance coverage disputes with a new process based on a review by an independent review organization (“IRO”) that conforms to the requirements of the federal Patient Protection and Affordable Care Act (“PPACA”). An IRO is a private organization that contracts with a medical doctor to give a medical opinion on a health insurance coverage dispute. Although we support this bill, we have some concerns about the S.D. 2 that we wish to bring to the attention of the Committee. Therefore, our testimony will be in two parts.

A. Generally, we support the intent of this bill.

Hawaii already has an existing external review process located at Hawaii Revised Statutes section 432E-6 which involves review by a 3 member panel, but the

process has suffered some serious setbacks. In 2004, the Hawaii Supreme Court ruled that this process was pre-empted by ERISA which means that those members who get their health insurance through their private employers could no longer use the external review process. In 2008, the Department of the Attorney General ruled that the EUTF was also exempted from the external review process. Today, the external review process only handles individual, non-group members and Medicaid members. Also, we should point out that because Medicaid offers an administrative hearing at the Department Human Services we are offering a duplicative process to Medicaid members. Today, we get about one request per month for an external review, if that. As a result, there is almost nothing left of the original external review process and the process therefore does not help very many of Hawaii's citizens.

The PPACA regulation on external reviews (see Federal Register / Vol. 75, no. 141, July 23, 2010 / Rules and Regulations) requires that by July 1, 2011, Hawaii come into compliance with federal requirements and contemplates an IRO process. The regulation also cites to the National Association of Insurance Commissioner's model act on external reviews using an IRO. This is the model we used in developing HB 1047. In order to meet the federal requirements, and restore a workable process to Hawaii's people, we believe it is advisable to enact SB 1274. Note that we have carved out the EUTF and Medicaid from the proposed IRO program because they both have their own existing administrative appeals process. If we do not create an external review process that is compliant with the federal law, then as of July 1, 2011, the federal HHS will take over the external review process for Hawaii. Although we do not have a definitive decision from HHS, we believe that our current external review process is noncompliant with the federal law in some respects.

The use of an IRO for external reviews is well established. Medicare uses an IRO process as do many other states.

We believe that an IRO can handle a review of Hawaii's medical necessity statute (see HRS section 432E-1.4), which is only applicable in selected cases where there is no specific coverage exclusion. Currently, medical directors of health plans must do a medical necessity review.

We should also note that the existing external review process has been problematic because it is difficult to get practicing physicians to take the time out to volunteer for service on an external review panel.

B. We have some concerns about the S.D. 2

On page 3, line 12, the word "commission" should be "commissioner".

Proposed section 432E–F, pertaining to external review of experimental or investigational treatment adverse determinations, deleted requirements for: (1) assignment of the external review to clinical reviewers (instead, requiring a single reviewer); and (2) assignment of an additional reviewer if there is a split decision. The Department prefers the original process set forth in the NAIC model law, which required as least two reviewers for external reviews of experimental or investigational treatment.

The proviso in proposed section 432E–L on page 48, lines 21 to 22, and page 49, lines 1 to 4, subjects the Insurance Division to the procurement process. This contradicts the previous section which properly exempts the external review process from procurement. The provision creates unnecessary confusion and ambiguity in the law and should be removed. Because the health plans will be paying for the IRO's no State moneys are involved.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 15, 2011

The Honorable Ryan Yamane, Chair
The Honorable Dee Morikawa, Vice Chair
House Committee on Health

Re: SB 1274 SD2 – Relating to Health Insurance

Dear Chair Yamane, Vice Chair Morikawa and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 1274 SD2 which would provide uniform standards for external review procedures based on a National Association of Insurance Commissioners (NAIC) Act in order to comply with Affordable Care Act (ACA) requirements. HMSA supports this measure.

The ACA requires that plans in all markets comply with state external review requirements that, at minimum, include the protections in the NAIC's External Review Model Act or for states without an external review process that meets these requirements and for self-funded plans, implement an external review process that meets minimum standards established by HHS through guidance. We appreciate the Insurance Commissioner's intent to ensure that existing state law pertaining to external appeals will be compliant with this ACA requirement.

We will continue to work closely with the Insurance Commissioner to address any outstanding issues. Thank you for the opportunity to provide comments on SB 1274 SD2.

Sincerely,

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

Jennifer Diesman
Vice President
Government Relations



LATE TESTIMONY

94-450 Mokuola Street, Suite 106, Waipahu, HI 96767
808.675.7300 | www.ohanahealthplan.com

Tuesday, March 15, 2011

To: The Honorable Ryan I. Yamane
Chair, House Committee on Health

From: 'Ohana Health Plan

Re: Senate Bill 1274, Senate Draft 2-Relating to Health Insurance

Hearing: Tuesday, March 15, 2011, 11:20 a.m.
Hawai'i State Capitol, Room 329

Since February 2009, 'Ohana Health Plan has provided services under the Hawai'i QUEST Expanded Access (QExA) program. 'Ohana is managed by a local team of experienced care professionals who embrace cultural diversity, advocate preventative care and facilitate communications between members and providers. Our philosophy is to place members and their families at the center of the health care continuum.

'Ohana Health Plan is offered by WellCare Health Insurance of Arizona, Inc. WellCare provides managed care services exclusively for government-sponsored health care programs serving approximately 2.3 million Medicaid and Medicare members nationwide. 'Ohana has utilized WellCare's national experience to develop an 'Ohana care model that addresses local members' healthcare and health coordination needs.

We appreciate this opportunity to submit testimony in strong support of Senate Bill 1274, Senate Draft 2-Relating to Health Insurance, as it necessary in order to help the State of Hawai'i conform to requirements under the Patient Protection and Affordable Care Act of 2010 (ACA).

This bill seeks to update Hawai'i's insurance laws to conform to the requirements relating to external medical reviews as established under the ACA, also known as National Healthcare Reform, and is based on the National Association of Insurance Commissioners (NAIC)'s Uniform Health Carrier External Review Model Act. Passage of this bill will provide a uniform and consistent external review procedure and will make the insurance statutes governing the external review of adverse determinations by health plans consistent and available to enrollees, while reducing confusion and inefficiencies in implementing Hawaii law.

The external review process, through an independent review organization (IRO) is very clearly laid out in the bill and ensures the protection of rights for plan enrollees, while balancing the necessity of proper and timely medical treatment. According to this bill, the IRO shall be comprised of physicians or other health care professionals who meet the minimum qualifications described in 432E- C and, through clinical experience in the past three years, are experts in the treatment of the enrollee's condition and knowledgeable about the recommended or requested health care service or treatment.

Additionally, neither the enrollee, the enrollee's authorized representative, if applicable, nor the health carrier shall choose or control the choice of the physicians or other health care professionals to be selected to conduct the external review and in reaching an opinion, clinical reviewers are not bound by any decisions or conclusions reached during the health carrier's utilization review process or internal appeals process, thus preserving the integrity of the medical decisions being made in the best interest of the patient.

To ensure timely accessibility and transparency the IRO is required, under this bill to maintain a toll-free telephone service to receive information on a twenty-four-hour-day, seven-day-a-week basis related to external reviews that is capable of accepting, recording or providing appropriate instruction to incoming telephone callers during other than normal business hours, and must agree to maintain and provide to the commissioner the information required by this part.

To further protect impartiality, under this proposal an IRO may also not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with a health benefit plan, a national, state or local trade association of health benefit plans, or a national, state or local trade association of health care providers, nor have a material professional, familial or financial conflict of interest with any of the health carriers that is the subject of the external review, the covered person whose treatment is the subject of the external review or the covered person's authorized representative, any officer, director, or management employee of the health carrier that is the subject of the external review, the health care provider, the health care provider's medical group, or independent practice association recommending the health care service or treatment that is the subject of the external review, the facility at which the recommended health care service or treatment would be provided, or the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review.

The process and procedures laid out under this bill are consistent with the model utilized by the NAIC on a national level, and strike the necessary balance to best ensure patient protection and timely access to medical treatment and supplies. More importantly, passage of this measure is necessary in order to conform Hawai'i's insurance laws to provisions of ACA.

We respectfully request that you pass Senate Bill 1274, Senate Draft 2-Relating to Health Insurance. Mahalo for this opportunity to provide testimony in support of this measure.

Tomas W. Watanabe MD

Sincerely,

- 1 Please do not repeal HRS 432F-6
 - 2 Please do not repeal patient right to a local hearing for medical care
 - 3 Please do not repeal patient's right to have private attorney and report present their care for health care.
- I am deeply concerned that Senate bill 1274 will seriously impact members of our community, whose complex medical needs may not be met. I therefore ask your cooperation & assistance.

Re: Senate bill 1274

TO: Honorable Chair of House committee on Health
 Mr. Ryan Yessane
 FROM: Tomas W. Watanabe MD

LATE TESTIMONY

Tomas W. Watanabe MD
 1150 S. King St #908
 Honolulu, HI 96814

3.14.11

LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From: Chad Kuhauka

Contact (address, phone, or email):

wkuhauka@yahoo.com

Hearing:

I **strongly oppose** the Abercrombie Administration Bill to REPEAL H.R.S. § 432E-6. That law was passed to protect Hawaii consumers against insurance companies. Hawaii has not had the terrible stories about people being bankrupted by medical expenses or dying because their health plan refused to cover life-saving medical treatment they could not afford, because we have a powerful law that holds them accountable.

I know the health insurance companies are lobbying the Abercrombie Administration and the Legislature to repeal our law. Naturally wealthy insurance companies don't want me to continue having the right to have a local hearing before a live, three-person panel, and an attorney and experts to prepare and represent my case, at no cost to me, so that I don't have to face the health plan's lawyers alone. I deserve a level playing field if my health plan denies coverage for medical care I need, or refuses to pay for medical care I have already had. Don't take that right away from me. DO NOT REPEAL our very effective external review law.

Thank you for taking care of your constituents instead of wealthy insurance companies.

LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From : KALE KUHAULUA
Contact (address, phone, or email): wkuhaulua@yahoo.com

Hearing:

I **strongly oppose** the Abercrombie Administration's attempt to REPEAL my right to have a hearing (*external review by a live, local, three-person panel*) and a level playing field (*representation by an attorney with no cost to me*) if my health plan denies coverage for medical care I need or refuses to pay for medical care I have already had.

I have heard the stories about people being bankrupted by medical expenses when their health plan refused to pay, and about people dying because their health plan refused to cover life-saving medical treatment they could not afford. I have noticed we have had few such stories in Hawaii, and I believe that is because our law has been very effective in deterring that type of behavior. I want to keep it that way! DO NOT REPEAL our best-in-the-nation external review law. DO NOT REPEAL my right to have an attorney and experts prepare my case and represent me, at no cost to me, against the health plan's team of high-priced lawyers.

Thank you for SUPPORTING HAWAII CONSUMERS instead of wealthy insurance companies.

LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name: Ed Stumpf
Contact info (address, phone, or email): kavaibb@aloha.net

Hearing:

I **strongly oppose** the Bill Governor Abercrombie's Administration sent to the Legislature to REPEAL H.R.S. § 432E-6. I understand that you are considering replacing our law with the minimum protections the health care reform act requires every state to have. Only the *minimums*.

You don't hear reports of people in Hawaii being bankrupted by medical expenses or dying because their health plan refused to cover life-saving medical treatment they could not afford, like you do on the mainland. That is because H.R.S. § 432E-6 is BETTER than what everyone else has. I DO NOT CONSIDER IT MY PATRIOTIC DUTY TO **GIVE UP SOME OF MY RIGHTS TO MAKE OUR LAW EQUAL TO THE FEDERAL MINIMUMS**.

I want you to make sure that if my health plan ever denies me a medical treatment my doctor prescribes, I will have the same rights patients in Hawaii have had for the past ten years to appeal and have a local hearing where I am represented by lawyers and experts at no cost to me.

If you repeal H.R.S. § 432E-6, you will be going against the will of the people. I doubt you could find a Hawaii consumer anywhere who would disagree with me. No one in their right mind would want to give up those rights because the day may come when their insurance refuses to cover a life-saving or expensive medical treatment.

DO NOT REPEAL H.R.S. § 432E-6. If the Abercrombie Administration officials do not want to enforce H.R.S. § 432E-6, don't confirm their appointments. Find someone who will.

Thank you for taking care of your constituents instead of wealthy insurance companies.

LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name: [Handwritten Name]

Contact info (address, phone, or email):

[Handwritten Contact Information]

Hearing:

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From : Daphane Panui
Contact (address, phone, or email): 4678 Iwaena Rd.
Kapaa HI 96746

Hearing:

I **strongly oppose** the Abercrombie Administration's attempt to REPEAL my right to have a hearing (*external review by a live, local, three-person panel*) and a level playing field (*representation by an attorney with no cost to me*) if my health plan denies coverage for medical care I need or refuses to pay for medical care I have already had.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From: Henry Panui Jr.
Contact (address, phone, or email):

4678 Iwaena Rd.
Kapaa, HI 96746

Hearing:

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From: *Alice Panui*

Contact (address, phone, or email): *4678 Iwaina Rd.
Kapaa, HI 96746*

Hearing:

I **strongly oppose** the Abercrombie Administration Bill to REPEAL H.R.S. § 432E-6. That law was passed to protect Hawaii consumers against insurance companies. Hawaii has not had the terrible stories about people being bankrupted by medical expenses or dying because their health plan refused to cover life-saving medical treatment they could not afford, because we have a powerful law that holds them accountable.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name: *Jui WignO*
Contact info (address, phone, or email): *207-505-0512*

Hearing:

I **strongly oppose** the Abercrombie Administration's attempt to REPEAL my right to have a hearing (*external review by a live, local, three-person panel*) and a level playing field (*representation by an attorney with no cost to me*) if my health plan denies coverage for medical care I need or refuses to pay for medical care I have already had.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name: *Greg Wight*
Contact info (address, phone, or email): *808-346-5384*

Hearing:

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name: *Dana Nolan*

Contact info (address, phone, or email): *0442-rose@hotmail.com*

Hearing:

I **strongly oppose** the Abercrombie Administration's attempt to REPEAL my right to have a hearing (*external review by a live, local, three-person panel*) and a level playing field (*representation by an attorney with no cost to me*) if my health plan denies coverage for medical care I need or refuses to pay for medical care I have already had.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From : *Scott Vanderhoof, Scott Vanderhoof*
Contact (address, phone, or email): *svanderhoof@mac.com*

Hearing:

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TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From : Sarah Kuhaulua

Contact (address, phone, or email):

PO Box 895

Hearing:

Anahola. H 94703

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TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From: Kateihoku Kuhaulua
Contact (address, phone, or email): Po Box 395
Anahola, HI 96703

Hearing:

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From: George Keala Jr.

Contact (address, phone, or email):

PO Box 243
Anahola, HI 96703

Hearing:

I **strongly oppose** the Abercrombie Administration Bill to REPEAL H.R.S. § 432E-6. That law was passed to protect Hawaii consumers against insurance companies. Hawaii has not had the terrible stories about people being bankrupted by medical expenses or dying because their health plan refused to cover life-saving medical treatment they could not afford, because we have a powerful law that holds them accountable.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From : *Alberta Heath*

Contact (address, phone, or email): *PO Box 243
Anahola, HI 96703*

Hearing:

I **strongly oppose** the Abercrombie Administration's attempt to REPEAL my right to have a hearing (*external review by a live, local, three-person panel*) and a level playing field (*representation by an attorney with no cost to me*) if my health plan denies coverage for medical care I need or refuses to pay for medical care I have already had.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

From: *Piilani Keala*
Contact (address, phone, or email):

*PO Box 243
Anahola, HI 96703*

Hearing:

I **strongly oppose** the Bill Governor Abercrombie's Administration sent to the Legislature to REPEAL H.R.S. § 432E-6. I understand that you are considering replacing our law with the minimum protections the health care reform act requires every state to have. Only the *minimums*.

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Thank you for taking care of your constituents instead of wealthy insurance companies.

LIVE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name:

Contact info (address, phone, or email):

Hearing:

I **strongly oppose** the Abercrombie Administration Bill to REPEAL H.R.S. § 432E-6. That law was passed to protect Hawaii consumers against insurance companies. Hawaii has not had the terrible stories about people being bankrupted by medical expenses or dying because their health plan refused to cover life-saving medical treatment they could not afford, because we have a powerful law that holds them accountable.

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Thank you for taking care of your constituents instead of wealthy insurance companies.

Marion Bullington
Po Box 1160, Kilauea, HI 96754

LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name:

DONALD M. PARRISH

Contact info (address, phone, or email):

182 KINGSLE - PARRISH RD
FREDERICKSBURG, VA. 23104

Hearing:

I **strongly oppose** the Abercrombie Administration's attempt to REPEAL my right to have a hearing (*external review by a live, local, three-person panel*) and a level playing field (*representation by an attorney with no cost to me*) if my health plan denies coverage for medical care I need or refuses to pay for medical care I have already had.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name: Ann Powers
 Contact info (address, phone, or email):

PO Box 1709 Hanalei HI 96714
(808) 635-3038

Hearing: _____

I strongly oppose the Bill Governor Abercrombie's Administration sent to the Legislature to REPEAL H.R.S. § 432E-6. I understand that you are considering replacing our law with the minimum protections the health care reform act requires every state to have. Only the *minimums*.

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If you repeal H.R.S. § 432E-6, you will be going against the will of the people. I doubt you could find a Hawaii consumer anywhere who would disagree with me. No one in their right mind would want to give up those rights because the day may come when their insurance refuses to cover a life-saving or expensive medical treatment.

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Ann M. Powers

LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name:

Contact info (address, phone, or email):

Hearing:

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Jinda Lester

Po Box 223133

Princeville HI 96722

LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name:

Contact info (address, phone, or email):

Hearing:

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Thank you for taking care of your constituents instead of wealthy insurance companies.

Erin Wilton

5335

30820 A Kapalca Rd
Princetonville, HI

96722

LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name:

Valerie Simmons

Contact info (address, phone, or email):

3867 Pinakelua Rd. Prineville.

Hearing:

PO Box 383 Hanalei HI 96714

Dakajan@Hawaiian.net.

I strongly oppose the Abercrombie Administration's attempt to REPEAL my right to have a hearing (*external review by a live, local, three-person panel*) and a level playing field (*representation by an attorney with no cost to me*) if my health plan denies coverage for medical care I need or refuses to pay for medical care I have already had.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name: TARA FANKHAUSER

Contact info (address, phone, or email):

POB. 15F3

Hearing:

Hanalei HI 96714

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name: Catherine L.C Burns
Contact info (address, phone, or email):
5116 Iolani Pl.
Hearing: Princeville, HI 96722

I **strongly oppose** the Abercrombie Administration's attempt to REPEAL my right to have a hearing (*external review by a live, local, three-person panel*) and a level playing field (*representation by an attorney with no cost to me*) if my health plan denies coverage for medical care I need or refuses to pay for medical care I have already had.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name:

Contact info (address, phone, or email):

Linda Pittman
PO Box 350

Hearing: Kalaheo HI 96754

I **strongly oppose** the Abercrombie Administration Bill to REPEAL H.R.S. § 432E-6. That law was passed to protect Hawaii consumers against insurance companies. Hawaii has not had the terrible stories about people being bankrupted by medical expenses or dying because their health plan refused to cover life-saving medical treatment they could not afford, because we have a powerful law that holds them accountable.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name:

Contact info (address, phone, or email):

J & Chenoweth
5122 Kapiolani Ave
Hearing: Princesville, HI 96722

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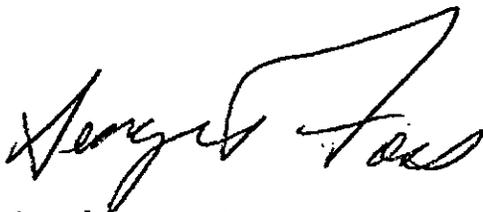
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TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name:

Contact info (address, phone, or email):

Hearing:



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LATE TESTIMONY**TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6**Name: *J. E. Spurrleder*Contact info (address, phone, or email): *P.O. Box 1411, Hanalei HI 96714*Hearing: *J. E. Spurrleder*

I **strongly oppose** the Abercrombie Administration Bill to REPEAL H.R.S. § 432E-6. That law was passed to protect Hawaii consumers against insurance companies. Hawaii has not had the terrible stories about people being bankrupted by medical expenses or dying because their health plan refused to cover life-saving medical treatment they could not afford, because we have a powerful law that holds them accountable.

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LATE TESTIMONY

TESTIMONY IN OPPOSITION TO REPEALING H.R.S. § 432E-6

Name:

Contact info (address, phone, or email):

Judith Grant

PO Box 1192 Hanalei HI 96714

Hearing:

I **strongly oppose** the Abercrombie Administration's attempt to REPEAL my right to have a hearing (*external review by a live, local, three-person panel*) and a level playing field (*representation by an attorney with no cost to me*) if my health plan denies coverage for medical care I need or refuses to pay for medical care I have already had.

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Thank you!

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A MESSAGE FOR YOU

NUMBER OF PAGES: (INCLUDING THE COVER PAGE)

2

FAX:

526-6151

FROM:

Dr. W. Yamane

TO:

Mr. Ryan Yamane

Wanda Chao of Kure comm. re Mr. W. Yamane

DATE:

3/14/11

FAX: (808) 597-1201

TEL: (808) 597-1999

HONOLULU, HAWAII 96814

1150 SOUTH KING STREET, SUITE 908

~~MINA-SHIBATA, MD~~

TAMAR HOFFMANN, MD

LATE TESTIMONY



Attorneys at Law • A Law Corporation

LATE TESTIMONY

Testimony of Ellen Godbey Carson on behalf of Kaiser Foundation Health Plan, Inc.

Before the House Committee on Health
The Honorable Ryan Yamane, Chair

March 15, 2011, 11:20 a.m.
Conference Room 329

SB 1274, SD 2 RELATING TO HEALTH INSURANCE

Chairman Yamane and committee members, thank you for this opportunity to provide testimony on behalf of Kaiser on SB 1274 SD2, which creates a new external review law to comply with mandates of the Federal Patient Protection and Affordable Care Act of 2010 ("PPACA").

Ellen Godbey Carson
E-mail:
ECarson@ahfi.com

Kaiser supports the purpose and most terms of this bill but has several requested amendments for compliance and clarity.

First, I would like to address the legal necessity for this bill. PPACA mandates this form of external review. Contrary to some of the testimonies you may have received, Hawai'i cannot continue to use the existing State external review law in HRS § 432E-6 for health insurance benefit disputes. Hawai'i is not exempt from the external review requirements of §1001 of PPACA. Hawai'i must, by July 1, 2011, either have an external review law that meets PPACA requirements, or it will be subjected to a federal external review process over which Hawai'i will have no control. That is why the Insurance Division has sought enactment of a new external review law that will both comply with PPACA and promote uniformity in resolving health benefit disputes.

Second, Kaiser requests the following amendments:

(1) The definition of "medical necessity" in HRS § 432E-1.4 should be added as a matter that the independent review organization and its reviewer should consider and address in their review, to assure the review will still be consistent with this definition in Hawai'i law (in Sections 432E-__D(i); -__E(g); and -__F(q)).

(2) Section 432E-__L has inconsistent statements regarding the applicability of the state procurement law. Its second sentence should be

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Suite 1800
Honolulu, Hawai'i 96813
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Fax: (808) 524-4591

65-1241 Pomakai Place
Suite 2
Kamuela, Hawai'i 96743
Phone: (808) 885-6782
Fax: (808) 885-6011

2200 Main Street
Suite 521
Wailuku, Hawai'i 96793
Phone: (808) 244-1180
Fax: (808) 442-0794

www.ahfi.com

766988v1/3700-100

amended to state that the selection of an independent review organization "shall" be subject to chapter 103D, provided that..." (subject to the stated conditions there).

(3) Amendments to this bill were intended to eliminate the burden and cost of having more than one reviewer per case, but several sections still mention multiple "reviewers" and those should be revised to be singular instead of plural (in Sections 432E-__D(i); -__E(g)), and "each clinical reviewer" should be revised to "the clinical reviewer" (in Sections 432E-__F(r)(2) and -__F(r) at the end).

(4) The effective date of the Act in Section 15 is stated to be July 1, 2050, to be applied retroactively to January 1, 2011; this should be changed to state the Act shall take effect on July 1, 2011, to comply with PPACA's mandate.

(5) The termination clause in Section 15 should be deleted, as it would automatically repeal this Act if the US Supreme Court were to declare unconstitutional the PPACA mandate for the external review procedure. Even if such an unusual event occurs, this Act should not be automatically repealed. The Legislature should instead consider whether the new review procedures provide more fairness, expertise and efficiency than our existing process. Kaiser believes the new IRO review procedure will provide a faster and less burdensome procedure to resolve health benefit disputes, with enhanced national medical expertise, that will better serve the interests of all parties, even if the federal mandate is removed. The new external review procedure also provides a fast and economical external review process for many citizens of Hawai'i who currently do not have that option. In any event, any repeal should only follow serious Legislative consideration and adequate advance notice, as is standard procedure for other laws.

- (6) Other minor clarifications are needed before finalization of this bill:
- the filing fees in §432E-__C(a) should be returned to their original stated amounts (\$25 fee for single filing/\$75 maximum per year limit), which is directly authorized by PPACA;
 - "commission" in 432E-__C(a) should be revised to be "commissioner";
 - Section §432E-__F(r), "shall be a covered benefit" should be revised to say "shall be covered", as the IRO only makes coverage determinations in individual cases, and is not an insurer writing contractual plan benefits.

In summary, we support the purpose of SB 1274 but request these amendments for compliance and clarification purposes. I would be glad to assist the committee in incorporating these amendments into the pending bill.

Thank you for your consideration.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 15, 2011 9:49 AM
To: HLTtestimony
Cc: rmiller@aya.yale.edu
Subject: Testimony for SB1274 on 3/15/2011 11:20:00 AM

Testimony for HLT 3/15/2011 11:20:00 AM SB1274

Conference room: 329
Testifier position: support
Testifier will be present: No
Submitted by: Professor Emer. Richard S. Miller
Organization: Individual
Address:
Phone:
E-mail: rmiller@aya.yale.edu
Submitted on: 3/15/2011

Comments:
Representative Ryan Yamane, Chair,
Representative Dee Morikawa, Vice Chair
COMMITTEE ON HEALTH

and

Members of the Committee:
Delia Au Belatti
Chris Lee
Faye Hanohano
Jo Jordan
John Mizuno
Jessica Wooley
Corinne Ching
Kymberly Marcos Pine

Re: S.B. 1274 SD2

This bill will kill the most important patient protections in Hawaii's Patients' Bill of Rights -- The right to a 3-person external review of health plan denials of benefits to patients, with the possibility of necessary attorney's fees to the losing patient, and probably the important Medical Necessity provisions of the Bill of Rights. PLEASE ASK ANY TESTIFYING ATTORNEY JUST WHO THEY ARE REPRESENTING. THIS IS A SELL OUT TO HMSA AND THE OTHER HAWAII HEALTH PLANS.
PLEASE LEAVE IT TO THE FEDS ADMINISTERING THE NEW HEALTH BILL TO DECIDE WHETHER OUR BILL OF RIGHTS CAN REMAIN INTACT. MAHALO!!

LATE TESTIMONY



<http://www.h-c4h.org>

302 California Ave. #209
Wahiawa, HI 96786
Ph: 622-2655
Fax: 622-5599



<http://www.h-cop.org>

March 14, 2011

Representative Ryan Yamane, Chair,
Representative Dee Morikawa, Vice Chair
COMMITTEE ON HEALTH

and

Members of the Committee:

Delia Au Belatti
Chris Lee
Faye Hanohano
Jo Jordan
John Mizuno
Jessica Wooley
Corinne Ching
Kymberly Marcos Pine

Re: S.B. 1274 SD2

Honorable State Officials:

I would like to thank you for deferring companion HB 1047. We now respectfully ask that you stop passage of SB 1274 SD2 because its passage will seriously jeopardize the health and welfare of every seriously ill person in Hawaii.

SB 1274 SD2 not only fails miserably in many respects to protect consumers and to ensure that health carriers will act reasonably in the future, but the access to an external review before the insurance commissioner that the Bill promises is purely illusory. Passage of S.B. 1274 S.D.2 as it stands today provides a huge boost for health carriers and deals a death blow to seriously ill patients who are denied access to life-saving medical treatments by their health plan.

I am sure you will agree that meaningful protection of healthcare consumers through an external review by the insurance commissioner, be it through a 3-person panel appointed by the commissioner or by an independent review organization (IRO), requires that all denials are in the

public eye and subject to regulatory scrutiny, that the system is fair and not subject to bias or conflict of interest, and that consumers have the resources they need to effectively prepare and argue their case in an external review.

S.B. 1274 S.D.2 accomplishes none of these, and is clearly beyond redemption. At this point, one need look no further than the first few paragraphs of the section on standard external review to realize that this a bill strongly favors health insurance companies and is a death warrant for our seriously ill.

EXCERPT FROM S.B. 1274 S.D.2 (Problems are highlighted and commentary written in italics and bolded.)

§432E-D Standard external review. (a) An enrollee or the enrollee's appointed representative may file a request for an external review with the commissioner within one hundred thirty days of receipt of notice of an adverse action. Within three business days after the receipt of a request for external review pursuant to this section, the commissioner shall send a copy of the request to the health carrier.

(b) Within five business days following the date of receipt of the copy of the external review request from the commissioner pursuant to subsection (a), *the health carrier shall determine whether:*

(1) The individual is or was an enrollee in the health benefit plan at the time the health care service was requested or, in the case of a retrospective review, was an enrollee in the health benefit plan at the time the health care service was provided;

(2) *The health care service that is the subject of the adverse determination or the final adverse determination would be a covered service under the enrollee's health benefit plan but for a determination by the health carrier that the health care service does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness;*

(3) The enrollee has exhausted the health carrier's internal appeals process or the enrollee is not required to exhaust the health carrier's internal appeals process pursuant to section 432E-C(b); and

(4) The enrollee has provided all the information and forms required to process an external review, including a completed release form and disclosure form as required by section 432E-C(a).

(c) Within three business days after a determination of an enrollee's eligibility for external review pursuant to subsection (b), *the health carrier shall notify the commissioner, the enrollee, and the enrollee's appointed representative in writing as to whether the request is complete and whether the enrollee is eligible for external review.*

If the request for external review submitted pursuant to this section is not complete, the health carrier shall inform the commissioner, the enrollee, and the enrollee's appointed representative in writing that the request is incomplete and shall specify the information or materials required to complete the request.

If the enrollee is not eligible for external review pursuant to subsection (b), the health carrier shall inform the commissioner, the enrollee, and the enrollee's appointed representative in writing that the enrollee is not eligible for external review and the reasons for ineligibility.

Notice of ineligibility for external review pursuant to this section shall include a statement informing the enrollee and the enrollee's appointed representative that a health carrier's initial determination that the external review request is ineligible for review may be appealed to the commissioner by submission of a request to the commissioner.

(d) Upon receipt of a request for appeal pursuant to subsection (c), the commissioner shall review the request for external review submitted by the enrollee pursuant to subsection (a), determine whether an enrollee is eligible for external review and, if eligible, shall refer the enrollee to external review. The commissioner's determination of eligibility for external review shall be made in accordance with the terms of the enrollee's health benefit plan and all applicable provisions of this part. If an enrollee is not eligible for external review, the commissioner shall notify the enrollee, the enrollee's appointed representative, and the health carrier within three business days of the reason for ineligibility.

This section of S.B. 1274 S.D.2 is an example of the proverbial fox guarding the hen house. It enables health carriers to regulate themselves with the insurance commissioner's hands tied behind his back.

Under existing 432E-6(a), all denials of care by a health carrier are entitled to external review by the insurance commissioner, contingent only upon obtaining a final denial from the health plan. Furthermore, the commissioner may dismiss a request without a review ONLY if he finds the request to be frivolous or without merit. 432E-6(a)(6).

In the new proposed 432E-D(b) and (c) not all denials are eligible for external review. The health carrier determines whether the denial of care is eligible for external review, and the commissioner must make his eligibility determination according to the health plan's rules. In the likely event that the commissioner determines, under these circumstances, that the denial is not eligible for external review, there is apparently no appeal of the commissioner's determination.

In my professional opinion, this may exclude all disputes regarding insurance contract interpretation, rendering many denials of care by insurers ineligible for external review. Health carriers have historically taken the position that their insurance contracts specifically exclude all care they deem experimental or investigative, even though our medical necessity statute 432E-1.4 has included care that may be experimental or investigative, if the care meets applicable standard of care, or is deemed to be most appropriate for the patient by expert opinion. I am concerned that none of these cases would be subject to an external review under

S.B. 1274 S.D.1. With 432E-6 repealed, there is no requirement that health plans apply 432E-1.4 in making denials of care and I believe there is no right of appeal under Chapter 91. Even if there were a right of appeal, the commissioner's determination would not be overturned because his determination followed the law.

In addition, repeal of 432E-6 would gut a plan's internal appeals process. Determination of medical necessity goes to the very heart of external review. Under existing 432E-6(a)(7)(B), a plan's medical director must properly apply the medical necessity criteria in 432E-1.4 in making the final internal determination, and will be scrutinized in the external review hearing. In the new proposed 432E-D(b)(2), there is no required adherence to 432E-1.4, the health carrier gets to insert its own medical necessity criteria, and then in 432E-D(d), the commissioner adheres to those terms, when deciding whether the enrollee is eligible for external review.

Under these circumstances, I strongly suspect that few denials of care will ever be subjected to external review, thus permitting health carriers to deny care with impunity.

Senators Baker and Green, and members of their committees seem to have relied on Ellen Godbey Carson, Esq. of Alston Hunt Floyd and Ing (AHFI) as their legal advisor in this matter. I was present at the hearing in Conference Room 229 at the State Capitol on February 10, 2011 when Senator Baker asked Ms. Carson to advise her on this matter. AHFI is firmly on the side of health carriers and against seriously ill patients. AHFI has represented almost all health insurance companies in Hawaii on health care matters including defending them against patients in the 432E-6 and 6.5 external appeal hearings held before the insurance commissioner since passage of the Patients' Bill of Rights about 12 years ago. In fact, AHFI represented health carriers in 27 of 32 external review cases, about which I have personal knowledge, brought to completion under 432E-6 and 6.5. 75% of these cases either settled before hearing or the health plan's denial of care was reversed by the commissioner. The health carrier's denial of care was upheld by the 3-person panel in only 8 cases. In one of those cases, the plan later reversed itself and provided, in that case, heart surgery. The circuit court reversed the panel in two of those cases. Thus, in only 5 cases was the patient denied the benefit. In one of those cases, about to be appealed, the hearing officer dissented. Another is presently on appeal to the circuit court. I have also been involved in many cases that were resolved before we even requested an external review. Thus, it is not difficult to see why health carriers and their attorneys may want to change the odds against them, but this also speaks to the fact that, but for the existence of 432E-6 which the legislature now aims to repeal, at least 27 seriously ill patients would have been denied the care they needed.

I believe that Commissioner Ito understands the potential for consumer harm that S.B. 1274 S.D.2 presents. I do understand that our fiscal problems must weigh heavily on our new administration's mind. However, a seriously ill patient's right to medically necessary health care must be protected, and a health carrier's conduct must be properly regulated, and I strongly believe that S.B.1274 S.D.2 won't accomplish that. Furthermore, withholding proper care from seriously ill patients may save insurers money, but the practice actually imposes far greater costs on society, so should not be permitted.

In passing the Bill through their committees, I believe the Senate was also falsely informed that Hawaii is required to replace its external review law. Recently, Rafael del Castillo, Esq. and Emeritus Prof. Richard Miller held a conference call with staff from the DHHS Office of Consumer Information and Insurance Oversight and they confirmed our belief that they have NOT reviewed Hawaii's law and that federal law will supersede state laws only if they are determined by DHHS to be inferior to the 16 federal elements in the regulations. In other words, if our legislature does nothing, the worst that could happen is the federal regulations will supersede our law on July 1, 2011 until our legislature passes legislation that DHHS deems as good as or better than the federal elements. OCIIO staff invited Rafael and Prof. Miller to submit a position paper on our external review law and the federal policy makers will review it and give them a response on the OCIIO's position. Preparation of the paper is presently under way.

It is also my understanding that legislators are being told that too few consumers have access to Hawaii's law because our court held that it was preempted for ERISA plans. The OCIIO staff told Rafael and Prof. Miller that only self-insured plans are exempt, and that has always been the case. Fully-insured plans are mandated to comply with state external review law whether or not they are ERISA benefits. Furthermore, at this time, the 264,000 Medicaid enrollees in managed care have access to the external review. S.B. 1274 S.D. 2 removes them from the consumers who presently have access to external review. In other words, S.B. 1274 S.D. 2 does not increase access to our external review, but instead dramatically reduces the number of consumers who may use the external review.

We urge you to stop passage of SB 1274 SD2 and prevent the train wreck its passage will cause.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Arleen Jouxson-Meyers". The signature is written in a cursive, flowing style.

Arleen Jouxson-Meyers, M.D., J.D., M.P.H.,
President

cc: Honorable Governor Neil Abercrombie

Gordon Ito, Insurance Commissioner,
DEPT. COMMERCE & CONSUMER AFFAIRS