



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

March 12, 2014

TO: The Honorable Della Au Belatti, Chair
House Committee on Health

FROM: Barbara A. Yamashita, Deputy Director

SUBJECT: **S.B. 2031, S.D. 2 - RELATING TO HEALTH**

Hearing: Wednesday, March 12, 2014; 8:30 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of this bill is to require vendors who have been awarded contracts through the Centers for Medicare and Medicaid Services durable medical equipment, prosthetics, orthotics, and supplies bidding program to have a physical presence in Hawaii.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) opposes this bill and defers to the Department of Attorney General on the legal issues of this bill.

The durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) program is a Medicare program; it is not a Medicaid program. It is our understanding that states do not have authority over Medicare contracts and programs. However, the one exception may be through state licensing requirements. Requiring that a Medicare vendor have a physical presence in Hawaii may only be possible through state licensing requirements. The DHS does not license providers, including Medicare DMEPOS providers.

While the DHS is sympathetic to the issues presented by testifiers in previous hearings, this bill as written by inserting the amending language in chapter 346, would require the DHS to

regulate DMEPOS providers. The DHS does not have the authority to regulate businesses nor enforcement powers if a vendor/supplier is conducting business without a physical location here in the State. In addition, the DHS does not have staff resources to ensure that the vendor or supplier awarded a Medicare contract indeed has a physical location in Hawaii.

Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:
S.B. NO. 2031, S.D. 2, RELATING TO HEALTH.

BEFORE THE:
HOUSE COMMITTEE ON HEALTH

LATE

DATE: Wednesday, March 12, 2014 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Heidi M. Rian, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Attorney General opposes this bill because it conflicts with federal law.

This bill would require a physical presence in Hawaii for Medicare suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) who have been awarded supplier contracts with the Centers for Medicare and Medicaid Services by adding a new section to chapter 346, Hawaii Revised Statutes, which pertains to the Department of Human Services. The bill defines "physical presence" as a physical location or administrative office in the State.

The DMEPOS competitive bidding program is mandated by Congress through the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Federal regulation 42 CFR § 424.57 sets forth the standards for DMEPOS suppliers. The regulation requires that a DMEPOS supplier "maintain a physical facility on an appropriate site." 42 CFR § 424.57(c)(7). It does not require a physical presence in every competitive bidding area in which the DMEPOS supplier has been approved. A significant part of the federal program is the National Mail Order program for diabetic testing supplies, which contemplates Medicare beneficiaries accessing suppliers across the country. A physical presence requirement in the State would contravene the intent and purpose of the program.

The bill conflicts with federal law because it imposes on federally approved DMEPOS suppliers the additional requirement of a physical presence in Hawaii. The provision would be preempted by federal law under the Supremacy Clause of the United States Constitution. In addition, section 1856(b)(3) of the MMA broadened the scope of federal preemption of state law governing plans serving Medicare beneficiaries. The only exceptions to this broad preemption

pertain to state laws and regulations regarding licensing and plan solvency. The bill would impermissibly regulate Medicare plans by restricting the ability of federally approved DMEPOS suppliers to supply Hawaii Medicare beneficiaries.

We respectfully recommend that the Committee hold this bill.



S.B. 2031, S.D. 2, Relating to Health
House Committee on Health
March 12, 2013; 8:30 a.m.

Thank you for the opportunity to provide testimony in **support** of SB 2031, SD2 Relating to Health.

Section 302 of the Medicare Modernization Act of 2003 established requirements for a new competitive bidding program for certain durable medical equipment, prosthetics, orthotics, and supplies. Under the program, suppliers compete to become Medicare contract suppliers by submitting bids to furnish certain items in competitive bidding areas, and the Centers for Medicare and Medicaid Services awards contracts to finite number of suppliers meant to meet the supply demand. The majority of the award winners are located 5,000-10,000 miles away. SB 2031, which requires awarded vendors to have a physical presence in Hawaii, is needed as the new process has resulted in various challenges for Hawaii's system of care, including but not limited to:

- 1) The time difference makes it difficult to contact vendors to obtain needed equipment. Not available on Sundays or afterhours (last delivery is 3:30 p.m.).
- 2) Case Managers ask for the vendor to provide an order in a certain timeframe because the patient has a flight home to a neighbor island and the vendor does not respond
- 3) At times, the contracted vendors experience difficulty in fulfilling the order demands and delivery requirements in a timely manner. These have led to QMC staff faxing, sometimes for hours, to get the order to go through to the company.
- 4) There is no "choice" when it comes to the purchase of certain items that are only available through a certain vendor. There have been situations when vendors are not able to service a patient, so the order is redirected by the vendor to be filled, but without coordinating with the hospital. This is very frustrating and impedes communication, coordination, and limits patient choice.
- 5) Vendor wants to actually speak to a patient to ensure the patient is able to make co-payment prior to discharge
- 6) With so many challenges and complications, patients are not being discharged to appropriate settings in a timely manner, which drives costs up.
- 7) Not having needed equipment can also have a negative impact on the patient's well-being and improvement.

8) Some patients have been purchasing the equipment on their own because it takes too long to obtain it through a designated Medicare DME provider.

Given the complexity and implications of the accurate and prompt fulfillment of these orders, QMC suggests requiring the vendors to maintain a local, physical presence is reasonable and could resolve many of these ongoing concerns.



Wednesday – March 12, 2014 – 8:30am

Conference Room 329

The House Committee on Health

To: Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair

From: George Greene
President & CEO
Healthcare Association of Hawaii

Re: **Testimony in Support**
SB 2031, SD 2 — Relating to Health

The Healthcare Association of Hawaii (HAH) is a 116-member organization that includes all of the acute care hospitals in Hawaii, the majority of long term care facilities, all the Medicare-certified home health agencies, all hospice programs, as well as other healthcare organizations including durable medical equipment, air and ground ambulance, blood bank and respiratory therapy. In addition to providing quality care to all of Hawaii's residents, our members contribute significantly to Hawaii's economy by employing nearly 20,000 people statewide.

Thank you for the opportunity to testify in strong support of SB 2031, SD2, which would require vendors who supply durable medical equipment (DME) to the residents of Hawaii through the Centers for Medicare and Medicaid Services' (CMS) nationwide Competitive Bidding Program to have a physical presence in the state.

Medicare beneficiaries in Hawaii are experiencing a reduction in access to quality care as a result of the change in the way Medicare purchases DME. Round 2 of Medicare's DME Competitive Bidding Program began July 1, 2013 in Honolulu County. The unintended consequences of the implementation of this national program in Hawaii have been disastrous. Only 13 of the 97 vendors selected to supply the state with DME are located within the state of Hawaii. The minimum shipping time from the mainland to Hawaii is two to four days, and the typical wait time for physician-ordered wheelchairs and hospital beds is four to eight weeks. These vendors do not have special phone or service hours to account for the time difference, which means when Medicare beneficiaries in Hawaii call after 11 a.m., the offices are closed.

Without access to timely, local services, Medicare beneficiaries in Hawaii have been forced to forego necessary DME devices. This restricted access to care has led to reductions in health, increases in preventable admissions and readmissions, increases in costs to beneficiaries and the Medicare system and impact on quality of life for Medicare patients.

SB 2031, SD2, would require Medicare DME vendors to have a physical presence in the State, which would ensure that vulnerable Medicare patients receive DME critical to their care by requiring vendors to have an in-state presence. DME suppliers are required under federal law to comply with all applicable state regulations as a prerequisite to qualifying for the nationwide Competitive Bidding Program. (42 CFR 424.57(c)(1)(ii).) As a result, if SB 2031, SD2, is enacted, out of state DME suppliers that did not maintain an in-state presence would be ineligible for supplying Medicare DME to Hawaii's patients. This would allow patients to procure DME from alternate, in-state vendors who would be able to timely supply critical DME to Hawaii's Medicare patients.

The failure of the nationwide Competitive Bidding Program has led to at least one other state enacting an in-state presence law for DME suppliers. The Tennessee Department of Health, Board for Licensing Health Care Facilities, adopted Rule 1200-08-29-.06(5), which imposes a similar in-state presence requirement on out of state DME suppliers. (Available at <http://www.state.tn.us/sos/rules/1200/1200-08/1200-08-29.20120402.pdf>.) In June 2013, Marilyn Tavenner, the CMS Administrator, validated Tennessee's in-state presence law by voiding the contracts of thirty DME suppliers who failed to meet Tennessee's in-state presence requirements. (Letters attached; available at https://s3.amazonaws.com/aafh/downloads/308/HHS_Lawsuit_061913.pdf?1371669910 at pp. 27-38.)

In sum, HAH respectfully asks the committee to pass SB 2031, SD2, which would ensure that Hawaii's Medicare DME patients have access to critical, life-sustaining medical supplies.

Thank you for the opportunity to testify in strong support of SB 2031, SD2.



Tuesday February 11, 2014

To: Lori K. Aquino
Deputy Attorney General
State of Hawaii
Health & Human Services Division

From: George Greene
President & CEO
Healthcare Association of Hawaii

RE: Preemption Analysis of Proposed HB 2528, HD2

The Attorney General has asked for an analysis of federal preemption as it relates to HB 2528. At the hearing before the House Committee on Health, the Attorney General raised preemption concerns with HB 2528 because, in the Attorney General’s view, HB 2528 “conflicts with federal law,”—namely the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)—“because it imposes on federally approved DMEPOS suppliers the additional requirement of a physical presence in Hawaii.” (HB 2528, Late Testimony of the Attorney General, January 31, 2014, p. 1 [AG Testimony].) The Attorney General did, however, note that “exceptions to this broad preemption pertain to *state laws and regulations regarding licensing and plan solvency.*” (AG Testimony, pp. 1-2 [italics added].) As such, we have submitted a draft proposed HB 2528, HD2 to the House Committee on Consumer Protection & Commerce—which is drafted as a state licensing law and which we shared with the Attorney General’s office—and offer the following analysis of that proposal.

Analysis

The Supremacy Clause of the United States Constitution provides Congress with the authority to preempt state law. (*See* U.S. Const., art. VI.) And the United States Supreme Court has recognized that federal preemption of state law can occur in three different areas: (1) where Congress explicitly preempts state law; (2) where preemption is implied because Congress has occupied the entire field; and (3) where preemption is implied because state law actually conflicts with federal law. (*Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 299-300 (1988); *Bank of America v. City & County of San Francisco*, 309 F.3d 551, 558 (9th Cir. 2002).) Nevertheless, “[c]onsideration under the Supremacy Clause starts with the basic assumption that Congress did not intend to displace state law. (*Maryland v. Louisiana*, 451 U.S. 725, 746 (1981), citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).)

In examining HB 2525, HD2—the Healthcare Association of Hawaii’s (HAH) draft proposed durable medical equipment (DME) licensing bill—we must assume that Congress did not intend

to preempt state law unless there is an actual conflict between the language in the draft proposed HB 2525, HD2 and the MMA and related federal regulations. As such, we believe that the Legislature has the authority to regulate DME suppliers unless the provisions of the draft proposed HB 2528, HD2 actually conflict with federal law. HAH's draft proposed HB 2528, HD2 does not conflict with federal statute or regulation.

As the Attorney General points out, “[f]ederal regulation 42 C.F.R. § 424.57 sets forth the standards for DMEPOS suppliers.” (AG Testimony, p. 1.) Under 42 Code of Federal Regulations §424.57(c), a “supplier must meet and must certify in its application in its application for billing privileges that it meets and will continue to meet . . . State licensure and regulatory requirements.” (42 CFR 424.57(c)(1).) Further, “[i]f a State requires licensure to furnish certain items or services, a [DME] supplier . . . must be licensed to provide the item or service.” (*Id.*) Thus, the federal regulation expressly provides that states may impose licensing requirements on DME suppliers, and further requires DME suppliers to meet such state licensing laws as a prerequisite to participation in the federal program. As a result, the licensure requirements contained in HAH's draft proposed HB 2528, HD2 do not conflict with 42 CFR §424.57(c), which clearly allows states to impose licensing requirements on DME suppliers.

The Attorney General also expressed the view that “section 1856(b)(3) of the MMA broadened the scope of federal preemption of state law governing plans serving Medicare beneficiaries.” (AG Testimony, p. 1.) Section 232 of the MMA, however, expressly exempts “State licensing laws” from preemption:

SEC. 232. AVOIDING DUPLICATIVE STATE REGULATION.

(a) IN GENERAL.—Section 1856(b)(3) (42 U.S.C. 1395w–26(b)(3)) is amended to read as follows:

“(3) RELATION TO STATE LAWS.—The standards established under this part shall supersede any State law or regulation

(other than State licensing laws or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part.

(MMA, §232(a), emphasis added.) As such, state licensing laws—such as that proposed by HAH's draft proposed HB 2528, HD2—are not preempted by federal law, and are expressly exempted from preemption under the MMA.

The Legislature has the inherent authority—derived from its traditional police power—to adopt laws for the wellbeing and security of its citizenry. “The police power of the State is broad and extends to the public safety, health, and welfare.” (*State v. Ewing*, 81 Haw. 156, 164 (Haw. St. App. 1996), citing *State v. Lee*, 55 Haw. 505, 513, 523 P.2d 315, 319 (1974) [holding statutes “reasonably related to the preservation of public health, safety, morals or general welfare of the public” are within the State's legitimate exercise of the police power]; see also *State v. Lee*, 51 Haw. 516 (1970); *State v. Diamond Motors, Inc.*, 50 Haw. 33 (1967).) Here, the Legislature—were it to enact HAH's draft proposed HB 2528, HD2—would be acting under its traditional police power to protect its vulnerable Medicare patients by ensuring they receive timely delivery of critical DME supplies.

In sum, the state licensure program contemplated by HAH's draft proposed HB 2528, HD2 is not preempted by federal law. The applicable federal statute and related regulations all expressly

recognize the state's authority to regulate DME suppliers through state licensure. And the state has authority under its traditional police power to adopt laws for the safety, public health, and general welfare of the public such as the DME licensing and patient safety program offered under HAH's draft proposed HB 2528, HD2.

The Healthcare Association of Hawaii (HAH) surveyed providers for examples of DME supply –related stories highlighting serious patient difficulties in obtaining timely, critical DME supplies. The following are responses HAH received from providers.

Patient and provider names are redacted to preserve patient confidentiality.

Oahu home health agency

Today, we had another example of problems ordering and receiving a standard 30 inch sliding transfer board for a pt we have had on service for over 2 months. After receiving all the paperwork and making numerous phone calls with both [local DME award vendor] and [local vendor that did not win an award], we are told this item is not stocked on the islands. I finally had a friend copy and make a sliding board for this patient, paid him \$25 out of my own pocket, and provided the sliding transfer board myself. Oahu home health agency

Oahu hospital

1. There are limited choices resulting in delays in discharging the patient.
2. Patient care is impeded by the competitive bidding process. We are limited to ordering from certain vendors who it appears cannot handle the demands or others require a minimum of 2 items before filing in our order. We end up faxing, sometimes for hours, just to get the order to the vendor.
3. There is no "choice" when it comes to wheelchairs as [local DME award vendor] is the only vendor that has that DME contract. There have been situations when vendors are not able to service the patient, for one reason or another, and they simply send the order to another vendor, but without discussing it with the patient or the Case Manager --thus, impeding communication, coordination, and limiting patient choice.
4. There are reports from Home Health Care agencies that [local DME award vendor] does not have an RN or RD to do the teaching for their enteral patients, rather have used their driver to teach how to do TubeFeeding at home. As a result, Home Care Agencies have had several patients readmitted to the hospital for aspiration and have reported this to the appropriate CMS department.

Oahu skilled nursing facility

A medically fragile patient who has Respiratory disease and is fed via Gastric Tube, will be going home to Wailuku, Maui in about 10 days.

The company on the mainland that [Medicaid managed care plan] contracted with is [mainland award vendor]. Apparently, since our doctor and Social Worker had several conversations with both [Medicaid managed care plan] and [mainland award vendor] staff, regarding the arrival and accessibility of equipment he needs, they have realized that they could not effectively get this boy's equipment to him as needed. They share they "are making other plans" as I write this to you.

Oahu home health agency

Female Home health pt referred for management of pressure ulcer on lower back. At SOC, RN requested hospital bed and Hoyer lift via [local DME award vendor], Medicare vendor for competitive bid contract. Forms sent to MD's office, forms not completed properly per [local DME award vendor]. No instructions provided for MD and no customer svc at Vendor to assist MD office in completing forms properly to meet Medicare criteria. This process has been going on for 3 wks. Family having difficulty repositioning

pt and daughter in law has injured her back. Both the hospital bed and the Hoyer lift have not been delivered as yet. The home health RN has been frustrated as she feels helpless in assisting with the paper work between the vendor and the MD to be completed in order to process the order. This vendor has expressed that they are unable to manage the orders coming in.

Oahu home health agency

[Local DME award vendor], vendor for Medicare competitive bid contract, President of company informing staff with equipment orders - expressed desire to set up a contract with home health agency. Also expressed his (vendor) frustration in not being able to keep up with orders. Staff contacting vendor with 4 phone calls on this particular pt case, left msgs and no follow up for 2 wks until staff left a threatening msg.

[Local DME award vendor], vendor for Medicare competitive bid contract, was faxed a request for a hospital bed for pt. Pressure ulcer became worsened and had to be re-hospitalized as the bed was not delivered until 4 wks later. Concern is that these worsened outcomes impacts home health agency outcomes such as in "Home Health Compare".

Oahu home health agency

Pt. discharged on 092513 from Rehab and Nursing facility, youth front wheeled walker with 5" wheels/ from [local DME award vendor]- ordered 102913. So far, 3 phone calls were made to [local DME award vendor], and pt still has not received walker. Latest phone call to [local DME award vendor] on 110813, we were told "sometime next week" family would be contacted. As of today, family has not been contacted, walker has not been delivered.

Oahu home health agency: Patient readmission to the hospital

[Local DME award vendor] wins the DME Competitive Bidding and signs an exclusive contract with a healthcare provider. The healthcare provider agreed on the exclusive contract with one DME Company because this DME Vendor agreed to coordinate the DME needs for all their patients (i.e., the Case Manager or Discharge Planner will only have to contact one DME Company). However, [local DME award vendor] lacked the expertise to provide a specialty service that the patient needed. The patient needed enteral feeding supplies, which they delivered, but there were no instructions or nutritional counseling provided. The lack of expertise resulted in the patient's readmission to the hospital.

Oahu home health agency: DME Competitive Bidding does not offer patient choice

A patient was discharged from the hospital, and safety equipment was needed for the home. After three fax messages and numerous phone calls (at least four) to contact [local DME award vendor], the suction equipment and bed were delivered three days later. This posed a safety issue to the patient who needed the suction machine and hospital bed. Before DMEPOS Competitive Bidding Program implementation, patients could reach out to a DME supplier that could provide prompt service from a local office and warehouse.

Neighbor Island skilled nursing facility

One of our problems is that our local vendors do not participate in the competitive bidding program. Because of this, we do not have a vendor that is responsible for providing DME to our

residents upon d/c. The vendors that we work with now, have different policies (which continues to change) with regard to required documentation for DME.

We are in the process of scheduling in-services with the different vendors to assist us with preparing for DME documentation and/or other steps necessary to obtain the DME.

Neighbor Island medical center

“As you may or may not be aware Mr. A has been here 153 days. Since 7/31/13 he has been here solely due to the insurance plan’s inability to procure a wheelchair. Once the CFO became involved we saw a little effort as the insurance plan did issue a “one time” contract with [a Maui DME supplier] to provide a wheelchair, but it turns out [a Maui DME supplier] is not licensed to issue the type of wheelchair our patient requires. As such we are now back at “square one” with a patient taking up an acute bed simply because he does not have a wheelchair. We have since lost his bed offer at [nursing facility], which is a source of great frustration for all parties involved. While this is an extreme example, it is indicative of our ongoing issues in working with the insurance plan and the DME providers and their inability to provide the services their members require”

Neighbor Island medical center: Delay in discharge and avoidable hospital stay

[Locally-based award vendor] wins the DME Competitive Bidding and signs an exclusive contract with a healthcare provider. The healthcare provider agreed on the exclusive contract with one DME Company because this DME Vendor agreed to coordinate the DME needs for all their patients. (the Case Manager will have to contact one DME Company). However, [locally-based award vendor] was unable to provide a specialty service that the patient needed. The patient needed Trach Supplies. [locally-based award vendor] was unable to provide Trach supplies without additional durable medical equipment ordered. The service had to be sent from an off island vendor causing an avoidable day in the hospital. Due to no Trach supply vendor on island, there is a problem with servicing the equipment and the ability to provide hands on representative to initiate help or problem solve on island.

Neighbor Island medical center: Competitive Bidding does not offer patient choice

A patient was being discharged from the hospital, and safety equipment was need for the home. After numerous phone calls to off island and Maui vendors, the oxygen was delivered to the patient and all expenses needed to be paid out of pocket for all oxygen supplies indefinitely. The patient recently moved to Maui from the mainland with oxygen use history. Patient was unable to have [local award vendor] or [locally-based award vendor] service due to prior authorization to mainland DME provider.

Oahu medical center: Numerous problems with [local award vendor] for DME equipment:

[Local award vendor] won the DME Competitive Bidding and signed an exclusive contract with certain healthcare providers. There is a monthly charge to the healthcare providers by [local award vendor] to be exclusive for all their DME needs. Our medical center did not facilitate an exclusive contract with them.

Calls were made to [local award vendor] to because they won the DME Competitive Bid for the DME needed at discharge.

[Local award vendor] response has been they service healthcare providers that signed a contract them first and they are too busy and cannot accommodate us.

We contacted the Medicare Hotline for DME issues many times to report these issues.



March 12, 2014

The Honorable Della Au Belatti, Chair
The Honorable Dee Ann Morikawa, Vice Chair

Committee on Health

Re: SB 2031, SD2 – Relating to Health

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

My name is Rick Jackson and I am Chairperson of the Hawaii Association of Health Plans (“HAHP”) Public Policy Committee. HAHP is a non-profit organization consisting of nine (9) member organizations:

AlohaCare	MDX Hawai‘i
Hawaii Medical Assurance Association	‘Ohana Health Plan
HMSA	University Health Alliance
Hawaii-Western Management Group, Inc.	UnitedHealthcare
Kaiser Permanente	

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 provide testimony in opposition to SB 2031, SD2 which requires vendors who have been awarded contracts through the Centers for Medicare Services durable medical equipment, prosthetics, orthotics, and supplies bidding program to have a physical presence in Hawaii.

HAHP has concerns with this Bill as it would unnecessarily limit opportunities to contract with vendors. We are aware of the growing pressure that hospitals face with patients on waitlists for specialized equipment, and are concerned that we would lose much needed specialty vendors on the mainland.

Thank you for the opportunity to provide testimony.

Sincerely,

Rick Jackson
Chair, Public Policy Committee



REHABILITATION HOSPITAL
OF THE PACIFIC

Rebuilding Lives Together

LATE

March 11, 2014

The Honorable Rep. Della Au Belatti, Chair
The Honorable Rep. Dee Morikawa, Vice Chair
The Twenty-Seventh Legislature Committee on Health

Hearing Date: March 12, 2014, 8:30am
Hearing Location: State Capitol Conference Room 329
RE: SB 2031 SD2 – Relating to Health

To our Distinguished Senators:

Thank you for the opportunity to testify on this important matter. I serve as President and CEO of Rehabilitation Hospital of the Pacific (REHAB), the only acute inpatient rehabilitation hospital in the state of Hawaii. I am also a board-certified physician specializing in Physical Medicine and Rehabilitation, and have spent nearly 25 years caring for persons who have suffered serious illnesses and injuries that resulted in disabilities.

In my role as an advocate for my patients and the patients needing care at REHAB I am writing to urge you to support Senate Bill 2031 SD2. This bill would require vendors who supply durable medical equipment (DME) to the residents of Hawaii through the Centers for Medicare and Medicaid Services' nationwide Competitive Bidding Program to have a physical presence in the state.

Section 302 of the Medicare Modernization Act of 2003 established requirements for a new competitive bidding program for certain durable medical equipment (DME), prosthetics, orthotics, and supplies. Under the program, suppliers compete to become Medicare contract suppliers by submitting bids to furnish certain items in competitive bidding areas, and the Centers for Medicare and Medicaid Services awards contracts to finite number of suppliers meant to meet the supply demand.

The Honolulu metro area was included in Round 2 of the competitive bidding, which went into effect July 1st, 2013. Due to a flawed methodology in awarding contracts under this program, only 13 of the 97 vendors selected to supply the state with DME are located within the state of Hawaii. In two major categories of DME (“Continuous Positive Airway Pressure (CPAP) devices and Respiratory Assist Devices (RADs) and related supplies and accessories” and “Standard (Power and Manual) wheelchairs, scooters, and related accessories”) only ONE local supplier was chosen.

Every year, REHAB provides care to approximately 1,500 inpatients and 5,500 outpatients who have acquired disabilities due to illness or injury. Every year, REHAB physicians prescribe hundreds of mobility devices, including power and manual wheelchairs. For our patients, access to DME such as these devices can be the difference between self-sufficiency versus remaining dependent on others for daily needs.

With only one vendor for wheelchairs located locally, and the remaining contract awardees located anywhere from 2,600 to 5,000 miles away, this CMS program has imposed a serious restriction on access to DME for disabled persons in Hawaii. Although the enabling legislation for this program (42 CFR § 414.422 (c)) bars discrimination, implementation of this program unfairly amounts to geographic discrimination against the people of Hawaii, as these mainland vendors are simply unable to provide timely or cost-effective service.

Further, hospitals have long operated under CMS's Conditions of Participation including 42 C.F.R. § 482.13(a)(1): "A hospital must inform each patient, or when appropriate, the patient's representative (as allowed under State law), of the patient's rights, in advance of furnishing or discontinuing patient care whenever possible." This has long been interpreted as a requirement that hospitals should give our patients a choice regarding services that are provided, including choice of DME supplier. In limiting our patients' "choice" to one sole provider, this program has unfairly restricted the rights of Hawaiian patients and forced an environment of near-monopoly on the DME industry in our state.

SB 2031 SD2 propose reasonable minimum requirements on DME vendors that wish to do business in our state. In doing so it will ensure that our patients receive the equipment they need in a manner that is fair and consistent with DME services provided to disabled persons on the mainland. In sum, Rehabilitation Hospital of the Pacific respectfully asks the committee to pass SB 2031, SD2. Mahalo again for consideration of our viewpoint, and for your distinguished public service.

Sincerely,

A handwritten signature in black ink, appearing to read 'Timothy J. Roe', written in a cursive style.

Timothy J. Roe, MD MBA
President & Chief Executive Officer

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association



March 12, 2014

The Honorable Della Au Belatti, Chair
The Honorable Dee Morikawa, Vice Chair
House Committee on Health

Re: SB 2031, SD2 – Relating to Health

Dear Chair Au Belatti, Vice Chair Morikawa, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2031, SD2. HMSA opposes this Bill.

It has long been HMSA's mission to improve the health and well-being of our members and for all the people of Hawai'i. But, we also are cognizant of the need to provide services and products our members demand, in the most efficient way. We need to do our part to contain the cost of Hawaii's health care system.

To that end, we believe in the importance of ensuring cost-effective access to quality durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) from suppliers that members can trust. The Center for Medicare and Medicaid Services (CMS) competitive bid program for DMEPOS is designed to do just that. During its first year of the procurement program's implementation, it saved the Medicare program over \$202 million, a 42 percent drop in expenditures in the nine participating markets.

HMSA has concerns with this Bill because it undermines the goal of that efficient CMS procurement process – it will reduce competition and drive up costs for Medicare recipients.

Under the original Medicare program, purchases of DMEPOS must be made exclusively from the list of vendors secured under the CMS DMEPOS procurement contract. This Bill will restrict all DMEPOS purchases only to those vendors having a physical local presence. This legislation will:

- reduce competition
- in some cases, effectively create monopolies; and
- worst of all, potentially eliminate the availability of any vendor a particular DMEPOS.

Simply put, this Bill is not consumer friendly, and it is detrimental to the welfare of Honolulu's Medicare recipients.

Thank you for the opportunity to testify today in opposition to SB 2031, SD2. We ask that you consider our concerns in your deliberations.

Sincerely

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

Jennifer Diesman
Vice President
Government Relations

morikawa2-Joanna

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 10, 2014 8:50 PM
To: HLTtestimony
Cc: teresa.parsons@hawaii.edu
Subject: Submitted testimony for SB2031 on Mar 12, 2014 08:30AM

SB2031

Submitted on: 3/10/2014

Testimony for HLT on Mar 12, 2014 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Teresa Parsons	Individual	Support	No

Comments: Senators, I urge you to SUPPORT and pass SB 2031 SD2 to ensure timely response to patients needing medical equipment and prosthetics. Too often, delays in care due to companies having only mainland offices result in patients being held unnecessarily in the hospital or being readmitted after a compounding injury. I do not see this requirement is burdensome, especially when the company should provide prompt service to those who desperately need assistive devices. I urge you to pass this measure to the full Legislature for a vote. Mahalo for allowing me to submit testimony in SUPPORT of this measure.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE**SB2031**

Submitted on: 3/11/2014

Testimony for HLT on Mar 12, 2014 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Cecile Sebastian	Individual	Support	No

Comments: Thank you for the opportunity to testify in support of SB 2031, SD2. which would require vendors who supply durable medical equipment (DME) to the residents of Hawaii through the Centers for Medicare and Medicaid Services' nationwide Competitive Bidding Program to have a physical presence in the state. Without access to timely, local services, Medicare beneficiaries in Hawaii have been forced to forego necessary DME devices. This restricted access to care has led to reductions in health, increases in preventable admissions and readmissions, increases in costs to beneficiaries and the Medicare system, and has negatively impacted the quality of life for Medicare patients. Sincerely, Cecile Sebastian, D.D.S.

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