

TO: Representative Alex Sonson
Members of the Labor and
Public Employee Committee
Hawaii State Capitol

FROM: Maricela Yee
Masters Social Work student
1147 Elm St.
Honolulu, HI 96814

LATE TESTIMONY

February 12, 2008- Room 309

Please continue to pass HB 2520 unammended, Relating to Caregivers

Aloha, my name is Maricela Yee. In my studies of Gerontology at the University of Hawaii, I keep learning of the future elder population increase in the State of Hawaii. I've also learned that caregivers, like women's domestic work, is unappreciated because it is unpaid and out of the public sphere. By supporting this bill, not only will you recognize the hard work of the many citizens who carry the burden of being the primary means of care for a family member with a chronic illness, mental or physical disability, but also alleviate the stress of the caregivers who also hold a valuable place in the job market. These caregivers have been called the "backbone of America's long term care system," saving the nation over three hundred billion dollars in residential long-term care.

Caregivers are the people who give up their vacations, good paying jobs, put their friends and home on the backburner, put their marriage in jeopardy to fulfill and honor their vows as a parent, spouse or child. They are also known to have high amounts of anxiety, depression, guilt, frustration, which could and often leads the caregiver to be at risk of suicide, alcohol and drug abuse, and also physically and mentally deteriorate from such high amounts of stress. This burnout is counterproductive when the caregiver must contribute to the workplace. While taking on such feats as working part-time or all day, the caregiver must be able to think clearly for the responsibilities of issuing their loved

one's prescribed medication, with the specifics of the right dosage, at the right time under the right methods. Physical strain may also occur to a caregiver, as sleeping patterns may be disrupted.

Their ability to leave the home for a simple trip to the store or an office may turn into a demanding task because it may require situating a care receiver in and out of the vehicle and he or she may become confused or frustrated in a crowded, unfamiliar place.

These cherished care providers often need to rise to demanding new financial strains and increase domestic responsibilities like cleaning, cooking extra meals, and a possible role reversal might happen between child and parent or spouse.

By protecting the caregiver you are implicitly protecting the care receiver from possible abuse. Professionals recommend taking breaks from continuous care giving to avoid burnout. Providing a relief from the workplace and the home will empower the caregiver giving him or her more support to continue with the emotional distress.

I will have to take care of my grandmother in the near future as she will be 85 this year and deteriorating in health. She gave her all when she took care of me since a toddler until today. I as well as other caregivers should not have to choose their profession over family duties.

House Bill 2520 encourages the marketplace with steady incomes and retention of jobs. From a business perspective keeping experienced employees rather than training new ones is less costly and improves the efficiency of the workplace. It is time to invest in our domestic workers, who have gone unappreciated for so long. Please support this bill.

Thank you for the opportunity to testify.

Mahalo,
Maricela Yee
MSW student



LATE TESTIMONY

To: Committee on Labor & Public Employment

Hearing: February 12, 2008, 8:50 a.m.
Conference Room 309

From: Society for Human Resource Management - Hawaii Chapter

SHRM Hawaii represents more than 1,200 human resource professionals in the State of Hawaii. On behalf of our members, we would like to thank the Committee for giving us an opportunity to comment on HB 2520, HD1. We are currently OPPOSED to HB 2520.

As we informed the Joint Legislative Committee on Family Caregiving during its informational hearing on November 7, 2007, although providing support to caregivers is a laudable goal, insured benefits and leaves of absence are governed by a complex web of federal and state laws and regulations. Consequently, any proposed changes to HRS Chapter 392 should be thoroughly researched and carefully considered.

SHRM Hawaii has reviewed HB 2520 and has identified several serious issues which must be addressed. These issues include:

1. ERISA Preemption. The Employee Retirement Income Security Act preempts state laws which seek to create employee benefit plans, 29 U.S.C. § 1144(as). HB 2520 stated purpose is to "permit an eligible employee to collect up to two weeks of temporary disability insurance benefit payments to care for a family member with a serious health condition." By imposing this new benefit requirement on employers, HB 2520 falls squarely within the preemption provisions of ERISA. See, *Kentucky Association of Health Plans, Inc., v. Miller*, 123 S. Ct. 1471 (2003).
2. Insurability. HB 2520 requires employers to provide TDI coverage for family members -- child and parent as defined under HRS Chapter 398 (which refers to natural, adopted, step and *hanai* relationships), spouses and reciprocal beneficiaries -- who suffer a serious health condition as defined under HRS Chapter 398 (Hawaii's Family Leave Law). HRS Chapter 398 defines a serious health condition to include any health condition that requires medical attention for 3 or more days (which can include cases of influenza or similar common illnesses that last for more than 3 days). These definitions would *greatly expand* the situations in which TDI benefits can be used. The question is whether such an expansion of the program results in *uninsurable risk*.

LATE TESTIMONY

As we suggested in November, it is critical that input be obtained from the insurance industry. If HB 2520 is passed and the insurance companies conclude the risk is *uninsurable*, both the Department of Labor and Industrial Relations and employers will be faced with a nightmare. How can we administer a program in which a significant part of the coverage cannot be insured? Does that mean employers will be found liable for noncompliance if they cannot convince an insurance company to provide the requisite coverage? And what if an insurer provides the coverage but only at a *cost prohibitive* price? Would employers be forced to layoff some employees in order to properly insure the remaining workers? Such a result would clearly be at odds with one of the stated purposes of HB 2520 – to ensure participation in the workforce.

3. Confusion Over Coverage. Some of the language in HB 2520 is based on the assumption that HRS Chapter 392 requires employers to provide a leave of absence to employees who receive TDI benefits. HRS Chapter 392 *does not provide leave benefits to eligible employees* – it simply provides insurance benefits (a wage replacement) for employees who work 20 or more hours per week, have been in employment for 14 weeks, and are temporarily and totally disabled. See HRS §§ 392-21 and 392-25.

On the other hand, leaves of absence are either required by law or provided by employers through their own policies (i.e. sick leave, vacation, paid time off). Because HB 2520 makes repeated reference to HRS Chapter 398, some will reasonably assume that coverage must only be extended to employees who have worked at least 6 or more months for employers with 100 or more employees. See HRS § 398-1.

Needless to say, the confusion in the language will inevitably result in legal disputes. It will not result in paid leaves for caregivers.

4. Medical Privacy. Although the intent of HB 2520 is to enable employees to obtain a leave of absence if their family members suffer serious illnesses, there are no provisions which would enable: (a) a health care provider to provide information about a patient; to (b) the employer and insurance carrier of the patient's family member. Since such a disclosure is governed by the federal Health Insurance Portability and Accountability Act, what would happen if the requisite release were not or could not be provided and, as a result, no information could be given to the insurance carrier so as to obtain benefits? Clearly this is another complicated set of regulatory requirements which would have to be addressed and which is not within the control of the State.
5. Federal Legislation. It is our understanding that Congress is also looking into the possibility of enacting legislation for paid family leave. If that occurs, SHRM Hawaii is concerned about whether steps will be taken to reconcile any federal legislation with HB 2520 should it be enacted. At the present time, the federal Family and Medical Leave Act and the Hawaii Family and Medical Leave Act are

different and these differences create much confusion and difficulty for employers with 100 or more employees. Should these "conflicts" continue with the passage of paid family leave at the State and Federal levels, we are fearful the result will simply be increased litigation.

Until the foregoing issues can be resolved, we are opposed to HB 2520. We would be more than happy to provide more information and to work with you and other important stakeholders on possible resolutions.

Once again, thank you for this opportunity to provide you with this input.

LATE TESTIMONY