SB 1110

LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
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
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEES ON HUMAN SERVICES
AND COMMERCE AND CONSUMER PROTECTION

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Tuesday, February 17, 2009
1:15 p.m.

TESTIMONY ON SENATE BILL NO. 1110 – RELATING TO LONG-TERM CARE.

TO THE HONORABLE SUZANNE CHUN OAKLAND AND ROSALYN H. BAKER, CHAIRS, AND MEMBERS OF THE COMMITTEES:

My name is J.P. Schmidt, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department strongly supports this bill.

The purpose of this bill is to create the Hawaii Partnership for Long-Term Care Program in the Department of Human Services (section 1 of the bill) and to amend Hawaii Revised Statutes ("HRS") § 431:10H-221 (section 2 of the bill). The Department limits its comments to section 2 of the bill and defers to the Department of Human Services as to section 1 of the bill.

Section 2 adds a new subsection to HRS § 431:10H-221 to expressly allow the exchange of an existing long-term care policy for a long-term care partnership policy.

This bill is intended to encourage members of the public to purchase long-term care insurance policies and to reduce reliance upon the Medicaid program.

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

LINDA LINGLE
GOVERNOR

LILLIAN B. KOLLER, ESQ.
DIRECTOR

HENRY OLIVA
DEPUTY DIRECTOR

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

February 17, 2009

MEMORANDUM

TO:	Honorable Suzanne Chun Oakland, Chair Senate Committee on Human Services Honorable Rosalyn H. Baker, Chair Senate Committee on Commerce and Consumer Affairs
FROM:	Lillian B. Koller, Director
SUBJECT:	**S.B. 1110 – RELATING TO LONG-TERM CARE** Hearing: Tuesday, February 13, 2009, 1:15 P.M. Conference Room 016, State Capitol

PURPOSE: The purpose of this bill is require the Department of Human Services and the Department of Commerce and Consumer Affairs to establish a Qualified State Long-Term Care Insurance Partnership to combine funds from long-term care insurance policies and Medicaid to fund long-term care for Hawaii residents.

DEPARTMENT'S POSITION: With the concerns stated below, the Department of Human Services (DHS) supports the intent of the bill because it provides an incentive for individuals to use their personal assets to purchase insurance to cover the cost of their long-term care services before accessing public funding through Medicaid. The bill will create a private-public partnership to fund long-term care services.

Medicaid is the primary funding source for individuals who need long-term care services, whether for services in a nursing facility or home and community based services. In Hawaii, the average annual cost of private nursing home care exceeds $100.000.

Under this proposed bill, individuals who purchase a long-term insurance policy certified under a Qualified State Long-Term Care Insurance Partnership will be allowed to shelter assets equal to the amount of benefits provided by the policy when applying for Medicaid after insurance benefits have been exhausted. For example, an individual who purchases a policy that provides $200,000 in benefits will have $200,000 of their assets disregarded when the individual applies Medicaid coverage after exhausting the $200,000 insurance benefits. Potentially, the individual may have delayed accessing Medicaid funds for two years.

DHS would like to express our concern that the provisions of proposed new chapter, "Hawaii Partnership for Long-Term Care", in Section 1 only address the responsibilities of DHS, the "public" partner. The Department of Commerce and Consumer Affairs (DCCA) has oversight over the activities of the insurance companies, the "private" partner. DHS, as the State Medicaid agency, is responsible to secure approval from the Centers for Medicare & Medicaid Services to establish the Qualified State Long-Term Care Insurance Partnership, and to promulgate rules to address the disregard of assets for a Medicaid applicant who has exhausted the benefits of a certified long-term care insurance policy. However, 42 United States Code Section 1396p, the Federal law enabling the partnership, requires that the state insurance agency shall ensure that insurance companies and their insurance policies comply with the requirements of a qualified State Long-term Care Insurance Partnership. Thus, Section 5 of the proposed chapter should specify that the DCCA should be responsible to certify that the polices of participating insurance companies meet the requirements of the Qualified State Long-Term Care Insurance Partnership.

DHS also has concerns over the provisions in Section 7 of the proposed new chapter that requires DHS to establish an outreach program to educate consumers about the availability of long-term care insurance. DHS should not engage in activities that can be viewed as the promotion of the sale of private insurance policies. This may fall under the purview of DCCA.

The Department defers comments regarding the amendment in Section 2 to HRS section 431:10H-221 to DCCA.

Thank you for this opportunity to testify.

ACLI
Financial Security. For Life.

AHIP
America's Health Insurance Plans

February 11, 2009

Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
State Senate
Hawaii State Capital, Conference Room 229
415 S. Beretania Street
Honolulu, HI 96813

Re: Proposed Senate Bill 1110: Long-Term Care Partnership Program

Dear Senator Baker:

On behalf of ACLI and AHIP, we applaud Hawaii for seeking to authorize the filing of a State Plan Amendment to enable the implementation of a Long-Term Care Partnership program in Hawaii. We have reviewed the proposed bill and have the comments provided below.

Description

The language allows only those who have exhausted their private long-term care insurance to qualify for Medicaid. We wish to advise that the Deficit Reduction Act, (DRA) which authorizes Partnerships, does not require this. A few states initially included this requirement and later amended their program to delete it. Hawaii should eliminate the "exhaustion" requirement.

Purpose

At the end of this section there is a reference to the number of states with operational Partnership programs. It should be noted that New York along with Connecticut, Indiana and California are the original participants in the LTC Partnership program supported by the Robert Wood Johnson Foundation. In 1993, Congress prohibited other states from enacting similar programs. The Partnership program was expanded under the Federal Deficit Reduction Act (DRA) of 2005, enabling other states, like Hawaii, to set up Partnership programs. Today, there are 22 states with operational DRA Partnership programs, including the one in Oregon.

Definitions

In the definition of "Partnership", there is a reference to a "cooperative agreement between the State and an approved long-term care ***insurance producer*** to provide long-term care coverage to qualified individuals."

Producers are not a party to the "agreement". A qualified Partnership operates under the direction of the Hawaii [name of the Medicaid Agency] in consultation with the Hawaii Department of Insurance and the guidelines for the Hawaii Partnership Program have been jointly issued by the Agency and the Department.

Eligibility for Benefits; Resources Not Considered

Under (a), it incorrectly states that a person can only purchase an amount of long-term care insurance equal to the resources that person wants to protect. If someone purchases an amount that exceeds the maximum asset disregard that will be allowed, the amount purchased would in no way override the maximum asset disregard that would be allowed. It is also not likely that someone will be able to predict at the time of application what their "resources" will be when they years later apply for Medicaid. Accordingly, the limitation should be eliminated.

Certification of Policies or Plans

The language should reflect that both individual policies and group policy and certificate forms may meet the Partnership requirements, as certified by the companies. Accordingly, the language should read "***The department shall only certify policy and certificate forms as certified long-term care insurance partnership forms if these forms meet the requirements....***".

Rules

It is unusual for Partnership enabling legislation to delegate the item (3) responsibility to the Medicaid Agency – we have not seen any other state enabling legislation that has done this. The DRA has already decided this and the DOI usually makes the "left-over" decisions by providing the missing details.

Item (4) refers to "reporting requirements for producers of certified long-term care insurance partnership policies". As stated above, insurance companies issue policies, not producers. The language should say "reporting requirements for companies that issue certified long-term care insurance partnership policies".

We would welcome an opportunity to discuss these comments with you further after you have had a chance to review them.

Sincerely,

Miriam Krol

Miriam Krol
Vice President, Long Term Care
ACLI

Amanda H. Matthiesen

Amanda Matthiesen
Director of Policy
AHIP

NAIFA
HAWAII

ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS

516 Kawaihae St., #E • Honolulu, Hawaii 96825
Ph.: (808) 394-3451 • Fax: (808) 395-4417
email: NAIFA-Hawaii@hawaii.rr.com

Committee on Human Services – Senator Suzanne Chun Oakland, Chair

Committee on Commerce & Consumer Protection – Senator Rosalyn Baker, Chair

Hearing Date: ***February 17, 2009***
Time: *1:15 pm*

Re: ***Senate Bill 1110 – Relating to Long Term Care***

Chair Chun Oakland, Chair Baker and members of the Committees, my name is Cynthia Hayakawa, Executive Director of NAIFA ("National Association of Insurance and Financial Advisors") Hawaii, an organization made up of life insurance agents and financial advisors across Hawaii.

We support SB 1110 that will create the "Hawaii Partnership for Long Term Care Program".

The Long Term Care Partnership Program began in 1987 as a demonstration project funded through the Robert Wood Johnson Foundation (RWJ gave seed money to develop programs that would integrate public-private partnerships in long term care financing). Implementation required a change in federal Medicaid rules. Four states developed partnership programs as part of the demonstration project- California, Connecticut, Indiana, and New York.

The program was expanded to a nationwide program as part of Title VI, Section 6021 of The Deficit Reduction Act of 2005. Policies in these new programs must meet specified criteria, including federal tax qualification, identified consumer protections, and inflation protection provisions. The law also requires the US Department of Health and Human Services to develop a reciprocity agreement enabling purchasers to use their benefits in other partnership states (states may opt out).

Under Medicaid's partnership program, states with approved section 1902(r)(2) plan amendments may extend Medicaid coverage, including long term care benefits to certain persons who have purchased private LTC insurance policies without requiring them to meet the same means-testing requirements applicable to other groups of Medicaid eligibles.

Participants are able to protect some or all of their assets from Medicaid spend-down requirements during the eligibility determination process, but they still must meet income requirements.

The partnership program is designed to encourage the purchase of private LTC insurance, especially among moderate income individuals and is hoped to be attractive to younger buyers. It is also intended to incur savings both to Medicaid, by delaying or preventing spend-down to Medicaid eligibility, and to individuals, by having them rely on insurance policies to cover LTC expenditures that would otherwise be paid by personal income and savings.

The State of Hawaii Department of Human Services has to prepare a state plan and seek the appropriate amendments to the Medicaid rules.

Additionally, Act 233, SLH 2007 (SB 1410, SD1, HD1, CD1), created a new section under the Long Term Care Insurance Act -- §431:10H-106.5, HRS, Producer Training Requirements – that requires insurance producers who will be selling these policies to complete a one-time training course and ongoing training every twenty-four months thereafter.

About half the states across the country have passed this partnership program.

We ask for your support on this measure.

Mahalo for allowing us to share our views.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
COMMENTING ON S.B. 1110, RELATING TO LONG TERM CARE

February 17, 2009

Via E Mail: cpntestimony@capitol.hawaii.gov
Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
State Senate
Hawaii State Capital, Conference Room 229
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Baker and Committee Members:

Thank you for the opportunity to comment on SB 1110, relating to the Long Term Care Partnership Program.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred forty (340) member company's account for 94% of the life insurance premiums and 94% of the annuity considerations in the United States among legal reserve life insurance companies. ACLI member company assets account for 93% of legal reserve company total assets. Two hundred fifty-three (253) ACLI member companies currently do business in the State of Hawaii.

In 2007 the legislature passed Act 233 which enabled the State of Hawaii to establish the Public Private Long Term Care Partnership Program enacted by Congress in 2006 as part of the Deficit Reduction Act (DRA).

ACLI generally believes that as a matter of policy the State of Hawaii should encourage families to provide for their own financial well-being. If a family is unable to support its long-term care needs, the State will need to spend its scarce resources for that purpose.

The partnership program allows people to preserve some of their assets and still qualify for Medicaid by purchasing a "partnership" long term care policy or exchanging an existing policy for a partnership policy.

SB 1110 implements the partnership program authorized by Act 233.

America's Health Insurance Plans (AHIP) and ACLI have partnered in working with States adopting the partnership program. AHIP is a national association representing nearly 1,300 member companies providing health insurance, including long term care insurance, to more than 200 million Americans.

While ACLI is in full support of the intent and purposes of SB 1110, ACLI suggests that the Bill be amended. Its comments are set forth in a joint letter prepared by my client and AHIP, which I've attached.

Thank you for the opportunity to comment on SB 1110.

CHAR HAMILTON
CAMPBELL & YOSHIDA
Attorneys At Law, A Law Corporation

Oren T. Chikamoto

737 Bishop Street, Suite 2100
Honolulu, Hawaii 96813
Telephone: (808) 524-3800
Facsimile: (808) 523-1714
E mail: ochikamoto@chctlaw.com

TESTIMONY SUBMITTED for Tuesday, Feb. 17, 2009

TO: COMMITTEE ON HUMAN SERVICES
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Jr., Vice Chair

TO: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

TESTIMONY FOR HEARING on Tuesday, Feb. 17, 2009, 1:15 p.m., State Capitol Rm. 016

SB 1110: Relating to Long-Term Care: I testify in favor of this bill, knowing that the cost of Long Term Care, and increased longevity means that more individuals will "outlive" the Long Term Care Insurance benefits they have bought. There probably will be individuals who will exhaust their benefits, especially since the year 2011 is when Baby Boomers will turn 65 years of age and more will be living to beyond 85 years. This demographic reality means that we must put into place an "aging safety net" and infrastructure" with good public policy meant to meet the needs of a society that is living longer and will be demanding home and community-based services at an unprecedented rate.

SB 1134: Relating to Long-Term Care: I testify in favor of this bill as I think we need to "incentivize" individuals to invest in their own aging and personal demand for home and community-based services. A tax credit has long been talked about and, if enacted, would be another part of the "aging safety net and infrastructure" needed for an increasing aging society.

SB 1204: Relating to Long-Term Insurance Tax Credit for Small Business: I testify in favor of this bill as it addresses a solid fact, as solid as the "aging of society" and that is the "aging work force". Not only are employees aging but they are more and more faced with care giving and issues related to their own aging and need for home and community-based services. An aging workforce means that Employers will increasing see long term care insurance as needing to be added to their employee benefit packages. This is public policy that is cognizant of the increased importance of aging and longevity in society. "Incentivizing" Employers is also a part of good aging policy.

Mahalo,
John A. H. Tomoso, MSW, ACSW, LSW
51 Ku'ula Street
Kahului, Maui, Hawai'ii 96732-2906
Home Phone: 808-871-4982
Office Phone: 808-442-6801
jtomoso@hawaii.rr.com

BCC: JACOSA ListServe, Maui County State Legislators, PIO Mahina Martin