



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

RONALD BOYER
ACTING DIRECTOR
RODNEY A. MAILE
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION
AND COMMERCE

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Monday, March 29, 2010
2:05 p.m.

**TESTIMONY ON SENATE BILL NO. 2371, S.D. 2 – RELATING TO LIMITED
BENEFIT HEALTH INSURANCE.**

TO THE HONORABLE ROBERT HERKES, CHAIR, AND MEMBERS OF THE
COMMITTEE:

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

Previously, the Department offered comments on various drafts of this bill. After fully analyzing the impact the enactment of this bill would have on Hawai'i's insurance regulatory scheme, the Department finds that there is a likelihood that confusion and problems would arise from the proposed language.

The Department, therefore, is opposed to this bill.

As written, this bill would prohibit the application of any statute in Hawai'i Revised Statutes Chapter 431, Article 10A, enacted after July 1, 2010, relating to a policy of accident and health or sickness insurance from applying to an accident-only, specified disease, hospital indemnity, long-term care, medicare supplement, disability income, dental, vision, or other limited benefit health insurance policy unless the relevant provision expressly states that it applies to those areas.

While the Department understands that the reasoning behind the proposed language is to promote clarity in the application of newly enacted statutes, the consequences of this bill's enactment is that existing statutes will now be subject to this criteria. Every time an existing statute is amended the application language will have to be inserted to make sure that the amended statutes continue to apply to specified coverages. It is highly likely that there will come a time when the only way to tell whether an existing statute applies or not is to look at the enactment date of the statute to see whether the statute was enacted before or after July 1, 2010. This will be very confusing to insurers, consumers, and regulators and rather than streamline insurance regulation, this bill would only make it more complex. In sum, rather than the words of the statute being the guide for the business of insurance, it will be the legislative notes at the end of the statute which will be the guide for all to follow.

Current legislative drafting methods allow for the carving out of types of coverage from the application of certain statutes. Such methods are already used with great effect in Hawai'i Revised Statutes Chapter 431, Article 10A, as illustrated by the following examples:

§431:10A-101 Applications and exceptions. This part shall apply to all policies of accident and health or sickness insurance delivered or issued for delivery in this State, *except that nothing in this part shall apply to or affect:*

- (1) Any policy of workers' compensation insurance or any policy of vehicle or liability insurance with or without supplementary coverage therein;
- (2) Any policy or contract of reinsurance;
- (3) Any blanket or group policy of insurance; or
- (4) Life insurance, endowment, or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and health or sickness insurance as . . .

§431:10A-105 Required provisions. *Except as provided in section 431:10A-107*, each policy of accident and health or sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below. . .

§431:10A-302 Applicability and scope. (a) Notwithstanding any provision in this part to the contrary, this part shall apply to . . .

(b) *This part shall not apply* to a policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations.

§431:10A-603 Self-employed persons, exemption. *The requirements of this article* related to mandated coverages for persons insured under accident and health or sickness policies *shall not apply to accident and health or sickness policies* for self-employed persons in this State; provided that this exemption shall apply only to those portions of the accident and health or sickness policies that cover self-employed persons in this State and individuals included in the self-employed person's family coverage.

The Department believes that it is less confusing and more efficient for the Legislature to continue to use the previous methods to carve out specific coverages from statutory application rather than implement the blanket and opposite method that this bill proposes.

We respectfully request that S.B. No. 2371, S.D. 2, be held in Committee and thank this Committee for the opportunity to present testimony on this matter.

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

March 26, 2009

Honorable Robert N. Herkes, Chair
Honorable Glenn Wakai, Vice Chair
Committee on Consumer Protection and Commerce
House of Representatives
State Capitol
415 South King Street
Honolulu, Hawaii 96813

Re: S.B. No. 2371, S.D. 2 RELATING TO LIMITED BENEFIT HEALTH INSURANCE

Dear Chair Herkes, Vice Chair Wakai and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following written testimony in strong support of S.B. No. 2371, S.D. 2, relating to limited benefit health insurance, which is to be heard by your Committee on Consumer Protection and Commerce on March 29, 2010.

Supplementary or limited benefit health insurance policies provide consumers with the option of purchasing additional coverage for certain defined risks. For example, a cancer policy may provide a consumer with additional insurance to pay for costs associated with cancer that are not normally covered by a primary health insurance policy, such as travel costs. Other types of supplemental policies include accident-only or hospital indemnity policies, which similarly may provide coverage for out-of-pocket costs, rather than the direct costs of treatment. Limited benefit health insurance policies are generally policies in which the benefits are paid directly to the insured to be used in whatever way the insured decides, rather than as reimbursements to the providers.

Because the nature of limited benefit health insurance policies is fundamentally different from primary health insurance policies, the requirements imposed upon primary health insurance policies can be inappropriate for limited benefit health insurance policies. For example, Hawai'i law mandates that health insurance policies provide coverage for certain diabetes-related training, *etc.* See Hawaii Revised Statutes ("HRS") § 431:10A-121. While this may be an appropriate requirement for a primary policy of health insurance, it would not be appropriate to mandate this benefit for limited benefit health insurance policies. For example, a Hawai'i consumer that purchases a cancer policy has made the choice to insure against certain costs associated with cancer, possibly because of family history or other reasons specific to the consumer. However, if Hawai'i law also requires that the cancer policy include coverage for certain diabetes-related treatments, in effect, the law will force the consumer to purchase additional unwanted coverage at a higher price or, in the worst case, cause the consumer to be unable to purchase the desired cancer policy at all. Moreover, because Hawai'i law already requires that the consumer's primary health insurance policy cover the diabetes-related

Honorable Robert N. Herkes, Chair
Honorable Glenn Wakai, Vice Chair
Committee on Consumer Protection and Commerce
March 26, 2010
Page 2 of 2

treatments, it is duplicative, unnecessary and ultimately wasteful to require that the supplemental policy cover it as well. Similarly, requirements that relate to reimbursement levels should not apply to limited benefit policies, because these policies generally pay benefits to the insured directly and without regard to the amount of the actual costs or expenses incurred by the insured, whereas primary health insurance policies are reimbursement policies in which the benefits are paid to the providers, rather than the insured.

Although coverage under limited benefit health insurance policies is triggered by accident or health-related occurrences, as discussed above, the nature of these policies is entirely different from primary health insurance policies. HRS chapter 431:10A does not specifically distinguish limited benefit health insurance policies from primary health insurance policies. However, the Hawai'i Legislature has recognized that limited benefit health insurance policies are a different type of insurance product, as certain provisions of HRS chapter 431:10A specifically except limited benefit health insurance policies. *See, e.g.*, HRS § 431:10A-121 ("Each policy of accident and health or sickness insurance providing coverage for health care, other than an accident-only, specified disease, hospital indemnity, medicare supplement, long-term care, or other limited benefit health insurance policy, that is issued or renewed in this State, shall provide coverage for outpatient diabetes self-management training, education, equipment, and supplies . . .").

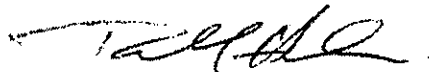
Each year, the Hawai'i Legislature considers a large number of bills relating to health insurance, including various mandated benefit bills, reimbursement bills, *etc.* Almost without exception, these measures are intended to address issues relating to primary health insurance policies, but may have unintended and undesirable effects if applied to limited benefit health insurance policies. S.B. No. 2371, S.D.2, would help to avoid these unintended consequences, creating a general exception for limited benefit health insurance from HRS chapter 431:10A, so that future laws regulating health insurance policies apply to limited benefit health insurance policies only if these laws specifically state that they are intended to apply to limited benefit health insurance policies.

Similar carve-outs have been enacted in Arizona, California, Georgia, Indiana, Louisiana, Minnesota, North Carolina, North Dakota, Oregon, Texas, Utah and West Virginia.

For the foregoing reasons, we strongly support S.B. No. 2371, S.D.2. Thank you for your consideration of the foregoing.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Peter J. Hamasaki

AMERICAN COUNCIL OF LIFE INSURERS
TESTIMONY IN SUPPORT OF SB 2371, SD 2, RELATING TO
LIMITED BENEFIT HEALTH INSURANCE

March 29, 2010

Via E Mail: cpctestimony@capitol.hawaii.gov
Honorable Representative Robert N. Herkes, Chair
House Committee on Consumer Protection and Commerce
Hawaii State Capital, Conference Room 325
415 S. Beretania Street
Honolulu, HI 96813

Dear Chair Herkes and Committee Members:

Thank you for the opportunity to testify in support of SB 2371, SD 2, relating to Limited Benefit Health Insurance.

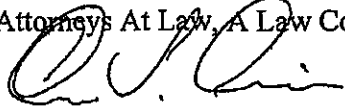
Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association whose three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States account for over 90% of the assets and premiums of the U.S. life insurance and annuity industry. ACLI member company assets account for 93% of the life insurance premiums and 98% of the annuity considerations paid in the State of Hawaii. Two hundred thirty-six (236) ACLI member companies currently do business in the State of Hawaii.

The apparent purpose and intent of SB 2371, SD 2, is to make prospective provisions of Article 10A of the Insurance Code applicable only to the type of Accident and Health or Sickness insurance specified by its terms. Thus, if a provision in the Article enacted after July 1, 2010 specifies that its terms are to apply to health insurance, its terms would not apply to a long term care insurance policy or a disability income insurance policy.

ACLI supports the bill as it adds clarity and will prevent confusion in administering the provisions of Article 10A. ACLI, therefore, requests that this measure be passed by this Committee.

Again, thank you for the opportunity to testify in support of this bill.

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


By: OREN T. CHIKAMOTO
otc@charhamilton.com

cc Joann Waiters, Esq.