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TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Thursday, March 25, 2010
2:45 p.m.

TESTIMONY ON SENATE BILL NO. 2701, S.D. 1 – RELATING TO CONSUMER PROTECTION.

TO THE HONORABLE JON RIKI KARAMATSU, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is J. P. Schmidt, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). Thank you for hearing this bill. The Department strongly supports this Administration bill with requested amendments.

The purpose of this bill is to modernize the laws in Hawaii Revised Statutes ("HRS") chapter 488 regulating prepaid legal services plans. This bill adds definitions, deletes the exemption for insurers regulated under chapters 431 and 432, clarifies filing requirements, requires the plan administrator to act as a trustee for funds collected by the plan and to maintain a trust account, and allows the Commissioner to suspend, revoke, or fine any plan that fails to comply with law.

Prepaid legal services plans are currently regulated by HRS chapter 488, with certain exceptions. One of the exceptions currently creates an exemption for plans where either the group or the plan administrator is an insurer regulated under chapter 431 or 432. This will clarify that all plans should register with the Department.

Prepaid legal services plans appear to have a low rate of compliance with Hawaii law. This bill clarifies the current practice where prepaid legal services plans file plan documents and annual exhibits with the Insurance Division.

The Department has recently received complaints from consumers and launched an investigation into prepaid legal services plans. The amendments are necessary to allow the Department to increase its ability to regulate these plans and to enforce these laws for the benefit of Hawaii's consumers.

Some of the consumer complaints received by the Department involve requests for refunds, where consumers made payment in full and either did not receive legal services or subsequently changed their mind and canceled the agreement. Current law provides for imposing fines upon a plan but does expressly allow the Department to take administrative action and to order the plan to cease and desist, to refer the case to Attorney General's or Prosecutor's office, or to require that the plan make restitution to consumers, where appropriate.

Based on the above, the Department respectfully requests the following amendments such that section 6 of the bill reads as follows:

SECTION 6. Section 488-7, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~**488-7**~~]~~] **Failure to comply; penalty.** (a) Any plan [~~which~~] that neglects or refuses to comply with this chapter shall be notified in writing by the [~~director of commerce and consumer affairs~~] commissioner of the neglect or refusal, and of the need to take corrective action[~~; if~~] within seven days. If the neglect or refusal continues for seven days after notification, the plan, group, or plan administrator may be fined not more than $1,000. Every day's neglect or refusal after the expiration of seven days shall be a separate offense.

(b) The commissioner may deny, suspend, revoke, or refuse to approve any plan or plan amendments and may levy civil penalties as allowed by chapters 431, 432, 480, 481A, 481B, 481C, and any applicable law for any violation of this chapter, including restitution."

In section 4 of the bill on page 5, lines 15, the word "plan" should be substituted for "premium", such that the lines 15-16 read "charges may be commingled with the plan funds accumulated pursuant to this section."

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