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TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Friday, January 28, 2011
9:30 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL NO. 613 – RELATING TO HEALTH INSURANCE.

TO THE HONORABLE RYAN I. YAMANE, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department opposes this bill which would make permanent the normally prohibited practice of requiring consumers to purchase only bundled insurance products. Health insurers with less than five percent of the market have an exemption which allows it to limit the consumers' choice and require consumers to purchase only bundled insurance products. Removal of the exemption does not prohibit insurers from offering bundled products; it only prohibits the mandatory purchase of bundled products. Where an insurer offers the consumer the choice to freely select individual products or as a bundled package, this practice is not prohibited.

The Department favors consumer choice, where consumers have the option of purchasing insurance products separately in addition to bundled insurance products. When an insurer offers the choice of purchasing either bundled and unbundled products, consumers are freely able to determine whether the pricing is favorable to purchase it bundled or unbundled. Only offering bundled insurance products is unfair to consumers, because it forces a consumer that wants to buy one product to buy another offered by the same insurer. With the current exemption, this is not only bad for consumers, but also creates an un-level playing field between insurance companies that are competing for business.

We thank this Committee for the opportunity to present testimony on this matter and respectfully request that this bill be held.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

January 28, 2011

The Honorable Ryan Yamane, Chair
The Honorable Dee Morikawa, Vice Chair
House Committee on Health

Re: HB 613 – Relating to Health Insurance

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 613 which would remove the sunset clause in Act 227 passed in 2008. This Act exempts small health plans that occupy less than five per cent of the health care market from adhering to a portion of the Insurance Code dealing with unfair methods of competition and unfair or deceptive acts or practices.

The language of the Act contains a requirement for the State Auditor to perform a sunset study and in October of this year, HMSA was contacted by the State Auditor's office to gather information on the impact of the potential sunset of Act 227. To this date, the study has not yet been published but after contacting the Auditor's office they stated that it will be available shortly. We believe that without reviewing the Auditor's study many questions remain around the impact of Act 227 including:

- What methodology was used to determine the 5% market share defined in the Act?
- Has the market share of health plans taking advantage of Act 227 remained below the statutory 5% market share ceiling in Act 227?
- How will this type of law work in conjunction with federal health care reform?

Without this information, it is difficult to know with certainty the impact that Act 227 has had on consumers in the state. Given this, the Committee may wish to delay action on HB 613 until the Auditor's report becomes available.

Thank you for the opportunity to testify today.

Sincerely,

A handwritten signature in black ink, appearing to read "JD", written over a white background.

Jennifer Diesman
Vice President
Government Relations



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BEFORE THE

HOUSE COMMITTEE ON HEALTH

Representative Ryan I. Yamane, Chair
Representative Dee Morikawa, Vice Chair

HB 613 RELATING TO INSURANCE

TESTIMONY OF
JOHN HENRY FELIX
Chairman of the Board and Chief Executive Officer

January 28, 2008, 9:30 a.m.
State Capitol Conference Room 329

Chair Yamane, Vice Chair Morikawa, and Committee Members:

My name is John Henry Felix, Chairman of the Board and Chief Executive Officer of Hawaii Medical Assurance Association (HMAA). HMAA **STRONGLY SUPPORTS** HB 613, which would enable small insurers that occupy less than five percent of the health insurance market to continue combining different types of health and sickness-related insurance benefits into a single unified policy.

By way of background, HMAA is a non-profit mutual benefit society which provides health insurance to over 40,000 Hawaii residents. HMAA occupies about four percent of Hawaii's health insurance market. As a small insurer, HMAA takes special pride in providing health insurance to sole-proprietors and small businesses, a segment of Hawaii's market which has a difficult time obtaining affordable health related insurance. Because these types of businesses are unable to take advantage of larger risk pools characteristic of larger employers, their insurance premiums tend to be more costly.

Hawaii's previous insurance commissioner changed the insurance division's longstanding interpretation of Hawaii law as now prohibiting combining different types of accident and health or sickness insurance benefits within the same policy, as a violation of anti-tying statutes described in section 431:13-103(a)(4)(B), Hawaii Revised Statutes. In 2008, however, the legislature, recognizing that access to affordable health insurance is one of the State's most pressing concerns, properly found that small accident and health or sickness insurers lack coercive market power and that a prohibition on tying arrangements by small insurers hurts consumers by preventing small insurers from offering different types of benefits in a single unified policy. Accordingly, the legislature passed Act 227, Session Laws of Hawaii 2008, which amended the Insurance Code to permit such bundling.

In enacting Act 227, the legislature found that comparable federal antitrust laws regarding anti-tying only apply as against companies which occupy thirty percent or more of the market. In the seminal decision of *Jefferson Parish Hospital v. Hyde*, 466 U.S. 2 (1984), the United States Supreme Court in applying the Sherman Act concluded that Jefferson Hospital had no market power with an assumed market share of thirty percent and therefore its tying arrangement was not unlawful. See *Hovenkamp*, Federal Antitrust Policy (3d edition, 2005) 402; *Hack v. President and Fellows of Yale College*, 237 F.3d 81 (2d Cir. 2000); *Marts v. Xerox*, 77 F.3d 1109, 1113 n.6 (8th Cir. 1996) (18% too small); *Shafi v. St. Francis Hosp.*, 937 F.2d 603 (4th Cir. 1991) (11% insufficient); *Grappone, Inc. v. Subarus of New England, Inc.*, 858 F.2d 792, 797 (1st Cir. 1988) (recognizing a general rule of at least 30%).

The intent of Act 227 was to bring Hawaii into compliance with the foregoing well-settled federal standards, and thereby encourage the longstanding practice by smaller accident and health or sickness insurers to "bundle" together different insurance benefits, such as health, dental, and vision, thus continuing the historical acceptance of this practice by small insurers who lack coercive power in the marketplace. In these circumstances, bundling provides broader health care coverage in single unified policies, ultimately resulting in lower overall premiums, fostering greater competition within the Hawaii insurance marketplace, and providing consumers with greater flexibility, coverage and pricing options.

Act 227, however, contains a sunset clause that will repeal Act 227 on June 30, 2011. Consequently, HB 613 removes the sunset clause and keeps in place the specification that it is not an unfair method of competition or an unfair or deceptive act or practice for an accident and health or sickness insurer with a market share of less than 5 percent to refuse to issue or renew a policy with a prospective insured unless the prospective insured contracts for another class or an additional policy of the same class of insurance with the same insurer.

HB 613 will help self-employed workers and small businesses by allowing broader coverage for less cost. Numerous Hawaii laws already permit the combination of various types of health coverages under one policy, and this should be encouraged, not discouraged, to help provide the broadest health coverage possible for Hawaii's residents. Act 227 and HB 613 simply codify into Hawaii law the same rules applicable to similar federal anti-tying laws, though using a far more conservative standard of 5% market share. Without passage of HB 613, hundreds of sole-proprietors, small businesses, and their families currently insured by HMAA could be forced to shop for more expensive individual policies with much less coverage.

HMAA STRONGLY SUPPORTS HB 613 and urges the passage of this measure. Thank you for the opportunity to testify.
