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TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Wednesday, March 30, 2011
2:05 p.m.

**TESTIMONY ON SENATE BILL NO. 27, S.D. 1 – RELATING TO LONG-TERM CARE
INSURANCE.**

TO THE HONORABLE ROBERT HERKES, 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 submits the following comments on this bill.

This version of the bill amends Hawaii Revised Statutes ("HRS") § 431:10A-102.5(b) by: (1) removing the references to HRS § 431:10A-131 and to long-term care; and (2) adding the term "accident and health or sickness insurance".

HRS § 431:10A-102.5 was added last session to clarify the provisions applicable to limited benefit health insurance policies.

HRS § 431:10A-131 defines the offense of insurance fraud for health insurers, which has comparable provisions in HRS §§ 432:1-206 and 432D-18.5 governing mutual benefit societies and health maintenance organizations, respectively. These provisions were enacted by Act 125, Session Laws of Hawaii 2003, to address health insurance fraud. As proposed, excluding this section would mean that the Department

does not have the authority to bring insurance fraud actions involving limited benefit health insurance policies.

Long-term care insurance is governed by Article 10H of the Insurance Code, HRS chapter 431. Removing the phrase "long-term care" from HRS § 431:10A-102.5(b) does not appear to have any impact on the Department's regulation over long-term care insurance.

We thank this Committee for the opportunity to present testimony on this matter.

AMERICAN COUNCIL OF LIFE INSURERS
TESTIMONY IN SUPPORT OF SB 27, SD 1
RELATING TO LONG-TERM CARE INSURANCE

March 30, 2011

Via e mail: cpctestimony@capitol.hawaii.com

Hon. Representative Robert N. Herkes, Chair
Committee on Consumer Protection and Commerce
State House
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Herkes and Committee Members:

Thank you for the opportunity to testify in support of SB 27, SD 1, relating to Long-Term Care Insurance.

Our firm represents the American Council of Life Insurers ("ACLI"), a national trade association, who represents more than three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies account for 90% of the assets and premiums of the United States Life and annuity industry. ACLI member company assets account for 91% of legal reserve company total assets. Two hundred thirty-nine (239) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 95% of the annuity considerations in this State.

The purpose of this bill is to exclude long-term care insurance ("LTC") from the laws relating to accident, health or sickness insurance contained in Article 10A of the Insurance Code.

The laws governing LTC are contained in Article 10H of the Insurance Code. Article 10H was added to the Code as the receptacle for the laws pertaining to LTC as a result of the passage by the Legislature of SB 131, relating to long term care (the "Long Term Care Insurance Bill"). This bill was enacted into law as Act 93 during the 1999 Legislative Session.

The stand alone Article 10H, pertaining to long-term care insurance, was intentional.

Under the Federal tax laws, generally amounts received under an LTC contract are treated as amounts received for personal injuries and sickness and are, thus, non-taxable. In order for the LTC contract to receive this favorable tax treatment the contract must provide the consumer safeguards mandated by the Health Insurance Portability and Accountability Act ("HIPAA"). Under the tax laws, a long term care insurance contract is deemed to satisfy these requirements if it incorporates certain provisions contained in the National

Association of Insurance Commissioners Long-Term Care Insurance Model Act. Section 7702B, Internal Revenue Code. These provisions were incorporated into Hawaii's Long Term Care Insurance Bill

When the Bill was introduced in 1999, its provisions were originally added to Part V of Article 10A, relating to accident, health or sickness insurance contracts ("AHSIC"). Part V was the original receptacle for the then existing laws pertaining to long term care insurance. In recognition that later amendments to Article 10A relating to AHSIC products might inadvertently be applied to an LTC contract and thereby disqualify it as being a "qualified long-term care insurance contract" under the tax laws, the Senate Ways and Means Committee repealed Part V of Article 10A and enacted new Article 10H to serve as the separate receptacle for LTC contracts

Last session, when the Legislature passed SB 2371, which was enacted into law as Act 115 (now Section 431:10A-102.5, HRS) LTC was inadvertently made subject to the regulatory requirements applicable to AHSIC contained in Section 431:10A-104 through and including 114, 117, 118, 131, and 601 through and including 603. A summary of these regulatory provisions is attached.

If the provisions of Act 115 are interpreted as applying to LTC, all LTC contracts in existence and issued after its effective date, May 17, 2010, would be in violation of its provisions. Act 115 would, for example, require all existing and newly issued LTC contracts to be in the form specified in Section 431:10A-104, they would have to include the provisions specified under Section 431:10A-105 and stated in a particular order as mandated under Section 431:10A-108. Fortunately, the Insurance Commissioner has to date interpreted Act 115 as excluding LTC contracts.¹

In order to correct the inadvertent inclusion of LTC contracts in Article 10A and subjecting it to its provisions, SB 27, SD 1, would exclude long-term care insurance from the provisions of Act 115.

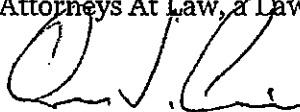
Finally, SB 27, SD 1, deletes reference in Act 115 to the requirements set forth in Section 431:10A-131, HRS, relating to insurance fraud, as that section was repealed by the Legislature in 2009.

For the foregoing reasons, ACLI requests that this Committee pass SB 27, SD 1.

¹ In a comfort letter issued to ACLI by the Insurance Division dated June 23, 2010, the Division states: "Long Term Care Policies are not affected by Senate Bill 2371 which is concerned with sections in Hawaii Revised Statutes (HRS) 431:10A. The language of the Bill states "except as otherwise provided..." and the Insurance Division interprets this to mean that because Long Term Care Policies are governed by HRS 431:10H, HRS 431:10A-105 requiring self-certification referenced in Senate Bill 2371 does not apply to Long Term Care Policies."

Again, thank you for the opportunity to testify in support of SB 27, SD 1, relating to long-term care insurance.

CHAR, HAMILTON
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A handwritten signature in black ink, appearing to read "Oren T. Chikamoto".

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As drafted Act 115 (now Section 431:10A-102.5, HRS) makes all LTC policies subject to the compliance provisions of Article 10A, relating to Accident and Health or Sickness Insurance contracts, specified below.

1. Section 431:10A-104, specifies the required form of an accident and health or sickness insurance policy ("AHSIP").

2. Section 431:10A-105, sets forth provisions that must be included in an AHSIP. Many of these provisions are different than those required under Hawaii's LTC Insurance law.

3. Section 431:10A-106, states that optional provisions relating for example to coverage after the insured changes his/her occupation to one that is more hazardous the insured's occupation when the policy was issued may not be included in an AHSIP unless such provisions are worded as specified in the section.

4. Section 431:10A-107, states that if an AHSIP has a provision in the policy that is inapplicable or inconsistent with those required by Article 10A the provision must be modified to conform to those required by Article 10A.

5. Section 431:10A-108, require that the mandatory and optional provisions in an AHSIP must be stated in particular order.

6. Section 431:10A-109, provides that a 3rd party having an insurable interest in the insured may own the AHSIP covering the insured.

7. Section 431:10A-110, states that an AHSIP issued by an out of state insurer may include any provision which is no less favorable than the provision required by Article 10A.

8. Section 431:10A-111, states that a provision otherwise allowable under Article 10A cannot be less favorable than the provisions which are covered by Article 10A.

9. 431:10A-112, provides that any AHSIP which violates the provisions of Article 10A is nonetheless valid but shall be construed in a manner that conforms too Article 10A.

10. Section 431:10A-113, specified the procedure applicable to the filing of an AHSIP.

11. Section 431:10A-114, states that if the policy sets forth an age or date at which there is no coverage, if the insured accepts the insured's premium which covers the period of non-coverage, the coverage of the policy will continue in force until the end of the period for which the premium has been accepted.

12. Section 431:10A-117, allows for the issuance of an AHSIP under an franchise (employer provided) plan.

13. Section 431:10A-118, prohibits use of genetic information to deny or limit coverage under the AHSIP.

14. Section 431:10A-131, was repealed in 2009.

15. Section 431:10A-601, mandates coverage for members of a reciprocal beneficiary's family to the same extent provided to family members of a person who is not a reciprocal beneficiary.

16. Section 431:10A-602, states that required coverage under Article 10A shall not apply to an insurer offering an AHSIP under a federally funded program under Social Security.

17. Section 431:10A-603, states that required coverage under Article 10A shall not apply to an AHSIP issued to a self-employed person.