NEIL ABERCROMBIE
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PATRICIA MCMANAMAN
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BARBARA A. YAMASHITA
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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 24, 2012

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Patricia McManaman, Director

SUBJECT: **H.B. 1689, H.D. 1 - RELATING TO LONG-TERM CARE**

Hearing: Friday, February 24, 2012; 3:30 p.m.
Conference Room 308, State Capitol

PURPOSE: The purpose of the bill is to implement the long-term care partnership program, allowing individuals to qualify for Medicaid coverage for continued long-term care and exempt assets that would otherwise be counted toward determining eligibility for Medicaid.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) respectfully opposes this bill as these long-term care partnership programs have not been shown to increase the purchase of long-term care insurance or result in Medicaid savings. Instead these programs provide a mechanism for wealthy individuals to shelter assets in order to become eligible for Medicaid, a publicly funded program intended to serve poor individuals.

The position of the DHS is consistent with that of the Hawaii Long-Term Care Commission (HLTCC), which did not recommend implementation of partnership programs. Reasons cited include:

- Other states have found that it did not produce the intended results of increasing the number of people who purchased long term care insurance;

- Those that did participate were overwhelming affluent and the effect of the program was that it protected the assets of the affluent rather than provide relief to the intended population.

In addition the United States General Accounting Office published a report in June 2007 (GAO-07-231) on the effect of long-term care partnership programs and concluded that these programs do not result in savings for Medicaid. The report's findings included:

- Partnership and traditional long-term care insurance policyholders tend to have higher incomes and more assets at the time they purchase their insurance compared with those without insurance.
- More than half of all households have assets of at least $350,000 at the time they purchase a Partnership policy.
- Partnership programs are unlikely to result in savings for Medicaid, and may increase spending.
- About 80 percent of surveyed Partnership policyholders would have purchased traditional long-term care insurance policies if Partnership policies were not available, representing a potential cost to Medicaid.
- About 20 percent of surveyed Partnership policyholders indicate they would have self-financed their care in the absence of the Partnership program.

This bill does not appear to be an effective way to encourage the purchase of long-term care insurance to reduce Medicaid expenditures, and conversely, could very well result in increased Medicaid expenditures. However, this bill would seem to preserve wealth for Medicaid recipients at taxpayer's expense.

Thank you for the opportunity to testify on this bill.

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:
H.B. NO. 1689, H.D. 1, RELATING TO LONG-TERM CARE.

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE:	Friday, February 24, 2012	**TIME:**	3:30 p.m.
LOCATION:	State Capitol, Room 308		
TESTIFIER(S):	David M. Louie, Attorney General, or Lili A. Young, Deputy Attorney General		

Chair Oshiro, and Members of the Committee:

The Department of the Attorney General has the following comments.

This bill seeks to establish the Long-term Care Partnership Program (the "Program") by adding a new chapter to the Hawaii Revised Statutes. Through the Program, individuals are encouraged to purchase long-term care insurance in order to reduce future Medicaid costs for long-term care. As an incentive under the Program, the individual's assets, in an amount equal to the amount of benefits paid under a qualified long-term care insurance policy, would be disregarded when applying for Medicaid assistance.

The proposed statutory wording contained in section 1 of the bill on page 3, lines 7-11, is confusing. It provides that "[t]he department shall establish a long-term care partnership program that enables an individual who has assets that would otherwise disqualify the individual from receiving medicaid benefits **to continue receiving** medicaid benefits" (emphasis added). An individual who was initially disqualified from receiving Medicaid benefits would not be able to "continue receiving" the benefits. We suggest changing the phrase "to continue receiving" to "to receive" to eliminate confusion.

Further, in section 1 of the bill on pages 3-4, starting from line 20 on page 3, the proposed statutory wording provides: "Notwithstanding any other law to the contrary, an individual who purchases a certified long-term care insurance partnership policy and has assets above the eligibility levels for receipt of medicaid benefits shall be eligible to receive medicaid benefits and any other long-term care services specified by the department without regard to the individual's assets." This provision should be clarified. As written, it appears to allow an individual to be eligible for Medicaid benefits by disregarding **all** of an individual's assets. This provision would be rendered ineffective as federal law preempts it. For coverage under the federal Medicaid program, 42 United States Code section 1396p(b)(1)(C)(iii) provides restrictively that "any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy" will be disregarded if certain requirements are met. Thus, only the value of a person's assets that is equal to the long-term benefit payments the person receives would be disregarded for purposes of eligibility.

On the other hand, if it is the intent of the Program to ensure that **all** assets of an individual who purchases long-term care insurance are to be disregarded so the person may be eligible to receive long-term care supported by the State, this wording would require that the benefits be paid with State funds only. This would make it difficult to refer to this, however, as a partnership program.

We respectfully ask that, if the Committee passes this bill, amendments be made to address these concerns.

TO : COMMITTEE ON FINANCE
Rep. Marcus R. Oshiro, Chair
Rep Marilyn B. Lee, Vice Chair

FROM: Eldon L. Wegner, Ph.D.
POLICY ADVISORY BOARD FOR ELDER AFFAIRS (PABEA)

HEARING: 3: 30 pm Friday, February 24, 2012
Conference Room 308, Hawaii State Capitol

SUBJECT: HB 1689 HD1 Relating to Long-Term Care

POSITION: The Policy Advisory Board for Elder Affairs, **opposes** HB 1689 HD1, which would implement a long-term care partnership, allowing individuals who purchase private long-term insurance to qualify for Medicaid coverage for continued care prior to exhausting their assets.

RATIONALE:

The Policy Board for Elder Affairs has a statutory obligation to advocate on behalf of the senior citizens of Hawaii. While we advise the Executive Office on Aging, we do not speak on behalf of the Executive Office of Aging.

- The Long-Term Care Commission submitted its recommendations to the Legislature on January 18, 2012. The Commission decided to note this program as a possible incentive to purchasing private long-term care insurance way of financing long-term care, however, the Commission decided against recommending this program.

- Studies in other states which adopted this program found that it did not increase the numbers purchasing private long-term care insurance, thus not serving the intended purpose. Apparently, those who enrolled were persons who would have purchased private insurance regardless of the program.

- Furthermore, those who did participate in the program were overwhelmingly affluent. Thus, effect of the program is to protect the assets of affluent individuals so they could pass them to their beneficiaries. This result is not consistent with the intended purpose of Medicaid to provide services to the indigent.

- The purpose of initiatives to finance long-term care should be to reduce the dependency on Medicaid rather than to increase its enrollees. Medicaid is a welfare program and the funding for Medicaid already fall short of being able to provide the much needed medical and long-term care services by the truly needy.

- Thus, we oppose this proposal as perhaps well-intended, but having detrimental effects in benefiting only the relatively affluent at the expense of resources needed by the truly needy and increasing the burden on public revenues.

Thank you for allowing me to testify on this bill.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN SUPPORT OF HOUSE BILL 1689, HD 1, RELATING TO LONG TERM CARE

February 24, 2012

Via e mail: fintestimony@capitol.hawaii.gov

Hon. Representative Marcus R. Oshiro, Chair
Committee on Finance
State Senate
Hawaii State Capitol, Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Oshiro and Committee Members:

Thank you for the opportunity to testify in support of HB 1689, HD 1, relating to Long Term Care.

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-five (235) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 92% of the annuity considerations in this State.

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).

The purpose and intent of HB 1689, HD 1, is to implement the partnership program authorized by Act 233. 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. It allows individuals to qualify for Medicaid coverage for continued long term care prior to exhausting their assets.

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 will encourage families to finance the cost of long term care themselves. ACLI, therefore, is in strong support of HB 1689, HD 1, and requests that this Committee pass this measure into law.

Again, thank you for the opportunity to testify in support of HB 1689, HD 1, relating to Long Term Care.

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NAIFA

HAWAII

House Committee on Finance
Hearing Date: February 24, 2012
Time: 3:30 pm - Agenda 6

RE: HB 1689, HD1 - Relating to Long Term Care

Chair Oshiro, Vice Chair Lee, and members of the Committee, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii is made up of life and health insurance agents throughout Hawaii, who primarily market life, annuities, long term care and disability income insurance products.

We support this measure to implement the "Hawaii Partnership for Long Term Care Program".

The LTC partnership has been adopted by 44 states to reduce Medicaid expenditures by delaying or eliminating reliance on Medicaid. 6 states have no plan - Alaska, Utah, New Mexico, Mississippi, Michigan and Hawaii. Originally, 4 states - California, New York, Connecticut, Indiana - began a demonstration project funded by the Robert Wood Johnson Foundation in 1987.

The Deficit Reduction Act of 2005 allows states to create a LTC partnership plan that will amend its Medicaid plan. It requires LTC partnership policies to include consumer protections tied to the NAIC's model LTC regulations that Hawaii was already adopted. The NAIC model LTC regulation also requires that these partnership policies meet the IRC definition of a tax "qualified" LTC insurance policy where the benefits received are not taxable.

The LTC partnership program once enacted by the Hawaii Legislature will allow consumers to purchase "certified" LTC insurance partnership policies that meets the specified requirements of the NAIC model LTC regulations and will also include inflation protection for those under age 76. DHS, as the Medicaid administrator will administer the program. The state will set the percentage of assets to determine eligibility and enter into agreements with insurer(s) that will be selected.

Consumers will then purchase amounts of LTC insurance that will be used pay for their LTC benefits before being able to access Medicaid. For example, a consumer who bought a policy benefit of $100,000 would be entitled up to $100,000 worth of nursing home or community based LTC services from the policy and if further care was necessary, then apply for Medicaid while retaining $100,000 in assets.

This model is known as the "dollar for dollar" asset protection model that promotes more affordable policies. Currently, individuals cannot have more than $2000 in assets (plus their home) to meet the eligibility threshold.

These LTC partnership policies will allow the policyholders to protect some or all of their assets from the Medicaid spend down requirements during the eligibility process. They will no longer have to become impoverished to qualify for Medicaid. Also, there will be income requirements for the policyholders and eligibility criteria that the state will determine.

Policyholders will take responsibility for their initial phase of LTC through private insurance before accessing Medicaid. Consumer education and agent training are key components in the complexity of LTC insurance choices. Current Hawaii law is in place to ensure agent training – Act 233, 2007 SLH – a one time 8 hour training course and ongoing training of 4 hours every 24 months (431:10H-106.5, HRS).

We encourage any and all options for consumers to finance their LTC needs.

Mahalo for your favorable consideration on this measure and for the opportunity to share our views.

Cynthia Takenaka, Executive Director
Phone: 391-3451

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2012 2:29 PM
To: FINTestimony
Cc: robertscottwall@yahoo.com
Subject: Testimony for HB1689 on 2/24/2012 3:30:00 PM
Attachments: ~$1689 HD1.doc

Testimony for FIN 2/24/2012 3:30:00 PM HB1689

Conference room: 308
Testifier position: Support
Testifier will be present: Yes
Submitted by: Scott Wall
Organization: United Self Help
E-mail: robertscottwall@yahoo.com
Submitted on: 2/22/2012

Comments:

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 23, 2012 2:56 PM
To: FINTestimony
Cc: otc@chikamotolaw.com
Subject: Testimony for HB1689 on 2/24/2012 3:30:00 PM

Testimony for FIN 2/24/2012 3:30:00 PM HB1689

Conference room: 308
Testifier position: Support
Testifier will be present: No
Submitted by: Oren T. Chikamoto
Organization: American Council of Life Insurers
E-mail: otc@chikamotolaw.com
Submitted on: 2/23/2012

Comments: