HB 1689, HD1

Measure Title:	RELATING TO LONG-TERM CARE.
Report Title:	Long-Term Care Partnership Program
Description:	Implements the long-term care partnership program, allowing individuals to qualify for medicaid coverage for continued long-term care prior to exhausting their assets. Effective July 1, 2050. (HB1689 HD1)
Companion:	SB2309
Package:	None
Current Referral:	HMS, WAM
Introducer(s):	RHOADS, M. LEE

NEIL ABERCROMBIE
GOVERNOR

PATRICIA MCMANAMAN
DIRECTOR

BARBARA A. YAMASHITA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

March 20, 2012

TO: The Honorable Suzanne Chun Oakland, Chair
Senate Committee on Human Services

FROM: Patricia McManaman, Director

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

Hearing: Tues, March 20, 2012; 1:45 p.m.
Conference Room 016, 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 overwhelmingly 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, in fact, increase spending.
- 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. Conversely, it could very well result in increased Medicaid expenditures. This bill would seem to preserve individual wealth 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:

SENATE COMMITTEE ON HUMAN SERVICES

DATE:	Tuesday, March 20, 2012	**TIME:**	1:45 p.m.
LOCATION:	State Capitol, Room 016		
TESTIFIER(S):	David M. Louie, Attorney General, or Lili A. Young, Deputy Attorney General		

Chair Chun-Oakland 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 **<u>all</u>** 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 **<u>all</u>** 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 HUMAN SERVICES
Senator Suzanne Chun-Oakland, Chair
Senator Les Ihara, Vice-Chair

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

HEARING: 1:45 pm Tuesday, March 20, 2012
Conference Room 016, 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.

We propose an amendment as SD 1 to strike the language in this bill and substitute language from SB 2321 SD 1, SB 2306 SD 2 and SB 2308.

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.

1) The current contents of HB 1689 HD 1 be stricken, since this bill proposes the public-private partnership Medicaid waiver which the long-term care commission did not recommend. The effect of this waiver is to enable persons purchasing long-term care insurance to be enrolled in Medicaid services while protecting their assets. Research in other states shows this does not lead to increased purchase of private insurance but provides a benefit to affluent persons who would purchase the insurance without this incentive.

2) We recommend inserting into HB 1689 the language of the following bills which implement the recommendations of the Long-Term Care Commission:

   A. **SB 2321 SD 1**. Long Term Care Insurance. This bill establishes a taskforce to study to feasibility of a limited mandatory public insurance program for long-term care. SD 1 placed the taskforce under the Executive Office on Aging and requested an appropriation of $75,000 for staffing. (SD 2 added an appropriation for an actuarial study, but this is not appropriate until the feasibility study is completed and not possible within the one year deadline.)

B. **SB 2308 SD 2** Relating to Long Term Care. Requests the state's Executive Office on Aging to conduct an education and awareness campaign to inform the public of the risks of long-term care, motivate residents to plan for future needs, reduce misinformation about who pays for long-term care, and inform them of possible alternatives for financing long-term care.

C. **SB 2306** Consolidation: Long-Term Care Taskforce. Establishes a taskforce to consolidate state responsibility for long-term care; as an interim arrangement this bill proposes to create a Deputy Health Transformation Coordinator over Long-Term Care in the Office of Health Care Transformation Coordinator.

Thank you for allowing me to testify on this bill.

SUGGESTED AMENDMENT TO HB 1689 HD 1 AS SD 1

TO: SENATE COMMITTEE ON HUMAN SERVICES,
Senator Suzanne Chun-Oakland, Chair
Senator Les Ihara, Vice-Chair

FROM: Eldon L. Wegner, Policy Advisory Board for Elder Affairs

The Policy Advisory Board for Elder Affairs supports bills which implement the recommendations of the Long-Term Care Commission. We recommend the following amendment to HB 1689 HD 1, entitled Long-Term Care.

1) The current contents of HB 1689 HD 1 be stricken, since this bill proposes the public-private partnership Medicaid waiver which the long-term care commission did not recommend. The effect of this waiver is to enable persons purchasing long-term care insurance to be enrolled in Medicaid services while protecting their assets. Research in other states shows this does not lead to increased purchase of private insurance but provides a benefit to affluent persons who would purchase the insurance without this incentive.

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NAIFA

HAWAII

Senate Committee on Human Services
Hearing Date: March 20, 2012
Time: 1:45 pm Room: 016

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

Chair Chun Oakland, Vice Chair Ihara, 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".

However, we **oppose** the House Finance Committee's Standing Committee Report No. 877-12, requesting that future discussions consider a dollar for fifty cents asset "disregard" rather than a dollar for dollar asset "disregard' as currently proposed in this measure.

We were not able to find out if partnership programs are allowed to deviate from the dollar for dollar asset disregard (aka asset protection) via the partnership program rules.

The following was submitted earlier for SB 2309, a similar bill to HB 1689, HD1.

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

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 14, 2012 3:22 PM
To: HMS Testimony
Cc: robertscottwall@yahoo.com
Subject: Testimony for HB1689 on 3/20/2012 1:45:00 PM

Testimony for HMS 3/20/2012 1:45:00 PM HB1689

Conference room: 016
Testifier position: Support
Testifier will be present: Yes
Submitted by: Scott Wall
Organization: United Self Help
E-mail: robertscottwall@yahoo.com
Submitted on: 3/14/2012

Comments:
Aloha Sen Ige, Sen. Chun-Oakland, members of the committees.

My name is Scott Wall and I am writing on behalf of United Self Help. We support HB1689 HD1.

We feel that long term care is an integral part of reconstructing Hawai'i's health care system.

The lack of long term care facilities has proven a stumbling block in the treatment of the elderly and the disabled. People languish in acute care settings just burning up taxpayer dollars simply because there are no supervised facilities for them to go to.

Just think about what is going to happen when (as the U.S. Dept. of Health and Human Services has fortold,) twenty million Americans become aflicted with Altzheimers over the next twenty years. Neither the country nor our State are prepared for this.

We support this bill as a first step in correcting a horrible lapse in foresight.

Mahalo,
Scott Wall
United Self Help