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March 18, 2012

House Committee on Consumer Protection and Commerce
Representative Robert Herkes, Chair
Representative Ryan Yamane, Vice Chair

Hearing:

State Capitol Room 325
March 19, 2012, 2:00 p.m.

SB 2434, SD1, HD1 – Relating to the Hawaii Health Insurance Exchange

Thank you for the opportunity to provide testimony supporting the intent of SB 2434, SD1, HD1. The American Cancer Society is the nationwide, community-based, voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer, through research, education, advocacy, and service. Providing access to health care is a major concern of the Society.

The Society has continued concerns over the creation of a separate individual and small group risk pools. During the previous committee hearings regarding this bill and HB 1736, the House version, the connector board explained that this recommendation was made because it reflects Hawaii's current market. While there are many factors that may affect the exchange, our main concern is with maintaining a healthy risk pool.

Our concern comes from the absence of an assessment, however, that was not contained in any report of the Connector Board. To determine whether the risk pools should be separated, there should be some assessment of the markets based on size, risk, economic characteristics of the group, and the impacts to the risk pools. This would provide the public a greater understanding of the risks of the small group and individual markets. Having separate risk pools may be ideal for Hawaii's insurance market, but there should be some analysis of the current market in order to draw these conclusions.

We also recognize the Health Committee's amendments to increase consumer representation on the Connector Board. As a mechanism designed to benefit consumers by simplifying the purchase of health insurance, the exchange should have adequate representation from consumers. The board has also been trying to work with consumer groups, although has not

yet determined what type of role the consumer groups will play in providing guidance to the board as a whole. We look forward to continue working with the board and all of the stakeholders as implementation of the exchange continues.

Thank you for allowing us the opportunity to provide testimony on this measure.

Sincerely,

A handwritten signature in black ink that reads "Cory Chun". The signature is written in a cursive style with a horizontal line extending to the right.

Cory Chun
Government Relations Director

March 16, 2012

The Honorable Robert N. Herkes, Chair
The Honorable Ryan I. Yamane, Vice Chair
House Committee on Consumer Protection & Commerce

March 19, 2012, 2:00pm
Conference Room 325

Re: SB 2434, SD1, HD1 Relating to the Hawaii Health Insurance Exchange

Chair Herkes, Vice Chair Yamane, and Members of the Committee:

Consumers for Fairness appreciates the opportunity to testify in opposition of SB 2434, SD1, HD1 as it is currently worded.

The current provision of SB 2434, SD1, HD1 separates individuals and small groups into two separate programs and is contrary to the objectives of the Patient Protection and Affordable Care Act (PPACA).

One of the primary objectives in the passage of the federal PPACA was to reform health care insurance practices and to create exchanges for the individual and small group market. In so doing, the objective was to have a pooling of risk as opposed to a segregation of the individual and small group market. This is especially true in the State of Hawaii, where we have a significant number of sole proprietors and small groups. The current provision of SB 2434, SD1, HD1, which separates individual and small groups into two risk pools, is anti-consumer and will drive up the rates for these groups.

In addition, page 5, lines 18-21 of this bill states:

“Qualified employer” means a small employer that elects to make, at a minimum, all of its full-time employees eligible for one or more qualified plans in the small group market offered through the connector.

The federal law allows an employer to provide options and offers the employees to choose between an employer-sponsored plan and an exchange plan. This definition restricts the small employer from exercising those options. We strongly recommend that your committee amend the above definition to read:

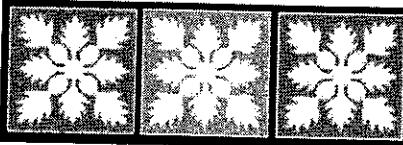
“Qualified employer” means a small employer that elects to make, at a minimum, one or more of its full-time or part-time employees eligible for one or more qualified plans in the small group market offered through the connector.

In 2003, the legislature amended Chapter 393 to remove insurance company representatives and employees from serving on the Hawaii Prepaid Health Care Advisory Council. However, the legislature has placed insurers on the Hawaii Connector Board. This policy is inconsistent. We believe the legislature should be consistent with their policies. We object to insurance representatives sitting on the Connector Board as this creates an unfair advantage to insurers when the exchanges are primarily for the benefit of the individual and small group market.

Furthermore, the main objective and tenet of the PPACA was to reform health care insurance practices. However, the legislature is allowing the insurance industry to participate in determining the practices of the health exchanges. If the legislature does not want to amend the proposed bill, then, at the minimum, there should be transparency, which means all decisions should be made in public and all agendas and action items should be made available to the public at least ten days in advance of the meeting. If the board fails to do so, such actions and decisions by the board would be null and void.

We respectfully request that you hold this bill in committee or amend the definition as outlined on the previous page. Thank you for allowing us to testify in opposition of this measure.

Respectfully submitted,
Consumers for Fairness



Hawaii Association of Health Plans

March 19, 2012

The Honorable Robert Herkes, Chair
The Honorable Ryan I. Yamane, Vice Chair

House Committee on Commerce & Consumer Protection

Re: SB 2434 SD1 HD1 – Relating to the Hawaii Health Insurance Exchange

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

My name is Richard Jackson and I am chair of the Public Policy Committee of the Hawaii Association of Health Plans (HAHP). HAHP is a non-profit organization consisting of eight (8) member organizations: AlohaCare, HMAA, HMSA, HWMG, Kaiser Permanente, MDX Hawai'i, UHA, and UnitedHealthcare. Our mission is to promote initiatives aimed at improving the overall health of Hawaii. HAHP is also active participants in the legislative process. Before providing any testimony, all HAHP member organizations must be in unanimous agreement of the statement or position.

We appreciate the opportunity to provide testimony in support of SB 2434 SD1 HD1, which reflects the recommendations for the Health Insurance Exchange offered by the Interim Board of Directors of the Hawaii Health Connector (HHC). HAHP believes that in order to best serve consumers, both individual and small group markets should be offered within a single Exchange and each insurer that participates in the Exchange should be required to offer qualified plans to all State residents. These guidelines will help ensure broader access to care and greater insurance coverage for all people of Hawaii.

We also feel that costly errors and missteps may be avoided by specifying that the Department of Human Services be responsible for performing eligibility determinations for individuals in the Medicaid program that are applying through the Exchange and agree to such eligibility determinations.

HAHP supports the proposed Board composition and feels that this arrangement will best represent consumers, providers, and insurers. The Interim Board's other policy recommendations also meet the requirements mandated by the Affordable Care Act and will be in the best interest for both consumers and health plans in the Hawaii Health Connector.

Thank you for allowing us to testify in support of SB 2434 SD1 HD1 today.

Sincerely,

Richard Jackson
Chair, Public Policy Committee



To: Committee on Consumer Protection & Commerce
Representative Robert N. Herkes, Chair

Date: March 19, 2012, Conference Room 325, 2:00 p.m.

Re: **SB2434 , SD1, HD1 – RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE**

Chair Herkes and Committee Members:

AARP is a membership organization of people 50 and older with nearly 150,000 members in Hawaii. We are committed to championing access to affordable, quality health care for all generations, providing the tools needed to save for retirement, and serving as a reliable information source on issues critical to Americans age 50+.

AARP provides **comments** and amendments on SB2434, SD1 HD1 which specifies that the Hawaii health connector shall establish and administer separate programs to serve the individual market and the small group market; establishes a navigator program; establishes staggered terms for board members and clarifies board composition; and clarifies the role of DHS in determining Medicaid eligibility.

AARP proposes to amend SB2434, SD1 HD1 by excluding insurers (health plans) from the board of directors of the Hawaii Health Insurance Exchange. We appreciate the amendments to this bill by the Committee on Health which recognizes conflict of interest and consumer protection issues, by increasing consumer representation on the board. However, the amendments do not go far enough. The current bill would not increase consumer representation on the board for at least two years. In that time the current board may have established policies and procedures not in the best interests of consumers.

Allowing insurers on the board that determines the policies and rules under which they will be competing for consumer accounts, raises conflict of interest concerns. The consumer is not served, and is contrary to good public policy to allow board membership to individuals representing organizations who stand to gain financially by board policy and decisions. This is akin to having the foxes design the henhouse. Further, this is not even fair to all insurers since the insurers who sit on the board would have a clear inside advantage over those that don't. What would best serve consumers is to have all insurers excluded from serving on the board of the Hawaii Health Insurance Exchange.

AARP believes that the function of the Hawaii Health Insurance Exchange is of such significance that transparency of board meetings and actions, and public disclosure of board reports and minutes in accordance with the Sunshine Law would provide the consumer with assurance that there is no specter of any conflict of interests, real or perceived. This would also provide a level playing field for insurers to compete.

AARP recognizes that insurers have an important role in the establishment of the Hawaii Health Insurance Exchange and can provide necessary information and input. Insurers should be appointed to advisory or standing committees reporting to the board.

AARP is also concerned about the establishment of separate programs (risk pools) for the individual and the small group market. Separating the two programs would mean fewer individuals over which to spread the costs and risk. If the two programs were merged it would allow for costs to be spread to more participants; especially since these risk pools are relatively small, as the Hawaii Prepaid Health Care Act covers over 90% of all Hawaii residents.

AARP proposes that SB 2434, SD1,HD1 Section 3 be amended as follows:

SECTION 3. Section 435H-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The Hawaii health connector shall be a nonprofit entity governed by a board of directors that shall comprise fifteen members appointed by the governor and with the advice and consent of the senate pursuant to section 26-34; provided that the governor shall submit nominations to the senate for advice and consent no later than February 1, 2012~~[§]~~, and no later than February 1 in any year thereafter in which nominations are made; and provided further that the senate shall timely advise and consent to nominations for terms to begin July 1, 2012 ~~[§]~~, and no later than July 1 in any year thereafter in which nominations are made. Members of the interim board shall be eligible for appointment to the board."

2. By amending subsection (c) to read:

"(c) Board members shall serve staggered terms ~~[and the interim board shall recommend an appropriate schedule for staggered terms; provided that this]~~ and shall be appointed to terms of four years; provided that of the initial appointees, five shall be appointed to a two-year term, and five shall be appointed to a three-year term. Each member shall hold office until the member's successor is appointed and qualified. This subsection shall not apply to ex-officio members, who shall serve during their entire term of office."

3. By amending subsection (b) to read:

(b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders, representing consumer interests, including consumers who are beneficiaries, advocates for enrolling hard to reach populations, trade associations and other organizations representing the interests of small businesses, and organizations whose primary mission is to advocate for consumers. Including five consumers, one employer, three insurers, and two providers. A member of the board or staff of the Hawaii health connector shall not, while serving on the board or the staff of the Hawaii health connector, be employed by, a consultant to, a member of the board of directors of, affiliated

with, or otherwise a representative of, an insurer, an agent or broker, a board member, or an employee of a trade association of insurers, a health care provider who has an ownership interest in a professional health care practice receiving compensation for rendering services as a health care provider, or a health care facility or health clinic. The director of commerce and consumer affairs or the director's designee, the director of health or the director's designee, the director of human services or the director's designee, and the director of labor and industrial relations or the director's designee shall be ex-officio, voting members of the board.

4. By amending subsection (f) to read:

(f) The board shall maintain transparency of board actions, including public disclosure and posting of board minutes on the connector's website according to provisions adopted by the legislature ~~based on recommendations of the interim board.~~ The functions of the Hawaii health connector are of such significance to the public that all of its business shall be conducted in accordance with the Sunshine Law, §§ 92-1 to 92-13.

5. By adding subsection (g) to read:

(g) The board shall have authority to constitute a standing committee comprised of one or more representatives from each insurer, and one or more agents or brokers, to provide information to the board.

Thank you for the opportunity to testify.



AMERICANS FOR DEMOCRATIC ACTION

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March 17, 2012

TO: Chair Robert Herkes, Vice Chair Ryan Yamane
Members of the House Committee on Consumer Protection and Commerce

FROM: Americans for Democratic Action/Hawaii
Barbara Polk, Legislative Chair

SUBJECT: OPPOSITION TO SB2434 SD1 HD1 RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE

Americans for Democratic Action/Hawaii opposes SB 2434 SD1 HD1 as currently worded and suggests amendments to this bill and other sections of HRS 435H-4.

Act 205 of the 2011 Hawaii State Legislature established the Hawaii Health Connectors as an independent, non-profit agency to implement the Federal Affordable Care Act. Hawaii is the only state in the union to organize itself in this way, all others, to date, placing the exchange within or under the direction of an existing state agency. It is not clear in what way having an independent corporation benefits the public, but it may benefit its Board members by shielding it from public scrutiny unless the legislature acts to ensure that the interests of consumers are protected.

There is no need for the legislature to pass the specific provisions of this bill at this point. The HHC must be operational by January 2014, so there is time to reconstitute the Board as one that is consumer-oriented rather than insurer-oriented and provide for a review of the decisions made by the Interim Board. The major flaw in this bill is that it appears to have been developed for the interests of insurers, not consumers. The composition of the Interim Board of the Hawaii Health Connector (HHC) includes only two consumer representatives, only one of whom might be construed as a representative of individual, rather than small group, consumers. Until a board that is consumer-oriented can be appointed, we recommend the following:

1. Delete section 435H - Separate programs for individual market and small group market; participation by insurers. Dividing an already small pool of consumers into two groups and two rate pools will result in higher than necessary rates for individual consumers and perhaps also for small group consumers. This recommendation by the Interim Board will benefit insurers rather than consumers and is contrary to the intent of the federal Affordable Care Act. It will also, after two years of federal assistance, place a burden on the taxpayers of Hawaii who will have to pick up the extra costs for those who cannot afford the health insurance rates.

2. Section 2. Section 435H-1 HRS

Delete definition "Qualified employer means a small employer that elects to make, at a minimum, all of its full-time employees eligible for one or more qualified plans in the small group market offered through

the connector.” This provision restricts the choices of consumers and employers, in contravention of the purpose of the federal Affordable Care Act.

Delete definition: “Small group market means the health insurance market under which individuals obtain health insurance coverage on behalf of themselves and their dependents through a group health plan maintained by a small employer.” See the reasons in item 1 above.

3. Section 3 (b): Delete the allocation of seats on the board to representatives of insurers. Allowing insurers to sit as voting members of the HHC Board is a clear conflict of interest. Twenty-one states have passed or are considering laws preventing representatives of health insurers from being voting members of such boards. Hawaii should do likewise. In addition, the current bill would include only some insurers on a board, but not others, giving the insurer board member a potential financial advantage over other insurers by promoting arrangements favorable to their employers. We recommend that representatives of ALL insurers be invited to sit on a non-voting advisory committee to provide technical support to a consumer-oriented board. See proposed amendment below.

E. Delete Section 5 regarding changes to the composition of the HHC Board made to subsection (b) or section 235H-4 HRS. Representatives of insurers should immediately be taken off the board, not after the entire Health Connector system has been built in their interests. The current bill would not increase the representation of consumers for at least two years—well after all procedures are in place and operating.

Some may wonder whether it is really important to take insurers off the Board. Following are instances of ways in which the Interim Board for the HHC has demonstrated their bias in favor of health insurers rather than consumers:

- A. Recommending separate pools for small groups and individuals, as discussed above.
- B. Deciding that employers must enroll all or none of their employees in a Connector plan, thereby limiting employer and employee choices of health plans.
- C. Planning a computer system that will not allow individual consumers to see the rates for small employers or vice versa, thereby violating the intent of the Affordable Care Act to increase transparency in insurance rates and plans.
- D. Deciding to allow insurance producers to sell insurance products to small business owners in competition with the Health Connector. This will allow insurance producers to cherry-pick the low risk businesses, resulting in higher rates for others, rates that may eventually have to be subsidized by state funds.
- E. Passing a “Conflict of Interest” policy the purpose of which is stated as “to protect the interest of this nonprofit corporation,” NOT to protect the interests of the general public or insurance consumers. The provisions of this policy do not permit a challenge with regard to conflict of interest from anyone outside the Board, and all discussions of conflict of interest within the Board will be shielded from public scrutiny by being held in executive session.
- F. Making little effort to obtain input from consumer advocates, especially from advocates for individual consumers. The Interim Board’s practice of scheduling time for public input at the end of a meeting, after all decisions have been made, does not provide for the Board’s consideration of consumer viewpoints.
- G. Reluctance to abide by the state’s Sunshine Laws, calling into question the degree to which the Board is prepared to serve the public interest. Because Act 205 of the 2011 legislature allows the Board to make its own rules, unless the legislature requires the Board to abide by these laws, there is no certainty that they will, or that the public will have access on a timely basis to meeting notices, agendas,

meetings, discussions, and minutes of this very important Board, and that the Board will conduct its business in public.

H. Failure to pass rules pertaining to ethics. Because the Board will be able to make and change its own rules, it will not be subject to State ethics laws. Unless the Legislature acts to apply ethics laws, its members will be open to bribery.

We also note that the State chose not to apply for a federal grant to fund a consumer advocate, despite the fact that the Interim Board contained only two consumer representatives.

In light of these concerns, and in addition to the amendments to this bill that we have recommended above, we propose the following amendments to Section 435H-4 Hawaii Revised Statutes:

Amend subsection (b) to read:

(b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders, representing consumer interests, including consumers who are beneficiaries, advocates for enrolling hard to reach populations, trade associations and other organizations representing the interests of small businesses, and organizations whose primary mission is to advocate for consumers, including consumers, employers, insurers, and dental benefit providers. A member of the board or staff of the Hawaii health connector shall not, while serving on the board or the staff of the Hawaii health connector, be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, an insurer, an agent or broker, a board member, or an employee of a trade association of insurers, a health care provider who has an ownership interest in a professional health care practice receiving compensation for rendering services as a health care provider, or a health care facility or health clinic. The director of commerce and consumer affairs or the director's designee, the director of health or the director's designee, the director of human services or the director's designee, and the director of labor and industrial relations or the director's designee shall be ex-officio, voting members of the board.

Amend subsection (f) to read:

(f) The board shall maintain transparency of board actions, including public disclosure and posting of board minutes on the connector's website according to provisions adopted by the legislature ~~based on recommendations of the interim board.~~ The functions of the Hawaii health connector are of such significance to the public that all of its business shall be conducted in accordance with the Sunshine Law, §§ 92-1 to 92-13.

Add subsection (g) to read:

(g) The board shall have authority to constitute a standing committee comprised of one or more representatives from each insurer, and one or more agents or brokers, to provide information to the board.

We ask that the committee hold this bill if it is not amended to delete current policy statements and reconstitute the Board by replacing insurers with consumers. Thank you for considering these proposals for amending SB 2434 to serve the interests of consumers, as intended by the Federal Affordable Care Act.



March 18, 2012
TWENTY-SIXTH LEGISLATURE
Regular Session of 2012
TESTIMONY CONCERNING S.B. 2434 SD1 HD1:

A BILL FOR AN ACT RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE

From: HAWAII COALITION FOR HEALTH
by Rafael del Castillo
Submitted on the Capitol Website

To: House Committee on Consumer Protection and Commerce,
Honorable Robert Herkes, Chair; Hon. Ryan Yamane, Vice Chair

Hearing: March 19, 2012, 2:00 p.m. Conference Room 325

Proposing Amendments to Adequately Protect Consumers and Competition

Reps. Herkes and Yamane, and honorable members of the Committee:

Thank you for the opportunity to submit testimony on Senate Bill 2434 SD1 HD1.

The Hawaii Coalition for Health celebrates the beginning of its sixteenth year advocating for Hawai'i's health consumers. HCFH has served on the Patient Bill of Rights and Responsibilities Task Force, the MedQUEST Advisory Committee, and has testified numerous times before the Legislature on matters of consumer interest and health insurance issues. HCFH regularly receives input from a wide variety of organizations and individuals with decade-upon-decade of experience and knowledge in health insurance and access to health care which it has consistently employed in informing the Legislature and the State and Federal Administrations, and in advocating for better benefits and beneficial competition in health insurance. Hawaii is unique among the fifty states in having established the requirement that employees have prepaid healthcare since 1973, something the Affordable Care Act was enacted to ensure for the rest of the nation. For that reason, and others, it is incumbent on all of us to take care in implementing all of the Affordable Care Act requirements to produce the long term benefits it is designed to create, instead of harming our health insurance market and sacrificing benefits we already enjoy.

This Bill affects the organization and operation of Hawaii's health insurance exchange, the Hawaii Health Connector, established to meet one of the Affordable Care Act requirements. Insurance exchanges are essential to the successful implementation of universal health care coverage through the provisions of the Affordable Care Act. The ACA incorporates exchanges with the purpose of correcting longstanding inequities in the cost-sharing of universal coverage and quality of benefits affecting individuals and small businesses by standardizing plan benefits and cost-sharing, restraining premium growth, and reaching out to the uninsured. Consumer protection is thus a fundamental purpose of health insurance exchanges. By design, the health insurance exchanges will also have certain powers affecting competition in the

insurance market. For the Hawaii health connector to have full credibility and effect, and protect the public interest, the law constituting its governing board and operations must guarantee that it fosters fair and robust competition in the exchanges, fully protects consumers and small businesses as intended by the Affordable Care Act and the implementing regulations, and that all of its business is fully transparent.

Representatives of insurers, agencies, and brokers cannot possibly be expected to serve two masters, protecting the interests of their big business employers or organizations, at the same time they are expected to protect consumers and small businesses. Comprising the governing board of representatives of insurers will deprive it of essential credibility and impose unacceptable financial burdens on consumers and Hawai'i taxpayers. Similarly, a governing board comprised of fewer than all insurers will be overshadowed by anticompetitive concerns because the board will be making decisions that affect plans that have no representative on the board. The solution is to amend the law so that insurance and agency representatives are excluded from serving in voting positions. The law provide for input from insurers simply by creating an advisory committee comprised of all insurers which the Connector board can consult whenever it deems it necessary to have their input.

We appreciate the amendments to the Bill by the Health Committee, which acknowledge the problems of consumer protection and assuring that consumers hold the majority of positions on the governing board of the Connector, but the amendments do not go far enough. First, the amendments phase in consumer participation only after the Connector's operation has been established with the insurance representatives at the helm. This has been likened to appointing the foxes to design the henhouse. Surely they cannot be expected not to use the back door when they feel the need. Second, by leaving three insurance representatives on the Connector board the amendments confer a permanent competitive advantage on a minority of insurers with a government imprimatur which renders them unassailable through the established means of remedying anticompetitive conduct. The best way of configuring the Connector to maximize its credibility and protect it from these potential controversies is to eliminate insurers and agents from the board entirely.

The transparency mandate in the present law is ambiguous as to scope, and thus may be difficult or impossible to enforce as intended. The transparency provision is designed to protect the Connector, not consumers. Surely the operations, decisions, and all discussions of Connector board relating to the exchange must be transparent to protect the public interest in their governance of a market worth hundreds of millions annually.

Hawaii's market has been fragmented into numerous risk pools under our 38 year-old Prepaid Health Care Act, something other states will avoid because their exchanges will inevitably make over their markets into statewide or even regional pools. It is a well-known and indisputable fact that administrative costs and premiums are reduced by spreading the risk over large pools. The Connector was positioned to bring about the same benefits to consumers and small businesses, but regrettably this Bill was amended by the Senate Committee on Consumer Protection to make fragmentation of Hawaii's health insurance market permanent. The separation of the markets will cost consumers, small businesses, and ultimately the State of Hawai'i's treasury inestimable millions in the long run, inflating administration costs and protecting the substantial rate advantages big business already enjoys over consumers and individuals. The new fragmentation provision separating the risk pools must be eliminated from SB 2434 SD1 HD1 to ensure a level playing field for small business, and a highly competitive market benefiting consumers and business equally in purchasing quality health care coverage.

For the reasons stated, amendments to S.B. 2434 SD1 HD1 are necessary to ensure that Hawaii's health insurance exchange passes antitrust scrutiny and complies with the consumer protection mandates of the Affordable Care Act. The Hawaii health connector board should have clear authority to assemble an advisory committee from the insurers to provide information on medical loss, ratemaking, and benefits, as well as other industry-specific information and concerns. Participation by insurer representatives as voting members of the governing board is inadvisable and ultimately harmful.

HCFH joins other organizations and individuals in recommending the attached amendments to section 3 of the Bill. These amendments correct the constitution of the governing board, ensure transparency, and provide the board with clear authority to resort to an advisory committee comprised of non-voting representatives of insurers. We join other organizations in opposing market fragmentation and the "all-in" definition of "qualified employer." The definition appears to be unnecessary and to serve no other purpose than to limit choices and thereby limit competition, one of the primary mechanisms the exchanges were intended to promote to drive premiums lower and increase the quality of benefits. The "qualified employer" definition will substantially reduce choices by mandating that small employers opt completely out of the prepaid market into the exchange or vice versa, instead of offering their employees the broader range of choices they would have in the combined markets. The definition should thus be eliminated.

Aloha and thank you for your efforts on behalf of Hawaii's health care insurance consumers,

Hawaii Coalition for Health

by Rafael del Castillo

Proposed Amendments:

SECTION 3. Section 435H-4, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The Hawaii health connector shall be a nonprofit entity governed by a board of directors that shall comprise fifteen members appointed by the governor and with the advice and consent of the senate pursuant to section 26-34; provided that the governor shall submit nominations to the senate for advice and consent no later than February 1, 2012^[5], and no later than February 1 in any year thereafter in which nominations are made; and provided further that the senate shall timely advise and consent to nominations for terms to begin July 1, 2012 ^[5], and no later than July 1 in any year thereafter in which nominations are made. Members of the interim board shall be eligible for appointment to the board."

2. By amending subsection (c) to read:

"(c) Board members shall serve staggered terms [~~and the interim board shall recommend an appropriate schedule for staggered terms; provided that this~~] and shall be

appointed to terms of four years; provided that of the initial appointees, five shall be appointed to a two-year term, and five shall be appointed to a three-year term. Each member shall hold office until the member's successor is appointed and qualified. This subsection shall not apply to ex-officio members, who shall serve during their entire term of office."

3. By amending subsection (b) to read:

(b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders, representing consumer interests, including consumers who are beneficiaries, advocates for enrolling hard to reach populations, trade associations and other organizations representing the interests of small businesses, and organizations whose primary mission is to advocate for consumers. Including five consumers, one employer, three insurers, and two providers. A member of the board or staff of the Hawaii health connector shall not, while serving on the board or the staff of the Hawaii health connector, be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, an insurer, an agent or broker, a board member, or an employee of a trade association of insurers, a health care provider who has an ownership interest in a professional health care practice receiving compensation for rendering services as a health care provider, or a health care facility or health clinic. The director of commerce and consumer affairs or the director's designee, the director of health or the director's designee, the director of human services or the director's designee, and the director of labor and industrial relations or the director's designee shall be ex-officio, voting members of the board.

4. By amending subsection (f) to read:

(f) The board shall maintain transparency of board actions, including public disclosure and posting of board minutes on the connector's website according to provisions adopted by the legislature based on recommendations of the interim board. The functions of the Hawaii health connector are of such significance to the public that all of its business shall be conducted in accordance with the Sunshine Law, §§ 92-1 to 92-13.

5. By adding subsection (g) to read:

(g) The board shall have authority to constitute a standing committee comprised of one or more representatives from each insurer, and one or more agents or brokers, to provide information to the board.



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808.675.7300 | www.ohanahealthplan.com

Monday, March 19, 2012

To: The Honorable Robert N. Herkes
Chair, House Committee on Commerce and Consumer Protection

From: 'Ohana Health Plan

Re: Senate Bill 2434, Senate Draft 1, House Draft 1-Relating to the Hawaii Health Insurance Exchange

Hearing: Monday, March 19, 2012, 2:00 p.m.
Hawai'i State Capitol, Room 325

'Ohana Health Plan is managed by a local team of experienced health care professionals who embrace cultural diversity, advocate preventative care and facilitate communications between members and providers. Our philosophy is to place members and their families at the center of the health care continuum.

'Ohana Health Plan is offered by WellCare Health Insurance of Arizona, Inc. WellCare provides managed care services exclusively for government-sponsored health care programs serving approximately 2.6 million Medicaid and Medicare members nationwide. 'Ohana has been able to take WellCare's national experience and that of our local team to develop an 'Ohana care model that addresses local members' health care, long-term care and care coordination needs.

We appreciate this opportunity to submit testimony in support of Senate Bill 2434, Senate Draft 1, House Draft 1-Relating to the Hawaii Health Insurance Exchange. The purpose of this measure is to specify that the Hawaii Health Connector establish a separate program and risk pool to serve the individual market and a separate program and risk pool to serve the small group market, establish staggered terms for board members, clarify qualifications of and restrictions on navigators, and to clarify the role of the Department of Human Services in determining Medicaid eligibility.

The separation of risk pools in the individual and small group markets serves to level the playing field, reducing the potential for excessive premium growth or instability in markets in the Exchange. We also support the staggering of the Connector Board appointees as it will ensure a line of continuity in these important discussions surrounding the increase in accessibility to health care coverage in Hawai'i.

We would also like to take this opportunity to encourage the Committee to consider amending the bill to include authorizing language for a Basic Health Plan (BHP) option so as to give the Administration and the Connector Board the statutory ability to move forward with a BHP should they choose to do so.

The inclusion of a BHP in the Health Insurance Exchange will offer a high-quality, cost-effective mechanism for providing health coverage for low-income populations. Individuals and families under 200% of poverty frequently change jobs and often experience fluctuations in income. In the past, this meant that they churned, or moved back and forth, between public coverage like Medicaid and CHIP and uninsured status. Since BHP health plans can and should be designed to coordinate seamlessly with Medicaid and CHIP - using the same providers, rate schedules and health plans - BHP enrollees will be able to obtain uninterrupted care even if their source of coverage changes.

We would also recommend that Hawaii's BHP leverage its existing robust QUEST, QxEA and CHIP health plan community in order to allow families in which parents and children are eligible for varying affordability programs to maintain coverage in the same plan, rather than having parents and children divided between various coverage sources.

'Ohana would recommend that QUEST and QxEA plans be automatically deemed as approved BHP plans. Medicaid plans have significant experience serving low-income populations and contracting with essential community providers. Medicaid managed care plans are already subject to stringent licensing and certification processes that far exceed the minimum requirements set out in the Affordable Care Act to participate as a BHP provider. Deeming of QUEST plans will reduce the administrative burden on the state and facilitate rapid implementation. To further simplify BHP implementation, we recommend that Hawaii establish a BHP by amending existing Quest, QxEA and CHIP managed care contracts. Building upon these existing infrastructures, BHP becomes a "turnkey" start-up, thus reducing administrative costs and improving seamless coordination with other programs.

Finally, as the Committee may already be well aware, the U.S. Department of Health and Human Services (HHS) released their final rules for the establishment of Health Insurance Exchanges last week. Based on their final rules, the Legislature may feel it necessary to make further amendments not already stated in this testimony in order to comply with the rules set forth by HHS, particularly in regards to the Exchange Board composition and functions.

Thank you for this opportunity to testify in support of Senate Bill 2434, Senate Draft 1, House Draft 1-Relating to the Hawaii Health Insurance Exchange.

Re: SB2434 SD1 HD1

Aloha Chair Herkes, Vice-Chair Yamane, and members of the committee,

My name is Scott Wall and I am speaking on behalf of United Self Help. We wish to issue our opposition of SB2434 SD1 HD1 in its' present form.

There are four severe problems with how the Hawai'i Health Connector is developing. The first problem is the proposed language in Section 435 H-(1). This language would limit the use of Navigators to non-profit entities and seems to be in direct opposition to the intent of the Affordable Care Act which strives to be inclusive of many more potential entities that might employ Navigators. i.e. section (i)(B)

PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 NAVIGATORS

(i) Navigators-

(1) IN GENERAL- An Exchange shall establish a program under which it awards grants to entities described in paragraph (2) to carry out the duties described in paragraph (3).

(2) ELIGIBILITY-

(A) IN GENERAL- To be eligible to receive a grant under paragraph (1), an entity shall demonstrate to the Exchange involved that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be qualified to enroll in a qualified health plan.

(B) TYPES- Entities described in subparagraph (A) may include trade, industry, and professional associations, commercial fishing industry organizations, ranching and farming organizations, community and consumer-focused nonprofit groups, chambers of commerce, unions, resource partners of the Small Business Administration, other licensed insurance agents and brokers, and other entities that--

(i) are capable of carrying out the duties described in paragraph (3);

(ii) meet the standards described in paragraph (4); and

(iii) provide information consistent with the standards developed under paragraph (5).

(3) DUTIES- An entity that serves as a navigator under a grant under this subsection shall--

(A) conduct public education activities to raise awareness of the availability of qualified health plans;

(B) distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402;

(C) facilitate enrollment in qualified health plans;

(D) provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the Public Health Service

*Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and
(E) provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges.*

As you can see there are many companies and institutions that could utilize Navigators and many, if not most of those are for profit entities.

The other problems with how the Connector is developing are:

- A. The potential appearance of conflict of interest in having health plans voting as members of the Connector board of directors.
- B. The lack of transparency in how the development of the Connector is proceeding.

We believe that problems A. & B. can be addressed by adopting the amendments proposed by Consumers for Fairness in their testimony.

- C. That still leaves one glaring problem with the development of the Hawai'i Health Connector. That is the virtual complete lack of community stakeholder involvement in the development of the Connector so far. To this point there has only been one consumer representative on the interim board of directors which is in direct opposition with the intent of the Affordable Care Act.

We applaud the Affordable Care Act, the development of the Hawai'i Health Connector, and the much needed transformation of the delivery system of health care here in Hawai'i. We simply feel that everyone should take a breath and make sure that we are doing the very best job that we could be doing.

The Administrator of the Rehabilitative Services Administration told me that she thought that the Affordable Care Act was the single most important piece of legislation addressing the needs of America's disabled community since the Americans with Disabilities Act. We at United Self Help agree with her.

We also feel that this is an opportunity which comes along once in a generation. We believe that this bill should be held in committee until all of the problems can be worked out.

Let's not blow it by going too fast. Let's cross all the T's, dot all the I's, and create the best transformative health care system that we can for our Ohana.

Mahalo,

Scott Wall

United Self Help

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 19, 2012

The Honorable Robert N. Herkes, Chair
The Honorable Ryan I. Yamane, Vice Chair

House Committee on Consumer Protection and Commerce

Re: SB 2434, SD1, HD1 – Relating to the Hawaii Health Insurance Exchange

Dear Chair Herkes, Vice Chair Yamane, and Members of the Committees:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in support of SB 2434, SD1HD1.

Pursuant to Act 205, SLH 2011, the Interim Board of Directors of the Hawaii Health Connector (Connector) submitted a report of its findings and recommendations, including proposed legislation, to the Legislature on December 29, 2011. SB 2434, as introduced, reflected those recommendations. The Interim Board of Directors subsequently voted on proposed amendments to SB 2434, and SB 2434, SD1 incorporates those proposed changes.

SB 2434, SD1, HD1 offers for legislative authorization certain policy recommendations on the permanent Connector Board and operations of the Connector. After due consideration, the Interim Board members agreed on the following recommendations that will provide for an efficient health insurance exchange and that meet the requirements of the Affordable Care Act:

- There will be separate programs for the individual and small group markets within a single Exchange.
- Insurers offering qualified plans through the Connector shall have separate risk pools for the individual and small group markets.
- Insurers offering a qualified plan or qualified dental plan in the small group market must also offer a qualified plan in the individual market.
- Each insurer that participates in the Connector must offer qualified plans to all State residents.
- The Connector Board will select nonprofit navigators who are not insurance producers nor are insurance brokers.
- The terms for the Connector Board members will be staggered.
- Clarification of the Medicaid process by specifying that the Department of Human Services will perform eligibility determination for individuals applying through the Connector.

The Interim Board has been meeting tirelessly, but much more work remains. The development of the Connector's policies continue to be fluid as the federal regulations governing the ACA are pending. Consequently, the Legislature must anticipate additional statutory changes may be needed in the future and as the federal government further clarifies the ACA.

HMSA appreciates the opportunity to serve on the Connector's Interim Board, and it has been a pleasure working with the other members and the Executive Director, Coral Andrews. And, particular recognition must be afforded the Insurance Commissioner Gordon Ito and his staff, particularly Lloyd Lim. While there certainly was not full agreement on every point of discussion, the Interim Board has been able to take tremendous strides in ensuring the Connector becomes fully operational by the federally mandated 2014 deadline.

Thank you for the opportunity to testify in support of this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read 'JD', with a long horizontal stroke extending to the right.

Jennifer Diesman
Vice President
Government Relations

Testimony of
Phyllis Dendle
Director of Government Relations

Before:
House Committee on Consumer Protection and Commerce
The Honorable Robert N. Herkes, Chair
The Honorable Ryan I. Yamane, Vice Chair

March 19, 2012
2:00pm
Conference Room 325

SB 2434 SD1 HD1 RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE

Chair Yamane and committee members, thank you for this opportunity to provide testimony on SB2434 SD1 HD1 which amends the law concerning the Hawaii Health Connector.

Kaiser Permanente Hawaii supports this bill.

We had the opportunity to work on the Hawaii Health Connector established by the legislature in 2011. The bill before you is in answer to the request of the legislature for proposed amendments to make necessary clarifications to the law.

The HHC will make it easy for individuals and small businesses to learn about, compare and purchase health insurance. It will enable participants to receive subsidies from the federal government to assist them in affording health care. It provides a real opportunity to expand insurance coverage to include those currently uninsured. We urge this committee to support this bill which will contribute to bringing the connector to fruition.

Thank you for your consideration.



HPCA

HAWAII PRIMARY CARE ASSOCIATION

House Committee on Consumer Protection and Commerce

The Hon. Robert N. Herkes, Chair

The Hon. Ryan I. Yamane, Vice Chair

Concerns: Senate Bill 2434 S.D. 1 H.D. 1
Relating to the Hawai'i Health Insurance Exchange
Submitted by Nani Medeiros, Policy and Public Affairs Director
March 19, 2012, 2:00 p.m., Room 325

The Hawai'i Primary Care Association, which represents community health centers in Hawai'i has the following concerns with Senate Bill 2434 Senate Draft 1 House Draft 1.

1. An insurance exchange relies on a large number of consumers to minimize the associated risk for all purchasers. Already the State of Hawaii is at a disadvantage in this regard because the Prepaid Healthcare Act covers such a large percentage of working individuals (a point highlighted by Herb Schultz, Regional Director HHS Region IX.) If the exchange were to be further parsed into individual and small market options, the smaller pools would be much more susceptible to associated risk. This susceptibility simultaneously **reduces the consumer's purchasing leverage and enhances the bargaining power of insurers. Such a situation would stand in stark contradiction to the legislative intent of ACA in creating insurance exchanges: to support consumers and small businesses.**

Much discussion has been made around following the model first pioneered by Massachusetts with their health insurance exchange in 2006. In that model, the state went to great lengths to ensure the individual and small market options were together in the form of a single pool for the reasons outlined above. As a result of keeping the risk pools combined, rates for small business increased nominally while premiums for individuals decreased significantly.

If it is the "policy" recommendation of the HIE board that businesses be protected from increased premium rates while individual consumers pay for this via increased rates in the Exchange (due to the separation of risk pools scenario) then the Connector board should be clear about that position. When public funds are at stake, and tax subsidies are provided directly to insurance plans, the public and consumers deserve to know the reasons behind these policy decisions and deserve to understand the cost drivers of their insurance premiums.

2. Requiring that navigators be nonprofit entities under Chapter 414D, Hawai'i Revised Statutes, is a far more narrow definition than allowed under the federal Act. The ACA allows eligible entities to include trade, industry, professional associations, commercial fishing industry organizations,

ranching and farming organizations, community and consumer-focused nonprofit groups, chambers of commerce, unions, resource partners of the Small Business Administration, other licensed insurance agents and brokers, and other entities capable of carrying out the required duties and can meet required standards and provide required information. Limiting navigators to nonprofits may significantly reduce the number of effective navigators in Hawai'i, in addition to preventing qualified people from providing a necessary service.

3. The proposed definition of a "health benefit plan" may be inconsistent with services in the ten required categories of the essential health benefits package in the federal Act. Specifically, it is not clear what is meant in numbers (7), (8), (9), and (10) of "health benefit plan" and we have not been able to receive clarification from the Connector board on this language despite numerous attempts for them to explain it. The ACA required categories are:
 - a. Ambulatory patient services.
 - b. Emergency services.
 - c. Hospitalization.
 - d. Maternity and newborn care.
 - e. Mental health and substance use disorder services, including behavioral health treatment.
 - f. Prescription drugs.
 - g. Rehabilitative and habilitative services and devices.
 - h. Laboratory services.
 - i. Preventive and wellness services and chronic disease management.
 - j. Pediatric services, including oral and vision care.

We think restating the categories in ACA and the Hawai'i Connector's compliance with them in the affirmative rather than adopting language from the NAIC model in the negative will produce a clear statute and compliance with federal law.

4. Final rules regarding exchanges were released by HHS last week. They stipulate requirements regarding conflicts of interest, disclosure, transparency, public adoption of charters/bylaws and various guidance policies, in addition to requiring stakeholder consultation. We have witnessed the Connector board struggle with these issues and are concerned that the intent, and integrity, of the exchange law is not being met. We have concerns with insurance plans having voting seats on the board of the exchange and the conflict of interest that role may cause, and their influence on the above issues. Insurance plans will be receiving the tax credits/subsidies for enrollees in the Connector, and they stand to gain, or lose, millions of dollars depending on the outcomes, success, and failures of the Connector; conservative estimates put the value of the Connector's business at \$300 million. Further, we recommend providing a definition of consumer in this bill, and including consumer advocates as eligible representatives of consumer interests to serve on the board.

Thank you for the opportunity to express our concerns with the changes proposed in this measure.



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Committee on Consumer Protection and Commerce
Rep. Robert N. Herkes, Chair, Rep. Ryan L. Yamane, Vice Chair

Committee on Judiciary
Rep. Gilbert S. C. Keith-Agaran, Chair, Rep. Karl Rhoads, Vice-Chair

Monday, March 19, 2012, 2:00 pm, Room 325
SB2434, SD1, HD1 — RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE

TESTIMONY

Janet Mason, Vice-President, League of Women Voters of Hawaii

Chairs Herkes and Keith-Agaran, Vice Chairs Yamane and Rhoads and Committee Members:

The League of Women Voters of Hawaii cannot support SB2434, SD1, HD1 without amendments, and we respectfully offer six amendments for your consideration.

CURRENT SITUATION

Hawaii's health insurance exchange (the "Connector") is at the heart of the federal Affordable Care Act (ACA) strategy for making health insurance available and affordable to some 100 thousand people in Hawaii's individual and small group markets.

Hawaii's individual and small group markets are currently dysfunctional, offering inadequate choices and high prices, and to many individuals offering nothing at all. The exchange promises to increase competition among insurers and if organized well it can focus insurer competition on price and quality rather than on risk avoidance. The exchange will also open the door through which lower and middle-income residents can obtain premium tax credits and cost reduction payments to reduce the cost of health insurance and health care services, and through which low-income people can access Medicaid and Children's Health Insurance Program (CHIP) coverage.

Compared with most states, Hawaii is further along in establishing an exchange that will comply with federal requirements under the Affordable Care Act (ACA). The health insurance exchange task force (and later the Interim Board of Directors for the Connector) has worked diligently to see that the exchange is in place and operational by January 1, 2014. The federal Department of Health and Human Services (HHS) must, however, determine by January 1, 2013, whether or not a state will have an exchange in place by that date. In states that fail to establish exchanges on a timely basis, the federal government must establish "federally-facilitated exchanges."

January 1, 2013 is less than a year away. In 2011, Hawaii passed Act 205 establishing the Hawaii Health Connector ("Connector"), opting for a clearinghouse arrangement, with a nonprofit 15-member Board. Under S.B. No 2434 the Interim Board is to be replaced with an eleven-member board on June 30, 2012. The Governor's nominations to the Board which will be considered by the Senate on Tuesday, March 20th.



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GOVERNANCE FEATURES OF THE HAWAII HEALTH CONNECTOR

Fortunately, the current and future Board has included many regulatory stakeholders such as the State Insurance Commissioner and a representative from the Department of Health and Human Services. I say “fortunately,” because it is the State Insurance Commissioner who can be most influential in maximizing the number of qualified health plans that wish to offer insurance through the exchange, and ***it is in the consumer’s interest to have competition among a large number of insurers.*** And the Department of Health and Human Services could be considered the most influential health care purchaser in the State, by virtue of determining eligibility (and overseeing the State’s share of premium payment) for those eligible for Medicaid. We are counting on both these regulators to protect the interest of consumers.

Unfortunately our interim Exchange Board has included little consumer representation and little employer representation. In addition, though Federal funding was available for a Consumer Advocate to the Board, the Interim Board did not apply for this funding. Nearly all states with established exchanges have created independent governing Boards, and most include representatives from state government, consumers, subject matter experts, and small and large employers. Typically, states with active purchase exchanges prohibit industry representation,¹ ***The League of Women Voters of Hawaii strongly believes health insurers and health insurance producers (agents and brokers who sell health insurance) should be prohibited from serving on the Connector which sells its products or those of a competitor.***

We applaud the fact that pursuant to Chapter 435 the Interim Board established a conflict of interest policy governing the nonprofit. But this arrangement allows the Connector to determine for itself how to handle interest conflicts, and insurers dominate consumer interests on the Board. This is essentially a public exchange operated by a nonprofit, and we question whether the Board should operate outside Sunshine Law, §§ 92-1 to 92-13 and why the Board is not subject to State Ethics regulation.

Preserving the Hawaii Prepaid Health Care Act

Act 205 of 2011 provided that the Connector would work in tandem with Hawaii’s existing Prepaid Health Care Act, Chapter 223, Hawaii Revised Statutes. This was a major design decision made by the legislature in cooperation with the health insurance exchange task force. The League of Women Voters regrets we did not study- and oppose the measure this group advanced during the 2011 legislative session. While it is true that the Prepaid Health Care Act has proven to be successful in many ways, isolating the PPHCA market from the Connector market effectively created two separate markets for Hawaii health insurance, a large market (about 90% of the State’s population) for those employed more than 20 hours a week and a much smaller market (about 100 thousand people) for those who do not work more than 20 hours a week. If there had been a single pool for everyone in the State the risk would be pooled over the most diverse population possible, and the expected claims experience for the entire State

¹ “Focus on Health Reform,” The Henry J. Kaiser Foundation, January 2012, p.2.



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would be more predictable than it will be for the smaller Connector market.³ We note that having the PPHCA outside of the Connector also tends to preserve the status quo in the current health care market, which is dominated by a few large health insurers, the insurance producers who have successfully marketed the related insurance, and large employer customers who negotiate sophisticated and less expensive risk financing such as a large corporate-level insurance retention.

Operational Issues: Individual Market vs. Small Group Market

We are dismayed that SB2434 proposes to further segment the Connector market by dividing this market into two separate programs, an individual market and a small group market. While the measure requires that an insurer who offers a plan to the more profitable small group market offer a plan to the individual market, the measure also permits waivers of this requirement by the insurance commissioner, if an insurer demonstrates that offering plans to both markets would result in insolvency or other extreme economic hardship.

Our goal with this health insurance exchange should be clear – to maximize the supply of insurance from qualified health plans that participate in the exchange, while permitting health insurers to cover all operating costs and earn a reasonable return on the qualified policies. Having the largest maximum pool of similar exposures to loss while at the same time continuing to allow medical underwriting⁴ without restriction seems the ideal approach. We see no compelling reason for two separate programs, and believe segmenting the market could easily have an adverse effect on the number of insurers who would be willing to participate in the individual program. If few qualified insurers step up to offer plans through the individual market, it seems entirely possible this would also have a direct and negative effect on the State’s Medicaid program.

We want the health exchange to have a single pool that can attract larger insurers, because these organizations are normally prepared to invest in wellness programs. Most consumers now recognize lifestyle-related factors such as obesity caused by insufficient exercise and unhealthy food choices, excessive alcohol use, smoking and use of street drugs can increase utilization and therefore insurance prices. We want to help drag down the health care cost curve with the help of insurers and health care providers who provide such programs. We’re all in this effort together!

The League applauds the Insurance Commissioner’s sometimes heroic efforts to attract and retain financially strong insurers to Hawaii. **However, we believe there should be a single pooled market for the small group and individual sectors, and a single risk pool for this program. We hope that this Committee will delete the first**

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section of this measure establishing two separate programs for individual and small group markets as well as the related exception permitting non- participation by insurers.

In fact, besides indirect utilization control, the Connector will have other significant rate regulation influence. The State Insurance Commissioner sits on the Board and the ACA requires exchanges to receive and make available to the public rate increase justifications from Qualified Health Plans before the Qualified Health Plan can put the increase into effect. And speaking of information, why would a "transparent marketplace," such as that envisioned in the Connector's mission statement, isolate rate quotations for an individual from rate quotations for a small group?

Navigator Program and the Role of Insurance Producers

Regarding the Navigator program described in this measure, navigators will educate and inform health insurance consumers and assist them in navigating the exchanges. SB2434!dpsf dñz!qspi jçjt !jot vsbodf !qspvdf st lboe! csp! f st !qpn !t f swjoh!bt lobwjhbps! !qstü f !dpoof dups-!t jodf !ü f t f !qbsjf t !qñz!bo!bdjwf !sprñ!jo!n bs f joh! f ydi boh! !qspvdf !/!X i bujt !ü f !ef gojypo!pg!qspvdf sñvoef stü f !n f bt vsf !òlep f t !jujodñef !jot vsbodf ! bhf out @We are concerned that web-based agents might steer consumers towards plans that are most profitable for the agent, not necessarily the best placement for the consumer. We do not want web-based agents to undermine the Connector. Web-based brokers must allow consumers to view all Qualified Health plans offered through the Connector, display all Qualified Health Plan information provided through the exchange, not steer consumers to particular plans through incentives such as rebates or giveaways, and allow consumers to withdraw from the web-based broker and use the exchange website instead. Agents and brokers will also have to be registered with the exchange and comply with its requirements. How this will all work is far from clear, but we expect all Hawaii producers to support the exchange.

The League of Women Voters respectfully suggests the following six amendments:

1. that SB 2434, SD1, HD1 Section 3 be amended as follows:

(a)! By deleting this subsection in its entirety.

SECTION 3. Section 435H-4, Hawaii Revised Statutes, is amended as follows:

2. By amending subsection (a) to read:

"(a) The Hawaii health connector shall be a nonprofit entity governed by a board of directors that shall comprise fifteen members appointed by the governor and with the advice and consent of the senate pursuant to section 26-34; provided that the governor shall submit nominations to the senate for advice and consent no later than February 1, 2012 [7], and no later than February 1 in any year thereafter in which nominations are made; and provided further that the senate shall timely advise and consent to nominations for terms to begin July 1, 2012 [7], and no later than July 1 in any year thereafter in which nominations are made. Members of the interim board shall be eligible for appointment to the board."



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3. By amending subsection (c) to read:

"(c) Board members shall serve staggered terms [and the interim board shall recommend an appropriate schedule for staggered terms, provided that this] and shall be appointed to terms of four years; provided that of the initial appointees, five shall be appointed to a two-year term, and five shall be appointed to a three-year term. Each member shall hold office until the member's successor is appointed and qualified. This subsection shall not apply to ex-officio members, who shall serve during their entire term of office."

4. By amending subsection (b) to read:

(b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders, representing consumer interests, including consumers who are beneficiaries, advocates for enrolling hard to reach populations, trade associations and other organizations representing the interests of small businesses, and organizations whose primary mission is to advocate for consumers. Including five consumers, one employer, three insurers, and two providers. A member of the board or staff of the Hawaii health connector shall not, while serving on the board or the staff of the Hawaii health connector, be employed by, a consultant to, a member of the board of directors of, affiliated with, or otherwise a representative of, an insurer, an agent or broker, a board member, or an employee of a trade association of insurers, a health care provider who has an ownership interest in a professional health care practice receiving compensation for rendering services as a health care provider, or a health care facility or health clinic. The director of commerce and consumer affairs or the director's designee, the director of health or the director's designee, the director of human services or the director's designee, and the director of labor and industrial relations or the director's designee shall be ex-officio, voting members of the board.

5. By amending subsection (f) to read:

(f) The board shall maintain transparency of board actions, including public disclosure and posting of board minutes on the connector's website according to provisions adopted by the legislature based on recommendations of the interim board. The functions of the Hawaii health connector are of such significance to the public that all of its business shall be conducted in accordance with the!Tvo i jof !Law, §§ 92-1 to 92-13.

6. By adding subsection (g) to read:

(g) The board shall have authority to constitute a standing committee comprised of one or more representatives from each insurer, and one or more agents or brokers, to provide information to the board.

Thank you for the opportunity to submit testimony

Faith Action for



Community Equity

Oahu and Maui Chapters

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Terrence Watanabe
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Executive Director

Mr. Patrick Zukemura
Oahu Lead Organizer

COMMITTEE ON CONSUMER PROTECTION & COMMERCE
Chair, Representative Robert N. Herkes
SB2434, SD1, HB1
RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE
Monday, March 19, 2012 @ 2:00 pm
Room 325

IN SUPPORT WITH RECOMMENDED CHANGES

Good morning Chair Yamane and committee members:

I am Rev. Bob Nakata and I am the Vice-Chair of the FACE Health Care Committee and its past President. FACE is the largest State inter-faith and community organizing non-profit. We have 24 institutions on Maui, 27 on Oahu and one statewide. There are 38 churches, a Buddhist Temple, 2 Jewish congregations, 10 community groups and non-profit organizations and one labor union. FACE has a statewide participating membership base in excess of 40,000.

FACE has been a steadfast voice of the vulnerable healthcare consumer population. We have also been a part of the reform of the national healthcare in the development of the ACA. This reform also brings with it a system that focus on patients and their wellness. According to the Department of Health and Human Services (HHS) in the summary of the ACA it says in part...***"The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small business the same purchasing clout as large businesses"***.

FACE would like to recommend that the language in this bill be changed or deferred in the following area:

Separate programs for individual market and small group market: According to the HHS ***"acknowledges that the ACA provides each State with flexibility to merge its individual market Exchange and SHOP under a single administrative or governance structure. We interpret this provision to also allow a State to operate these functions under separate governance or administrative structures. However, we believe that a single governance structure for both the individual market Exchange functions and SHOP will yield better policy coordination"***. (Emphasis added).

We oppose the provision of SB2434 SD1 that requires separate programs for individual and small business markets within the exchange. FACE recommends that the Legislature require the Connector engage an actuary to do an analysis of separate vs. combined risk pools to see the impact on premiums.

The overarching objective of the Connector should be to provide affordable health insurance coverage options to consumers. The decision to require separate programs or risk pools should be made with affordability as the priority.

First, no clear rationale has been offered to support the need for this provision. Neither Connector Board of Directors discussions nor testimony provide justification; except that it is the way Hawaii insurers currently treat these markets. This is insufficient reason to put into law a provision that is not necessary to operate the Connector.

Second, separate programs or risk pools within the Exchange would only be meaningful if insurers are required to treat these markets differently within their own health plan. What State agency would be responsible for enforcing this requirement has not been identified or discussed.

Finally, we encourage this committee to require the Hawaii Health Connector to seek professional and unbiased analysis of the impact of combined or separate markets on health insurance premiums. Again, affordability needs to be the objective. Little is known about those who make up the Connector's individual market. These are not just adults, but also children of parents who may have coverage through their employer but pay for dependent coverage themselves.

Prior to the passage of the Affordable Care Act, insurers charged individual's premiums based on their health status for individual health plan products (non-employer prepaid health care act coverage). This is known as medical underwriting. Individuals who have or have had past illnesses are considered a higher risk or cost to health insurers and are charged higher premiums. Some may have been charged premiums they could not afford, thus causing them to go uninsured. A better understanding of how these individuals will impact risk pools and the affordability of health insurance offered by the Connector is needed for informed policy making to occur.

THE NAVIGATOR: It is recommended that the language contained in this bill be less restrictive. To codify language that the Navigator only be a non-profit and to further restrict that federal funds received by the state to establish the connector shall not be used to fund grants to navigator may be contrary to HHS rules. According to the HHS, the navigator function is "**encouraged be an existing entity that has existing relationships, or could readily establish relationships with employers and employees, consumers (including uninsured and under insured consumers), or self-employed individuals likely to be eligible to enroll in an Exchange...We note that an entity need not have the ability to form relationships with all relevant groups in order to be eligible for Navigator funding; for example, an entity that can effectively conduct outreach to rural areas may not be as effective in urban areas.**" The HHS goes on to say that..."**we propose the general standard that Exchanges must award grant funds to public or private entities to serve as Navigators.**" FACE recommends that this committee defer decision on the Navigator program as contained in this bill until there is further public discussion at the Hawaii Health Connector Board level, once the permanent board is confirmed by the Senate. The need for the consumer navigation varies from Island to Island, region to region and the outreach need to each community and consumer or small business will vary.

Because of the diversity and potential need for both for-profit and non-profit Navigators, it may not be effective to codify that the Navigator only be a non-profit.

Regarding the composition of the Hawaii Health Connector, Board of Directors, the Healthcare Committee of FACE, on February 16, 2012 passed the following position:

- 1) That the Hawaii State Legislature be requested to remove all health insurance members from appointment to the Board of Directors effective immediately, and**
- 2) That the Hawaii State Legislature require that the Board of Directors of the Hawaii Health Connector develop an Advisory Committee made up of all Health Insurers licensed in the State of Hawaii to advise the Board of Directors on issues or procedures relating to health insurance in the State of Hawaii**

FACE would like to respectfully ask this committee to pass this measure with the suggested changes to facilitate further public discussion before final decisions on these important matters are codified. The public has been slow to engage in this discussion due to its complicated nature, but now that the public is aware of these important decisions, it is requested that we make changes that will benefit the true beneficiaries...The Consumer.

Rev. Bob Nakata
Vice-Chair
FACE Healthcare Committee

Faith Action for



Community Equity

Oahu and Maui Chapters

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Maui President

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Statewide Treasurer

Ms. Judy Ott
Statewide Secretary

Mr. Drew Astolfi
Executive Director

Mr. Patrick Zukemura
Oahu Lead Organizer

COMMITTEE ON HEALTH
Chair, Representative Ryan Yamane
SB2434, SD1

RELATING TO THE HAWAII HEALTH INSURANCE EXCHANGE
Tuesday, March 13, 2012 @ 9:00 am
Room 329

IN OPPOSITION WITH RECOMMENDED CHANGES

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of the diversity and potential need for both for-profit and non-profit Navigators, it may not be effective to codify that the Navigator only be a non-profit.

STAGGERED TERMS: FACE agrees that there should be staggered terms. However, FACE suggests the follow language which allows for the staggering of terms by Industry representation. FACE suggests that the language on Page 7, lines 10 to 18, read as follows:

2. By amending subsection (c) to read:

"(c) Board members shall serve staggered terms ~~[and the interim board shall recommend an appropriate schedule for staggered terms; provided that this]~~ and shall be appointed to terms of four years; provided that of the initial appointees, *members that are representatives of Health Insurance Producers or Health Insurance Brokers*, shall be appointed to a *one-time only two-year term, inclusive of time on the interim board*, and *the balance* shall be appointed to a three-year term. *Appointees that are considered Consumer Representatives shall be appointed to unlimited four year terms*. Each member shall hold office until the member's successor is appointed and qualified. This subsection shall not apply to ex-officio members, who shall serve during their entire term of office."

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