

LATE TESTIMONY



LEAGUE OF
WOMEN VOTERS*

League of Women Voters of Hawaii

49 South Hotel Street, Room 314 | Honolulu, HI 96813

www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

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.

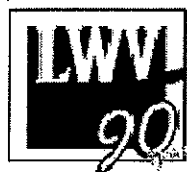
CURRENT SITUATION

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.

Operational Issues: Individual Market vs. Small Group Market

We are dismayed that SB2434 proposes to 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

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



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the same time continuing to allow medical underwriting² 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***

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 correctly prohibits insurance producers and brokers from serving as navigators for the connector, since these parties play an active role in marketing exchange products. What is the definition of "producer" under the measure – does it include insurance agents? 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

² Medical underwriting is the process that allows insurance companies the right to review the health history of prospective members. An individual's health status can be used to determine the premium charged. In Hawaii, we have guaranteed renewability, which means that if you paid all of the premiums, you cannot be denied coverage even if you become ill.

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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^(*), 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."

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

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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 Sunshine 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

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Hawaii's Voice for a Better Future

COMMITTEE ON CONSUMER PROTECTION &
COMMERCE

Rep. Robert N. Herkes, Chair

Rep. Ryan I. Yamane, Vice Chair

SB2434

CPC

Monday, March 19, 2012

2:00 p.m.

Room 325

March 19, 2012

Re: SB2434 — Relating to the Hawaii Health Insurance Exchange

Proposing Amendment for Consumer Protection

Rep. Herkes, Rep. Yamane and members of the Committee:

Hawaii has been the national leader in health care protection due to its enactment of pioneering legislation such as the Prepaid Health Care Act and the Patients Bill of Rights and Responsibilities Act. Hawaii has been referred to as the "health state" for good reason.

I have faith that the citizens of Hawaii will continue to enjoy superior health benefits as we move, along with other states, towards implementing the coverage mandated by the federal Affordable Care Act. This will only be assured, however, if the Legislature allows the consumer protections built into the federal Act to be reflected in Hawaii law. At present, this is not the case.

The insurance exchanges to be set up in Hawaii will have the responsibility to deal with and correct the discrimination in rate-setting and coverage that currently exists against individuals and small businesses. The clear intent of the federal law is to provide fair, equitable and universal coverage to health care consumers. This will require a change from current practice in which certain dominant insurers negotiate with larger business entities for favorable rates while disproportionately raising rates for small business and individuals, as an example.

The Hawaii Health Connector is, in effect, the governing board for Hawaii's health care reform under the Affordable Care Act, and cannot be effective if comprised of representatives of only the largest insurers and the largest business interests. It cannot be effective if it continues to meet and decide its business in virtual secrecy. There is also a clear conflict of interest in having on this board members who will be affected by the rates the exchange will be setting.

Another concern is that certain insurers will be setting rates for all Hawaii insurers. In other words, the current makeup of the board is anti-competitive in a market where competition is already very limited.

Neither of these situations is in the public interest.

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There is also a need to replace secrecy with transparency. Since the decisions made by this board are of such great public importance, it should operate under full public scrutiny. This requires compliance with Hawaii's Sunshine Laws (open meetings laws and open records law). The functions of the Hawaii Health Connector are of such significance to the public that all of its business must be conducted in accordance with the Sunshine Law.

One can look at California's law, already in effect, as an example for Hawaii. It is very much the opposite of what Hawaii is doing. It clearly reflects the intent of the federal Act. Hawaii is headed in the opposite direction.

Accordingly, Kokua Council joins with other consumer organizations in recommending to the Committee the following amendments to section 3 of SB2424 SD1 HD1:

SB 2434, SD1, HD1 Section 3 should 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

LATE TESTIMONY

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.

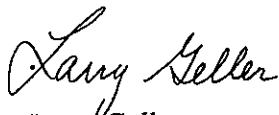
4. By amending subsection (f) to read:

(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.

Consumer protection should be the primary interest of our state representatives. The insurance companies will suffer no hardship with the enactment of the proposed Amendment since the federal Act mandates the purchase of insurance. What the Amendment will do is ensure that consumers are given the protections that the federal Act requires. Of course, the advice and guidance of Hawaii's largest insurers will be important to creating a successful insurance exchange, but that guidance should be available on request. The foxes should not be *running* the henhouse.



Larry Geller
President, Kokua Council

The Kokua Council is one of Hawaii's oldest advocacy groups. Kokua Council seeks to empower seniors and other concerned citizens to be effective advocates in shaping the future and well-being of our community, with particular attention to those needing help in advocating for themselves. "We embrace diversity and extend a special invitation to any senior or intergenerational minded individual interested in advocating for these important issues in Hawaii."



House CPC Committee
Chair Robert Herkes, Vice Chair Ryan Yamane

Monday 3/19/12 at 2:00PM in Room 325
SB2434 SD1 HD1 – Hawaii Health Insurance Exchange

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

Chair Herkes, Vice Chair Yamane, and Committee Members:

Common Cause Hawaii offers comments on SB2434 SD1 HD1, regarding the Hawaii health insurance exchange. The Hawaii Health Connector was established to implement provisions of the federal Affordable Care Act. Given the critical role of the Hawaii Health Connector board in making decisions that will impact the public, we ask the Committee to consider the following improvements to the law:

#1 - Boost the voice of consumers and prevent conflicts of interest. To ensure that the public interest is served, consumers must be strongly represented on the board, and those with obvious conflicts of interest should not.

We appreciate the amendments made by the Health Committee which increase the representation of consumers on the board. However, the HD1 does not effectively address the issue of conflicts of interest.

The concern about conflicts of interest on health exchange boards is widespread, and other states are already addressing it directly. Information from the National Conference of State Legislatures shows that a number of states prohibit board members from being affiliated with entities involved in the exchange or benefitting financially. (see <http://www.ncsl.org/issues-research/health/state-actions-to-implement-the-health-benefit-exch.aspx>) Also, according to Pacific Business News, “21 states already have crafted legislation prohibiting health plans from having a seat on the board of their respective health insurance exchanges because of the potential conflict-of-interest issues that could arise” (“*State’s first health insurance exchange starts to take shape,*” 2/24/12).

#2 - Ensure transparency of the board’s work.

Given the critical role of this board in implementing the Affordable Care Act, this board must be open

(continued on next page...)

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to public input and scrutiny. We urge the Committee to require that this board operate in accordance with the state's Sunshine Law. We understand that this board has been set up as a nonprofit, but given its major role in implementing this health care reform, elected officials must find a way to guarantee transparency and public input in this process.

Without strong transparency requirements, there is nothing to ensure that citizens, consumers, interested businesses or organizations, or even elected officials would be able to effectively monitor or participate in this important process.

Mahalo for the opportunity to submit testimony.

Testimony for SB2434 on 3/19/2012 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, March 19, 2012 11:22 AM

To: CPCtestimony

Cc: rmiller@aya.yale.edu

Categories: Red Category

Testimony for CPC 3/19/2012 2:00:00 PM SB2434

Conference room: 325

Testifier position: Comments Only

Testifier will be present: No

Submitted by: Richard S. Miller, Prof. of Law, Emer.

Organization: Hawaii Coalition for Health

E-mail: rmiller@aya.yale.edu

Submitted on: 3/19/2012

Comments:

I strongly support the testimony and recommendations of the Americans for Democratic Action/Hawaii, by Barbara Polk, Legislative Chair! From long experience dealing with health plans at the Legislature it has become clear that most of the health plans exercise inordinate power at the legislature and put their interests in profit-making ahead of the members of the public. This is particularly true of HMSA which, some years ago, sharply narrowed the ability of HMSA members to affect HMSA board of directors decision-making, and which, more recently, killed the very effective and fair appeal provisions of our Patients' Bill of Rights and Responsibilities. Just as it was correct and just to remove the health plans from self-serving decision-making by the board of our Pre-Paid Health Plan, it is just as important to keep the health plans and those who represent them from being seated on the Exchange Board!!!

Your careful concern will be very much appreciated.

Richard S. Miller, Prof. of Law, Emer.

Consultant, the Hawaii Coalition for Health

Hawaii Health Connector

P.O. Box 3767
Honolulu, HI 96812

COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

March 19, 2012 at 2:00 p.m.
State Capitol, Conference Room 325
Representative Robert Herkes, Chair
Representative Ryan Yamane, Vice-Chair

In Support of SB 2434, SD1 Comments on SB 2434 SD1, HD1

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

My name is Sherry Menor McNamara, Chair of the Interim Board for the Hawaii Health Connector. Coral Andrews is on the Mainland attending meetings and therefore is unable to attend this hearing. Thank you for the opportunity to provide comments on SB 2434, SD1, HD1. The Hawaii Health Connector, as you are aware, was established during the 2011 State Legislative Session as SB 1348 SD2 HD3 CD1 and subsequently signed into law on July 8, 2011 with the signing of Act 205. The "Connector" is governed by an interim Board that was established by Act 205 and Coral Andrews has been serving as the Executive Director since December 5, 2011.

The Connector Board supported the language of SB 2434, SD1 but has not had an opportunity to convene to deliberate the modifications included in SB 2434, SD1, HD1. Therefore, the Connector takes no position on the modifications. :

1. When the Connector Board does meet, it will need, among other things, to consider the final rules for health insurance exchanges which were published last Monday by HHS. The final regulations do present possible modifications to policy considerations of the Hawaii Health Connector. We look forward to discussing these requirements with the Connector Board in the coming weeks as the 600 page document is summarized and after our Executive Director returns from the Mainland and reports on her meetings with HHS/CCIIO. We will provide updates to the Chair and Vice-Chair of this committee once the summary is available.
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