

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
COMMENTING ON SENATE BILL 3061, RELATING TO INSURANCE

January 31, 2012

Via e mail

Hon. Senator Suzanne Chun Oakland, Chair
Committee on Human Services
State Senate
Hawaii State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Chun Oakland and Committee Members:

Thank you for the opportunity to comment on SB 3061, relating to Insurance.

Our firm represents the American Council of Life Insurers (“ACLI”), a national trade association, who represents more than three hundred (300) legal reserve life insurer and fraternal benefit society member companies operating in the United States. These member companies account for 90% of the assets and premiums of the United States Life and annuity industry. ACLI member company assets account for 91% of legal reserve company total assets. Two hundred thirty-five (235) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 92% of the annuity considerations in this State.

ACLI generally believes that as a matter of public policy the State of Hawaii should encourage individuals to provide for their own financial well-being. The proposed legislation, however, is deeply flawed both technically and substantively and it belies a fundamental misunderstanding of how life insurers create, price and provide affordable products to Hawaii’s citizens. If enacted, SB 3061 would increase the cost of life insurance overall since insurers would be required to incorporate the additional costs associated with the mandated benefit. Many young families would be priced out of traditional life insurance. There are individuals who may be underwritten for a traditional life insurance policy that may not qualify otherwise due to the morbidity associated with the rider. There are a number of insurers who simply do not offer such rider and are not equipped to price or account for such an additional benefit. There may be tax consequences to the insured since the benefit distribution mandated in the bill may not qualify as a “tax free” benefit under federal law. There are companies that have offered the rider at no charge and insureds have requested it be removed due to potential tax consequences. People that would otherwise do much better under a traditional long term care insurance policy may be dissuaded from such a purchase due to the existence of the mandated rider.

We note that Hawaii has yet to adopt NAIC Model #620, Accelerated Benefits Model Regulation. It may make more sense for the legislature or the Insurance Division to pursue adoption of such Model if there is an interest in establishing standards for these benefits; and we would be willing to work with all to develop meaningful standards for the type of products that are sold in other jurisdictions. It is important to note that products based on this Model are regulated as life insurance. As the accelerated benefit has evolved through the past years, states have been allowing companies to include triggers in addition to terminal illness, such as medical conditions requiring extraordinary medical intervention, conditions that are reasonably expected to require continuous confinement in an institution, and a chronic illness defined as a permanent inability to perform, without substantial assistance from another individual, a specified number of activities of daily living and/or permanent severe cognitive impairment. ***The death benefit payments made when these triggers are met are considered “life insurance”*** because the payments are not contingent upon receipt of specified services nor do they reimburse actual expenses incurred. If the benefit payments were contingent upon receipt of qualified LTC services and supports, the benefit would be subject to the long-term care requirements, and such payments are eligible for favorable tax treatment.

We also note that Hawaii has adopted NAIC Models #640 and #641 which address long-term care insurance. If an accelerated death benefit was issued to make a payment contingent upon receipt of qualified long term care services and supports, that such a benefit would be required to be advertised and sold as long-term care insurance subject to the Models #640 and #641, as is the case in the majority of the states today.

Accordingly, the proposal to integrate the “accelerated death benefits” with “long-term care benefits” is problematic. We see no beneficial reason to establish a new category for “accelerated death benefits” in the long-term care insurance section of Hawaii’s Insurance Code – that section of the Code already allows for the sale of qualified long-term care benefits, and a benefit based on the advance payment of a life insurance proceeds is already considered qualified long-term care insurance and as such is available in the marketplace today, is being approved and sold in most states, and would already be subject to the requirements of Hawaii’s long-term care insurance laws.

It should be noted that the federal Pension Protection Act, which became effective for plan years beginning in January 1, 2010, provides tax preferential treatment for long-term care insurance benefits that are sold with life insurance policies and annuity contracts, provided that the benefits meet the HIPAA tax qualification requirements. The sale of these types of products is already accommodated for in the Models #640 and #641, which Hawaii adopted in its Insurance Code.

For the reasons stated above (the existence of state regulations and federal law that already provide alternatives to the funding of long-term care insurance products), we believe that the proposed legislation is not necessary.

The proposed bill is problematic for the following reasons:

- It would require every applicant for a life insurance policy to also buy an accelerated death benefit. Such a requirement impairs the proposed insured's right to contract
- Not all insurers currently offer the type of benefit proposed and this will force these companies to offer such benefits and develop a pricing methodology and administrative systems to support such benefits.
- Since not all face amounts requested would be candidates for an accelerated death benefit, the mandate would require applicants to purchase more coverage than they need or want to pay for.
- Many policies are purchased for business reasons – perhaps a buy/sell agreement, or funding a non-qualified deferred compensation plan, for estate planning reasons to fund a trust, coverage to be kept in force as part of a divorce decree. In these cases, it is hard to understand how a mandate like this will work – particularly when the insurance contract is the funding vehicle for a specific purpose.
- Based on experience with the sale and administration of accelerated death benefits, there are some situations where insureds elect to only accelerate a portion of what they can so that the remaining death benefit can go to family members as intended. If the intent of mandating accelerated death benefits is to exhaust the benefits available to pay for long-term care services and supports, this may not be the end result.

We also have concerns with the following language of the proposed bill:

- ***Lines 8-9, Page 1***, of the proposed legislation may not meet the requirements of a tax-qualified long-term care insurance plan, and, therefore, any proposal to mandate the purchase of such a benefit may increase the buyer's tax liability, and, if so, we do not believe this would be beneficial to Hawaii consumers. As stated above, Hawaii already has the vehicle in place (the long-term care insurance Models) to allow qualified long-term care insurance benefits funded by the advance of a life insurance death benefit.
- The requirements proposed in ***lines 5 – 22 on page 2 and lines 1-9 on page 3*** are already addressed in the long-term care insurance Models.
- As for the monthly report mentioned on ***line 9 on page 3***, please note that every time a benefit payment is made an explanation of benefits is issued which shows the benefits paid to date and the benefits remaining.
- We do not understand what is meant by ***line 18 on page 3***.

Lastly, bills similar to SB 3061 were introduced in New York in October 2010 and last month in Florida. Both bills were dismissed due to the various issues and concerns identified by the life

insurance and the long-term care insurance industry. While each of those bills went beyond what is proposed in Hawaii, all three bills would have mandated the sale of accelerated death benefits.

For all the reasons stated above, we oppose the proposed legislation and would be willing to discuss some of the suggested alternative course of action outlined above.

Again, thank you for the opportunity to comment on SB 3061, relating to Insurance.

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To: Committee on Human Services
Senator Suzanne Chun Oakland, Chair

Date: January 31, 2012, Conference Room 016, 1:15 p.m.

Re: **SB3061 – RELATING TO INSURANCE**

Chair Chun Oakland and Committee Members:

My name is Barbara Kim Stanton, State Director of AARP Hawaii. 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 offers the following **comments** on **SB3061**, that proposes that life insurance policies issued in Hawaii shall include an accelerated death benefit provision. Such a provision may provide consumers with additional sources of funding for long-term care (LTC) services.

The accelerated death benefit options for LTC first arose in the 1990's, but there has been little growth in this sector with many insurers abandoning the option altogether. The recommendation to mandate the offer of accelerated death benefits may impact the prevalence of employer-sponsored life insurance policies, and the legality of such a mandate under state/or federal law needs to be determined.

Accelerated death benefits may be part of an existing life insurance policy or sold separately as a rider. They allow policyholders to access accelerated benefits before death in the case of a terminal illness, catastrophic or long-term care need. Payouts are typically for a portion of the policy's face value, up to 80 percent. But accelerated benefits have limitations. For instance, individuals with a preexisting condition may be unable to purchase an accelerated benefits rider after they have purchased a life insurance policy. Also, payouts of accelerated benefits will reduce the amount available to beneficiaries when the policyholder dies.

Another life insurance provision that should also be considered, but not addressed in this bill, are viatical settlements. This is another life insurance option that can assist consumers with funds for long-term care services. Viatical settlements allow policyholders needing LTC or have a serious medical condition to sell their death benefit to a third party in exchange for money while the policyholder is alive, usually at a discount.

AARP's policy is that accelerated death benefit and viatical settlement provisions should be regulated by the State to ensure full disclosure of information to consumers on the effect of such provisions, and should ensure that consumers receive fair actuarial compensation for the value of their life insurance.

Thank you for the opportunity to provide our testimony.



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TO THE SENATE COMMITTEE ON HUMAN SERVICES

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Tuesday, January 31, 2012
1:15 p.m.

TESTIMONY ON SENATE BILL NO. 3061 – RELATING TO INSURANCE.

TO THE HONORABLE SUZANNE CHUN OAKLAND, CHAIR, AND MEMBERS OF
THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner (“Commissioner”),
testifying on behalf of the Department of Commerce and Consumer Affairs
(“Department”). The Department supports the intent of this bill, with amendments.

This bill adds a new definition of accelerated death benefits in Hawaii Revised
Statutes (“HRS”) § 431:10H-104 and mandates in HRS § 431:10H-114 an “accelerated
death benefits” provision in life insurance policies offering long-term care benefits.

While a lump sum payment similar to an accelerated death benefit provision in
policies may provide consumers greater flexibility in long-term care financing options,
the Department has the following concerns.

First, consumers may currently purchase optional accelerated death benefits
riders in life insurance policies. The market has many life insurance products which
offer optional “accelerated death benefits” riders which allow early access to death
benefits for policyholders with a chronic or terminal illness, i.e. anticipated 12-month life
expectancy. While they are not called “long-term care riders”, the benefit serves the
same purpose. Article 10D, HRS chapter 431, governing life insurance policies, may be

amended to mandate insurers offer to consumers accelerated death benefits riders as an option. Therefore, the proposed mandate in HRS § 431:10H-114, may not be necessary.

Second, the definition of long-term care insurance in HRS § 431:10H-104 excludes life insurance policies that accelerate the death benefit for certain qualifying events, creating a conflict with the proposed mandate. Long-term care insurance is not a death benefit product, and is not priced to pay out a lump sum if there were an accelerated death benefit provision. Long-term care insurance is meant to provide payments over a period of time to pay for an individual's care. While recognizing the value of combination products of life and long-term care, the Department also acknowledges that pricing a death-benefit provision on a line of insurance such as long-term care that does not provide a death benefit may increase premiums.

Life insurance products are priced accordingly, taking into consideration possible lump sum payments in the event of a chronic or terminal illness. Therefore, the proposed definition of "accelerated death benefits" which allows access to funds when an individual's life expectancy is 24 months, extending the time period from the standard 12-month period for chronic or terminal illness, should also be a mandated option. This will keep costs down for consumers who do not need it, and increase the availability of the rider to all life insurance consumers, not just those who have a long-term care rider. To mandate the provision outright will likely increase the premiums for a long-term care rider and may discourage the purchase of long-term care insurance.

Third, the proposed mandate would have prospective application, leaving intact current policies issued that may not have the accelerated death benefits provision, only affecting future sales of these type of long-term care products.

Finally, insurers may be reluctant to include the accelerated death benefits provision in policies, leading to possible disruption in the life insurance market. Life insurance products are priced to provide end-of-life benefits based on mortality tables. A mandate of early payout of the death benefit requires adjusted tables which increase premiums for all.

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