

SCR 44

Measure Title: ESTABLISHING THE LONG-TERM CARE FINANCING TASK FORCE TO CONDUCT A FEASIBILITY STUDY ON THE VIABILITY OF USING ACCELERATED DEATH BENEFITS AND VIATICAL SETTLEMENTS AS SOURCES OF FUNDING FOR LONG-TERM CARE NEEDS.

Report Title: Kupuna Caucus; Life Insurance; Viatical Settlements; Accelerated Death Benefits; Insurance Commissioner; Long-Term Care Commission

Description:

Companion:

Package: Kupuna

Current Referral: HMS/CPN, WAM

Introducer(s): CHUN OAKLAND, IHARA, SHIMABUKURO, Espero



NEIL ABERCROMBIE
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TO THE SENATE COMMITTEES ON HUMAN SERVICES AND
COMMERCE AND CONSUMER PROTECTION

TWENTY-SIXTH LEGISLATURE
Regular Session of 2012

Thursday, March 29, 2012
10:35 a.m.

**TESTIMONY ON SENATE CONCURRENT RESOLUTION NO. 44 – ESTABLISHING
THE LONG-TERM CARE FINANCING TASK FORCE TO CONDUCT A FEASIBILITY
STUDY ON THE VIABILITY OF USING ACCELERATED DEATH BENEFITS AND
VIATICAL SETTLEMENTS AS SOURCES OF FUNDING FOR LONG-TERM CARE
NEEDS.**

TO THE HONORABLE SUZANNE CHUN OAKLAND AND ROSALYN BAKER,
CHAIRS, AND MEMBERS OF THE COMMITTEES:

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 concurrent resolution.

The purpose of this concurrent resolution is to establish a six-member long-term
care financing task force chaired by the Commissioner. The task force is to coordinate
research and recommendations on the use of accelerated death benefits and viatical
settlements to fund long-term care needs and submit a report on the following:
feasibility of using accelerated death benefits and viatical settlements as funding
sources to pay for long-term care; feasibility of mandating insurance companies to
include an offer of accelerated death benefits in standard policies; a standard by which
to rate the option of accelerated death benefits offered in policies; review the Hawaii
Insurance Code to identify any barriers to implementing use of viatical settlements as a

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funding source; feasibility of establishing a regulatory oversight system for viatical settlements; and establishing a regulatory oversight system if found feasible. If the task force is established, funding will be needed for studies and research to address and report on the points set forth in the resolution.

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

Senate Committee on Human Services
Senator Suzanne Chun Oakland, Chair
Senator Les Ihara, Jr., Vice Chair

Senate Committee on Commerce & Consumer Protection
Senator Rosalyn Baker, Chair
Senator Brian Taniguchi, Vice Chair

Hearing on March 29, 2012 at 10:35 am

SCR 44 -- ESTABLISHING THE LONG-TERM CARE FINANCING TASK FORCE TO CONDUCT A FEASIBILITY STUDY ON THE VIABILITY OF USING ACCELERATED DEATH BENEFITS AND VIATICAL SETTLEMENTS AS SOURCES OF FUNDING FOR LONG-TERM CARE NEEDS

Chair Chun Oakland, Chair Baker, Vice Chair Ihara and Vice Chair Taniguchi and Members of the Committees, the National Association of Insurance and Financial Advisors (NAIFA) Hawaii is made up of life and health insurance agents throughout Hawaii, who primarily market life, annuities, long term care and disability income insurance products.

We are offering our comments on SCR 44. The Insurance Commissioner is being tasked to establish a task force to "coordinate research and recommendations on the use of accelerated death benefits (ADB) and viatical settlements to fund long term care."

Currently, viatical settlements are not regulated in Hawaii but these kinds of transactions are allowed. The Senate CPN Committee sent SB 3062, SD1, to the House and they have amended the measure as SB 3062, SD1, HD1, and sent it to the Finance Committee. We support the intent of SB 3062, SD1, HD1 in it's latest draft.

SB 3062, SD1, HD1 will re-enact 177, SLH 2008 (HB 94, HD1, SD2, CD1), without the original sunset language. Act 177 was repealed on June 16, 2010. Act 177, SLH 2008, is the NCOIL Life Settlements Model Act that regulates life and viatical settlements, that was adopted by NCOIL in November 2007.

If SB 3062 is enacted by the Legislature then life and viatical settlements regulation as sought in this resolution will be achieved. With viatical settlements a viatical settlement company buys (and policyholder sells) the life insurance policy and gives a percentage of the death benefit upfront to the policyholder. It pays the premiums, becomes the sole beneficiary of the policy and then receives the full benefit upon death of the policyholder. Usually the settlement is tax free for the terminally or chronically ill but policyholders should always check with their tax advisors for updated tax rulings.

Regarding **accelerated death benefits** (living benefits), many life insurance policies provide a rider that has to be selected by the policyholder. Some riders have additional cost and others no cost; some may have a service fee for this benefit. **ADB allows for percentage of the death benefit to be paid in advance of the insured's death when certain severe medical conditions and terminal illness are present or confinement to nursing homes.** Living benefits were offered in the 1980s to assist HIV/AIDS patients.

Insurers have their own policy criteria as to when the benefit may be accessed. Since ADBs are not mandated, some life insurance policies do not include it due to pricing benefits. Mandating benefits in insurance policies will increase the cost of the insurance.

When ADBs are accessed, the proceeds from the living benefit are deducted from the policy's face value either in one lump sum or monthly. Premiums must continue to be paid to keep the policy in force if the policyholder wants their beneficiaries to receive the remainder amount. Insurers will charge interest on the living benefit amounts distributed, therefore, a loan against the policy. Income from a living benefit typically is not taxable...both on the federal and state levels provided that the policyholder is classified as "terminally ill" when filing taxes. Again policyholders should always check with their tax advisors.

The ADB amount depends on several factors – face value of policy; terms of the contract; state laws; and loans against the policy. It's a limited benefit meant to alleviate end of life financial hardship. **It was NOT designed to replace comprehensive long term care costs.**

Hawaii has not yet adopted the NAIC model regulation on accelerated benefits. We respectfully suggest that the Hawaii Insurance Division and the Legislature consider pursuing the standards in the model regulation.

Thank you for allowing us to testify and share our views.

Cynthia Takenaka, Executive Director
Phone: 394-3451

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN OPPOSITION TO SENATE CONCURRENT RESOLUTION 44 ESTABLISHING THE
LONG-TERM CARE FINANACING TASK FORCE TO CONDUCT A FEASIBILITY
STUDY ON THE VIABILITY OF USING ACCELERATED DEATH BENEFITS
AND VIATICAL SETTLEMENTS AS SOURCES OF
FUNDING FOR LONG-TERM CARE NEEDS

March 29, 2012

Via e mail

Hon. Senator Suzanne Chun Oakland, Chair
Committee on Human Services
Hon. Senator Rosalyn H. Baker, Chair
Committee on Commerce and Consumer Protection
State Senate
Hawaii State Capitol, Room 229
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Chun Oakland, Chair Baker and Committee Members:

Thank you for the opportunity to testify in opposition to SCR 44, proposing to establish a Long-Term Care Financing Task Force to Conduct a Feasibility Study on the Viability of Using Accelerated Death Benefits and Viatical Settlements as Sources of Funding for Long-Term Care Needs.

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.

The ACLI respectfully opposes Senate Concurrent Resolution establishing a Long-Term Care Financing Task Force for two reasons: (1) it puts the cart before a certain horse; and (2) it is based upon a flawed report by the Long-Term Care Commission.

The Resolution is premised upon the Final Report of the Hawaii Long-Term Care Commission published in January. The Resolution proposes to determine if “viatical settlements are beneficial to insurance policyholders, and how to regulate viatical settlements.” But the Report itself expressly acknowledges that, “Since viatical settlements are not currently regulated in Hawaii,

there may be some policyholders who could be victimized by unscrupulous operators unless strict oversight is established. These operators may take advantage of desperate people who need immediate cash for medical or long-term care, paying them only a small portion of the value of their benefit.”

By the Commission’s own Report, then, the Resolution in this regard is premature. That is, it is premature to study whether viatical settlements are beneficial to consumers in the absence of law establishing such transactions as respectable and sufficiently regulated to protect consumers. After all, there are many well-documented cases of insurance owners and investors abused by viatical settlement providers over the decades of transactional experience in other states.¹ Meanwhile, legislation to re-enact the sunset Hawaii viatical settlement law is pending. Should this legislation be enacted, it might then enable study of the contribution that viatical settlements might make to long-term care financing, if any. Until there is a viatical settlement law enacted, it is impossible to study whether viatical settlements contribute any value whatsoever.

Separately, the Commission’s Final Report makes numerous erroneous findings about insurance nonforfeiture values, accelerated death benefits, and their relevance to long-term care financing. Egregiously omitted is any economic analysis of the practical result on the Hawaii insurance market should the Report recommendations pertaining to compulsory accelerated death benefits be adopted. That the Commission should make such errors in its Report is not surprising inasmuch as the Commission did not consult with the ACLI or its members in conducting its research or preparing its findings. This notably includes the omission of consultation with ACLI members which have collectively underwritten more than \$2 billion in life insurance premium and \$25 million in Long-Term Care insurance premium.² It is no wonder the Commission did not find the right answers to its insurance questions since it failed to look in the right places for answers.

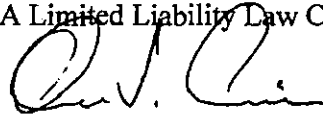
For these very good reasons, the ACLI respectfully recommends that SCR 44 be tabled pending enactment of a viatical settlement law and revision of the Commission’s Final Report relating to insurance nonforfeiture value; accelerated death benefits; and their relevance to long-term care financing.

¹ “There has been substantial criminal and civil litigation arising from the fraudulent activities known to occur in the viatical settlement industry. See, e.g., *Liberte Capital Group, LLC v. Capwill*, 462 F.3rd 543 (6th Cir. 2006); *Wuliger v. Kelco, Inc.*, 2006 U.S. Dist. LEXIS 561, 2006 WL 51126 (S.D. Ohio, Jan. 10, 2006). It has been observed that the ‘risk of fraud’ is ‘somewhat common in the viaticals business.’ *People ex rel. Wood v. Innovative Financial Services, Inc.*, 2006 Cal. App. Unpub. LEXIS 1439, 2006 WL 392030, *3 (Cal.App. 4th Dist., Feb. 17, 2006) (unreported).

² From 2010 data.

Again, thank you for the opportunity to testify in opposition to SCR 44.

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A handwritten signature in black ink, appearing to read "Oren T. Chikamoto", written over the text of the law firm name.

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