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TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Monday, February 10, 2014
5:00 p.m.

TESTIMONY ON HOUSE BILL NO. 2529, H.D. 1 – RELATING TO HEALTH.

TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department defers to the Office of the Governor on the merits of this bill, but wishes to submit the following comments on one section.

Page 14 of the bill starting at line 14 creates a section 27-L which requires the insurance commissioner to adopt rules to certify agents and brokers to handle health insurance policies sold through the Hawaii Health Connector (“Connector”). The insurance commissioner already has the authority and responsibility to license agents and brokers for the sale of insurance under HRS article 431:9A. Presently, the Connector requires Assistants and Navigators to go through training, sign agreements to maintain confidentiality and meet other requirements before being allowed to act as Assistants and Navigators. Insurance agents and brokers should go through the same process and meet the requirements set forth by the Connector. Therefore, the certification process may not be needed and may be duplicative.

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



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Consumer Protection and Commerce
Monday, February 10, 2014 at 5:00 P.M.
State Capitol - Conference Room 325**

RE: HOUSE BILL 2529, HD1 RELATING TO HEALTH

Chair McKelvey and Vice Chair Kawakami, and members of the committee:

The Chamber of Commerce of Hawaii ("The Chamber") would like to offer **comments** regarding HB 2529 Relating to Health.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber's main concern is that whether the Hawaii Health Connector is a public or private entity, there is a large operational cost to sustain this. It presently costs about \$7 million to maintain operations. We do think legislative oversight might be one way to review costs.

Thank you for the opportunity to testify.



Community Alliance for Mental Health

February, 10, 2014

Board of Directors

Anne Chipchase
President

Robert Scott Wall
Vice President

Brenda Kosky
Secretary

William Lennox
Treasurer

Susan King

Linda Takai

Randolph Hack

Gina Hungerford

To: House Committee on Consumer Protection and Commerce
Re: HB2529, HD1

Aloha Chair McKelvey and the members of the committee,

On behalf of the Community Alliance for Mental Health along with United Self Help we strongly support the passage of HB 2529, HD1.

We feel that the Hawai'i Health Connector's brief life as a quasi-non-profit was an error from the beginning and that the only option the State has is to start fresh.

We also believe that the creation of permanent advisory groups is necessary. The last thing we would suggest is an amendment guaranteeing the inclusion of Hawai'i's "Sunshine" laws.

Scott Wall
VP/Legislative Advocate
Community Alliance for Mental Health

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LATE



Real Possibilities

To: Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair

Date: February 10, 2014, Conference Room 325, 5:00 p.m.

Re: **HB 2529 HD1 – Relating to Health
Testimony - Comments**

Chair McKelvey and Committee Members:

AARP is a non-profit, non-partisan membership organization of people 50 and older with nearly 150,000 members in Hawaii. We serve as a reliable source of information on issues critical to Americans 50+. AARP fights on issues that matter to Hawaii families including access to affordable, quality healthcare for all generations. Because of this, we have a keen interest in this bill.

AARP offers the following comments on this bill.

Establishing the Hawaii Health Connector as a State Agency

There has been insufficient due diligence to know the impact of establishing the Connector as a new state agency. Prior to making such a decision, the Connector must be required to provide the Legislature with a comprehensive sustainability report for 2015 and the next 5 years that provides details on how it operates, what its expenses will be, how it will control those expenses, how it will generate the revenue to offset those costs and how it will increase enrollment.

If the Connector is established as a State agency the bill needs to be clarified as to how "...the debts and liabilities of the Hawaii health connector shall not constitute the debts and liabilities of the State."

Sustainability Fee

Prior to the establishment of a sustainability fee, the Connector should be required to provide the Legislature with a 2015 Sustainability Report that provides details on how the Connector operates, what its expenses will be, how it will control those expenses, how it will generate the revenue to offset those costs and how it will increase enrollment. The Connector has received approximately \$205 million in federal taxpayer dollars for the development and implementation of the Connector, and Hawaii residents should not be "left holding the bag" and assessed a fee to "bail-out" the Connector when federal funds are not available, or if the board failed in its fiduciary duty to develop an appropriate sustainability plan.

If a sustainability fee becomes necessary a process must be established that requires a management and financial audit to evaluate the appropriateness of the amount of funds

provided to the Connector. Without such audits there is little incentive for the Connector to generate revenues, control expenses or increase enrollment. Without any accountability by the Connector for revenues and expenses it becomes too convenient for the Connector to rely on a sustainability fee for ongoing operations. This fee that is assessed on insurers would be passed on to the consumer by way of higher insurance premiums. The consumer would be the clear loser.

Composition of the Connector Board

AARP strongly supports the exclusion of insurers and dental benefit providers from the board. This has been a clear conflict of interest since the board was structured and both consumers and the public have not been served well as a result. We thank you for recognizing and addressing this problem.

Qualifications for board members should be broadened to allow for some members with executive experience in fields other than healthcare, from non-government agencies or entities.

Board Meeting – Transparency

AARP strongly supports the transparency of board actions and meetings and requests the applicability of these provisions to standing committees as well. While the public is invited to board meetings, much of the discussions and deliberations are out of the public view in Executive Sessions which account for approximately 25%-35% of time at board meetings. The public has no knowledge of discussions and decisions made at standing committee meetings and is not invited to attend or view meeting minutes.

While public comment is allowed at board meetings, the public often cannot provide meaningful input as they are not routinely provided access to reports and documents prior to being discussed at board meetings.

Creating Consumer, Patient, Business, and Health Care Advisory Groups

AARP supports the intent to provide more consumer input by creating the consumer, patient, business, and health care advisory group. While input from insurers is important, we recommend the majority of members for this group not consist of insurers, businesses, or entities that are providing services through the Connector.

In summary, we ask that the Committee require the Connector to provide the Legislature with an acceptable 2015 Sustainability Plan prior to acting on transferring the Connector to the State or the establishment of a Sustainability Fee; goes forward on the changes to the Board composition and the creation of the Advisory Groups; establishes transparency provisions; and to proceed with a full and complete management and financial audit.

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:
H.B. NO. 2529, H.D. 1, RELATING TO HEALTH.

LATE

BEFORE THE:
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

DATE: Monday, February 10, 2014 **TIME:** 5:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Lili A. Young, Deputy Attorney General

Chair McKelvey and Members of the Committee:

The Department of the Attorney General provides the following comments.

The federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, enabled the State of Hawaii to establish a health insurance exchange known as the Hawaii Health Connector (Connector). In 2011 the legislature established the Connector as a private nonprofit corporation. See chapter 435H, Hawaii Revised Statutes (HRS). Part I of the bill's stated purpose is to establish the Connector as a state entity and to provide for the long-term sustainability of the Hawaii Health Connector by authorizing the insurance commissioner to assess a fee on all issuers selling plans, both inside and outside of the Connector.

First, in section 2 of the bill (page 4, lines 9-14) a new part is created under chapter 27, HRS, that establishes a state connector and provides that "the debts and liabilities of the Hawaii health connector shall not constitute the debts and liabilities of the State." This is inconsistent with section 6 of the bill (page 17, lines 21-22 through page 18, lines 1-7), which provides that "all...contracts...held by the Hawaii nonprofit corporation known as the Hawaii health connector...shall be transferred with the functions to which they relate." Under section 6, the contract liabilities would transfer to the State. The Department would be happy to work with the Committee to draft language that will facilitate the Committee's intent.

Second, while the bill refers to the Hawaii health connector sustainability revolving fund, the bill does not establish such as a special fund. We propose the following changes to section 2

Fourth, the following appropriation language should be added as a new section 9 (renumbering all remaining sections) at the end of Part I of the bill in order to allow expenditure of the subject moneys from the Hawaii health connector sustainability special fund:

SECTION . There is appropriated out of the Hawaii health connector sustainability special fund the sum of \$_____ or so much thereof as may be necessary for fiscal year 2014-2015 for the Hawaii health connector. The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

Fifth, procurement under chapter 103F, HRS, is limited to procurement of health and human services only. The connector may need to procure other, non-health and human services contracts to facilitate its operations. In section 2, for the new section 27-P (page 15, lines 5-7), we propose deletion and replacement of the following to clarify the wording of the bill.

§27-P Procurement. Notwithstanding any provision to the contrary, procurement by the connector shall be made pursuant to state procurement law.

Sixth, section 5 (page 16, lines 21-22 through page 17, lines 1-5) dissolves the nonprofit connector. Under chapter 435H, HRS, the connector “shall be a Hawaii nonprofit corporation organized and governed pursuant to chapter 414D, the Hawaii nonprofit corporations act.” Chapter 414D, Part XIII, HRS, contains specific provisions and processes to dissolve a nonprofit corporation. This process addresses a mechanism for potential claims that may be made against the dissolved entity. The bill makes a brief reference to debts and liabilities of the connector, but is unclear as to what entity is to be responsible for those debts and liabilities. Forgiving any debt or liability should be reserved to the equitable powers of a bankruptcy court.

Seventh, section 5 (page 17, lines 6-20) transfers employees of the connector established under chapter 435H, HRS, to the State. The wording of the bill automatically transfers the current Connector employees into the State. It removes from the newly created state entity the ability to hire its own employees when the new entity is first established. The existing employees should be given the opportunity or choice to apply for employment with the newly established state connector. We would propose giving the transferred employees the right of first refusal to work in the newly created state connector.



LEAGUE OF
WOMEN VOTERS®

LATE

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COMMITTEE ON CONSUMER PROTECTION AND HEALTH
Monday, February 10, 2014, 5:00 p.m., Room 325
HB 2529, HD1, RELATING TO HEALTH

TESTIMONY

Janet Mason, Legislative Co-Chair, League of Women Voters of Hawaii

Chair McKelvey, Vice-Chair Kawakami and Committee Members:

The League of Women Voters of Hawaii provides the following comments on HB2529, HD 1:

HB2529, HD addresses the future operation of the Hawaii Health Insurance Exchange, known as the Hawaii Health Connector. It would establish the Exchange as a state entity, and provide for the long-term sustainability of the Hawaii Health Connector through a fee assessment. The new draft establishes a "state innovation waiver task force," in addition to a subsequent Board of Directors. The League believes transitioning the Connector to a state facility is a sound step.

The League does have concerns about the new House Draft:

Structural concerns in the creation of Boards, advisory groups, and Task Forces:

- 1) **Composition of the Board of Directors:** The proposed composition of the Board of Directors for the Exchange consists primarily of political appointments and lacks representation of consumer groups. While Section 27-Q of the bill allows for such representation, this group is only advisory in nature. The League continues to oppose, as a direct conflict of interest, any representatives of the health insurance industry sitting on a Board of Directors overseeing the Exchange, and to insist that consumers have a greater share of representation. **An amendment related to Board composition is necessary.**

Perhaps more important at this juncture, **we strongly object to including any health insurers or their employees on the proposed Task Force**, and suggest an amendment to make this clear.

Section 27-G appears to exempt the Board from sunshine requirements for open and transparent executive meetings. **The League opposes any measures designed to inhibit full transparency in Board meetings.**

- 2) The new draft creates a task force by July 1, 2014 and an appropriation for fiscal year 2014-1015 for its operation; its purpose is to develop a health care innovation waiver



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Finally, I would be remiss if I did not mention in this testimony that the League of Women Voters has experienced problems working with the Health Connector because of its nonprofit status. We firmly believe the Connector is subject to the National Voter Registration Act (NVRA) that requires all States to provide access to voter registration when an individual applies for public assistances. Yet the State Attorney General's office has advised that the Hawaii Connector is not covered by the NVRA because it is a non-profit agency. Other state health exchanges are already committed to doing this, because it is also a requirement of the Federal Affordable Care Act. We hope this particular compliance problem could be addressed immediately so that voter rights are no longer jeopardized.

We urge you to consider our suggestions, and thank you for the opportunity to submit testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:
H.B. NO. 2529, H.D. 1, RELATING TO HEALTH.

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First, in section 2 of the bill (page 4, lines 9-14) a new part is created under chapter 27, HRS, that establishes a state connector and provides that "the debts and liabilities of the Hawaii health connector shall not constitute the debts and liabilities of the State." This is inconsistent with section 6 of the bill (page 17, lines 21-22 through page 18, lines 1-7), which provides that "all...contracts...held by the Hawaii nonprofit corporation known as the Hawaii health connector...shall be transferred with the functions to which they relate." Under section 6, the contract liabilities would transfer to the State. The Department would be happy to work with the Committee to draft language that will facilitate the Committee's intent.

Second, while the bill refers to the Hawaii health connector sustainability revolving fund, the bill does not establish such as a special fund. We propose the following changes to section 2

of the bill, page 7, lines 1-22 through page 8, lines 1-3, creating section 27-D(a)-(c) to clarify the

wording:

§27-D Hawaii health connector sustainability [revolving] special fund;

establishment; subaccount. (a) There is established the Hawaii health connector sustainability [revolving] special fund into which shall be deposited [moneys received by or under the supervision of the connector, pursuant to section 27-C, including]:

- (1) Hawaii health connector universal federally mandated sustainability fee revenues collected pursuant to section 27-E; [and]
- (2) Any other assessments or fees established by the connector; and[.]
- (3) Appropriations made by the legislature to the fund.

The existing subsection (b) at page 7, lines 13-20, should be deleted and replaced by the following to reflect:

(b) Moneys in the Hawaii health connector special fund shall be used for expenditures relating to the operations of the Hawaii health connector.

The existing subsection (c) at page 7, lines 21-22, page 8, lines 1-3, should be deleted. The sentence which begins “Moneys in” on page 7, lines 11-12, should be added as the new subsection (c) and amended to reflect:

(c) Moneys in the Hawaii health connector sustainability [revolving] special fund shall not be considered part of the general fund.

Also, in section 7 (page 18, line 13), the word “revolving” should be replaced by “special.”

Third, while section 2 of the bill, page 7, lines 13-20, establishes a subaccount within the Hawaii health connector sustainability special fund into which shall be deposited the remaining moneys received by the Connector from the federal government prior to January 1, 2015, and sections 6 and 7 (page 17, lines 21-22 through page 18, lines 1-16) directs that the appropriations and moneys (including federal grant moneys) be transferred to the newly established state Connector, it is unknown whether this can be achieved in this manner without prior federal approval or first meeting federal grant requirements for the transfer to and use of grant funds by a different grant awardee. We proposed deletion of subsection (b) above. If federal approval is given, we can propose appropriate language to address this issue.

Fourth, the following appropriation language should be added as a new section 9 (renumbering all remaining sections) at the end of Part I of the bill in order to allow expenditure of the subject moneys from the Hawaii health connector sustainability special fund:

SECTION . There is appropriated out of the Hawaii health connector sustainability special fund the sum of \$_____ or so much thereof as may be necessary for fiscal year 2014-2015 for the Hawaii health connector. The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

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Seventh, section 5 (page 17, lines 6-20) transfers employees of the connector established under chapter 435H, HRS, to the State. The wording of the bill automatically transfers the current Connector employees into the State. It removes from the newly created state entity the ability to hire its own employees when the new entity is first established. The existing employees should be given the opportunity or choice to apply for employment with the newly established state connector. We would propose giving the transferred employees the right of first refusal to work in the newly created state connector.

Eighth, transferring the current employees while preserving their “salary, seniority, prior service credit, vacation or sick leave credits previously earned,” may result in financial liability to the state’s employee retirement system. For example, an individual employed by the nonprofit Connector for the past three years would be able to receive retirement service credit of three years without having contributed to the state employee retirement system during that time.

Finally, while the transferred employees are exempt from civil service, this bill does not address whether these employees would be excluded from collective bargaining, so collective bargaining laws may apply to their salary and benefits. Once we know the intent of the Committee regarding this issue, we would be happy to propose language to achieve those ends.

We respectfully ask the Committee to consider our comments.