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**HOUSE COMMITTEE ON FINANCE**
**The Hon. Sylvia Luke, Chair**
**The Hon. Scott Y. Nishimoto, Vice Chair**
**The Hon. Aaron Ling Johanson, Vice Chair**

**February 26, 2014, 11:15 a.m., Room 308**

**House Bill 2529, HD 2 RELATING TO HEALTH**

**Comments**

**Presented by Beth Giesting, Healthcare Transformation Coordinator, Office of the Governor**

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Thank you for the opportunity to comment on HB 2529, HD 2 Relating to Health. We appreciate the Legislature's concerns for ensuring the viability and success of the Connector and its role in facilitating insurance enrollment.

HB 2529, HD 2 has many thoughtful provisions that warrant further consideration and we respectfully request that the bill be kept alive to continue discussing the positive and negative consequences of this draft. We defer to the office of the Attorney General on the issue of changing the status of an existing incorporated nonprofit entity.

Thank you for the opportunity to comment.

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

**ON THE FOLLOWING MEASURE:**
H.B. NO. 2529, H.D. 2, RELATING TO HEALTH.

**BEFORE THE:**
HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, February 26, 2014 **TIME:** 11:15 a.m.

**LOCATION:** State Capitol, Room 308

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

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Chair Luke 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 (ACA), enabled the State of Hawaii to establish a health insurance exchange known as the Hawaii Health Connector (Connector). The purposes of this measure are to: (1) provide for greater transparency, stakeholder engagement, and legislative involvement in the activities of the Connector; and (2) provide for the long-term sustainability of the Connector by authorizing the Insurance Commissioner to assess a fee on all issuers selling plans, both inside and outside of the Connector.

Below we have identified general areas of the bill that raise legal concerns. While we are able to provide recommendations to amend the measure to address some of our legal concerns, there are other legal concerns that cannot be resolved until the Committee or the Legislature determines the course of action it wishes to take to implement the intent of this bill.

**1. Connector's relationship to the State is ambiguous**

Section 3 of the bill is in conflict with itself, creating ambiguity and a potential constitutional issue. Section 3 at page 9, line 20, to page 10, line 6, establishes the Connector as an "instrumentality of the State," but continues "provided further that the Connector shall not be considered an agency of the State."

**a. If the Connector is an "instrumentality of the State"**

If the Connector is an "instrumentality of the State," it is required to be administratively attached to an executive branch agency pursuant to article V, section 6, of the Hawaii State Constitution. That provision requires that "All executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments in such a manner as to group the same according to common purposes and related functions. . . ." There are several models of administrative attachment that the Committee may wish to consider, such as the Research Corporation of the University of Hawaii (RCUH), sections 304A-3001 through 304A-3011, Hawaii Revised Statutes (HRS); the Hawaii Health Systems Corporation, chapter 323F, HRS; and others.

We are concerned that if the Connector becomes an instrumentality of the State, the responsibilities of the Connector Legislative Oversight Committee created in section 2 of the bill (page 5, line 4 to page 6, line 12) over the Connector may be unconstitutional as a violation of the separation of powers doctrine. The stated functions of the Connector Legislative Oversight Committee are to review the Connector's financial and operational plans and provide input and recommendations to the Connector board of directors (section 2, page 6, lines 4-7), conduct an annual review of the Connector's sustainability plan (section 2, page 6, lines 8-9), and recommend to the commissioner the amount of the sustainability fee to be assessed for future fiscal years (section 2, page 6, lines 10-12). Section 2 at page 7, lines 12-21, provides that the sustainability plan shall include the upcoming fiscal year's detailed budget and justification of all projected allocations and expenditures for release of moneys to the Hawaii health connector sustainability special fund. The commissioner must consider the recommendation of the Connector Legislative Oversight Committee before deciding whether to assess and collect the sustainability fee (section 2, page 8, lines 1-6). The function of the Connector Legislative Oversight Committee continues permanently.

There are three separate and distinct branches of government established under the United States Constitution and the Hawaii State Constitution: the Legislature, the Executive, and the Judiciary. Each separate branch of government has powers unto itself, exclusive from the other two. The separate powers of each branch keep the other branches in check, thus lending to the system of checks and balances. The separation of powers doctrine is intended "to preclude a commingling of . . . essentially different powers of government in the same hands and thereby prevent a situation where one department would be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments." *AlohaCare v. Dep't of Human Servs.*, 127 Hawaii 76, 85, 276 P.3d 645, 654 (2012), citing *Pray v. Judicial Selection Comm'n,* 75 Haw. 333, 353, 861 P.2d 723, 732 (1993) (internal quotation marks and citation omitted).

As written, there could be a potential constitutional problem with the Connector Legislative Oversight Committee exercising responsibilities over an "instrumentality of the State" that would necessarily be administratively attached to an executive branch department. In *Chaffin vs. Arkansas Game and Fish Comm'n*, 757 S.W.2d 950 (1988), the Arkansas Supreme Court held that a statute setting up the legislative council's practice of "review and advice" to state agencies on the intent of legislative appropriation violated the separation of powers doctrine and held that it was unconstitutional. The court provided that "[i]t is unreasonable to expect any state agency to defy such a body which has the power to determine its well-being. The 'advice' offered by the [legislative] committee to an agency is tantamount to a legislative order on how to execute a contract." *Id.* at 956. (Citations omitted). Similarly, this bill establishes and gives the Connector Legislative Oversight Committee authority to review the Connector's sustainability plan and make a recommendation to the commissioner that may impact the Insurance Commissioner's decision on the amount of money to be expended by the Connector, and if passed as worded, may not survive a constitutional challenge.

We believe that if the Connector is to be an instrumentality of the State, the Legislature may review its financial, operational, and sustainability plans, as the bill currently provides at page 6, lines 4-9, but should not make recommendations to the board or recommend to the Insurance Commissioner the amount of the sustainability fee to be assessed in upcoming fiscal years (page 6, lines 6-12).

We are also concerned about the amendment to section 435H-2(a), HRS, that provides "the debts and liabilities of the Connector shall not constitute the debts and liabilities of the State." It is not clear what entity would be responsible for those debts and liabilities. If the Connector becomes an instrumentality of the State, we recommend that the State first conduct due diligence on the Connector's debts and liabilities, and review the contracts into which it has entered, in order to ensure that the State is protected to the greatest extent possible.

**b. If the Connector is not an "instrumentality of the State"**

The Connector's relationship to the State is unclear as worded. At the House Consumer Protection Committee's decision making hearing, it was explained that the amendments in H.D. 2 were patterned after the Colorado health insurance exchange model. Committee members also commented that there was a need to address accountability, transparency, and sustainability. If the Connector is not an "instrumentality of the State," there may be other amendments to this bill necessary to ensure that these issues are addressed (e.g., making the Connector subject to provisions akin to the sunshine law or procurement law requirements).

Other than to follow Colorado's choice of entity in establishing the State health insurance exchange as a nonprofit unincorporated entity, it is unclear why the Legislature would want to change the current corporate status of the Connector. As an unincorporated nonprofit entity, restrictions under federal law relating to the governance structure and governing board as addressed below in paragraph 4 will remain in place. If the Committee can provide additional information about its intent in making this amendment, we will be able to determine the appropriateness of this type of entity.

**2. Changing Connector's status does not have the effect of dissolving the existing Connector**

Section 3 of the bill amends section 435H-2, HRS, to change the Hawaii health insurance exchange from a nonprofit corporation governed by chapter 414D, HRS, to an unincorporated entity. Page 9, line 20, to page 10, line 9. As mentioned above, the reason for this change is not clear. Amending the statute, however, will not automatically dissolve the existing nonprofit corporation, and the Legislature does not have the power to dissolve a Hawaii domestic nonprofit corporation.

Act 205, Session Laws of Hawaii 2010 (codified as chapter 435H, HRS), instructed that the Connector be created as a domestic nonprofit corporation. The Connector was created as a domestic nonprofit corporation, regulated by the Hawaii Nonprofit Corporations Act (HNCA) codified in chapter 414D, HRS. The HNCA provides the exclusive mechanisms to dissolve a nonprofit corporation. Legislative dissolution is not among them.

The first method of dissolution is a voluntary dissolution approved by vote of the nonprofit corporation's directors. HRS § 414D-242. In addition to the specific details identified in the "Articles of Dissolution," such as whether the dissolution has been approved by the members or the board of directors, a plan of dissolution must indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid. HRS § 414D-243.

Judicial dissolution is a second method. Under certain circumstances, the circuit court may dissolve a domestic nonprofit corporation in a proceeding brought by the Attorney General. HRS § 414D-252. To succeed in such a suit the court must find that: (1) the corporation obtained its articles of incorporation through fraud; (2) the corporation has continued to exceed or abuse the authority conferred upon it by law; (3) the corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or (4) the corporation is a public benefit corporation and is no longer able to carry out its activities.

Alternatively, the circuit court may dissolve a domestic nonprofit corporation in a proceeding by a creditor if it is established that: (1) the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or (2) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

Prior to dissolving a corporation, the court must consider whether there are reasonable alternatives to dissolution, and if the corporation serves a public purpose, whether dissolution is in the public interest.

The third method is the process of executive dissolution. The Director of the Department of Commerce and Consumer Affairs may administratively dissolve a domestic nonprofit corporation if the corporation fails to: (1) pay any fees prescribed by law; (2) file its annual report for a period of two years; (3) appoint and maintain an agent for service of process as required; or (4) file a statement of a change in the name or business address of the agent. HRS § 414D-248. The Connector is in full administrative compliance as of this date.

The HNCA also includes a process 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 does not specify 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.

Whether it is even in the State's interest to dissolve the Connector can really only be answered after the due diligence has been completed and decisions regarding the disposition of debts and liabilities have been made.

**3. Funding**

Section 4 at page 11, lines 16-19, amends section 435H-3, HRS, addressing the Connector's sustainability. While ACA requires that the exchanges be self-sustaining by January 1, 2015, the confidentiality, privacy, and security requirements must still be met. Pursuant to section 1411(g) of ACA, the Connector is mandated to keep an applicant's information confidential. Under 45 C.F.R. section 155.260, the Connector is prohibited from using the data received about an individual for marketing or fundraising purposes.[1] On-line advertising may be targeted to specific individuals based on information they provide (i.e., employment, income, and age). As worded, it is unclear whether any advertising for ancillary services on the Connector's website would use personally identifiable information provided by an individual. We propose adding a new subsection (c) to reflect: "(c) All plans to generate revenue for the Connector shall be in compliance with federal law."

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[1] The following excerpt was taken from the comments submitted to the federal Department of Health and Human Services (HHS) and the HHS response relating to 45 C.F.R. section 155.260 at 77 Fed. Reg 18341, March 27, 2012:
***Comment:*** A handful of commenters stated that Exchanges should obtain specific authorization from individuals prior to using any [personally identifiable information] PII for marketing purposes. Some commenters requested that HHS prohibit Exchanges from sharing any information for marketing or fundraising purposes altogether. One commenter stated that HHS should specifically prohibit Exchanges from selling data, or allowing access to PII collected for Exchange purposes for data mining. Another commenter stated that HHS should specifically prohibit any secondary uses of PII that are not specifically authorized.
***Response:*** Section 155.260(a) does not permit the use or disclosure of PII for marketing or fundraising purposes. The final rule clarifies that PII collected for those purposes of determining eligibility for enrollment in a Qualified Health Plan, determining eligibility for other insurance affordability programs, or determining eligibility for exemptions from the individual responsibility provisions in section 5000A of the Code, can only be used to the extent such information is necessary to carry out minimum functions in 155.200 of this subpart.

It is worth noting that currently the Connector receives federal funds and how the entity is formed will impact whether the State will continue to receive those funds or the manner in which the funds may be accounted for.

**4. Changes to the nonprofit Connector board composition**

Chapter 435H, HRS, was enacted in 2011, prior to the final federal rules governing exchanges established pursuant to ACA. Pursuant to 45 C.F.R. section 155.110(c) and (d), there are requirements relating to an exchange's governance principles and the governing board's structure specific to an exchange that is a state-established nonprofit entity.[2] Section 5 at page 11, line 20, through page 15, line 4, amends section 435H-4, HRS, changing the Connector board composition. To comply with the federal law, we propose the following changes to section 5 on page 13, lines 9-22.

> (b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders including consumers, employers, insurers, and dental benefit providers. Each person appointed to the board shall have education, training, or professional experience in at least one of the following areas:
>
> (1) Health care policy;
>
> (2) Health benefits plan administration, including Medicaid administration;

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[2] 45 C.F.R. section 155.110 provides the following in relevant part:

(c) *Governing board structure*. If the Exchange is an independent State agency or a non-profit entity established by the State, the State must ensure that the Exchange has in place a clearly-defined governing board that: (1) Is administered under a formal, publicly-adopted operating charter or by-laws; (2) Holds regular public governing board meetings that are announced in advance; (3) Represents consumer interests by ensuring that overall governing board membership: (i) Includes at least one voting member who is a consumer representative; (ii) Is not made up of a majority of voting representatives with a conflict of interest, including representatives of health insurance issuers or agents or brokers, or any other individual licensed to sell health insurance; and (4) Ensures that a majority of the voting members on its governing board have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues related to the small group and individual markets and the uninsured.

(d) *Governance principles*. (1) The Exchange must have in place and make publicly available a set of guiding governance principles that include ethics, conflict of interest standards, accountability and transparency standards, and disclosure of financial interest. (2) The Exchange must implement procedures for disclosure of financial interests by members of the Exchange board or governance structure.

(3) Health insurance;
(4) Health care financing and purchasing;
(5) Health care delivery;
(6) Information technology; [~~or~~]
(7) Economics and actuarial science;
(8) Health plan purchasing;
(9) Health care delivery system administration;
(10) Health care policy issues related to the small group and individual markets and the uninsured; and
(11) Public health.

We also recommend adding as the last sentence in section 5 on page 15, line 4, "Any changes to the board structure and governance shall be in compliance with federal law."

**5. Appropriation**

Section 2 at page 3, line 12, through page 5, line 3, establishes the: (1) consumer, patient, business, and health care advisory group; (2) health insurers advisory group; and (3) insurance producers advisory group. The bill provides that the members of each advisory group may be reimbursed for necessary expenses incurred in the performance of their duties. However, there is no appropriation to reimburse the members for their expenses. We propose amending this bill by adding a new section 6 as set forth below, and renumbering the remaining sections. We also note that for the amendments in the following sections, the appropriate department can be inserted as the expending agency once the intent of this Committee or the Legislature is clear.

> SECTION 6. There is appropriated out of the general fund the sum of $ ______ or so much thereof as may be necessary for fiscal year 2014-2015 for necessary expenses incurred by members of the advisory groups established pursuant to sections 435H-A, 435H-B, and 435H-C, Hawaii Revised Statutes, in section 2 of this Act. The sum appropriated shall be expended by the [department of commerce and consumer affairs division of insurance or the appropriate department] for purposes of this Act.

Section 2 at page 8, lines 17-22 to page 9, lines 1-17, establishes the Hawaii health connector sustainability special fund, from which moneys are to be expended by the Insurance Commissioner for the "administration, operations, and prudent cash management of the connector." This draft lacks an appropriation from the special fund to allow the expenditure of funds and therefore, we propose amending this bill by adding a new section 7 and renumbering the remaining sections.

SECTION 7. 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 [department of commerce and consumer affairs division of insurance or the appropriate department] for the purposes of this Act.

We respectfully ask this Committee to consider our comments.

# Community Alliance for Mental Health

February, 26, 2014



To: House Committee on Finance
Re: HB2529, HD1

Aloha Chair Luke 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

HPCA

HAWAI'I PRIMARY CARE ASSOCIATION

**House Committee on Finance**
The Hon. Sylvia Luke, Chair
The Hon. Scott Y. Nishimoto, Vice Chair
The Hon. Aaron Ling Johnson, Vice Chair

# Testimony on House Bill 2529, HD 2

**Relating to Health**

**Submitted by Robert Hirokawa, Chief Executive Officer**

**February 26, 2014, 11:15 am, Room 308**

The Hawaii Primary Care Association (HPCA), which represents the federally qualified community health centers in Hawaii, would like to offer comments on House Bill 2529 HD2, which seeks to alter the board composition of the Hawaii Health Connector and make it a state entity.

There are a few key points that the HPCA would like to comment on. First is the concern that if the Connector is made a state entity, any financial burdens or debts incurred by the Connector will become the responsibility of the state taxpayers. While this is spoken to briefly in the bill, there was no mention of how it could be ensured that the state would not consume such liabilities.

Also, the Board makeup as suggested by the bill would effectively concentrate all voting powers with state officials or their designees. While creating an advisory committee would allow a conduit for information to reach the Connector, it would not be granted an actual voice in any official business. We have significant concerns with a lack of consumer representation and the absence of representation for underserved populations and communities.

The HPCA thanks you for the opportunity to offer these comments.

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**Testimony to the House Committee on Finance**
**Wednesday, February 26, 2014 at 11:15 A.M.**
**Conference Room 308, State Capitol**

**RE: HOUSE BILL 2529, HD2 RELATING TO HEALTH**

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") would like to offer **comments** regarding HB 2529, HD2 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 – a cost that businesses will be forced to bear. It presently costs about $15 million to maintain operations. In addition to the other mandated costs to businesses, this large cost will be another burden. We do think legislative oversight might be one way to control costs.

Thank you for the opportunity to testify.

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HMSA
Blue Cross Blue Shield of Hawaii
An Independent Licensee of the Blue Cross and Blue Shield Association

February 26, 2014

The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair
The Honorable Aaron Ling Johanson, Vice Chair
House Committee on Finance

**Re: HB 2529, HD2 – Relating to Health.**

Dear Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2529, HD2. HMSA has comments on this Bill and offers amendments.

HMSA absolutely is supportive of the intent of HB 2529, HD2, to ensure an efficient health insurance exchange for Hawaii. And, we appreciate the effort reflected in the Bill to a design a cost-effective sustainability model for the Hawaii Health Connector (Connector) that includes a sustainability fee that the Insurance Commissioner may levy across all health and dental insurers. However, we are concerned that Section 4 of the Bill includes language that would provide for a duplicative fee to be directly levied by the Connector itself. We ask that the Committee consider amending Section 4 of the Bill as follows:

> SECTION 4. Section 435H-3, Hawaii Revised Statutes, is amended to read as follows:
>
> "**[~~[~~]§435H-3[~~]~~] Funding.** (a) The connector may receive contributions, grants, endowments, fees, or gifts in cash or otherwise from public and private sources including corporations, businesses, foundations, governments, individuals, and other sources subject to rules adopted by the board. The State may appropriate moneys to the connector. As required by section 1311(d)(5)(A) of the Federal Act, the connector shall be self-sustaining by January 1, 2015, and[ ~~may charge assessments or user fees to participating health and dental carriers, or~~] may otherwise generate non-insurer based funding to support its operations. Moneys received by or under the supervision of the connector shall not be placed into the state treasury and the State shall not administer any moneys of the connector nor be responsible for the financial operations or solvency of the connector[~~.~~] except as provided in section 435H-G.
>
> (b) In addition to any other means of generating revenue pursuant to subsection (a), the connector may charge fees for displaying advertisements for ancillary services on the connector's website."

Thank you for the opportunity to testify on this measure. Your consideration of our suggested amendment is appreciated.

Sincerely,

Mark K. Oto
Director, Government Relations,

House Committee on Finance

Representative Sylvia Luke, Chair

Representative Scott Nishimoto, Vice Chair

Reprsentative Aaron Ling Johanson, Vice Chair

**Testimony on HB 2529, HD2 – Relating to Health**
February 26, 2014 – Agenda #2 at 11:15 am

Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, I am Cynthia Takenaka, Executive Director representing the NAIFA (National Association of Insurance and Financial Advisors) Hawaii, an association made up insurance agents/producers and financial advisors across Hawaii.

We were pleased to see that the House Health Committee amended the bill to include that agents and brokers could assist individuals and employers in the application process.

We respectfully **request an amendment** to HB 2529, HD2.

We ask for your support **to allow agents and brokers to be paid commissions on the business they place through the Hawaii Health Connector** to be included in Section 435H-E of this measure. Insurance producers (agents and brokers) normally earn commissions on the insurance business they sell. In other types of insurance policies, the commission and other administrative costs are also included in the rate making.

Some of our members sell health insurance and they would place business through the HHC if they got paid as they get paid for health insurance business they place outside the HHC.

Mahalo for your favorable consideration and for this opportunity to share our concerns.

Hawaii Independent Insurance Agents

ASSOCIATION

February 24, 2014

To: Representative Sylvia Luke, Chair
Representative Aaron Ling Johanson, Vice Chair
Representative Scott Y. Nishimoto, Vice Chair
Committee on Finance

From: Sonia M. Leong, Executive Director
Hawaii Independent Insurance Agents Association

Re: HB2529 H.D.2 Relating to Health
Hearing: Wednesday, February 26, 2014 11:15 am Conference Room 308

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My name is Sonia M. Leong and I am the Executive Director of the Hawaii Independent Insurance Agents Association, a non profit trade association of independent agents & brokers. We would like to submit the following comments on Section 435H-E pertaining to Agents and Brokers.

We followed the Health Connector Board meetings since early last year. During that time, we explained to the Board that agents & brokers play a critical role in helping both Individuals and qualified employers & employees enroll in the Connector. We pride ourselves in our professionalism and make an ongoing effort to keep abreast of the market conditions & product availability & options. We are licensed producers and we are required to take Continuing Education classes every two years.

HIIA is please note that HB 2529 was amended to include a section on agents and brokers. We request the following amendment be made to the bill on page 6, line 17 (new language underscored):

{**Certified Insurance agents and brokers may enroll individuals and employers in applying for applicable premium tax credits and cost-sharing reductions for which they may be eligible <u>and shall be compensated for these activities in a manner determined by the board</u>. The commissioner shall adopt rules for certifying insurance agents and brokers pursuant to this section; provided that the rules shall include qualifications and educational requirements for agents and brokers comply with the federal act.**}

Thank you for the opportunity to provide testimony.

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## COMMITTEE ON FINANCE

Wednesday, February 26, 2014
Conference Room 308, 11:15 A.M.
**HB2529, HD2 RELATING TO HEALTH**
**TESTIMONY (Comments)**

Chair Luke, Vice Chairs Nishimoto and Johanson, Members of the Committee:

The League of Women Voters of Hawaii supports quality health care for all at an affordable price. We welcome the recent changes to HB2529, in HD2, which we feel advances this important goal for the citizens of our state.

The League has consistently expressed its concern over Board of Directors for the Exchange, which must include stake-holders and eliminate active agents of private insurance companies. The amendments to HB 2529, HD 2 would add seven new sections to Chapter 435 (H) Hawaii Revised Statutes. Among the new changes, it establishes a consumer, patient, business and health care advisory group, a health providers advisory group, and insurance producers advisory group, each of which would act only in an advisory capacity to the Board of Directors of the Health Exchange. The composition of the Board has changed substantially and provides a better reflection of the diversity required for the continued operation of the Connector. As drafted, HB 2529, HD 2 removes the more egregious conflicts of interest concerns that the League has raised about earlier drafts.

We believe the Connector must be self-sustaining, offer equity among the competing insurers and have an independent auditor. The League is pleased that HD 2 now establishes a connector Legislative Oversight Committee to promote and protect the interests of the residents of Hawaii, by reviewing the financial and operational plans of the connector and providing input and recommendations to the board. We are pleased that the Legislative Oversight Committee will monitor not only the Connector's finances, but its operations as well. We believe such oversight is necessary and an important improvement to the language of the bill.

HB 2529, HD 2 would require an annual review of the sustainability plan submitted by the Board and mandates that the Legislative Oversight Committee provide recommendations to the Commissioner on the amount of the sustainability fee for the upcoming fiscal year. The League supports the new draft language which calls for a sustainability plan to include a detailed and itemized budget and empowers the Commissioner to act upon those recommendations

The League supports efforts to make the Connector an agency of the state, subject to the same laws regulating other state agencies. We encourage the Committee to further review and clarify the language of the bill that now makes the Connector an "instrumentality of the state" for any unintended financial implications and/or liabilities this may incur. Thank you for the opportunity to testify on this important bill.

To: Committee on Finance
Rep. Sylvia Luke, Chair

Date: February 26, 2014, Conference Room 308, 11:15 a.m.

Re: **HB 2529 HD2 – RELATING TO HEALTH**
**Testimony - Comments**

Chair Ige and Committee Members:

AARP is a membership organization of people 50 and older with nearly 150,000 members in Hawaii. AARP fights on issues that matter to Hawaii families, including the high cost of long-term care; 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 **supports and opposes portions of HB 2529 HD2 - Relating to Health** which creates three advisory groups; creates a legislative oversight committee; establishes a sustainability fee and a special fund; and changes the composition and voting status of the Connector board.

Section 2 of this bill adds sections to Chapter 435H, Hawaii Revised Statutes.

Consumer, Patient, Business, and Health Care Advisory Group
AARP supports the establishment of this advisory group and recommends that:

1. This advisory group shall be allowed to present recommendations at board meetings. All recommendations should be voted upon at the board meetings and made part of the meeting minutes. This would insure that advisory group recommendations are heard and acted upon by the board.
2. Membership in this advisory group should be open to the public and guidelines should be established for the selection of members.

Health Insurers Advisory Group
AARP supports the establishment of this advisory group and recommends that:

1. This advisory group shall be allowed to present recommendations at board meetings. All recommendations should be voted upon at the board meetings and made part of the meeting minutes. This would insure that advisory group recommendations are heard and acted upon by the board.
2. Membership in this advisory group shall be open to all insurers regardless as to whether they offer plans through the Connector.

Insurance Producers Advisory Group
AARP supports the establishment of this advisory group and recommends that:

1. This advisory group shall be allowed to present recommendations at board meetings. All recommendations should be voted upon at the board meetings and made part of the meeting minutes. This would insure that advisory group recommendations are heard and acted upon by the board.
2. Membership in this advisory group shall be open to all agents and brokers regardless as to whether they sell qualified plans through the Connector.

Hawaii Health Connector Universal Federally Mandated Sustainability Fee; Annual Sustainability Plan
Prior to the establishment of a 2015 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 responsible for subsidizing the Connector when federal funds are not available.

Section 5 of this bill amends subsections of Section 435H-4, Hawaii Revised Statutes.

Board Composition
The proposed amendment to this subsection would reduce the Connector board from fifteen to twelve members and changes the composition and voting status of the board. Two insurers would be allowed on the board as nonvoting members.

1. AARP strongly opposes any insurers on the board, even as nonvoting members. Nonvoting insurers on the board have an unfair competitive advantage over other insurers that are not on the board. Even as nonvoting board members the insurers would have access to confidential information, contracts, and vendor negotiations discussed in executive sessions, standing committee meetings, and board documents. While they may not be allowed to vote - a conflict of interest would still exist as the nonvoting members would still be able to influence decisions as they would be included in deliberations on board and standing committees which may benefit their employers.

   Insurer expertise and knowledge are vital to the success of the Connector, however, to avoid any appearance of conflict of interest they should not be board members. Instead insurers should only be included as members of the Health Insurers Advisory Group.

2. While AARP opposes any insurers on the board, we also note that the proposed draft should have clarified that the Governor, Senate President, and House Speaker cannot appoint insurers to the board and that the board could only have two insurers who would be nonvoting board members.

Thank you for the opportunity to provide testimony.

**finance1**

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| **From:** | mailinglist@capitol.hawaii.gov |
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**HB2529**
Submitted on: 2/24/2014
Testimony for FIN on Feb 26, 2014 11:15AM in Conference Room 308

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Ronald Taniguchi | Individual | Support | No |

Comments:

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HAWAIʻI HEALTH
CONNECTOR

LATE

TO: **The Honorable Sylvia Luke, Chair**
**House Committee on Finance**

FROM: **Tom Matsuda, Interim Executive Director**

HEARING: **February 26, 2014, at 11:15 a.m., Room 308**

RE: **HB2529 HD2, Relating to Health**

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My name is Tom Matsuda, Interim Executive Director of the Hawaiʻi Health Connector (the "Connector"), speaking on behalf of the Connector's Board of Directors.

The Hawaiʻi Health Connector would like to **offer comments** on House Bill 2529 HD2. With respect to the proposed sustainability fee and annual sustainability plan, the Connector Board is engaged in a sustainability planning process to evaluate likely scenarios for the Connector's operating revenue based on enrollments as well as scenarios for reducing operating expenses in the future. Although that process is not completed yet, the Board has identified several preliminary findings, as follows:

1. Continuing the Connector as a state-based marketplace (SBM) is necessary in order to preserve the Prepaid Healthcare Act ("Prepaid" H.R.S. §393). To comply with Prepaid and obtain Affordable Care Act ("ACA") tax credits, Hawaii's small businesses have to use a local SBM with Prepaid functionality built in. If the Connector did not exist, Hawaii would have to fulfill the ACA federal mandate by using the Federally-facilitated Marketplace (FFM), which cannot accommodate unique state laws like Prepaid.

2. The market dynamics in Hawaii are not right for an online marketplace of this type and there is little chance of the Connector becoming self-sustaining under its current board-approved revenue model (2% fee on plans sold through the Connector). Our revenue projections, using the best available data, and looking at a dozen variables that affect future enrollment, were not even close to break even. Even with substantial reductions to the estimated $15 million annual operating budget in FY 2016, we will not be sustainable.

3. The Connector has experienced some well-known operational challenges. If these had been prevented and the roll out had been smooth, the public might have been happier with the Connector and enrollment might have been higher, but that would

not have a made a substantial impact on sustainability over the long term. This is not an operational problem, it is a market problem.

4. Enrolling the uninsured is a primary goal of the ACA, but in Hawaii the number of uninsured is low compared to most other states, estimated at about 100,000 lives. Excluding the uninsured who are Medicaid-eligible, there are not enough left to enroll at a volume that could sustain the Connector. While we will continue to help consumers sign up and provide tax subsidies, individual enrollment alone is not enough.

5. The key to our sustainability has always been small employer enrollments in our Small Business Health Options Program (SHOP). Due to the existence of Prepaid and the small number of health insurers in the state, there is little need for the average small business to use SHOP. The ACA small business tax credit is a real incentive, but few businesses may qualify for the credit. Also, the federal and state decision to give SHOP employers the option to remain with their existing insurance plans in 2014 has reduced the volume of potential customers. The State has a pending request to extend this option through 2017. If granted, it will continue to limit enrollment volume through the Connector.

6. We may be able to reduce operating expenses by considering changes to the Connector's business processes and IT systems in the future, in both the Individual and SHOP marketplaces. Also, we need to consider other enrollment and revenue sources allowed under the ACA, working with our stakeholders to see what makes sense for Hawaii. Those revenue and expense options are being considered by the Board in the next phases of the sustainability planning process.

7. If there are no changes to current revenue sources or projected operating expenses, the Connector will become unsustainable in 2015 unless there is a grant extension from the federal funding agency. With an extension, if nothing else changes it will become unsustainable a year later. (As of the date of this testimony we do not have a decision about the grant extension.)

8. If state policy is to protect Prepaid while implementing the ACA federal mandates and increasing coverage for all, then the community will have to find a way to sustain the Connector's services until the ACA Innovation Waiver can be considered for 2017. With the waiver, the community has an opportunity to change the State-based Marketplace to better fit Hawaii's unique market. A State Innovation Waiver Task Force has been proposed in HB 2581, HD2. If that measure passes, to provide time for

the Task Force to do its work, the Connector's services could be preserved during the interim by increasing fees assessed by the Connector, by a fee assessed by the State across the market, by finding other revenue sources, or by a combination of the above.

9. This information about the Connector's sustainability does not change our current operations. Regardless of the outcome of the Connector-related bills, we will continue to facilitate enrollment and provide public education services for Hawaii's people.

Thank you for the opportunity to provide comments on this measure.