



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2014

Tuesday, April 1, 2014
2:00 p.m.

**TESTIMONY ON SENATE BILL NO. 2820, S.D. 2, H.D. 2 – RELATING TO
INSURANCE.**

TO THE HONORABLE SYLVIA LUKE, 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”). Thank you for hearing this bill. The Department strongly supports this
Administration bill.

The purpose of this bill is to streamline and improve the operations of the
Insurance Division and to ensure that the Insurance Division complies with the federal
Patient Protection and Affordable Care Act, Public Law 111-148 (“PPACA”) by updating
the Insurance Code, Hawaii Revised Statutes (“HRS”) chapter 431 (“Insurance Code”),
and chapter 432, HRS.

SECTIONS 1, 2, and 3 of the H.D.2 add new sections to Article 10A of chapter
431, HRS, chapter 432 (“Mutual Benefit Societies”), HRS, and chapter 432D (“Health
Maintenance Organizations”), HRS, to prohibit rescission of coverage under a health
benefit plan in most instances and provide written notice prior to rescission in
conformance with the PPACA. The PPACA prohibits the rescission of coverage under

a health benefit plan after the individual is covered unless the individual (or representative) performs an act of fraud or makes an intentional misrepresentation of material fact. In addition, the PPACA requires that a health carrier provide at least 30 days advance written notice to a plan enrollee or primary subscriber before coverage may be rescinded under the allowed circumstances. These new sections would ensure conformance with the PPACA, and are modeled after the provisions of the National Association of Insurance Commissioners' ("NAIC") Model Language for Prohibition on Rescissions of Coverage. The language would make clear that non-payment as a rescission trigger must be in compliance with Federal regulation.

SECTION 4 of the bill amends HRS § 431:1-209 by clarifying that companies with general casualty insurance authority can only write accident and health or sickness insurance as incidental or supplemental coverage. Currently, any insurer with general casualty authority may write accident and health or sickness insurance as primary coverage without an accident and health certificate of authority. Under this scenario a general casualty insurer would be writing health and major medical products and not subject to the same regulations as health insurers and health plans. For instance, state mandated benefits and health rate regulation would not apply. Amending the statute would prevent any disparities in regulation from occurring and make Hawaii's definition similar to other states.

SECTION 5 of the bill amends HRS § 431:2-209(d) by clarifying retention requirements for tax records for surplus lines brokers and independently procured insureds is 3 years after the date filed or within 3 years of the due date for filing of the tax report, whichever is later. Proposed language will provide greater clarity as to the Insurance Division's record retention period for tax records of surplus line brokers and independently procured insureds, to be consistent with requirements for retention of tax records of foreign and alien insureds pursuant to HRS § 431:2-209(d), as well as the time frame in which the Commissioner may assess or levy taxes pursuant to HRS § 431:7-204.6.

SECTION 6 of the bill amends HRS § 431:2-402(c) to allow the Insurance Fraud Investigations Branch to review and take appropriate action on complaints of fraud

relating to insurance under title 24, including HRS chapters 431, 432, and 432D, but excluding workers compensation insurance under HRS chapter 386. Amending this section would clarify that the Insurance Division has jurisdiction to pursue fraud related issues involving activity that the Insurance Division currently regulates, including those where insurance agents defraud clients.

SECTION 7 of the bill amends HRS § 431:10A-102.5 by including long-term care insurance as part of limited benefit health insurance and clarifying that Article 10H would override any conflicting provisions in Article 10A. Long-term care insurance was previously deleted from this section in 2011, impacting the Insurance Division's ability to regulate long-term care effectively. Currently, filing fees and consumer protection provisions that are not in Article 10H, that are applicable to accident, health and sickness insurance contracts, do not apply to long-term care insurance. Amending HRS § 431:10A-102.5 would remedy this problem.

SECTION 8 of the bill amends HRS § 431:11A-101 by amending the definition of "licensed insurer" or "insurer" to include risk retention captive insurance companies. As NAIC accreditation standards require the application of Article 11A of the Insurance Code, HRS chapter 431, to risk retention captive insurance groups, the definition of "licensed insurer" or "insurer" in HRS § 431:11A-101 needs to be amended to ensure that Article 11A applies to risk retention captive insurance companies.

SECTION 9 of the bill amends HRS § 431:19-101 to include "captive insurer" in the definition of "captive insurance company." The terms "captive insurance company" and "captive insurer" are used interchangeably throughout Article 19, HRS chapter 431. HRS § 431:19-101 defines "captive insurance company"; however, "captive insurer" is not defined in Article 19, HRS chapter 431. Amending the definition of "captive insurance company" in HRS § 431:19-101 to also refer to "captive insurer" will provide greater clarity.

SECTION 10 of the bill amends HRS § 431M-2 ("Mental Health and Alcohol and Drug Abuse Treatment Insurance Benefits") to conform to the PPACA which mandates parity between medical and surgical benefits and benefits for alcohol dependency, drug dependence, and mental health treatment services and to change statutory language to

current medical language. Hawaii has designated these treatment services an essential health benefit under the PPACA. It is recommended, however, that line 20 of Section 10 read as follows:

"use disorder, substance use disorder, and mental [illness] ..."

SECTION 10 of the bill adds a new part (b) to section 431M-2 to mandate parity between medical and surgical benefits and mental health and substance use disorder benefits.

SECTION 11 of the bill repeals HRS § 431M-3 because it violates parity under the PPACA.

SECTION 12 of the bill amends HRS § 431M-4 by repealing subsection (a) because it violates parity under the PPACA.

SECTION 13 of the bill repeals HRS § 431M-5 because it violates parity under the PPACA.

SECTION 14 of the bill amends HRS § 432:1-406 by amending the definition of "uncovered expenditure" to include out-of-area services, referral services, and hospital services, as applicable to mutual benefit societies. Currently, the statute specifies what are not deemed "uncovered expenditures." Amending the statute would clarify what services are included in the definition of an "uncovered expenditure," and includes examples of "uncovered expenditures" set forth in the NAIC Health Maintenance Organization Model Act Drafting Note.

SECTION 15 of the bill amends HRS § 432:2-102 to extend to fraternal benefit societies the same immunity and confidentiality protections set forth in HRS §§ 431:3-303, 431:3-304, and 431:3-305 that are currently provided to insurers. Amending the statute will ensure consistency in applying these protections to fraternal benefit societies.

SECTION 16 of the bill amends HRS § 432D-1 by amending the definition of "uncovered expenditure" to include out-of-area services, referral services, and hospital services, as applicable to health maintenance organizations. Currently, the statute specifies what are not deemed "uncovered expenditures." Amending the statute would clarify what services are included in the definition of an "uncovered expenditure," and

includes examples of “uncovered expenditures” set forth in the NAIC Health Maintenance Organization Model Act Drafting Note.

SECTION 17 of the bill amends HRS § 432D-19 to extend to health maintenance organizations the same immunity and confidentiality protections set forth in HRS §§ 431:3-303, 431:3-304, and 431:3-305 that are currently provided to insurers. Amending the statute will ensure consistency in applying these protections to health maintenance organizations.

SECTION 18 of the bill amends HRS § 432G-1 (“Dental Insurers”) by amending the definition of “uncovered expenditure” to include out-of-area services, referral services, and hospital services, as applicable to dental insurers. Currently, the statute specifies what are not deemed “uncovered expenditures.” Amending the statute would clarify what services are included in the definition of an “uncovered expenditure,” and includes examples of “uncovered expenditures” set forth in the NAIC Health Maintenance Organization Model Act Drafting Note.

We thank this Committee for the opportunity to present testimony on this matter and ask for your favorable consideration.

Testimony of
John M. Kirimitsu
Legal and Government Relations Consultant

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

April 1, 2014
2:00 pm
Conference Room 308

Re: SB 2820, SD2, HD2 - Relating to Insurance

Chair, Vice Chairs, and committee members, thank you for this opportunity to provide testimony on this bill regarding the updating of Title 24, relating to insurance.

Kaiser Permanente supports this bill, as amended.

Kaiser Permanente supports the amended version of the bill, with the deletion of Section 9 requiring 80 percent of all investment income to be applied to rate determination and filing of a managed care plan.

Thank you for this opportunity to testify on this bill.

HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

April 1, 2014

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

Re: SB 2820, SD2, HD2 – Relating to Health Insurance

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 SB 2820, SD2, HD2. HMSA supports this Bill.

This Bill conforms the State Insurance Code to the federal Affordable Care Act (ACA). In doing so, it specifies the conditions under which health insurance coverage may be rescinded. And, it ensures the consumer will receive appropriate notification of a rescission of coverage by a health insurer.

As we all strive to achieve the ACA goal of universal health care coverage, we need to shield the public from inappropriate and unwarranted rescission of health care coverage. This Bill is “consumer friendly” legislation that protects the wellbeing of Hawaii’s families.

Thank you for the opportunity to testify in support of SB 2820, SD2, HD2.

Sincerely,

A handwritten signature in black ink, appearing to read "JDiesman".

Jennifer Diesman
Vice President
Government Relations

finance1

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 29, 2014 3:33 PM
To: FINTestimony
Cc: judc@aloha.net
Subject: *Submitted testimony for SB2820 on Apr 1, 2014 14:00PM*

SB2820

Submitted on: 3/29/2014

Testimony for FIN on Apr 1, 2014 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Jud Cunningham	Aloha House, Inc.	Support	No

Comments:

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SB2820 SD2 HD2 Insurance: Update Title 24 Including Parity

- COMMITTEE ON FINANCE: Representative Luke, Chair; Representative Nishimoto, Vice Chair; Representative Johanson, Vice Chair
- Tuesday, April 1, 2014 at 2:00 p.m.
- Conference Room 308

HAWAII SUBSTANCE ABUSE COALITION supports SB2820 SD2 HD2.

Good Morning Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, And Distinguished Committee Members. My name is Alan Johnson, Chair of the Hawaii Substance Abuse Coalition, an organization of more than 20 treatment and prevention agencies across the State.

SB2820, as amended, changes current state legislation to support the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA). The federal funding agency, Substance Abuse and Mental Health Services Administration (SAMHSA), stipulates that the enactment of this legislation ends discrimination against consumers of mental health and substance abuse treatment services in insurance coverage and gives consumers improved access to the care they need.

While insurer plans can still use “utilization reviews” and other managed care techniques to limit access to benefits, this legislation alone will encourage more people to participate in treatment to achieve and maintain recovery. The new law also requires plans to disclose the criteria they use to determine “medical necessity” to any current and potential participants, beneficiaries, and providers who request such information. They also must disclose the reason behind any denial of a claim for mental health or substance abuse treatment.

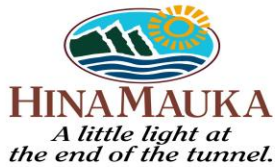
**The cost of
implementing parity
is quite small.**

Also, if past experience holds true, the cost of implementing parity may be quite small.

This legislation sets the foundation for the next steps, which are to address the state’s requirement to:

1. Define enforcement actions.
2. Clearly define who is subject to parity (out of state plans).
3. Define “medical necessity” criteria (such as the International Classification of Disorders, v.10, which many insurers now use).

HSAC appreciates the opportunity to provide testimony and is available for questions.



SB2820 SD2 HD2 Insurance: Update Title 24 Including Parity


- COMMITTEE ON FINANCE: Representative Luke, Chair; Representative Nishimoto, Vice Chair; Representative Johanson, Vice Chair
- Tuesday, April 1, 2014 at 2:00 p.m.
- Conference Room 308

Hina Mauka recommends minor clean up changes for SB2820 SD2 HD2.

Good Morning Chair Luke, Vice Chair Nishimoto, Vice Chair Johanson, And Distinguished Committee Members. My name is Alan Johnson, Chair of the Hawaii Substance Abuse Coalition, an organization of more than 20 treatment and prevention agencies across the State.

Recommend changing Section 12 to remove references to “subsection a)” because subsection a) has been deleted in this bill.

SECTION 12. Section 431M-4, Hawaii Revised Statutes, is amended to read as follows:

 ~~(b)~~] (a) Alcohol and drug dependence benefits shall be as follows:

(1) Detoxification services as a covered benefit under this chapter shall be provided either in a hospital or in a nonhospital facility that has a written affiliation agreement with a hospital for emergency, medical, and mental health support services. The following services shall be covered under detoxification services:

- (A) Room and board;
- (B) Diagnostic x-rays;
- (C) Laboratory testing; and
- (D) Drugs, equipment use, special therapies, and supplies.

Detoxification services shall be included as part of the covered in-hospital services, ~~but shall not be included in the treatment episode limitation, as specified in subsection (a);~~

(2) Alcohol or drug dependence treatment through in-hospital, nonhospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a qualified physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse shall determine that the person suffers from alcohol or drug dependence, or both; provided that the substance abuse services covered under this paragraph shall include those services that are required for licensure and accreditation ~~and shall be included as part of the covered in-hospital services as specified in subsection (a)~~. Excluded from alcohol or drug dependence treatment under this subsection are detoxification services and educational programs to which drinking or drugged drivers are referred by the judicial system and services performed by mutual self-help groups;

(3) Alcohol or drug dependence outpatient services as a covered benefit under this chapter shall be provided under an individualized treatment plan approved by a qualified physician, psychologist, licensed clinical social worker, marriage and family therapist, licensed mental health counselor, or advanced practice registered nurse and shall be services reasonably expected to produce remission of the patient's condition. An individualized treatment plan approved by a marriage and family therapist, licensed mental health counselor, licensed clinical social worker, or an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist. ~~Services covered under this paragraph shall be included as part of the covered outpatient services as specified in subsection (a);~~ and

HSAC appreciates the opportunity to provide testimony and is available for questions.



DOING THE
MOST GOOD

Founded in 1865

William Booth
Founder

Andre Cox
General

James Knaggs
Territorial Commander

John Chamness
Divisional Commander

Melanie Boehm
Executive Director

The Salvation Army

Addiction Treatment Services

4/30/14

SB2820 SD2 HD2 Insurance: Update Title 24 Including Parity

- COMMITTEE ON FINANCE: Representative Luke, Chair; Representative Nishimoto, Vice Chair; Representative Johanson, Vice Chair
- Tuesday, April 1, 2014 at 2:00 p.m.
- Conference Room 308

The Salvation Army Addiction Treatment Services (ATS) and Family Treatment (FTS) Supports SB2820 SD2 HD2:

The Salvation Army ATS strongly supports the efforts to make treatment and related benefits accessible to those who need it the most. Removing barriers and increasing accessibility for consumers who need to access mental health and substance abuse treatment services is overdue.

It is essential to discuss and define the enforcement of parity for mental health and substance abuse treatment.

1. Define enforcement actions.
2. Clearly define who is subject to parity (out of state plans).
3. Define “medical necessity” criteria (such as the International Classification of Disorders, v.10, which many insurers now use).

Melanie T. Boehm MA, LMHC, CSAC
Executive Director

Participating Agency



3624 Waokanaka Street ♦ Honolulu, Hawai‘i 96817 ♦ Tel: (808) 595-6371 ♦ Fax: (808) 595-8250
Visit us at: www.SalvationArmyHawaii.org

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
COMMENTING ON SENATE BILL 2820, HD 2, RELATING TO INSURANCE

April 1, 2014

Via e mail

Honorable Representative Sylvia Luke, Chair
Committee on Finance
State House of Representatives
Hawaii State Capitol, Conference Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Committee Members:

Thank you for the opportunity to comment on SB 2820, HD 2, relating to Insurance.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with approximately 300 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. Two hundred twenty-five (225) ACLI member companies currently do business in the State of Hawaii; and they represent 92% of the life insurance premiums and 90% of the annuity considerations in this State.

Section 7 of the bill would amend existing law to subject LTC to stated provisions of Article 10A of Hawaii’s Insurance Code relating to Accident and Health or Sickness Insurance Contracts.

Currently, the laws governing LTC are contained in Article 10H of the Insurance Code.

In 1999 Article 10H was added to Hawaii’s Insurance Code as the receptacle for the laws pertaining to LTC as a result of the passage by the Legislature of SB 131, relating to long term care (the “Long Term Care Insurance Bill”). This bill was enacted into law as Act 93 during the 1999 Legislative Session.

The stand-alone Article 10H, pertaining to long-term care insurance, was intentional.

Under the Federal income tax laws, amounts received under a LTC insurance form are generally treated as amounts received for personal injuries and sickness and are, thus, non-taxable. In order for benefits paid for LTC insurance to receive this favorable federal tax treatment the LTC insurance form must provide the consumer safeguards mandated by the Health Insurance Portability and Accountability Act (“HIPAA”). Under the tax laws, a long term care insurance form is deemed to satisfy these requirements if it incorporates certain consumer protection

provisions contained in the NAIC Long-Term Care Insurance Model Act. These consumer protection provisions were incorporated into Hawaii's Long Term Care Insurance Bill.

When the Bill was introduced in 1999, its provisions were originally added to Part V of Article 10A, relating to accident, health or sickness insurance contracts ("AHSIC"). Part V was the original receptacle for the then existing laws pertaining to long term care insurance. In recognition that later amendments to Article 10A relating to AHSIC products might inadvertently be applied to a LTC benefit and thereby disqualify it as being a "qualified long-term care insurance contract" under the tax laws, the Senate Ways and Means Committee repealed Part V of Article 10A and enacted new Article 10H to serve as the separate receptacle for LTC insurance.

As originally introduced Section 7 of SB 2820 would have once again subjected LTC to all of the regulatory requirements applicable to AHSIC contained in HRS Section 431:10A-104 through and including 114, 117, 118 and 601 through and including 604.

The justification stated for LTC's inclusion in Article 10A is that ". . . long-term care insurance may not be subject to the standard policy provisions in article 10A Justification Sheet, page 5 (Emphasis added).

While some of the Article 10A provisions which the bill seeks to subject LTC insurance forms are benign others may be in conflict with the provisions governing a LTC insurance form in Article 10H; or result in confusion in determining the rights, duties and obligations of the insurer and the insured.

Indeed, HRS Section 431:10A-112 expressly states that "[w]hen any provision in a policy governed by this part is in conflict with any specific provision of this part, the rights, duties and obligations of the insurer, the insured, and the beneficiary shall be governed by the provisions of this part." Thus, any LTC form with provisions in conflict with Article 10A would be in violation of Article 10A, even though they complied with the provisions of Article 10H.

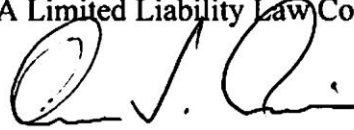
In recognition that some of the requirements in Article 10A should apply to LTC forms, and to assure that the proposed regulatory provisions in the current Bill and any future legislative changes to Article 10A do not conflict with the provisions governing LTC in Article 10H, the bill was amended by a prior Committee by adding to the end of Section 7 of the bill, on page 11, beginning at line 2, the following:

. . . [P]rovided that if any of the requirements set forth in the foregoing sections as applied to long term care insurance are in conflict with the provisions of article 10H, the provisions of article 10H shall govern and control."

ACLI believes that the revised language in SB 2820, HD 2, insures that the specified sections in Article 10A which are to apply to LTC insurance will not conflict with the provisions of Article 10H. Further, SB 2820, HD 2, will prevent confusion in determining the rights, duties and obligations of the insurer and the insured. **The revised language should, therefore, be retained in the bill.**

Again, thank you for the opportunity to comment on SB 2820, HD 2, relating to Insurance.

LAW OFFICES OF
OREN T. CHIKAMOTO
A Limited Liability Law Company

A handwritten signature in black ink, appearing to read "O.T. Chikamoto", written over the text "A Limited Liability Law Company".

Oren T. Chikamoto
1001 Bishop Street, Suite 1750
Honolulu, Hawaii 96813
Telephone: (808) 531-1500
Facsimile: (808) 531-1600
E mail: otc@chikamotolaw.com

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 31, 2014 10:40 AM
To: FINTestimony
Cc: lcook@kualoha.org
Subject: *Submitted testimony for SB2820 on Apr 1, 2014 14:00PM*

SB2820

Submitted on: 3/31/2014

Testimony for FIN on Apr 1, 2014 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Cook	Ku Aloha Ola Mau	Support	No

Comments:

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Subject: *Submitted testimony for SB2820 on Apr 1, 2014 14:00PM*

SB2820

Submitted on: 3/31/2014

Testimony for FIN on Apr 1, 2014 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Heather Lusk	The CHOW Project	Support	No

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To: FINTestimony
Cc: dyoshida-tiffe@cfs-hawaii.org
Subject: Submitted testimony for SB2820 on Apr 1, 2014 14:00PM



SB2820

Submitted on: 4/1/2014

Testimony for FIN on Apr 1, 2014 14:00PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Dona Yoshida	The Institute for Family Enrichment LLC	Comments Only	No

Comments: The Institute for Family Enrichment, LLC (TIFFE) has been a provider of mental health services for children, adolescents, and families in Hawai'i for over 30 years. Since 2006, TIFFE has been providing school and community-based substance abuse treatment for adolescents. TIFFE is in support of SB 2820 SD2 HD2.

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