

# HB 2529 HD3

Measure Title: RELATING TO HEALTH.

Report Title: Health; Hawaii Health Connector; Sustainability Fee

Description: Reduces the membership of the Connector board of directors from fifteen to ten members and changes the composition and voting status of the board. Creates the consumer, patient, business, and health care advisory group; health insurers advisory group; and the insurance producers advisory group to advise the Connector board of directors. Creates the Connector legislative oversight committee to review the financial and operational plans of the Connector. Establishes a sustainability fee to be collected through 6/30/2018, to support operations of the Connector, and establishes a special fund. Effective 7/1/2112. (HD3)

Companion:

Package: None

Current Referral: CPN, WAM

Introducer(s): BELATTI, AWANA, CABANILLA, CACHOLA, CHOY, CREAGAN, EVANS, HASHEM, ING, KOBAYASHI, C. LEE, LUKE, MCKELVEY, NAKASHIMA, NISHIMOTO, TAKAI, TAKUMI, YAMASHITA, Ohno, Rhoads



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

**SENATE COMMITTEE ON COMMERCE & CONSUMER PROTECTION**

**The Hon. Rosalyn H. Baker, Chair  
The Hon. Brian T. Taniguchi, Vice Chair**

**March 18, 2014, 9:00 a.m., Room 229**

**House Bill 2529, HD 3 RELATING TO HEALTH**

**Comments**

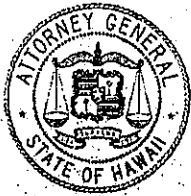
**Presented by Beth Giesting, Healthcare Transformation Coordinator, Office of the Governor**

Thank you for the opportunity to comment on HB 2529, HD 3: Relating to Health. We appreciate the Legislature's concerns for ensuring the viability and success of the Hawaii Health Connector and its role in facilitating insurance enrollment. In proposing changes to the Connector our foremost goals are to support functionality that leads to universal coverage and preserves the benefits of the Prepaid Health Care Act, and we continue to work across agencies and with the Connector to identify strategies to maximize benefits and reduce operating costs in 2015 and beyond.

As per HB 2529, HD 3:

- We defer to the Insurance Commissioner on provisions relating to agents and brokers.
- We suggest adding the phrase that was included in SB 3050, SD 1 to expedite payment to the Connector: "The connector shall be the designated health insurance exchange for the State."

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. 3, RELATING TO HEALTH.

**BEFORE THE:**  
SENATE COMMITTEES ON COMMERCE AND CONSUMER PROTECTION AND ON  
HEALTH

**DATE:** Tuesday, March 18, 2014 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 229

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

---

Chairs Baker and Green and Members of the Committees:

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 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, until June 30, 2018.

Below we have identified general areas of the bill that raise legal concerns.

**1. Connector Legislative Oversight Committee**

We are concerned that the responsibilities of the Connector Legislative Oversight Committee (CLOC) created in section 2 of the bill (page 5, lines 3-21, to page 6, lines 1-14) in relation to the Insurance Commissioner's responsibility to set the Connector's universal federally mandated sustainability fee may be unconstitutional as a violation of the separation of powers doctrine. The stated functions of the CLOC 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 Insurance 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 11-20, to page 8, lines 1-9, provides that “[t]he sustainability plan shall specify the amount of funding required to finance the operations and cash reserve of the connector for each ensuing fiscal year beginning on July 1<sup>st</sup>”, and shall include the upcoming fiscal year’s detailed budget and justification for release of moneys from the Hawaii health connector sustainability special fund. The Insurance Commissioner is to consider the recommendation of the CLOC before assessing and collecting the sustainability fee (section 2, page 8, lines 14-20). As worded, the function of the CLOC may violate the separation of powers doctrine.

Each of the three branches of government (i.e., executive, legislative, and judicial) has powers exclusive of the other two, keeping 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 mandating that the Insurance Commissioner (executive branch) consider a recommendation from the CLOC (legislative branch) before making a decision on the amount of the sustainability fee. In *Chaffin v. 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 CLOC authority to make a recommendation to the Insurance Commissioner that the Insurance Commissioner must consider prior to deciding the amount of the Connector’s sustainability fee. If passed in this form, the bill may not survive a constitutional challenge.

We believe that it is constitutionally within the CLOC's powers to review the Connector's financial, operational, and sustainability plans, as the bill currently provides at page 6, lines 4-9, but the bill should not require that the Insurance Commissioner consider the CLOC's recommendation before setting the amount of the sustainability fee (page 6, lines 10-12, and page 8, lines 15-18).

## 2. Connector's funding opportunities

Section 4 at page 13, lines 3-6, amends section 435H-3, HRS, by adding a new subsection (b) that addresses other opportunities for the Connector to generate revenue. While the ACA requires that the exchanges be self-sustaining by January 1, 2015, its confidentiality, privacy, and security requirements must still be met by the health insurance exchanges. Pursuant to section 1411(g) of the ACA, the Connector is mandated to keep an applicant's information confidential. Under 45 CFR section 155.260, the Connector is prohibited from using the personally identifiable information collected and received about an individual for marketing or fundraising purposes.<sup>1</sup> Personally identifiable information is defined as "any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information." NIST Special Publication 800-122.

---

<sup>1</sup> 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 CFR 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.

Online advertising may target specific individuals based on personally identifiable information they provided, which would include demographic information (i.e., gender, race, birthdates, and geographic indicators). 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. To resolve this problem, we propose adding a new subsection (c) as follows: "(c) All plans to generate revenue for the Connector shall be in compliance with federal law."

**3. Changes to the nonprofit corporation Connector's status and board composition must be adopted by the Connector board pursuant to chapter 414D, HRS, to effectuate the changes.**

Section 3 at page 11, lines 14-16, amends section 435H-2(a), HRS, by deleting the following wording: "The connector shall be a Hawaii nonprofit corporation organized and governed pursuant to chapter 414D, the Hawaii nonprofit corporations act." In that same subsection, the following wording is added. "The connector shall be a nonprofit incorporated entity." The reason for these amendments is not clear, but they do not change the fact that chapter 414D, HRS, must govern the Connector.

Section 5 at page 13, lines 7-22, through page 16, lines 1-12, amends section 435H-4, HRS, changing the Connector board composition. Section 435H-2, HRS, established the Connector as a Hawaii nonprofit corporation organized and governed under chapter 414D, HRS, the Hawaii Nonprofit Corporations Act. Part VIII of chapter 414D, HRS, is the governing authority for any changes to the Connector's board composition. Legislative mandate has no effect unless the legislative changes made to the Connector's board composition are adopted by the Connector board pursuant to chapter 414D, HRS.

Additionally, chapter 435H, HRS, was enacted in 2011, prior to the final federal rules governing exchanges established pursuant to the ACA. Pursuant to 45 CFR section 155.110(c) and (d), effective May 29, 2012, 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. We do not have any information as to whether the Connector board is aware of the federal law requirements relating to its board governance and structure and has amended its by-laws accordingly.

**4. Financial support**

To implement the financial support of the Connector, we suggest that the Legislature consider statutorily designating the Connector as the official State of Hawaii health insurance exchange. This action would address the constitutional concerns raised by article VII, section 4, of the Hawaii State Constitution, which (1) prohibits the appropriation of public moneys to private parties, except for a public purpose, and (2) provides that no grant of public money shall be made except pursuant to standards provided by law.

To accomplish this, we suggest, first, that the following language be inserted into to section 1 of the bill before the stated purpose which begins on page 3, line 1:

The legislature finds that the Hawaii health connector is the health insurance exchange for the State of Hawaii. The legislature also finds and declares that financial support of the Hawaii health connector is in the public interest and for the public health, safety, and general welfare of the State. It is, therefore, the desire of the legislature that the Hawaii health connector is officially designated as the State of Hawaii health insurance exchange. This status shall be implemented through an annual appropriation from the Hawaii health insurance exchange special fund.

The designation shall not impinge on the autonomy of the Hawaii health connector, nor imply state control over its programs or policies, except as specifically provided in this section. The comptroller and the legislative auditor shall have the authority to examine the use of state funds and shall report any findings to the legislature. The board of the Hawaii health connector shall provide an annual report not later than thirty days before the legislature convenes each regular session.

Second, we also propose that another new section be added to chapter 435, HRS, in section 2 on page 3, beginning at line 12, consistent with the intent of the bill to provide financial support to the Connector. With this insertion, the prefatory language in section 2 on page 3, lines 9-11 should be changed as follows:

SECTION 2. Chapter 435H, Hawaii Revised Statutes, is amended by adding [~~seven~~] eight new sections to be appropriately designated and to read as follows:

“§ 435H- Hawaii health connector. The official designation of the Hawaii health connector shall be the State of Hawaii health insurance exchange. The qualifying standards and conditions relating to the receipt of funds contained in chapter 42F shall apply to the funds received by the State of Hawaii health insurance exchange.”

**5. Establishment of the special fund**

Section 2 of the bill on page 10, line 1, through page 11, line 6, creates a new section in chapter 435H, HRS, that establishes the Hawaii health connector sustainability special fund. For clarity and consistency with the official designation of the Connector as Hawaii's health insurance exchange, we suggest renaming the special fund as provided below. Section 2 at page 10, lines 11-13, provides that moneys in this special fund are to be expended by the Insurance Commissioner. This special fund is subject to payment of central service expenses pursuant to section 36-27, HRS, and departmental administrative expenses pursuant to section 36-30, HRS. We suggest that the following be inserted to replace §435H-G (a) and (b) on page 10, lines 1-17.

**“§435H- Hawaii health insurance exchange special fund; establishment.**

**(a) There is established in the state treasury the Hawaii health insurance exchange special fund, into which shall be deposited:**

**(1) All revenues from the assessment of the Hawaii health connector universal federally mandated sustainability fee revenues collected pursuant to section 435H-F; and**

**(2) Appropriations made by the legislature to the fund.**

**(b) Moneys in the Hawaii health insurance exchange special fund shall be used for the following purposes:**

**(1) Financial support to the Hawaii health insurance exchange also known as the Hawaii health connector; and**

**(2) Central service expenses and administrative expenses of the special fund.”**

**6. Appropriation language is necessary**

Section 2 at page 3, lines 12-22, through page 5, lines 1-2, 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 inserting a new section as set forth below. We also note that for the amendments in the following sections, the references to the new sections in 435H may need to be redesignated, and the appropriate department can be inserted as the expending agency once this Committee or the Legislature decides which agency is most appropriate.



SECTION . 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 [appropriate department] for purposes of this Act.

Section 2 at page 10, lines 1-21, through page 11, lines 1-6, 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.” There is no language appropriating moneys from the special fund to allow the expenditure of funds, and therefore, we propose amending this bill by inserting a new section as provided. We note that our proposed amendment to change the name of the special fund is incorporated below.

SECTION . There is appropriated out of the Hawaii health insurance exchange 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 request this Committee consider our comments.



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](http://www.hawaii.gov/dcca)

KEALI'I S. LOPEZ  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2014

Friday, March 14, 2014  
9:00 a.m.

**TESTIMONY ON HOUSE BILL NO. 2529, H.D. 3 – RELATING TO HEALTH.**

TO THE HONORABLE ROSALYN H. BAKER, 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 6 of the bill starting at line 15 creates a section § 435H-E 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.

# TAXBILLSERVICE

126 Queen Street, Suite 304

TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

**SUBJECT:** MISCELLANEOUS, Hawaii health connector universal federally mandated sustainability fee

**BILL NUMBER:** HB 2529, HD-3

**INTRODUCED BY:** House Committee on Finance

**EXECUTIVE SUMMARY:** Permits the insurance commissioner to impose a Hawaii health connector universal mandated sustainability fee on each insurer to finance the operations and cash reserve of the connector between July 1, 2015 and June 30, 2018. Unfortunately, it appears that the connector is going to need a cash infusion and a fee on all insurance products seems to be a reasonable way to spread the burden. Any fee imposed should be assessed equitably upon both insurers selling their products through the connector and those who sell their products outside the connector.

**BRIEF SUMMARY:** Adds a new section to HRS chapter 435H to provide that beginning on July 1, 2015, and each July 1 thereafter until June 30, 2018, the insurance commissioner shall assess a Hawaii health connector universal federally mandated sustainability fee upon each insurer, on a pro rata basis, based upon the number of individuals covered by each insurer on the preceding December 31, excluding individuals covered under Medicaid. The fee or percentage thereof may be assessed on each dental insurer. The total of all revenues collected from the fee shall not exceed the amount of funding required to finance the operations and cash reserve of the Hawaii health connector.

Establishes a Hawaii health connector sustainability special fund into which all moneys from the connector sustainability fee shall be deposited. Moneys from the account shall only be used to support the administration, operations, and prudent cash management of the Hawaii health connector. Dissolves the fund on June 30, 2018 and provides that all the moneys in the fund shall lapse to the general fund.

Makes nontax amendments to provide that the Hawaii health connector shall be a nonprofit incorporated entity. Establishes a consumer, patient, business, and health care advisory group, a health insurers advisory group, an insurance producers advisory group, and a connector legislative oversight committee to provide advice and guidance to the Hawaii health connector and its board of directors.

**EFFECTIVE DATE:** July 1, 2012

**STAFF COMMENTS:** Act 205, SLH 2011, established the Hawaii Health Connector (HHC) as a nonprofit corporation. It appears that this measure ensures that it will be a nonprofit incorporated entity rather than a state agency as contemplated by some.

This measure would allow the insurance commissioner to impose a fee on insurers between July 1, 2015 to June 30, 2018. The amount of the fee, as proposed in this measure, will fluctuate depending on the number of individuals covered by each insurer in the prior year. Currently, it appears that the HHC has authorized a two percent increase on all health plans sold to individuals through the connector and an

HB 2529, HD-3 - Continued

additional two percent increase on all plans sold to small businesses on July 1, 2014. The fee added by this measure will add to the cost of the products sold by insurers, ratcheting up the cost of health care in the state. The fee must be imposed on all insurers because federal law requires insurers to sell their products through the connector at the same price outside of the connector.

It is unfortunate, but the truth of the matter is that HHC is now unsustainable. That means it needs to be bailed out by taxpayers, namely us.

Digested 3/12/14



**HPCCA**

HAWAII PRIMARY CARE ASSOCIATION

**Senate Committee on Commerce and Consumer Protection**

The Hon. Rosalyn H. Baker, Chair

The Hon. Brian T. Taniguchi, Vice Chair

**Testimony on House Bill 2529, HD 3**

**Relating to Health**

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

**March 18, 2014, 9:00 am, Room 229**

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 HD3, which seeks to alter the board composition of the Hawaii Health Connector and create advisory and oversight committees.

The HPCA supports the intent of this measure, which is to keep the Hawaii Health Connector as a free standing non-profit organization and create advisory and oversight committees. However, the HPCA has concerns about the financial sustainability of the Hawaii Health Connector and would ask that additional measures be implemented to assess and plan for such considerations moving forward.

The HPCA thanks you for the opportunity to offer these comments and urges you to move the bill forward for further consideration.

# HMSA



An Independent Licensee of the Blue Cross and Blue Shield Association

March 18, 2014

The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice Chair  
Senate Committee on Commerce and Consumer Protection

**Re: HB 2529, HD3 – Relating to Health.**

Dear Chair Baker, Vice Chair Taniguchi and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2529, HD3. HMSA has comments on this Bill and offers amendments.

HMSA supports the intent of HB 2529, HD3, to ensure an efficient health care system by making the Hawaii Health Connector (Connector) more cost effective. However, we are concerned that one particular element of the Bill goes contrary to that goal. It actually will result in increased costs for the employers, small businesses, and, overall, the health care system, and we suggest it be deleted. Section 2 of the Bill provides, in part, as follows:

...§435H-E Agents and brokers. (a) Certified insurance agents and brokers may enroll individuals and employers in qualified plans through the connector and assist individuals and employers in applying for applicable premium tax credits and cost-sharing reductions for which they may be eligible. 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 that comply with the federal act.

(b) Certified insurance agents and brokers shall be compensated for these activities in a manner to be determined by the board. ...

In mandating the Connector to pay for the services of agents and brokers, their compensation must be built into the Connector's operating budget and sustainability plan. That cost would be in addition to the previously estimated \$15 million operating budget, and it would have to be included in the sustainability fee authorized in this legislation.

If the Connector is to be sustainable, its organization and operations must be downsized and not expanded. We suggest that this provision of the Bill be deleted.

We appreciate the effort reflected in the Bill to a design a cost-effective sustainability model for the Connector. 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 amendments is appreciated.

Sincerely,



Jennifer Diesman  
Vice President  
Government Relations,

**America's Health  
Insurance Plans**

601 Pennsylvania Avenue, NW  
South Building  
Suite Five Hundred  
Washington, DC 20004

202.778.3200  
www.ahip.org



March 17, 2014

Honorable Senator Rosalyn H. Baker  
Committee on Commerce and Consumer Protection, Chair  
Committee on Health, Vice-Chair  
Senate District 6

Honorable Senator Josh Green  
Committee on Health, Chair  
Senate District 3

Honorable Vice Chair Brian T. Taniguchi  
Committee on Commerce and Consumer Protection, Vice Chair  
Senate District 11

***Re: HI HB 2529 HD3 – Hawaii Health Connector Sustainability Fee***

Dear Chairs Baker and Green, Vice-Chair Taniguchi and Members of the Committees,

On behalf of America's Health Insurance Plans (AHIP), I am writing to comment on 2014 HB 2529 HD3, as passed by the House, regarding the Hawaii Health Connector sustainability fee.

AHIP is the national trade association representing the health insurance industry. AHIP's members provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual and small group insurance markets, and public programs such as Medicare and Medicaid. Our members offer a broad range of health insurance products in the commercial marketplace and also have demonstrated a strong commitment to participation in public programs.

This bill creates a new Subsection (c) of HRS §435H-F that would allow the insurance commissioner to annually assess on a pro rata basis each insurer and dental insurer selling plans in Hawaii, both inside and outside the exchange, while specifically excluding Medicaid plans.

As articulated below, we have several concerns with this proposed funding methodology.

**Undefined assessment amount creates instability.** The legislation states that the amount to be assessed will be on a pro rata basis, based upon the number of individuals covered by each insurer, with the only limitation being that the total of all revenues collected from the fee not exceed the amount of funding required by the Connector. We strongly object to an open-ended assessment amount for several reasons:



March 17, 2014

Page 2

- An amount that varies each year is difficult to administer and creates unstable fluctuations in premium from year to year.
- The projected budget for the Connector will need to be set very early in the previous year in order to allow for carriers to file rates that reflect the next year's assessments by the - deadline for qualified health plan (QHP) and qualified dental plan (QDP) filings.
- An open-ended assessment lacks sufficient incentives for the Connector to appropriately manage resources and is inconsistent with zero-based budgeting.

**Innovative funding that does not contribute to an increase in health insurance premiums for consumers or employers should be explored.** The Exchange provides coverage for the uninsured populations in Hawaii previously served by safety net programs such as QUEST, CHIP, and community or federally-facilitated health centers. As these individuals obtain coverage through the exchange, they reduce the burden on state safety net programs; and so as utilization of safety net programs decreases, the existing funding for those programs should be redirected to fund the Exchange.

Additionally, the Exchange performs many functions that benefit more than the Exchange participants. For example, whereas Medicaid used to staff and conduct all of its eligibility and enrollment processes, the Exchange now shares that responsibility. Also, by enrolling previously uninsured individuals, many of whom were foregoing care, the Exchange increases the number of individuals seeking care from health care providers and manufacturers of pharmaceuticals and medical devices.

We suggest that the legislature seek innovative ways of funding the Exchange where the burden of funding is borne by all stakeholders that benefit from the presence of the Exchange. We also support the legislature's consideration of the broadest funding base possible, such as general revenues, and advertising as is included in 435H-3(b).

**“HIPAA Excepted Benefits” should not be included in the funding base.** The federal insurance and market reforms established under the Affordable Care Act (ACA) apply to comprehensive, major medical coverage. The ACA follows the approach established under HIPAA, excluding excepted benefit products from these requirements. Federal agencies have acknowledged this intent regarding ACA insurance and market reforms, and most states that have developed exchanges exclude HIPAA excepted benefit products from the funding mechanism. In addition, Sec. 1311 of the ACA specifically limits the types of coverage offered in Exchanges to qualified health plans and stand-alone dental plans providing “essential” pediatric dental benefits, and federal guidance confirms that no other types of coverage may be offered through Exchanges.

In accordance with ACA requirements, the Hawaii Health Connector limits the coverage it offers to qualified health plans (QHPs) and stand-alone dental plans that include essential pediatric benefits, referred to as qualified dental plans (QDPs). We recognize that the Connector is

required to be “financially self-sustaining” and suggest that the funding mechanism to achieve this should draw from stakeholders that either market their products on the Exchange, or otherwise offer QHPs or QDPs, and only from premiums associated with QHPs or QDPs. We believe it inappropriate to include premiums for HIPAA excepted benefit products not offered through the Connector in any funding mechanism. Because the new language includes broad reference to “insurers” but goes on to recognize dental insurer specifically in 435H-F (c) we believe the intent is to apply the new sustainability fee to health insurers and dental insurers, and not more broadly to other type of HIPAA excepted benefits (disability income, accident, long-term care, etc.). We thus ask that language be added to note that “insurer” as used in the legislation applies to health insurers, with the exception of limited benefit health insurance as defined in 431:10A-102.5. Doing so will ensure that purchasers of specific insurance products unrelated to the Connector are not unfairly targeted.

**Exclusion of Medicaid MCOs.** We applaud the legislature for excluding Medicaid plans from the assessment base. As noted above, we believe it is inappropriate to include in the assessment base the premiums of products not offered through Hawaii Health Connector, including Medicaid plans. It is important to note that federal law requires state Medicaid agencies to reimburse plans for the value of the assessment. Section 1903(m)(2)(A)(iii) of the Social Security Act mandates that MCO rates must be determined on an “actuarially sound basis,” and federal regulations under Section 42 CFR §438.6(c)(1)(i)(A) require that rates be “developed in accordance with generally accepted actuarial principles and practices.” The American Academy of Actuaries has determined that actuarially sound rates for Medicaid MCOs are to include “any state-mandated assessments and taxes.”<sup>1</sup> Including Medicaid plans in the assessment base would result in increased costs to the state.

**Applicability of the assessment is unclear.** After a careful examination of HB 2529, it is still unclear which products are subject to the assessment. Statutes establishing the exchange, specifically HRS §435H-3 relating to Exchange funding states that the state “may charge assessments or user fees to participating health and dental carriers, or may otherwise generate funding.”

We request that the language describing the sustainability fee be clarified to either assess participating qualified health plans and dental plans in alignment with the language in the existing Exchange statutes rather than imposing the assessment on all accident and sickness insurers. Alternatively, the legislature should look to innovative funding opportunities, as noted above, to generate additional funding for the Connector.

AHIP has serious concerns with the proposed language in its present form in HB 2529 to impose an assessment on all insurers to fund the Exchange. We share your goal for a successful, financially sustainable health insurance market and stand ready to work with the Hawaii

---

<sup>1</sup> American Academy of Actuaries, Health Practice Council Practice Note, Actuarial Certification of Rates for Medicaid Managed Care Programs, August 2005.

March 17, 2014

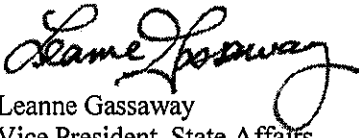
Page 4

legislature and the Hawaii Health Connector to find a solution that will ensure a robust marketplace.

We also note that we appreciate the creation of the new advisory boards in 435H-A, 435H-B and 435-H C; and further support the inclusion of Agents and Brokers in 435H-E as able to enroll individuals and employers in qualified plans.

We appreciate your time and consideration of our comments and recommendations. If you have any questions or would like additional clarification of these comments, please feel free to contact either Grace Campbell (425-223-5686 or email [gcampbell@ahip.org](mailto:gcampbell@ahip.org)) or myself (562-429-7493 or email [Lgassaway@ahip.org](mailto:Lgassaway@ahip.org)).

Sincerely,

A handwritten signature in black ink that reads "Leanne Gassaway". The signature is written in a cursive style with a large, looping "G" at the end.

Leanne Gassaway  
Vice President, State Affairs

Cc: Senate Committee on Commerce and Consumer Protection  
Senate Committee on Health

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
IN OPPOSITION TO HOUSE BILL 2529, HD 3, RELATING TO HEALTH

March 18, 2014

Via e mail

Honorable Senator Rosalyn H. Baker, Chair  
Committee on Commerce and Consumer Protection  
Honorable Senator Josh Green, Chair  
Committee on Health  
State Senate  
Hawaii State Capitol, Conference Room 229  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Baker, Chair Green and Committee Members:

Thank you for the opportunity to testify in opposition to HB 2523, HD 3, relating to Health.

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.

In 2011, Hawaii enacted Act 205 (now HRS Chapter 435H). Act 205 established the Hawaii Health Insurance Exchange. The Act defines an insurer subject to its provisions to mean “. . . any person or entity that issues a policy of accident and health or sickness insurance subject to article 10A of chapter 431, or chapters 432 or 432D.” HRS Section 435H-1.

By its terms, Article 10A of the Insurance Code (by reference to HRS §431:1-205) defines “accident and health or sickness insurance” to include disability insurance (“DI”).

HB 2523, HD 3, proposes to assess a fee to sustain the operations of Hawaii’s health connector against all insurers issuing an insurance policy under Article 10A until June 30, 2018.

ACLI submits that the intent of Hawaii’s Health Insurance Exchange Act was to subject “health insurance” and “dental insurance” – not limited benefit health insurance such as DI – to its provisions.

The preamble to HB 2529, HD 3, states in relevant part:

The purpose of this bill is to “[p]rovide for the 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 . . . .” (emphasis added)  
At page 3, lines 5-8.

Life insurers issuing DI are not “issuers selling plans” as contemplated by HB 2529, HD 3 and by Hawaii’s Health Insurance Exchange Act.

In accordance with the federal Patient Protection and Affordable Care Act (“ACA”), Hawaii’s health connector limits the “plans” it provides to consumers to qualified health plans (“QHPs”) described in section 1311(c) of the ACA and dedicated/stand-alone qualified dental plans (“QDPs”) described in Section 1311(d)(2)(B)(ii) of the ACA.

Life insurers issuing DI under Article 10A are not issuers of QHPs - they do not sell QHPs either through or independent of Hawaii’s health connector.

Life insurers issuing DI should not, therefore, be subject to the sustainability fee to fund the connectors operations. Those funds should properly be contributed from those stakeholders that either market their products through the connector, or otherwise offer QHPs or QDPs, namely health and dental insurers – not life insurers issuing DI which is an insurance product which is neither offered through or outside of the connector.

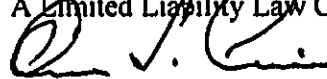
For the foregoing reasons, ACLI requests that HB 2529, HD 3, be amended by adding a new section to the bill which would amend the definition of an “insurer” which Chapter 435H is intended to apply, as set forth below:

Section \_\_\_\_\_. The definition of “Insurer” as set forth in HRS 435H-1 is amended as follows:

“Insurer” means any person or entity that issues a policy of accident and health or sickness insurance subject to article 10A of chapter 431, or chapters 432 or 432D, excepting and excluding, however, Medicare supplement, accident-only, specified disease, hospital indemnity, disability income, or other limited benefit hospital insurance policies.

Again, thank you for the opportunity to testify in opposition to HB 2529, HD 3, relating to Health.

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



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

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

Hearing on March 14, 2014 at 9:00 am

**RE: House Bill 2529, HD 3 – Relating to Health**

Chair Baker, Vice Chair Taniguchi, and Members of the Committee, the NAIFA (National Association of Insurance and Financial Advisors) Hawaii is an organization made up insurance agents/producers and financial advisors across Hawaii.

We will limit our comments to Pages 6 & 7, of this measure in “Section 435H-E Agents and brokers.” We **support** this section in allowing insurance agents and brokers to enroll individuals and employers through the Hawaii Health Connector and that they be **compensated for the work** which is to be determined by the Connector’s Board.

Insurance agents and brokers earn commission on the sales of insurance. Selling through the Connector should be no different than selling outside of the Connector. My members who sell health policies probably will not go through the Connector at this time due do its problems and because they won’t get paid for placing the business but they will get compensated for selling health insurance outside the Connector. Insurance policies are rated to include commission, admin costs, taxes, cost of insurance and profit.

We also question if the certification is needed for insurance agents since they fall under Hawaii’s Insurance Code and regulated by the Insurance Commissioner when they sell insurance. Insurance agents must know what they are selling to make benefit recommendations unlike the “assisters/navigators” who are required to complete the certification but not “sell” insurance.

Agents and brokers are important in educating and guiding their clients to seek the best coverage for their needs.

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

Cynthia Takenaka  
Executive Director  
Phone: 394-3451

# MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

March 12, 2014

Honorable Rosalyn H. Baker, Chair  
Honorable Brian T. Taniguchi, Vice Chair  
Committee on Commerce and Consumer Protection  
The Senate  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Re: H.B. NO. 2529, H.D.3 RELATING TO HEALTH

Dear Chair Baker, Vice Chair Taniguchi, and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following written comments on House Bill No. 2529, House Draft 3, relating to health, which is to be heard by your Committee on Commerce and Consumer Protection on March 14, 2014.

House Bill No. 2529, House Draft 3, requires the Hawaii Insurance Commissioner to impose on all "insurers" a sustainability fee for the purpose of funding the Hawai'i Health Connector. "Insurers" are defined in section 435H-1, as "any person or entity that issues a policy of accident and health or sickness insurance subject to article 10A of chapter 431, or chapters 432 or 432D."

As drafted House Bill No. 2529, House Draft 3, appear to require that the Insurance Commissioner impose the sustainability fee on issuers of certain types of limited benefit health insurance policies that not only are not sold via the Connector, but not are even eligible for sale via the Connector because they are not "qualified plans" as defined in section 435H-1, Hawaii Revised Statutes.

We respectfully submit that imposing the Connector's sustainability fee on limited benefit health insurance policies would simply raise the cost of these types of plans to consumers even though there is no link between the Connector and these plans, such plans cannot be sold via the Connector, and such plans do not complete with the comprehensive health insurance plans sold via the Connector.

For the foregoing reasons, we respectfully request that subsection (c) of the new section 435H-F to be added by Section 2 of House Bill No. 2529, House Draft 3, be amended as follows:

(c) Any other provision notwithstanding, beginning on July 1, 2015, and on each July 1 thereafter until June 30, 2018, the commissioner, taking into account the recommendation of the connector legislative oversight committee pursuant to section 435H-D(d), shall assess upon and collect from each insurer, other than insurers offering only accident-only, specified disease, hospital

Honorable Rosalyn H. Baker, Chair  
Honorable Brian T. Taniguchi, Vice Chair  
Committee on Commerce and Consumer Protection  
March 12, 2014  
Page 2

indemnity, long-term care, disability, dental, vision, medicare supplement, or other limited benefit health insurance contracts that are not "qualified plans" under section 435H-1, the Hawaii health connector universal federally mandated sustainability fee. At the discretion of the commissioner, the fee or a percentage thereof may be assessed upon and collected from each dental insurer subject to chapter 432G. The fee shall be assessed upon a pro rata basis, based upon the number of individuals covered by each insurer, or dental insurer, as appropriate, on the preceding December 31, excluding individuals covered under a medicaid plan pursuant to Title XIX of the Social Security Act, 42 U.S.C. section 1396 et seq. The total of all revenues collected from the fee shall not exceed the amount of funding required to finance the operations and cash reserve of the connector as specified in subsection (a).

(Additional language underscored.)

Thank you for your consideration of the foregoing.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Peter J. Hamasaki

PJH:fk



March 14, 2014

Committee on Commerce & Consumer Protection  
Hearing Date of March 14, 2014 at 9:00 am in Room 229  
HB 2529, HD3 -- Relating to Health

Dear Senators:

My name is Davis Kobayashi and I am the President of Advantage Insurance Services, Inc. I have attended numerous Hawaii Health Connector meetings and sit on their Consumer Advisory Committee and Broker Advisory Committee. Thank you for allowing me to present my testimony.

Advantage Insurance Services, Inc. was started in 2005. The motivation to start the agency was to help businesses and the senior population navigates through the complicated health care environment. Many businesses have a hard time balancing their day to day operations while at the same time keeping up with the employee benefits and the laws that are associated with it.

A Broker is an integral part of the health care process. Many individuals and businesses use Brokers to advise them. Although a Broker represents various insurance companies, the Broker will always lookout for their client's best interest.

Change is difficult for most people and with the ACA implementation; the consumer will have many questions, misconceptions and apprehensions. The Hawaii Health Connector will benefit from using a Broker because the Broker brings stability, expertise, objectivity and familiarity to the marketplace and existing relationships with businesses and individuals who will be directly affected by the ACA.

All of the other 49 Health Exchanges use brokers extensively as part of their distribution channel. Only Hawaii does not use nor recognize the value of the broker. This is a key ingredient that is missing for the success of the Connector's self-sustainability and increased enrollment. Brokers are licensed professionals that do this for a living and to be excluded from this very important process is unthinkable.

I am proposing that the Hawaii Health Connector be a General Agent and the Brokers will be subagents of the Connector as a business model. This model is common in the agency community and it works. In this model, various insurance carriers will contract with an insurance agency and the agency will have independent agents representing their products. This is an efficient model as the Connector will not have to pay individual agents and it will make the agencies monitor their agents and maintain the integrity of the product. The insurance carriers will pay the General Agent a percentage of the product sold. In turn, the General Agent will then pay the subagent a percentage of commission for their work in bringing in the clients.

The Agent/Broker compensation should be part of the Connector's business expense. It is much more affordable to pay the Agent/Broker a commission than it is to have staff on payroll, benefits and office space.

I sincerely appreciate the opportunity to present my view to you. Should you have any questions or concerns please do not hesitate to contact me.

Sincerely,  
Davis Kobayashi

1095 Avenue of the Americas  
18 Floor  
New York, NY 10036-6796



March 17, 2014

Skip L. Braziel, Jr.  
Government Relations Counsel

Honorable Senator Rosalyn H. Baker  
Committee on Commerce and Consumer Protection, Chair  
Committee on Health, Vice-Chair

(212) 578-6179  
(212) 578-8869 FAX  
sbraziel@metlife.com

Honorable Senator Josh Green  
Committee on Health, Chair

Honorable Brian T. Taniguchi  
Committee on Commerce and Consumer Protection, Vice Chair

**Re: HI HB 2529 HD3 – Hawaii Health Connector Sustainability Fee**

Dear Chairs Baker and Green, Vice-Chair Taniguchi and Members of the Committee:

Thank you for the opportunity to comment on HB 2529 scheduled for a joint hearing before the Committee on Commerce and Consumer Protection and the Committee on Health (Committees) on March 18<sup>th</sup>. MetLife, Inc. (MetLife) submits this letter to express our strong opposition to the broad reach of the assessment to include insurers not participating in the Hawaii Health Connector (Connector). Additionally, the letter also includes the following serious concerns we have about HB 2529: a) the calculation and indefiniteness of the assessment's pro rata basis; the possible inclusion of exempt benefits, and the lack of clarity of which products are included in the legislation.

**Subsection (c) HRS §435H-F**

The new Subsection (c) of HRS §435H-F allows the insurance commissioner to annually assess on a pro rata basis each insurer and dental insurer selling plans in Hawaii, both inside and outside the exchange, while specifically excluding Medicaid plans. MetLife believes strongly that those insurers who participate in health care exchanges, and therefore benefit from doing so, are the insurers who should be assessed to help fund health care exchanges including the Connector. In other words, if an insurer does not participate in the Connector, that insurer should not face an assessment to fund the Connector.

**Undefined assessment**

The legislation indicates that the assessment will be on a pro rata basis, based upon the number of individuals covered by each insurer, with the only limitation being that the total of all revenues collected from the assessment not exceed the amount of funding required by the Connector. MetLife objects to an open-ended assessment amount for several reasons:

- An amount that varies each year is difficult to administer and creates unstable fluctuations in premium from year to year.
- The projected budget for the Connector will need to be set very early in the previous year in order to allow us (and other carriers) to file rates that reflect the next year's assessments by the deadline for qualified health plan (QHP) and qualified dental plan (QDP) filings.
- An open-ended assessment lacks sufficient incentives for the Connector to appropriately manage resources and is inconsistent with zero-based budgeting.

Additionally, more consideration should be given to whether the pro rata basis should be based upon individuals covered instead of based solely on revenue. We believe calculating the assessment based on covered individuals would extend this legislation to federally exempt self-insured plans.

### **"HIPAA Excepted Benefits"**

The federal insurance and market reforms established under the Affordable Care Act (ACA) apply to comprehensive, major medical coverage. The ACA follows the approach established under HIPAA, excluding excepted benefit products from these requirements. MetLife offers a wide variety of HIPAA Excepted benefits. Federal agencies have acknowledged this intent regarding ACA insurance and market reforms, and most states that have developed exchanges exclude HIPAA excepted benefit products from the funding mechanism. In addition, Sec. 1311 of the ACA specifically limits the types of coverage offered in Exchanges to qualified health plans and stand-alone dental plans providing "essential" pediatric dental benefits, and federal guidance confirms that no other types of coverage may be offered through Exchanges.

In accordance with ACA requirements, the Connector limits the coverage it offers to qualified health plans (QHPs) and stand-alone dental plans that include essential pediatric benefits, referred to as qualified dental plans (QDPs). We recognize that the Connector is required to be "financially self-sustaining" and suggest that the funding mechanism to achieve this should draw from stakeholders that either market their products on the Exchange, or otherwise offer QHPs or QDPs, and only from premiums associated with QHPs or QDPs. MetLife believes it inappropriate to include premiums for HIPAA excepted benefit products not offered through the Connector in any funding mechanism. Because the new language includes broad reference to "insurers" but goes on to recognize dental insurer specifically in 435H-F (c) we believe the intent is to apply the new sustainability fee to health insurers and dental insurers, and not more broadly to other type of HIPAA excepted benefits (disability income, accident, long-term care, etc.). We ask that language be added to note that "insurer" as used in the legislation applies to health insurers, with the exception of limited benefit health insurance as defined in 431:10A-102.5. Doing so will ensure that purchasers of specific insurance products unrelated to the Connector are not unfairly targeted.

### **Applicability**

The applicability of the assessment is unclear. After reviewing HB 2529, it is still unclear which products are subject to the assessment. Statutes establishing the exchange, specifically HRS §435H-3 relating to Exchange funding states that the state "may charge assessments or user fees to participating health and dental carriers, or may otherwise generate funding."

We request that the language describing the sustainability fee be clarified to assess participating qualified health plans and dental plans in alignment with the language in the existing Exchange statutes rather than imposing the assessment on all accident and sickness insurers.

Thank you in advance for considering our comment letter regarding HB 2529. MetLife has serious concerns with the proposal's imposition of an assessment on all insurers to fund the Exchange. We share your goal for a successful, financially sustainable health insurance market and stand ready to work with the Hawaii legislature and the Hawaii Health Connector to find a solution that will ensure a robust marketplace.

If you have any questions or concerns regarding this letter please contact me at [sbrazil@metlife.com](mailto:sbrazil@metlife.com) or 212.578.6179.

Sincerely,



M.L. (Skip) Braziel  
Government Relations Counsel

cc: Senate Committee on Commerce and Consumer Protection  
Senate Committee on Health



# Community Alliance for Mental Health

March, 18, 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: Senate Committees on Commerce and Consumer Protection and Health  
Re: HB2529, HD3

Aloha Chairs Baker, Green, and the members of their committees,

On behalf of the Community Alliance for Mental Health along with United Self Help we strongly support the passage of HB 2529, HD3.

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 afresh.

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

Scott Wall  
VP/Legislative Advocate  
Community Alliance for Mental Health

# IRONWORKERS STABILIZATION FUND

March 12, 2014

Rosalyn Baker, Chair  
Committee on Commerce and Consumer Protection  
State Senate  
State Capitol  
415 S. Beretania Street  
Honolulu, Hawaii 96813

Date: March 14, 2014

Time: 9:00 a.m.

Place: Conference Room 229, State Capitol

Dear Honorable Chair Baker and Members of the Committee on Commerce and Consumer Protection:

Re: Opposition for HB2529, HD3 – Relating to Health

We are in Opposition of HB 2529, HD3, Relating to Health; that increases the funding of the Hawaii Health Connector via subsidization from private insurers.

The purpose of this bill is to ensure adequate healthcare to all individuals in the State of Hawaii. However, due to the State prepaid health care plan that was enacted prior to the federal Affordable Care Act, the State of Hawaii has a small amount of individuals not covered. It is not feasible for the State to attempt to cover a small amount of individuals at such a huge cost.

We have seen many examples of good intentions going bad and we believe that the intent is good, but not at this cost. The State Legislature has even received testimony from Mr. Tom Matsuda, Interim Executive Director of Hawaii Health Connector, regarding this. He states:

*“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.”*

Additionally, if the fees are generated from insurers who are not part of the plan; they have assured us they will pass on the cost to our small companies and trust funds. As such we cannot afford an increase since every year our private plans have been increasing by 7 – 10% annually. If the cost is passed to our small businesses and funds we will be looking at an increase of 15 – 20% yearly in healthcare costs.

Again we oppose this measure for small business and trust funds of Hawaii. Thank you for your time and consideration.



Real Possibilities

To: Committee on Commerce and Consumer Protection  
Senator Rosalyn H. Baker, Chair

Committee on Health  
Senator Josh Green, Chair

Date: March 18, 2014, Conference Room 229, 9:00 a.m.

Re: **HB 2529 HD3 – RELATING TO HEALTH**  
**Testimony - Comments**

Chair Baker, Chair Green 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 HD3 - Relating to Health**

Section 2 of this bill adds sections to Chapter 435H, Hawaii Revised Statutes. AARP provides comments on the following proposed new sections to Chapter 435H, Hawaii Revised Statutes.

**§435H-A 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.
2. Membership in this advisory group shall be open to the public and guidelines shall be established for the selection of members.

**§435H-B 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.
2. Membership in this advisory group shall be open to all insurers regardless as to whether they offer plans through the Connector.

**§435H- C 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.
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.

§435H-D Connector Legislative Oversight Committee

AARP supports the establishment of the council and recommends that:

1. The council's meeting shall be open to the public and a meeting notice should be posted on the connector's website.
2. Connector sustainability, financial, and operational plans provided to the council shall be posted on the connector's website.
3. Council meeting minutes shall be posted on the connector's website

§435H-F 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 Connector expenses until it provides the Legislature with an acceptable and detailed Sustainability Report.

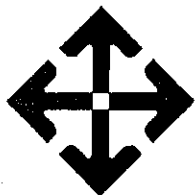
Section 5 of this bill amends subsections of Section 435H-4, Hawaii Revised Statutes.

AARP requests that the bill be amended to clarify that insurers and dental benefit providers are not on the board. Page 14, lines 15-17 of this bill should be amended as follows:

(b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders including consumers, and employers, ~~insurers, and dental benefit providers.~~

AARP strongly opposes any insurers on the board, even as nonvoting members due to actual or potential conflict of interests when board members are involved in decisions that may benefit their employer. Even if insurers are nonvoting board members they will have an unfair advantage over other insurers not on the board. Nonvoting board members would still 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 they would still be able to influence decisions as they would be included in deliberations on board and standing committees which may benefit their employer.

Thank you for the opportunity to provide testimony.



# The Hawaii Business League

1188 Bishop St., Ste. 1003, Honolulu, Hawaii 96813

Phone: (808) 533-6819 Facsimile: (808) 533-2739

March 14, 2014

Testimony To: Senate Committee on Commerce and Consumer Protection  
Senator Rosalyn H. Baker, Chair

Presented By: Tim Lyons  
President

Subject: H.B. 2529, HD 3 - RELATING TO HEALTH.

Chair Baker and Members of the Committee:

I am Tim Lyons, President of the Hawaii Business League, a small business service organization and we oppose this bill.

Although our position is against the bill we understand the predicament that the legislature is in. What we have is a situation where you need to support and fund a concept that plain does not fit very well within Hawaii's prepaid healthcare mandate.

We are particularly concerned with the establishment of the sustainability fee as outlined in Section 435H-F(c). We think it is extremely unfortunate that this would assess a fee to all insurance carriers who will all pass it along on to their customers. In Hawaii because of the Prepaid Health Care law that is going to be primarily the employer, including the small businesses of Hawaii.

Over the years many have noted the lack of competition in Hawaii's health insurance industry and now, unless other states adopt this similar measure it will make the

insurance that small businesses buy from our two (2) dominant carriers, that much more expensive. What is particularly concerning is that we have no idea what that cost will be however having heard some numbers at previous Informational Hearings it sounds as if the cost could be rather substantial.

It has often been said that the fairest way to assess a tax, and that is what this fee is, is on the broadest base possible and therefore we disagree with a premium being assessed to just the insurance carriers. We believe that any funding for this program should come out of the general fund since it is a program that will generally help everyone in the state.

We would also point out that in Section 435H-3(b), it allows a means of generating revenue by allowing the non-profit connector to charge fees for display advertisements. We would point out that under IRC 501 for the Internal Revenue Code, the non-profit law, non-profits may not exist for the benefit of any one member or company. In this case, if an advertisement is not a special benefit, we are not sure what is.

In short, we have heard from many of our members in the small business community that they think this entire exercise has just been a huge waste of money and ineffective. We do think it makes far more sense to impress upon our congressional delegation the need for a special exemption for Hawaii in consideration of our Prepaid Health Care Act and the limited number of enrollees that are potentially available to the Health Connector. Short of repeal, that urging and a change to provide for a general fund appropriation are about the only two (2) solutions that we see so far.

Thank you.



Chamber of Commerce HAWAII  
*The Voice of Business*

**Testimony to the Senate Committee on Commerce and Consumer Protection  
Friday, March 14, 2014 at 9:00 A.M.  
Conference Room 229, State Capitol**

**RE: HOUSE BILL 2529 HD3 RELATING TO HEALTH**

Chair Baker, Vice Chair Taniguchi, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") would like to offer comments regarding HB 2529 HD3 Relating to Health, with opposition to the sustainability fee.

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 the 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.

We oppose the fee to maintain the connector. We would like to see cost reductions before assessing the fee to businesses. This additional fee, along with the many other mandated healthcare costs, would harm many businesses. Also, we support the efforts to use existing federal dollars to fund the Health Connector through 2015.

Thank you for the opportunity to testify.



49 South Hotel Street, Room 314 | Honolulu, HI 96813  
www.lwv-hawaii.com | 808.531.7448 | voters@lwv-hawaii.com

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Friday, March 19, 2014, 9:00 a.m., Room 229  
HB 2529, HD3, RELATING TO HEALTH  
TESTIMONY  
Joy Marshall for the League of Women Voters of Hawaii

Chair Baker, Vice-Chair Taniguchi, and Committee Members:

**The League of Women Voters of Hawaii offers comments only on this bill.** The League supports quality health care for all at an affordable price. We acknowledge the hard work of many members of the Legislature in seeking to resolve the strategic and structural problems facing the Hawaii health connector.

The key strategic problem is now clear to the public, thanks to Director Tom Matsuda's candid comments in his February 26 testimony to the House Finance Committee. The Health Connector is not sustainable over the long term due to the relatively small size of the uninsured market in Hawaii. In fact, the problem is immediate, since the Connector is not sustainable after 2016 even with an extension from the Federal funding agency.

Our understanding is that in 2017 the Affordable Care Act (ACA) permits Innovation Waivers that would allow Hawaii to operate a more appropriate State-based marketplace. This seems like the way to go, and we fully support the related HB 2581, HD2. In fact, we call on the Connector management and Hawaii's Congressional delegation to try for an innovation waiver **before 2017**. Not doing so means we're likely to spend taxpayer money (State or Federal) on an exchange that's bigger than what Hawaii needs. In effect, Hawaii has already come close to achieving the goals of the Affordable Care Act, so why invest more toward this effort?

In the interim we do not support preserving the Connector's services with a sustainability fee assessed by the State across all health insurance policyholders. Maybe Hawaii's Federal grant could be extended through 2015 to model how to transform State exchanges to more modest arrangements in states that are close to market "saturation" in health insurance.

The strategic problem should be the focus of our efforts, and with a better fix we would know how to structure the Connector for the long term. Regarding restructuring proposals, on February 26<sup>th</sup> Attorney



49 South Hotel Street, Room 314 | Honolulu, HI 96813  
[www.lwv-hawaii.com](http://www.lwv-hawaii.com) | 808.531.7448 | [voters@lwv-hawaii.com](mailto:voters@lwv-hawaii.com)

General Loui testified on many of the legal problems associated with earlier versions of this bill, and it appears to us that the HD3 version of the measure has adequately addressed these concerns. Among other things, apparently the Connector will move along as a nonprofit. However, we hope the Attorney General will continue to review potential issues with all versions of all Connector bills, to avoid making a difficult Connector operation even more difficult.

The plethora of advisory boards proposed in the bill is well and good, since they represent various stakeholders who can provide useful advice to the Board. Based on the Attorney General's opinion, we think the proposed Legislative oversight committee offers value only as a short-term group that should be limited to keeping the Legislature fully informed of the trajectory of the Connector, so we note with satisfaction that this group would be dissolved on June 30, 2018.

We have one suggestion for consideration as to controlling costs. We do question whether having insurance agents and brokers enroll individuals and employers through the Connector is worth the associated commission expense, since the target market is relatively small, the Connector already employs well-trained navigators, and there are a limited number of products offered to customers. If permitting these parties to enroll individuals is not a legal requirement, let's consider abandoning this idea.

Regarding Section 5, (b) Board membership, we remain unalterably opposed to having dental insurers and health insurers appointed to the Board of Directors and call upon the Legislature to remove the provision for dental benefit providers in Section 5, (b). League has repeatedly called for removing such egregious conflicts of interest.

Thank you for the opportunity to submit testimony.

**HB2529**

Submitted on: 3/13/2014

Testimony for CPN on Mar 18, 2014 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Sonia Leong	Hawaii Independent Insurance Agents Association	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

Aloha Chair Baker and committee members

I am Barbara Service, a retired Child Welfare social worker and a member of AARP and Kokua Council.

I am urging your support of HB2529, HD3 relating to the Hawaii Health connector. I have attended the majority of the Connector meetings since the end of 2011 and written to the Honolulu Star Advertiser and testified before committees regarding my concerns, especially appropriateness of issuers being board members. The legislature erred in allowing the insurance companies to make Connector decisions, in which they have clear self-interest. Their presence on the board, whether they are able to vote or not, has definite influence on other board members. An Oversight Council is a must as the board continues to operate beyond the public's view. Much of their work is in Executive Session (i.e. to discuss the agenda for a retreat). There has not been a Community Outreach meeting for months.

AARP, especially, has been concerned about sustainability since the onset of the Connector. Now it looks like the Connector is not sustainable without a state bailout.

I urge your strong support of HB2529, HD3, to start to fix this problem.



**HB2529**

Submitted on: 3/11/2014

Testimony for CPN on Mar 14, 2014 09:00AM in Conference Room 229

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brett Kulbis	Individual	Support	No

Comments: I oppose this bill because it will destroy our economy. Isn't \$240m enough wasted on this dysfunctional program. Even the Federal Government had the sense to fire the contractor responsible for the Healthcare.gov failure, but not us. Now you want those that had the sense to stay out of the exchanges to be penalized for their smart business decision. Its time to stop robbing from our keiki's future.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)