



EXECUTIVE CHAMBERS

HONOLULU

NEIL ABERCROMBIE
GOVERNOR

HOUSE COMMITTEE ON FINANCE
The Hon. Sylvia Luke, Chair
The Hon. Scott Y. Nishimoto, Vice Chair

April 1, 2014, 2:00 p.m., Room 308

Senate Bill 2470, SD 1, HD 1: RELATING TO THE HAWAII HEALTH CONNECTOR

Comments

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

Thank you for the opportunity to comment on SB 2470, SD 1, HD 1: Relating to the Hawaii Health Connector. 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.

We have no recommendations about the specifics detailed in this measure but note that:

- We are working across State agencies and with the Connector to develop sustainable solutions that support Prepaid, are scaled to Hawaii's market, improve cost-effectiveness, and are compliant with the Affordable Care Act.
- There is general agreement on some methods that will reduce operating costs, including having one system that functions for individual determination of Medicaid and Advance-Premium Tax Credit eligibility and developing effective small business enrollment options
- We believe structure, functions, and funding needs will change substantially as we develop an Innovation Waiver under the Affordable Care Act for 2017.

Thank you for the opportunity to comment.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Finance
Tuesday, April 1, 2014 at 2:00 P.M.
Conference Room 308, State Capitol**

**RE: SENATE BILL 2470 SD1 HD1 RELATING TO THE HAWAII HEALTH
CONNECTOR**

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

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 2470 SD1 HD1, which establishes the Hawaii health connector as the State of Hawaii Health Insurance Exchange; establishes advisory groups and an oversight council to assist the Connector Board; amends the composition and duties of the Connector Board; establishes a special fund.

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.

This bill seeks to remove members representing insurers and dental benefit providers on the board of directors for the Hawaii health connector. We believe that the members representing health insurers and dental benefit providers should not be removed from the board.

First, our understanding in the creation of the board was to make a broad mix of community members and stakeholders to be a part of the decision making process. There are a total of 15 members with only 3 being from the insurance industry. We see no reason why they should be removed or how this helps the Exchange's sustainability.

Second, the Affordable Care Act is over 22,000 pages of rules and is intertwined with many other facets of federal and state law. It is very complicated and very fluid. The board in making these decisions both in full committee and executive committee needs to have all the pertinent information before making decisions. All stakeholders need to be part of the discussion, including insurers. Insurers have the knowledge and resources and deal with this topic almost every day. The other board members who bring different expertise can benefit from this insight and at the same time make their own independent decisions.

Thirdly, to sustain the operation of this endeavor we believe that the board as a whole should stay intact. This includes keeping all the state members on the committee as well. They each bring a perspective on the health care industry.

For this and other reasons we ask that you hold this bill in committee. Thank you for the opportunity to testify.



HPCCA

HAWAII PRIMARY CARE ASSOCIATION

House Committee on Finance

The Hon. Sylvia Luke, Chair

The Hon. Scott Y. Nishimoto, Vice Chair

The Hon. Aaron Ling Johnson, Vice Chair

Testimony on Senate Bill 2470, SD1, HD1
Relating to Hawaii Health Connector
Submitted by Robert Hirokawa, Chief Executive Officer
April 1, 2014, 2:00 pm, Room 308

The Hawaii Primary Care Association (HPCCA), which represents the federally qualified community health centers in Hawaii, would like to offer comments on Senate Bill 2470, SD1, HD1, which establishes working committees, appropriates funding, and seeks to alter the board composition of the Hawaii Health Connector.

The HPCCA supports the intent of this measure, which is to keep the Hawaii Health Connector as a free standing non-profit organization and remove insurers as voting board members. However, the HPCCA 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 HPCCA thanks you for the opportunity to offer these comments and urges you to move the bill forward for further consideration.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
COMMENTING ON SENATE BILL 2470, HD 1,
RELATING TO THE HAWAII HEALTH CONNECTOR

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 2470, HD 1, relating to the Hawaii Health Connector.

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.

ACLI requests that SB 2470, HD 1, be amended by adding a new section to the bill which amends the definition of “insurer” as set forth HRS Chapter 435(A) to exclude limited benefit health insurers from its provisions.

In 2011, Hawaii enacted Act 205 (now HRS Chapter 435H). Act 205 established the Hawaii Health Insurance Exchange which under Hawaii’s law is known as the Hawaii health connector. 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”).

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 purpose and role of Hawaii's health connector is set forth in HRS Section 435H-2, which states in relevant part:

- (b) The purposes of the connector shall include:
 - (1) Facilitating the purchase and sale of qualified plans and qualified dental plans . . .
- (c) The connector shall serve as a clearinghouse for information on all qualified plans and qualified dental plans listed or included in the connector . . .
- (g) The connector shall make qualified plans and qualified dental plans available to qualified individuals and qualified employers

Hawaii's Health Insurance Exchange Act limits the "plans" it provides to consumers to qualified health plans ("QHPs") described in section 1311(c) of the federal Patient Protection and Affordable Care Act ("ACA") and dedicated/stand-alone qualified dental plans ("QDPs") described in Section 1311(d)(2)(B)(ii) of the ACA. HRS Section 435H-1.

Medicare supplement, accident-only, specified disease, hospital indemnity, or other limited benefit hospital insurance policies issued by insurers, including DI issued by life insurers, are neither QHPs or QDPs described in the ACA as contemplated by Hawaii's Health Insurance Exchange Act.

Life insurers issuing DI under Article 10A do not sell QHPs either through or independent of Hawaii's health connector.

In recognition that all insurers issuing limited benefit health insurance policies, including 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 – in a related bill, HB 2529, SD 1, the Senate has amended the definition of insurer to exclude limited benefit health insurers.

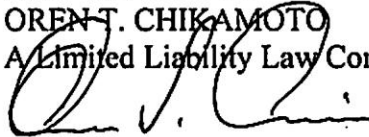
ACLI requests that a similar amendment be included in SB 2470, HD 1, by adding a new section to the bill which would amend the definition of an "insurer" which Chapter 435H is intended to apply, as set forth below:

"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, other than an accident-only, specified disease, hospital indemnity, medicare supplement, disability income, or other limited benefit hospital insurance policies."

ACLI believes that the suggested amendment defining an "insurer", will assure that only "health insurers" and "dental insurers" and not insurers issuing DI and other limited benefit health policies will be included in Hawaii's Health Insurance Exchange Act and any future legislative changes to that Act.

Again, thank you for the opportunity to comment on SB 2470, HD 1, relating to the Hawaii Health Connector.

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An Independent Licensee of the Blue Cross and Blue Shield Association

April 1, 2014

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

Re: SB 2470, SD1, HD1 – Relating to the Hawaii Health Connector

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 2470, SD1, HD1. HMSA has comments on this Bill and offers amendments.

HMSA is supportive of legislation to ensure an efficient, cost-effective health insurance exchange for Hawaii. That said, we are concerned that Section 4 of the Bill includes language that would provide for a duplicative fee to be levied by the Hawaii Health Connector (Connector) and the State. 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."

This amendment will clarify that, in sustaining the Connector, the only fee levied on issuers will be the sustainability fee levied by the Commissioner, pursuant to the recommendations of the Connector Oversight Council.

HMSA is additionally concerned that this Bill provides for the termination of its provisions on June 30, 2018. We believe it should terminate on December 31, 2016, concomitantly with an Innovation Waiver for the Connector from the federal government. This will provide an incentive for the State and the Connector to plan, draft, and submit the Innovation Waiver application well in advance of January 1, 2017. To address this, we suggest that all sections of the Bill that include the June 30, 2018, date be amended to reference December 31, 2016.

HMSA further has concerns with a provision in the Bill that, upon dissolution of the Sustainability Special Fund, unencumbered balances would be transferred to the State General Fund. We believe that the moneys collected from the sustainability fee were placed in the Special Fund, in trust, to finance the administration and operations of the Connector. Any unexpended balances rightfully should be returned to the respective issuers that paid the fee.

We suggest that the appropriate part of Section 2 of the Bill be amended to read as follows.

...§435H-G Hawaii health connector sustainability special fund. (a) There is established the Hawaii health connector sustainability special fund, into which shall be deposited:

(1) Hawaii health connector universal federally mandated sustainability fee revenues collected pursuant to section 435H-F; and

(2) Any appropriations that may be made by the legislature to the fund.

Moneys in the Hawaii health connector sustainability special fund shall not be considered part of the general fund....

...(d) The Hawaii health connector sustainability special fund shall be dissolved on June 30, 2018, and all unencumbered and unexpended moneys remaining on balance in the special fund on that date shall [~~lapse to the credit of the general fund~~] be refunded, on a pro rata basis, to each insurer upon which the universal federally mandated sustainability fee was levied .

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



To: Committee on Finance
Representative Sylvia Luke, Chair

Date: April 1, 2014, Conference Room 308, 2:00 p.m.

Re: **SB 2470 SD1 HD1 – RELATING TO HAWAII HEALTH CONNECTOR**
Testimony - Comments

Chair Luke 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 provides comments on portions of SB 2470 SD1 HD1 - Relating to Hawaii Health Connector.

Section 2 of this bill adds sections to Chapter 435H, Hawaii Revised Statutes and we have the following comments:

§435H-B 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 should be open to the public and guidelines should be established for the selection of members.

§435H-C 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- D 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-E Hawaii Health Connector Oversight Council

AARP supports the establishment of the Committee and recommends that:

1. Council meetings 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-G Hawaii Health Connector Annual Sustainability Plan

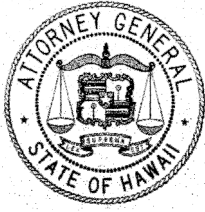
AARP supports the requirement for the Connector board to submit a sustainability plan to the Hawaii Health Connector Oversight Council. The Connector has received approximately \$205 million in federal tax dollars for the development and implementation of the Connector, and Hawaii residents should not be responsible for Connector expenses until it provides the Legislature with an acceptable and detailed sustainability plan.

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 13, lines 11-13 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.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2470, S.D. 1, H.D. 1, RELATING TO THE HAWAII HEALTH CONNECTOR.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, April 1, 2014

TIME: 2:00 p.m.

LATE

LOCATION: State Capitol, Room 308

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

Chair Luke and Members of the Finance Committee:

The Department of the Attorney General makes 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 Hawaii Health Connector; and (2) appropriate general funds to provide for the sustainability of the Hawaii Health Connector. Below we have identified general areas of the bill that raise legal concerns.

1. Changes to the Connector Board

a. The Connector Board must adopt the amendments to effectuate them

Section 5 on page 12, line 6 through page 15, line 6, proposes amendments to section 435H-4, HRS, relating to the Connector's board of directors, composition, and operation. In previous testimony to the House and Senate subject matter Committees, we explained that any changes the Legislature makes to the Connector's board composition will not be effective unless and until the Connector board adopts the changes. This would include deleting any reference to, and in effect changing the governance of, the Connector Board pursuant to chapter 414D, Hawaii Revised Statutes (HRS). Chapter 435H, HRS, is clear that the Connector is a non-governmental nonprofit corporation. Section 435H-2, HRS, specifically provides that "the connector shall not

be an agency of the State and shall not be subject to laws or rules regulating rulemaking, public employment, or public procurement. The connector shall be a Hawaii nonprofit corporation organized and governed pursuant to chapter 414D, the Hawaii nonprofit corporations act.” That wording gives the Connector the sole authority to make amendments related to the Connector board as provided in its articles and bylaws consistent with chapter 414D, HRS. See, e.g., chapter 414D, HRS, part VIII (sections 414D-132 (qualifications), 414D-133 (number of directors), 414D-134 (election, designation, and appointment), 414D-138 (removal), 414D-135 (terms), and 414D-136 (staggered terms). Since its establishment, the Connector has incorporated itself, adopted Articles of Incorporation and bylaws, and we were also informed by the Connector that it received approval for a chapter 501(c)(3) designation by the Internal Revenue Service, all of which cannot be undone by legislative action. Deletion of reference to chapter 414D, HRS, is meaningless, since (1) the Connector already exists under 414D; and (2) this is the only chapter which governs nonprofit corporations.

Currently, the Connector’s Amended Articles of Incorporation, in Article VIII, filed on April 19, 2013, with the Department of Commerce and Consumer Affairs (see attached) provides at Section 8.1: “There shall be a Board of Directors, the size and composition of which shall be fixed in accordance with the requirements of Act 205, Session Laws of Hawaii 2011.” The articles limit any changes to the board’s size and composition. In addition to amending the size and composition of the board, this bill seeks to make amendments relating to the qualifications and appointment of the board members. We are unsure whether these articles have been amended since the filing on April 19, 2013.

If the Connector amends its articles or bylaws consistent with the legislative intent of this bill, the Connector should amend its Articles of Incorporation by adding “the requirements of chapter 435H, HRS, and any amendments thereto.”

Alternatively, considering that the Connector may first want to consult with its own counsel regarding these amendments and their impact on the corporation, the changes could be made contingent upon the Connector board’s amending its articles or bylaws. To accomplish this we suggest replacing what is currently section 11 of the bill (governing its effective date) to read as follows:

SECTION 11. This Act shall take effect on [date], except that section 5 shall take effect upon the date on which the amendments to section 435H-4, Hawaii Revised Statutes, made in section 5 are adopted by the connector board or the date on which the connector articles of incorporation or bylaws are amended to incorporate those amendments, whichever is sooner, but under no circumstances shall the effective date of section 5 be a date before the effective date of the remainder of this Act.

We also note that even if these changes were adopted by the Connector's board, the Connector is not prohibited from making future amendments to its articles or bylaws as they relate to its board structure and governance. If the Legislature is concerned about this, the Legislature could condition its efforts to implement the purposes of this bill (which include the sustainability of the Connector through appropriations), upon the Connector's adoption of provisions consistent with chapter 435H, HRS, and any amendments thereto, regarding the board of directors.

b. Legislature's control over the Connector Board

Changes relating to the Connector board include reducing the members from fifteen to ten, with seven voting members. This draft proposes that the Legislature appoint four of the seven voting members. Some of the Connector Board's responsibilities and authorities are submitting a sustainability plan to the Legislative Oversight Council as well as the Insurance Commissioner (page 7, lines 11-14), which plan forms the basis for its funding from the newly established special fund (page 8, lines 3-5); making recommendations to the Governor for legislative action against the Connector (page 8, lines 18-19); and removing or suspending any board member after due notice and public hearing (page 13, lines 9-10). The Legislature's mandatory, as opposed to contingent language, as applied to a private nongovernmental entity; may have the effect of the Connector later being found to have been morphed from a private entity to a governmental agency. We'd be happy to meet with this Committee to make suggestions consistent with its intent relating to this issue.

c. Board governance and structure must comply with federal law

In the event the Connector adopts all changes made in this measure, the board's governance and structure must comply with federal law. Pursuant to 45 CFR sections 155.110(c)

and (d)¹, 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. Section 5 at page 12, line 6 through page 15, line 6, amends section 435H-4, HRS, relating to the Connector board. To comply with the federal law, we recommend the following changes to subsection (b) in section 5 beginning on page 13, line 11, to reflect the following:

(b) The membership of the board shall reflect geographic diversity and the diverse interests of stakeholders including consumers, employers, insurers, and dental benefit providers. Each person appointed to the board shall have education, training, or professional experience in at least one of the following areas:

- (1) Health care policy;
- (2) Health benefits plan administration, including medicaid administration;
- (3) Health insurance; provided that no employee of an insurer shall be appointed to the board;
- (4) Health care financing and purchasing;
- (5) Health care delivery, including system administration;
- (6) Information technology; ~~[or]~~
- (7) Economics and actuarial science;
- (8) Public health; or
- (9) Health care policy issues related to the small group and individual markets and the uninsured.

We also recommend adding a new subsection (d) in section 5 on page 15 as follows “(d) Any changes to the board structure and governance shall be in compliance with federal law.”

¹ 45 CFR section 155.110, provides the following in relevant part:

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

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

2. Funding

Chapter 435H, HRS, makes reference to the purchase and sale of health plans and dental plans. This bill also makes reference to the term “plans,” which when used in that context means the methods or tactics for generating revenue. It would be less confusing if the reference to “plans” in section 4 on page 12, lines 1-2, were changed to reflect the following:

(c) [All plans] Any means to generate revenue for the connector shall be in compliance with federal law.

3. Expending agency designation necessary for appropriation

Section 7 on page 15, lines 15-19, appropriates general funds to be deposited into the newly established special fund. However, there is no wording identifying the expending agency for the appropriation. We recommend adding the following wording as the last sentence in section 7:

“The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.”

We respectfully request that this Committee consider our comments.

LATE

The Honorable Sylvia Luke
Chair, Committee on Finance

Re: Testimony regarding S.B. 2470 SD1 HD1, Relating to the Hawai'i Health Connector.

Hearing scheduled for April 1, 2014, 2:00 p.m.

Chair Luke and members of the Committee on Finance:

My name is Tom Matsuda, Interim Executive Director of the Hawai'i Health Connector (the "Connector"), speaking on behalf of the Connector and its Board of Directors.

The following **comments** are offered with respect to the creation of the three advisory groups in proposed HD1 of SB 2470:

1. Currently, the Board of Directors has several mechanisms available for stakeholder engagement and public input on proposed board actions. Board meetings are open to the public, with agendas posted on the Connector website 3 days in advance. Every board meeting has a standing agenda item for public comment. Both written and verbal comments have been received at most board meetings. The Board has a standing Consumer Advisory Committee consisting of a variety of participants from the community. The committee has assisted with consumer input and focus group meetings about Connector services. Also, the Board has the option to create ad hoc committees as needed for stakeholder engagement.
2. If the advisory groups are created, it will be necessary to provide staff support to organize and conduct the meetings, prepare materials and analysis, produce agendas and minutes, and coordinate the advisory group's findings and recommendations to the Board. If the advisory groups are very active, it may be necessary to hire an additional staff position to provide support for their work.

The following **comments** are offered with respect to the proposed establishment of a Connector sustainability fee. The Connector Board is currently engaged in a sustainability planning process to prudently reduce the annual operating expenses of the Connector. The challenges in that process include the following:



- The services provided to the public by the Connector are mandated by the federal Affordable Care Act (ACA), which requires that all states must have online marketplaces that provide individuals and small businesses with access to health insurance and access to individual and small business tax credits. These operational requirements may prohibit us from reducing some services, at least until the State Innovation Waiver becomes available in 2017.
- The online marketplace and the ACA tax credits provide a valuable service by reducing the number of uninsured people in Hawai'i, reducing the out-of-pocket cost of insurance premiums for thousands of individuals and families, providing higher quality insurance benefits, and providing greater consumer choice. Reductions in future operating costs should protect the services that provide a net financial or health benefit to the people of Hawai'i.
- Under H.R.S. 435H, the Connector is required to protect the Prepaid Health Care Act and the many health insurance benefits it provides to the community. For that reason, the Connector's online marketplace for small businesses, called the Small Business Health Options Program (SHOP), is uniquely customized to provide access to Prepaid-compliant health insurance plans and the small business tax credits. Any reductions in the Connector's operating costs must avoid any threats to Prepaid.
- Changing federal rules regarding the implementation of the ACA sometimes have negative impacts on Connector enrollments, making it difficult to accurately predict future revenue.

These and many other issues make the Board's planning process complex, with many unknowns. The Board is engaged in a series of planning meetings to consider various alternatives to reduce costs. The planning discussion includes close collaboration with the State administration to find ways to reduce operating expenses that are consistent with State goals for Healthcare Transformation. The Board's goal is to find the right balance between cost cutting, complying with federal and state law, and protecting the most important services and benefits for Hawai'i's people, especially Prepaid, and the Connector is committed to providing the Legislature with an outline of a cost reduction plan within the next 2 to 3 weeks when I submitted testimony on March 13, 2014. We intend to complete that process this week.

The following **comments** are offered with respect to the proposed changes to the board appointment process. The Connector Board wishes to reiterate previously submitted testimony regarding legislation to change the composition of the Board. To preserve



continuity and expertise during a period when informed Board guidance is so important, the Board prefers to maintain the existing positions, designations and membership of the Board of Directors. If any current Board members decide to leave the Board or not renew their appointments, then the Board prefers that any vacancies be filled under the existing guidelines in H.R.S 435H.

Thank you for the opportunity to provide comments on SB 2470.



From: mailinglist@capitol.hawaii.gov
 Sent: Tuesday, April 01, 2014 11:54 AM
 To: FINTestimony
 Cc: mgsmart@yahoo.com
 Subject: Submitted testimony for SB2470 on Apr 1, 2014 14:00PM

SB2470

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
Mary Smart	Individual	Oppose	No

Comments: Oppose SB2470 SD1 HD1 -- the Hawaii Health Exchange is a failed concept and absolutely no funds should be raised or allocated to this system. It is time for the government to get out of the health care and insurance business and get back to governing only those functions government MUST run. Healthcare is a private matter. Every time the government gets involved or stays involved results in fraud, waste, mismanagement and fiscal irresponsibility (examples -- U.S. Postal Service, early childhood education (Head Start) and the Hawaii bottle bill). Do not waste any more time or money on this concept. Let people be free -- as the country was founded -- to take care of their own personal matters. Nothing is more personal than healthcare. This program is not sustainable and identity theft is a real threat when using these automated systems. If it were a value to people, there would be people standing in line to use the services (just as a new I-phone draws customers or a new high-rise generates long lines before the initial sale). Good ideas don't require the force of government to implement. We are not government's "subjects". We are government's employer. Stop this waste. In the acquisition business it is well known that you don't worry about "sunk costs" when you come to the realization of a failed concept. You extract yourself as soon as possible and pay the termination fees. That is what is required of Hawaii Health Connector. It is time to "eject, eject, eject!" Oppose SB2470 with amendments. No changes or modification can save this patient. It is time to let it go. It is on a death spiral and it is taking the state with it. Vote NO on this bill.

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.

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

LATE TESTIMONY

ON THE FOLLOWING MEASURE:

S.B. NO. 2470, S.D. 1, H.D. 1, RELATING TO THE HAWAII HEALTH CONNECTOR.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, April 1, 2014

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 308

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

Chair Luke and Members of the Finance Committee:

The Department of the Attorney General makes 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 Hawaii Health Connector; and (2) appropriate general funds to provide for the sustainability of the Hawaii Health Connector. Below we have identified general areas of the bill that raise legal concerns.

1. Changes to the Connector Board

a. The Connector Board must adopt the amendments to effectuate them

Section 5 on page 12, line 6 through page 15, line 6, proposes amendments to section 435H-4, HRS, relating to the Connector's board of directors, composition, and operation. In previous testimony to the House and Senate subject matter Committees, we explained that any changes the Legislature makes to the Connector's board composition will not be effective unless and until the Connector board adopts the changes. This would include deleting any reference to, and in effect changing the governance of, the Connector Board pursuant to chapter 414D, Hawaii Revised Statutes (HRS). Chapter 435H, HRS, is clear that the Connector is a non-governmental nonprofit corporation. Section 435H-2, HRS, specifically provides that "the connector shall not

SECTION 11. This Act shall take effect on [date], except that section 5 shall take effect upon the date on which the amendments to section 435H-4, Hawaii Revised Statutes, made in section 5 are adopted by the connector board or the date on which the connector articles of incorporation or bylaws are amended to incorporate those amendments, whichever is sooner, but under no circumstances shall the effective date of section 5 be a date before the effective date of the remainder of this Act.

We also note that even if these changes were adopted by the Connector's board, the Connector is not prohibited from making future amendments to its articles or bylaws as they relate to its board structure and governance. If the Legislature is concerned about this, the Legislature could condition its efforts to implement the purposes of this bill (which include the sustainability of the Connector through appropriations), upon the Connector's adoption of provisions consistent with chapter 435H, HRS, and any amendments thereto, regarding the board of directors.

b. Legislature's control over the Connector Board

Changes relating to the Connector board include reducing the members from fifteen to ten, with seven voting members. This draft proposes that the Legislature appoint four of the seven voting members. Some of the Connector Board's responsibilities and authorities are submitting a sustainability plan to the Legislative Oversight Council as well as the Insurance Commissioner (page 7, lines 11-14), which plan forms the basis for its funding from the newly established special fund (page 8, lines 3-5); making recommendations to the Governor for legislative action against the Connector (page 8, lines 18-19); and removing or suspending any board member after due notice and public hearing (page 13, lines 9-10). The Legislature's mandatory, as opposed to contingent language, as applied to a private nongovernmental entity; may have the effect of the Connector later being found to have been morphed from a private entity to a governmental agency. We'd be happy to meet with this Committee to make suggestions consistent with its intent relating to this issue.

c. Board governance and structure must comply with federal law

In the event the Connector adopts all changes made in this measure, the board's governance and structure must comply with federal law. Pursuant to 45 CFR sections 155.110(c)

2. Funding

Chapter 435H, HRS, makes reference to the purchase and sale of health plans and dental plans. This bill also makes reference to the term “plans,” which when used in that context means the methods or tactics for generating revenue. It would be less confusing if the reference to “plans” in section 4 on page 12, lines 1-2, were changed to reflect the following:

(c) [All plans] Any means to generate revenue for the connector shall be in compliance with federal law.

3. Expending agency designation necessary for appropriation

Section 7 on page 15, lines 15-19, appropriates general funds to be deposited into the newly established special fund. However, there is no wording identifying the expending agency for the appropriation. We recommend adding the following wording as the last sentence in section 7:

“The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.”

We respectfully request that this Committee consider our comments.

Katherine T. Kupukaa
Mililani Town, HI 96789

COMMITTEE ON FINANCE
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
Rep. Aaron Ling Johanson, Vice Chair

DATE: Wednesday, April 1, 2014
TIME: 2:00 PM
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

RE: SB2470 SD1 HD 1 Relating to Hawaii Health Connector

I oppose this bill and urge you not to pass this bill. The Hawaii Health Exchange is a failed system and should not be funded. By all accounts the expected individuals to sign up for this insurance are the lowest among states. The State does not have the funds and the taxpayers should not have to be burdened by passage of this bill. This was an ill-conceived project and should be closed down. **DO NOT PASS THIS BILL.**

Katherine T. Kupukaa