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NEIL ABERCROMBIE
GOVERNOR

HOUSE COMMITTEE ON HEALTH
The Hon. Della Au Belatti, Chair
The Hon. Dee Morikawa, Vice Chair

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
The Hon. Angus McKelvey, Chair
The Hon. Derek S.K. Kawakami, Vice Chair
March 14, 2014, 8:30 a.m., Room 329

Senate Bill 2470, SD 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: Relating to the Hawai'i 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, 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 the proposed HD1:

- 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:

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

LATE

BEFORE THE:

HOUSE COMMITTEES ON HEALTH AND ON CONSUMER PROTECTION & COMMERCE

DATE: Friday, March 14, 2014

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 329

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

Chairs Belatti and McKelvey and Committee Members:

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 Oversight Council

We are concerned that the responsibilities of the Connector Oversight Council (Oversight Council) created in section 2 of the bill (page 5, lines 3-22, to page 6, lines 1-16) 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 Oversight Council are to review the Connector's financial and operational plans and provide input and recommendations to the Connector's board of directors (section 2, page 6, lines 1-4), 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 until June 30, 2018 (section 2, page 6, lines 10-14). Section 2 at page 7, lines 12-21, through 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”, and shall include the upcoming fiscal year’s detailed budget and justification for release of moneys to the Hawaii health connector sustainability special fund. The Commissioner is to consider the recommendation of the Oversight Council before deciding whether to assess and collect the sustainability fee (section 2 on page 8, lines 14-19). As worded, the function of the Oversight Council 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).

The Oversight Council shall consist of five members, two of which are legislators (section 2, page 5, lines 10-15). With 5 members, a quorum for the purpose of conducting business will be 3 members. If 2 of the members are legislators, a constitutional issue may arise if the Insurance Commissioner is required to consider the decisions and recommendations. 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 stated 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 Oversight Council 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. This is the situation considered in *Chaffin*; based upon that analysis, the bill may not survive a constitutional challenge.

We believe that it is constitutionally within the Oversight Council's powers to review the Connector's financial, operational, and sustainability plans, as the bill currently provides at page 6, lines 1-4, and lines 8-9.

We believe that there are two options to lessen the potential for a constitutional challenge. The Legislature could revise the bill to provide that the Insurance Commissioner may but is not required to consider the Oversight Council's recommendation before making a decision on setting the amount of the sustainability fee (page 6, lines 10-12, and page 8, lines 14-19). Or, the Legislature could insert a new subsection after subsection (e) in section 2, page 6, line 15, to clarify that the legislative members cannot make up the majority for decisions or recommendations made by the Oversight Council.

“(f) At no time shall the legislative members of the council make up the majority of members when voting in favor of decisions or recommendations.”

~~[(f)]~~ (g) The connector oversight council shall be dissolved on June 30, 2018.”

2. Connector's Funding Opportunities

Section 4 at page 13, lines 5-8, amends section 435H-3, HRS, addressing other opportunities for the Connector to generate revenue. While the ACA requires that the exchanges be self-sustaining by January 1, 2015, such sustainability can only be accomplished when it is consistent with the confidentiality, privacy, and security requirements of the ACA. 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.¹ Personally identifiable information is defined as “any information about

¹ The following excerpt was taken from the comments submitted to the federal Department of Health and Human Services (HHS) and the HHS response relating to 45 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

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.

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 16-18, 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." Page 11, lines 12-13. The reason for these amendments is not clear, but they do not change the fact that chapter 414D, HRS, will nevertheless continue to govern the Connector.

Section 5 at page 13, lines 9-22, through page 16, lines 1-14, 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,

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.

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. The Connector board should be aware of all federal requirements relating to its board governance and structure and must itself adopt everything necessary into its articles of incorporation or by-laws.

4. Financial support

To implement the financial support of the Connector, we suggest that the Legislature consider statutorily designating the Hawaii Health 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.

We suggest 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.”

We also propose that another new section to amend chapter 435, HRS, be inserted into section 2 on page 3, line 12, consistent with the intent of the bill to provide financial support to the Connector. 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 eight new sections to be appropriately designated and to read as follows:

This new prefatory language should be followed by the new section below and the following new section appropriately designated by sequential letters.

“§ 435H-A 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 4, through page 11, line 8, 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 14-16, 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 what is now §435H-G (a) and (b) on page 10, lines 4-20.

“§435H-H 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-G; 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 6, lines 1-16, establishes the: (1) consumer, patient, business, and health care advisory group; (2) health insurers advisory group; (3) insurance producers advisory group; and (4) connector oversight council. The bill provides that the members of each advisory group and the Oversight Council 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 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], 435[C] and 435H-[D], 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 4-22, through page 11, lines 1-8, 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 the Committees consider our comments.

March 14, 2014

Committees on Health and Consumer Protection & Commerce
March 14, 2014 – 8:30 am -- Conference Room 329
Senate Bill 2470, SD1, Proposed HD1 – Relating to the Hawaii Health Connector

Dear Representatives:

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

Community Alliance for Mental Health

March, 14, 2014

Board of Directors

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President

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Linda Takai

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Gina Hungerford

To: House Committees on Health and Commerce and Consumer Protection
Re: SB 2470, SD 1

Aloha Chairs Belatti, McKelvey, 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 SB 2470, SD 1.

We believe and have stated that the creation of the Hawai'i Health Connector as a quasi-non-profit was an error. We believe that the board's views towards our sunset laws demonstrated lack of concern with proper public oversight. Lastly we believe that the boards demonstrated reluctance to bring in advisory groups from community non-profits and other community members demonstrated a sense of self confidence which has since been demonstratively proven as overreaching hubris.

We feel that the passage of SB 2470, SD 1 will go a long way to rectifying these errors.

Scott Wall
VP/Legislative Advocate
Community Alliance for Mental Health



Chamber of Commerce HAWAII
The Voice of Business

**Testimony to the House Committee on Health and Committee on Consumer
Protection and Commerce
Friday, March 14, 2014 at 8:30 A.M.
Conference Room 329, State Capitol**

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

Chairs Belatti and McKelvey, Vice Chairs Morikawa and Kawakami, and Members of the Committees:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 2470 SD1 Relating to the Hawaii Health Connector.

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 as set forth at the beginning of this bill.

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.

House Committee on Health
House Committee on Consumer Protection & Commerce
Representative Della Au Belatti, Chair
Representative Angus McKelvey, Chair



Hearing on March 14, 2014 at 8:30 am

RE: Senate Bill 2470, SD1, Proposed HD1

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

We will limit our comments of the Proposed HD1 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.

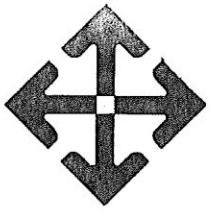
Insurance agents and brokers earn commission on the sales of insurance. Selling through the Connector should be no different than selling outside of the Connector. My members who sell health policies probably will not go through the Connector at this time due to its problems and because they won't get 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.

We appreciate the House's position in including agents and brokers in the process and allow compensation for work done. 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 continued support.

Cynthia Takenaka
NAIFA Hawaii
Executive Director
Phone: 394-3451



The Hawaii Business League

1188 Bishop St., Ste. 1003, Honolulu, Hawaii 96813
Phone: (808) 533-6819 Facsimile: (808) 533-2739

LATE

March 14, 2014

Testimony To: House Committee on Health
Representative Della Au Belatti, Chair

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

Presented By: Tim Lyons
President

Subject: S.B. 2470, SD 1 - RELATING TO THE HAWAII HEALTH CONNECTOR.

Chair Belatti, Chair McKelvey and Members of the Joint Committees:

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 have no comment on the composition of the Board, the advisory groups or the Connector Oversight Council.

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. At the least it would likely have to pay Unrelated Business Income Tax (UBIT) on the advertising income.

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.



To: Committee on Health
Rep. Della Au Belatti, Chair

Committee on Consumer Protection & Commerce
Rep. Angus L.K. McKelvey, Chair

Date: March 14, 2014, Conference Room 329, 8:30 a.m.

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

Chair Belatti, Chair McKelvey 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 support and opposes portions of SB 2470 SD1, HD1 Proposed - Relating to the Hawaii Health Connector.

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 should be open to the public and guidelines should 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 Oversight Council

AARP supports the establishment of the council and recommends that:

1. The council's meeting should 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 should be posted on the connector's website.
3. Council meeting minutes should 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 17-19 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.

AARP
SB 2470 SD1 HD1 PROPOSED
March 14, 2014
Page 3

Thank you for the opportunity to provide testimony.

morikawa2-Joanna

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, March 13, 2014 11:05 AM
To: HLTtestimony
Cc: dstevens@hawaiiipca.net
Subject: Submitted testimony for SB2470 on Mar 14, 2014 08:30AM



SB2470

Submitted on: 3/13/2014

Testimony for HLT/CPC on Mar 14, 2014 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Hirokawa	HPCA	Comments Only	No

Comments: The Hawaii Primary Care Association (HPCA), which represents the federally qualified community health centers in Hawaii, would like to offer comments on Senate Bill 2470, SD1, which seeks to alter the board composition of the Hawaii Health Connector. The HPCA supports the intent of this measure, which is to keep the Hawaii Health Connector as a free standing non-profit organization and remove insurers and many state officials as voting board members. 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.

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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HMSA



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March 14, 2014

The Honorable Della Au Belatti, Chair
House Committee on Health
The Honorable Angus S. K. McKelvey, Chair
House Committee on Consumer Protection and Commerce

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

Dear Chair Au Belatti, Chair McKelvey and Members of the Committees:

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

HMSA is supportive of legislation that ensures an efficient health insurance exchange for Hawaii. And, we appreciate the effort reflected in the Bill to design a cost-effective sustainability model for the Hawaii Health Connector (Connector). However, we are concerned that Section 4 of the Bill includes language that would provide for a duplicative fee to be levied by the 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

The Honorable Della Au Belatti
Chair, Committee on Health

The Honorable Angus McKelvey
Chair, Committee on Consumer Protection and Commerce

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

Hearing scheduled for March 14, 2014 at 8:30 a.m.

Chair Belatti, Chair McKelvey and members of the Committee on Health and the Committee on Consumer Protection and Commerce

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. As of the date of this testimony, the Connector has not received a decision from its federal funding agency regarding the request for an extension of time to utilize existing grant funds through 2015. 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 to provide the Legislature with an outline of a cost reduction plan within the next 2 to 3 weeks.

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.

LATE

Aloha Chair Carroll 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 SB2470 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 SB2470 SD2, to start to fix this problem.

