

JAN 23 2015

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# A BILL FOR AN ACT

RELATING TO LONG-TERM CARE INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that Hawaii has a long  
2 history of respecting and helping its kupuna. Accordingly, the  
3 legislature finds that additional protections are needed to help  
4 seniors avoid inadvertent lapses or terminations of their long-  
5 term care insurance for nonpayment of premiums. This Act amends  
6 the current law by requiring that notice of a lapse of coverage  
7 or cancellation be sent by certified mail or commercial delivery  
8 service to the policyholder. The legislature also finds that  
9 this will provide proof that the cancellation notice was mailed  
10 and delivered. This Act also provides for the reinstatement of  
11 coverage if the insurer is provided proof that during the period  
12 preceding the expiration of the grace period following the  
13 mailing of the cancellation notice, the policyholder or  
14 certificate holder was cognitively impaired or had a loss of  
15 functional capacity.

16           The legislature further finds that the changes effected  
17 under this Act will have a relatively minor impact on insurers



1 when compared with the consequences that would befall  
2 policyholders whose long-term care insurance lapses.

3       The legislature also finds that the need for additional  
4 protections is best illustrated by the by the tragic turn of  
5 events faced by an elderly couple in Virginia, whose confusion  
6 allowed their long-term care insurance to lapse. Over eleven  
7 years the couple had faithfully paid an insurer about \$50,000 in  
8 premiums, which would have entitled them to about \$600,000 in  
9 benefits through their joint policy. Then, during a visit to  
10 his bank, the husband mistakenly stopped the automatic premium  
11 payment system that his son had set up. The insurer then sent  
12 notices to the couple that their long-term care insurance  
13 coverage was about to end because they had stopped making  
14 payments. Unfortunately, the elderly couple did not understand  
15 the notices and did not act to prevent the cancellation. Their  
16 son found the insurer's notices months later when his mother  
17 became ill and needed to use her long-term care insurance  
18 benefits.

19       In this case, the son was the parents' designated third  
20 party, meaning that the insurer should have notified him of any  
21 change to his parents' policy. The insurer claimed that it sent



1 such a notice to him, however, the son claimed that he did not  
2 receive it. That state's insurance regulations offered the  
3 family no legal recourse other than to bring a lawsuit against  
4 the insurer. That option would have been far too expensive for  
5 the family, and similarly, purchasing a new long-term care  
6 insurance policy was prohibitively expensive. Ultimately, the  
7 elderly couple had to sell their condominium and downsize into a  
8 modest apartment, and the mother now receives care through a  
9 medicaid program.

10 The purpose of this Act is to help Hawaii's kupuna prevent  
11 lapses or terminations for their long-term care insurance  
12 policies.

13 SECTION 2. Section 431:10H-209, Hawaii Revised Statutes,  
14 is amended to read as follows:

15 "~~{}~~§431:10H-209~~{}~~ **Lapse or termination for nonpayment of**  
16 **premium.** (a) No individual long-term care policy or  
17 certificate shall lapse or be terminated for nonpayment of  
18 premium unless the insurer, at least thirty days before the  
19 effective date of the lapse or termination, has given notice to  
20 the insured and to those persons designated in section 431:10H-  
21 208 at the address provided by the insured for purposes of



1 receiving notice of lapse or termination. Notice shall be given  
2 by [~~first class United States mail, postage prepaid~~] certified  
3 mail or commercial delivery service and notice may not be given  
4 until thirty days after a premium is unpaid. Notice shall be  
5 deemed to have been given as of five days after the date of  
6 mailing. The policy or certificate shall not lapse or be  
7 terminated earlier than sixty days after the date of mailing of  
8 the notice.

9 (b) Coverage under a long-term care insurance policy or  
10 certificate that lapses shall be reinstated if:

- 11 (1) The insurer is provided proof that during the period  
12 from thirty days prior to the mailing of the notice in  
13 subsection (a) through sixty days following the  
14 mailing of the notice, the insured was cognitively  
15 impaired or had a loss of functional capacity; and
- 16 (2) The insured or any of the persons designated in  
17 section 431:10H-208 requests reinstatement within five  
18 months following the termination of the policy or  
19 certificate and renders payment of past due premiums,  
20 where appropriate.



1        For the purposes of this subsection, the standard of proof  
 2 of cognitive impairment or loss of functional capacity shall not  
 3 be more stringent than the benefit eligibility criteria on  
 4 cognitive impairment or the loss of functional capacity as  
 5 contained in the policy or certificate."

6        SECTION 3. Statutory material to be repealed is bracketed  
 7 and stricken. New statutory material is underscored.

8        SECTION 4. This Act shall take effect on January 1, 2016.

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INTRODUCED BY:

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# S.B. NO. 722

**Report Title:**

Long-Term Care Insurance; Termination or Lapse

**Description:**

Requires the 30-day termination notices to be sent by certified mail or commercial delivery service instead of first-class mail. Requires a 60-day grace period to reinstate coverage under a lapsed policy where cognitive impairment or loss of functional capacity is involved.

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