



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

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

CATHERINE P. AWAKUNI COLÓN  
INTERIM DIRECTOR  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Monday, February 2, 2015  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 102 – RELATING TO LONG-TERM CARE INSURANCE.**

TO THE HONORABLE ANGUS L.K. McKELVEY, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner (“Commissioner”), testifying on behalf of the Department of Commerce and Consumer Affairs (“Department”). The Department submits comments on this bill.

While protecting the interests of policyholders is admirable, this bill in large part duplicates the existing statutory protections for unintentional lapses and reinstatement of long-term care insurance policies set forth in sections 431:10H-208 and 431:10H-210, Hawaii Revised Statutes (“HRS”) and may increase costs to policyholders. Relevant provisions in Article 10H, HRS, are virtually identical to the National Association of Insurance Commissioners (“NAIC”) Long-Term Care Insurance Model Regulation 641 addressing unintentional lapse and reinstatement.

Section 431:10H-210, HRS, currently provides for reinstatement if there is proof of cognitive impairment or loss of functional capacity before the grace period in the policy has expired. Section 431:10H-210, HRS, also provides for reinstatement of the policy five (5) months after the termination date, provided payment of past due premiums is made.

**House Bill No. 102**  
**DCCA Testimony of Gordon I. Ito**  
**Page 2**

Proposed language on page 4, lines 6 to 8 prohibiting lapse or termination earlier than sixty days after the date of mailing of the notice will require an insurer to provide coverage for a sixty day period past a premium due date before a policy may be effectively terminated. Further, requiring certified mailing of notices will not guarantee reinstatement of lapsed policies if reinstatement is not requested within five (5) months of termination.

We thank this Committee for the opportunity to present testimony on this matter.

Michael Pirron  
2318 Stuart Avenue  
Richmond, VA 23220  
(804) 358-3258  
mpirron@aol.com

January 29, 2015

**Statement in support of HB102 Long-term care insurance**

To whom it may concern:

Thank you for reviewing HB102. If passed, this bill will ensure that Hawaii's citizens, who do the right thing to secure their future by taking out Long-term Care Insurance, will be able to use that insurance when they need it to cover their long-term health costs. This is a bi-partisan bill that further supports the free market for insurance products to cover long-term care costs, and not rely on public programs and government spending to cover these costs. In the case of my parents, this bill is too late to help them; however, I would like to briefly tell their story to bolster the need for this bill for others and to ensure that what happened to my parents never happens again to anyone. Virginia changed the rules similarly last year and the law change went into effect Jan 1 this year (2015) – and I know a number of other states have taken similar steps.

My parents took out a long-term healthcare policy from a large, reputable, national insurer about 12 years ago. They paid their premiums, I was added to their policy at that time as third-party designee, and I am also their power of attorney. My parents paid their premiums on time for 10 years, actually spent 30% of their liquid assets on this policy, and paid through an automatic bank payment that I ensured was set up to pay their premiums. As my parents' health deteriorated over the years, I ensured that I was still the third party designee and was confirmed by the insurer as such. Unfortunately, my father's memory started to decline in recent years, and he gets confused sometimes. Sadly, without letting me know, he went to the bank to stop an auto-payment for an unrelated health insurance premium that was also auto-paid, but accidentally stopped the auto-pay for the long-term care insurance. The premiums were not paid and the policy lapsed. Although my parents as the insured received notices in the mail (about which they were confused), I never as third party designee received one notice. By statute, the LTC insurer is supposed to notify the third party designee in time to take corrective action and ensure proper payment; however, I never received such notice. The insurer claimed they sent a notice to me in US Mail, but there was no burden of proof on the insurer before cancelling the policy, and no requirement to send the notice in certified mail. They denied reinstatement of the policy based on this, and my parents' policy remains cancelled. Subsequently, my mother's health deteriorated and she needs care, and after spending down her own assets, the Personal Care Medicaid program now pays her bills. In other words, the government is picking up the tab (i.e. taxpayers) for my mother's care that should have been picked up by their private insurance industry.

Although it is too late to help my family, it is not too late to ensure this doesn't happen again to anyone, and to make certain that it closes the possibility for predatory practices by insurance companies trying to avoid paying coverage due. Requiring that insurers send these third party notices as certified mail, and for them to provide proof of such before cancelling coverage, will protect Hawaiians who have in good faith paid their premiums while in good health and sound mind, but may later miss payments when their health and mental well-being deteriorates. I understand that the insurance companies are arguing against this bill, saying that they don't want to have additional burden to send a certified letter. To counter that argument, the cost of a certified letter should be a minor cost in relation to the premiums paid into a policy; for example, for my parents' policy the insurer received nearly \$50,000 from my parents in premiums, and my parents never filed one claim. In other words, they got 100% gross profit of the \$50,000, and I believe the insurer could easily have afforded the cost of sending a certified letter (about \$2) before they cancel the policy and pass the burden of actually paying for their care onto the government and taxpayers. Is that truly a burdensome requirement?

Please vote in support of this important bill to protect Hawaiians' future health needs, and to support the free market for these long-term care insurance policies. Voting for this measure ensures that these healthcare costs for the elderly can be covered by the private sector and not by government handouts.

Note: My parents' story and the law change in Virginia was also covered in the New York Times, in the following articles:

[http://newoldage.blogs.nytimes.com/2014/01/31/the-policy-lapsed-but-no-one-knew/?\\_r=0](http://newoldage.blogs.nytimes.com/2014/01/31/the-policy-lapsed-but-no-one-knew/?_r=0)

<http://newoldage.blogs.nytimes.com/2014/06/12/an-alert-when-the-policy-lapses/>

Thanks for your time and consideration of this bill.

A handwritten signature in blue ink that reads "Michael J. Pirron". The signature is written in a cursive, flowing style.

Michael Pirron  
2318 Stuart Avenue  
Richmond, VA 230220  
(804) 358-3258  
mpirron@aol.com

Also, Power of Attorney, and signing additionally for:

David and Anne Pirron  
5100 Monument Avenue  
Richmond, VA 23230

**PETER L. FRITZ**  
200 NORTH VINEYARD BOULEVARD, #430  
HONOLULU, HAWAII 96817  
TELEPHONE (SPRINT IP RELAY): (808) 568-0077  
E-MAIL: PLFLEGIS@FRITZHQ.COM

HOUSE OF REPRESENTATIVES  
THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Testimony on H.B. 102  
Hearing: February 2, 2015

(RELATING TO LONG-TERM CARE INSURANCE)

Chair McKelvey, Vice Chair Woodson, and members of the Committee. My name is Peter Fritz. I am an attorney and I am testifying **in strong support** of this bill.

This bill requires the 30-day termination notices for a Long-Term Care Insurance Policy ("LTCI") to be sent by certified mail or commercial delivery service instead of first-class mail. It also requires a 60-day grace period to reinstate coverage under a lapsed policy where cognitive impairment or loss of functional capacity is involved.

I offer the following for the Committee's consideration:

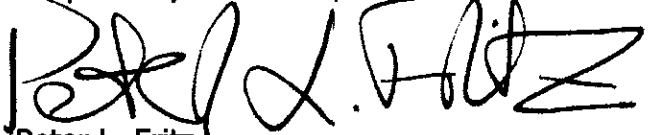
- A LTCI policy is not a form of insurance, when if cancelled, you can simply go to another carrier who may charge a slightly higher premium. If a LTCI policy is inadvertently cancelled after paying substantial premiums for years because of the failure to receive the correspondence from the company that the policy was being cancelled, the policy holder would not be able to buy a replacement policy that is affordable. There may be no option to protect for future long term care needs other than Medicaid.
- LTCI plays an important role in financing long-term care. It is in the best interests of both the state's broader long-term care financing system, and, more importantly, the individuals impacted to establish strong consumer protections for cases of unintentional lapse. State governments should improve the quality of LTCI policies by enacting the strongest possible consumer protection standards.
- For large premium policies that insurance companies are underwriting for brokers or their best agents, insurance companies routinely accept and send documents overnight via FedEx or UPS. Hawaii's kupuna deserve no less protection. Please do not accept any insurance industry claims regarding how difficult it would be to send certified letter notification of the intent to cancel a policy.

- The cost of the changes proposed by this bill, when balanced against the consequences of an inadvertent lapse or termination of a LTCI policy, when the cost of a replacement policy may be prohibitively expensive, is strong reason to pass the changes proposed in this bill to help prevent any kupuna or their family finding themselves in such a situation.
- A grace period of 60 days is beneficial to individuals on the cusp of needing long-term care, who are often suffering serious physical and cognitive impairments and may check their mail infrequently due to illness or hospitalization, or are only able to check their mail when they are able to get the help they need to do so.
- Insurance companies are afforded additional protection should there be a dispute about whether or not notice was mailed to the insured or the insured's designated third-party.

I respectfully request your support of this bill that carefully protects the needs of senior citizens who, in good faith, are paying very large premiums in relation to their fixed incomes, by not allowing the carriers to cancel a policy with just a token routine notice sent via US mail.

Thank you for the opportunity to testify.

Respectfully submitted,



Peter L. Fritz

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
IN OPPOSITION TO HOUSE BILL 102,  
RELATING TO LONG TERM CARE INSURANCE

February 2, 2015

**LATE**

Via e mail: [capitolhawaii.gov/submittestimony.aspx](http://capitolhawaii.gov/submittestimony.aspx)

Honorable Representative Angus L. K. McKelvey, Chair  
Committee on Consumer Protection and Commerce  
State House of Representatives  
Hawaii State Capitol, Conference Room 325  
415 South Beretania Street  
Honolulu, Hawaii 96813

Chair McKelvey and Committee Members:

Thank you for the opportunity to testify in opposition to HB 102, relating to Long Term Care Insurance.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with more than 284 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 nineteen (219) ACLI member companies currently do business in the State of Hawaii; and they represent 92% of the life insurance premiums and 89% of the annuity considerations in this State.

ACLI strongly opposes the proposed bill for the reasons set forth below.

***Re: Section 1:***

With regard to the “tragic turn of events faced by an elderly couple in Virginia”, it should be noted that the son appealed the insurance company’s decision not to allow reinstatement for his parents’ policy to the Virginia Bureau of Insurance which affirmed the insurer’s decision. While the son claimed that he never received the insurer’s three lapse notifications, the Bureau of Insurance found that three separate notices were in fact sent by the insurer; and it determined that it was highly unlikely that the son failed to receive all three notices. The parents, or the son, had elected to designate the son as a secondary addressee to ensure that he would be monitoring the correspondence regarding their LTC policy. They believed that at some point in time the couple would not be able to do this on their own. Unfortunately, the son failed to act; and only “became engaged” when 9 months later while placing his parents in a nursing home he learned that the policy had lapsed.

The son was not happy with the decision of Virginia’s Bureau of Insurance. He, therefore, went to the state legislature to change its laws to require lapse/cancellation notices to be sent by

“certified mail”. It should be noted that Virginia law, 12 VAC 5 200-65, which became effective on January 1, 2015, includes a certified mail option but continues to allow delivery by first class mail with recordkeeping requirements. The reason that Virginia continued to allow the first class mailing option is because it recognized that a certified mail process cannot go through the normal print, fold, insert, meter and mail process that first class USPS goes through; and requires manual intervention which is costly and takes longer to process. Virginia did not want to impose a mail process with a longer timeline to get important lapse notifications in the mail.

HB 102 proposes to require that the lapse/cancelation notice be given to the insured by “certified mail or commercial delivery service”. As Virginia’s legislature determined, certified mail is a lengthier process which an insurer must manually process which delays delivery of the notice and is more costly; costlier still is use of a commercial delivery service, such as UPS or FEDEX.

Moreover, delivery of a lapse or cancelation notice even by certified mail or by commercial delivery does not guarantee that those who receive it will in fact act in a timely manner.

***Re: 431:10H-209 Lapse or Termination for Nonpayment of Premium***

***Item (a)***

ACLI opposes the proposed changes. No state has yet to propose or enact a similar requirement, and for good reasons. Extending the grace period for another 60 days without premium payment violates basic insurance laws – coverage is not permitted to remain in effect without a premium payment. By extending the grace period HB 102 proposes to require the insurer to in effect provide the insured with an additional 60 days of free insurance.

***Item (b)***

ACLI opposes the proposed changes. The intent of the previous language was to allow reinstatement only if the person or the person’s designee submitted proof of cognitive impairment before the grace period expired. If someone was not cognitively impaired and could have submitted premiums but did not, the policy lapses and the person is not entitled to reinstatement. If the person was cognitively impaired before the grace period expired, he/she is entitled to reinstatement. The effect of the changes proposed by HB 102 is to unjustifiably extend the reinstatement period to 7 months, instead of 5 months.

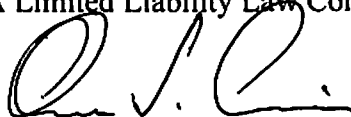
The need for an extended reinstatement period has not been explained or demonstrated by the bill’s sponsors. Indeed, the proposed reinstatement amendment in the bill conflicts and is inconsistent with current provisions of Chapter 431:10H-210 of Hawaii’s Insurance Code which allows reinstatement only if the person was cognitively impaired or functionally incapacitated before the grace period expired.

The problem with the unintended lapse notification process is not how lapse notifications are mailed or the timelines prescribed in the current Hawaii regulation which reflects the NAIC LTC Model Regulation #641. The problem is with the secondary addressees not fulfilling their expected role. Neither the insurance company or the State’s Insurance Division have regulatory leverage with secondary addressees and no one can force them to open up the mail, read it and take appropriate action.



For the reasons stated above, ACLI respectfully opposes HB 102, relating to Long Term Care Insurance, and requests that this Committee defer passage of this bill.

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

A handwritten signature in black ink, appearing to read "Oren T. Chikamoto". The signature is fluid and cursive, with a prominent initial "O" and a long horizontal stroke at the end.

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

**America's Health  
Insurance Plans**

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

202.778.3200  
www.ahip.org



January 30, 2015

Honorable Representative Angus L. K. McKelvey, Chair  
Committee on Consumer Protection and Commerce  
State House of Representatives  
Hawaii State Capitol, Conference Room 325  
415 South Beretania Street  
Honolulu, Hawaii 96813

RE: House Bill 102, Relating to Long-Term Care Insurance Lapse Notices

Via e mail: [capitolhawaii.gov/submittestimony.aspx](http://capitolhawaii.gov/submittestimony.aspx)

Dear Chairman McKelvey and Committee Members:

On behalf of America's Health Insurance Plans (AHIP), thank you for the opportunity to submit our concerns with HB 102, relating to long-term care insurance premium lapse notification and reinstatement. Our concerns with the legislation are two-fold and set forth below.

AHIP is the national trade association representing the health insurance industry. AHIP's members provide health and supplemental benefits to more than 200 million Americans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid.

HB 102 amends current law by requiring that notice of a lapse of coverage or cancellation be sent by certified mail or commercial delivery service to the policyholder. This requirement places an undue administrative burden on the company. Moreover, delivery of a lapse or cancellation notice (even by certified mail or by commercial delivery) does not guarantee that those who receive it will, in fact, act in a timely manner. We fully support current law, which is based upon the *NAIC Long-Term Care Insurance Model Regulation* (NAIC Model) which requires lapse and termination notices be given by first class United States mail.

The NAIC Model further provides that "no individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated at the address provided by the insured for purposes of receiving notice of lapse or termination.

HB 102 also extends the grace period for non-payment of premium from five months to seven months without premium payment. We are not aware of any state that has enacted a similar

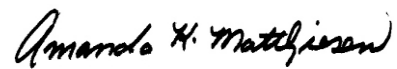
January 30, 2015

Page 2

requirement. We fully support current law, which is based upon the NAIC Model which requires reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder was cognitively impaired and the insured requests reinstatement within five (5) months after termination. If someone is not cognitively impaired and could have submitted premiums but did not, the policy lapses and the person is not entitled to reinstatement.

The NAIC Model reflects a broad consensus regarding the appropriate balance of insurer efforts to notify insurers regarding policy lapses and grace periods.. We respectfully submit that HB 102 would upset that balance. For the reasons stated above, AHIP opposes HB 102.

Sincerely,

A handwritten signature in black ink that reads "Amanda K. Matthiesen". The signature is written in a cursive style with a large initial 'A'.

Amanda K. Matthiesen

# MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

January 30, 2015

Honorable Angus L.K. McKelvey, Chair  
Honorable Justin H. Woodson, Vice Chair  
Committee on Consumer Protection and Commerce  
House of Representatives  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813



Re: House Bill No. 102, relating to Long-Term Care Insurance.

Dear Chair McKelvey, Vice-Chair Woodson and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following testimony on House Bill No. 102, relating to long-term care insurance, which is to be heard by your Committee on Consumer and consumer Protection on February 2, 2015.

House Bill No. 102 proposes to amend section 431:10H-209, Hawaii Revised Statutes, by (i) mandating the use of certified mail or commercial delivery service, instead of first class mail, when sending a notice of lapse or termination due to non-payment of dues; and (ii) providing certain reinstatement rights.

AFLAC has no objection to the reinstatement rights provided by House Bill No. 102, but has concerns that mandating the use of certified mail or commercial delivery will unnecessarily add to the cost of policy administration without providing the projected benefit of delivering actual notice to the insured or their designee.

As an initial matter, we note that Hawaii law currently follows the NAIC model rule in providing for notice of cancellation due to non-payment of premiums to be sent to the insured and any designee by first class mail, postage prepaid.

House Bill No. 102 would require that such notice be sent by certified mail or commercial delivery service instead of first class mail. As an insurer, AFLAC is concerned that the additional cost of sending such notice by certified mail or commercial delivery service may not result in achieving the stated goal of facilitating notice to the insured. Specifically, because certified mail will be held at the post office if the addressee is not present to receive the certified mail, requiring that notices be sent by certified mail actually may make it more difficult for the insureds to receive the notices because, if not present when delivery is made, the insured may need to physically go to the post office to obtain the item.

Honorable Angus L.K. McKelvey, Chair  
Honorable Justin H. Woodson, Vice Chair  
Committee on Consumer Protection and Commerce  
January 30, 2015  
Page 2

This fact was recognized in Cornhusker Casualty Insurance Company v. Kachman, 165 Wash.2d 404, 198 P.3d 505 (2008):

However, certified mail, once deposited with the post office, requires the signature of the recipient in order to be delivered. This adds to the duty placed upon the insured by now requiring the insured to be at home to receive the certified letter or to travel to the post office between nine in the morning and five in the evening on a weekday to receive the letter.

165 Wash.2d at 411, 198 P.3d at 508.

Thus, contrary to the intent of House Bill No. 102, requiring that certified mail be used to send notices may increase the burden on the insureds and their designees and make it less likely that notice actually will be received by the insureds and their designees.

For the foregoing reasons, we respectfully submit that changing the requirement for sending notices from regular mail to certified mail or commercial delivery service would unnecessarily increase the cost on insurers while potentially making it more burdensome for insureds and their designees to receive such notice.

If this Committee intends to move forward with House Bill No. 102, we respectfully request that Section 2 of the bill be amended to provide that [new] subsection (a) of section 431:10H-209, Hawaii Revised Statutes, is amended as follows:

**Lapse or termination for nonpayment of premium.** (a) No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated in section 431:10H-208 at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid and notice may not be given until thirty days after a premium is unpaid. Notice shall be deemed to have been given as of five days after the date of mailing. The policy or certificate shall not lapse or be terminated earlier than sixty days after the date of mailing of the notice.

Honorable Angus L.K. McKelvey, Chair  
Honorable Justin H. Woodson, Vice Chair  
Committee on Consumer Protection and Commerce  
January 30, 2015  
Page 3

If there is concern about whether an insurer in fact has mailed the notices to the insureds or their designees, an alternative may be to require insurers to retain proof of such mailing, such as an affidavit of mailing completed by the mail room employee who processes and mails the notice. The affidavit can be digitally imaged and attached to the policy file as proof of mailing. Such a requirement would address the issue of proof of mailing without adding the cost of certified mailing or commercial delivery to the insurer or the additional burden of receiving certified mail upon the insureds and their designees.

Thank you for your consideration of the foregoing.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP

A handwritten signature in black ink, appearing to read 'Peter J. Hamasaki', written over a faint horizontal line.

Peter J. Hamasaki