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TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2016

Monday, February 8, 2016  
1:45 p.m.

**TESTIMONY ON HOUSE BILL NO. 1707 - RELATING TO HEALTH INSURANCE.**

TO THE HONORABLE DELLA AU BELATTI, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

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

The purposes of this bill are to require the Insurance Commissioner and all health insurers, mutual benefit societies, and health maintenance organizations to make certain rate increase information available on their respective websites prior to increase, and to require that all health insurers, mutual benefit societies, and health maintenance organizations provide, without charge and upon request, claims data to group purchasers. The Department submits the following comments.

The Insurance Division conducts a robust rate review process under article 431:14G, Hawaii Revised Statutes (“HRS”), to determine whether health insurance rates are excessive, inadequate, or unfairly discriminatory, and reasonable in relation to the costs of the benefits provided. Information that is not confidential, a trade secret, or proprietary, pursuant to section 92F, HRS, and section 431:2-209(e)(3), HRS, is posted on the Division’s searchable website with links to the federal website.

Under the 2016 regulations issued pursuant to the Affordable Care Act (2010) (“ACA”), issuers seeking rate increases of ten percent or more for non-grandfathered coverage in the individual and small group markets are required to publicly disclose the

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proposed increases and the justification for them. These market rules seek to bring transparency to rate increases, and public comment is accepted by both state and federal regulators. The Department will continue to facilitate access by consumers and other interested parties, via the Internet, to filings available on the National Association of Insurance Commissioners (“NAIC”) System for Electronic Rate and Form Filing (“SERFF”).

Centers for Medicare and Medicaid Services promulgated federal regulations imposing uniform timelines for issuers to submit rate filings, and for states like Hawaii with effective rate review programs to provide public access to rate information, as determined by the federal regulators, about all ACA-compliant plans in the individual and small group markets. These federal regulations are specific and updated yearly. Pursuant to sections 431:10A-105.5, 432:1-107, and 432D-28, HRS, health insurers, mutual benefit societies, and health maintenance organizations must comply with applicable federal law. Sections 1, 2, and 3 of this bill would impose a different disclosure program. The proposed language could conflict with existing state disclosure statutes and federal disclosure and access regulations.

Sections 1, 2, and 3 of this bill would also require that insurers, mutual benefit societies, and health maintenance organizations annually provide without charge de-identified aggregated claims data to a group purchaser upon request. Such a requirement raises issues regarding the reliability of technology to safely ensure compliance with privacy laws, including the Health Insurance Portability and Accountability Act, a federal law designed to provide privacy standards to protect patients' medical records and other health information provided to health plans.

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



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February 8, 2016

The Honorable Della Au Belatti, Chair  
House Committee on Health  
The Honorable Richard Creagan, Vice Chair  
House Committee on Health

Re: HB 1707 – Relating to Health Insurance

Dear Chair Belatti, Vice Chair Creagan, and Committee Members:

The Hawaii Medical Association (HMSA) respectfully opposes HB 1707, which would require the insurance commissioner and health insurers, mutual benefit societies, and health maintenance organizations to make public disclosure of rate filings information prior to a rate increase and requires health insurers, mutual benefit societies, and health maintenance organizations to disclose aggregated claims data to group purchasers upon request.

HMSA fully appreciates the Committee's interest in ensuring transparency with regard to proposed rate increases and notes existing federal and state level requirements that provide oversight of this process. The Patient Protection and Affordable Care Act (ACA) sets required standards for review when an insurer requests a rate increase over a certain threshold. Additionally, issuers are currently required to include rate increase as part of required SERFF filings (System for Electronic Rate and Form Filing).

In addition, we also have the following concerns with HB 1707:

- The Department of Health and Human Services is currently reviewing new proposed rules that would require all proposed rate increase to be posted to the CMS website (linked to the Insurance Commissioner's website). The rule would require non-confidential portions of the filing (Rate Filing Justification) to be made public which would lead to more standardized information being posted without creating and administrative burden to the issuer or the state. This rule is expected to be out within the next month and we would therefore urge the Committee to consider deferring to the federal rules to prevent any conflict or create any duplicate processes.
- Will there be greater specificity with regard to the requirements needed by the Insurance Commissioner to justifying any rate increase? Plans will likely interpret the requirement for demonstrating rate increases differently and this could lead to confusion and delays in carrying out the intent of the measure.
- Data and formulas used to calculate rates are generally considered proprietary. General information showing costs compared to revenue (using percentages rather than dollars) with assurances that the rates are reviewed and approved prior to implementation could serve the same purpose.
- Requirements for disclosing small group claims data, even if deidentified, may conflict with HIPPA; in particular providing claims data to renewing groups, even at an aggregate level, could pose significant privacy concerns because the data could potentially be used to identify or at least narrow down high-cost claimants.



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- HB 1707 could lead to unnecessary and unintended confusion to consumers and plans. For example, we may still be awaiting approval from the Insurance Commissioner sixty days prior to the implementation of a rate increase; in this event we would be required to post the requested rate increase and then update at a later point when approved.

We would also note that under Hawaii's Prepaid Healthcare Act our state continues to benefit from some of the lowest health plan premiums in the country and health plans offered by HMSA continue to exceed the minimum requirements established by the ACA.

Thank your allowing us to testify in opposition to HB 1707.

Sincerely,

Jennifer Diesman  
Vice President, Government Relations.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
IN OPPOSITION TO HOUSE BILL HB 1707 RELATING TO HEALTH INSURANCE

February 8, 2016

Via e mail: [capitol.hawaii.gov/submittestimony.aspx](http://capitol.hawaii.gov/submittestimony.aspx)  
Honorable Representative Della Au Belatti, Chair  
Committee on Health  
State House of Representatives  
Hawaii State Capitol, Conference Room 329  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Au Belatti and Committee Members:

Thank you for the opportunity to testify in opposition to HB 1707, relating to Health Insurance.

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 sixteen (216) ACLI member companies currently do business in the State of Hawaii; and they represent 93% of the life insurance premiums and 88% of the annuity considerations in this State.

Section 1 of HB 1707 seeks to amend Part VI of Article 10A of Hawaii’s Insurance Code relating to Accident and Health or Sickness Insurance Contracts. Part VI of that Article sets forth “Miscellaneous Provisions” applicable Accident and Health or Sickness Insurance Contracts.

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

As drafted, section 1 of HB 1707 proposes to add 2 new sections to be included in Part VI of Article 10A.

The first section (beginning at line 4, page 1 of the bill) would require the Insurance Commissioner and any insurer issuing Accident and Health or Sickness Insurance Contracts to disclose to the public specified information to justify any rate increase for the insurer’s contracts including, for example, its “annual medical trend factor assumptions,” its “actual costs” for benefits and services by “benefit category to include hospital inpatient, hospital outpatient, physician services, prescription drugs and other ancillary services, laboratory, and radiology . . . .”.

The second section of the proposed new section (beginning at line 17, page 2 of the bill) would require the insurer to (among other matters) provide at the request of the group purchaser “claims data at no charge to a group purchaser” in accordance with applicable federal law.

ACLI submits that the intent and purpose of HB 1707 is to require only health insurers to provide the mandated information to the insured – not insurers issuing disability insurance.

Disability insurance provides cash payments designed to help individuals meet ongoing living expenses in the event they are unable to work due to illness or injury. Unlike health insurance, disability income insurance does not provide coverage for the insured’s health care or medical treatment; further, the cash payments are made directly to the insured – not to the insured’s health care providers or suppliers. Finally, the disability insurance policy typically does not dictate how the cash payments received by the insured are to be used by the insured.

In order to dispel any confusion that disability insurers are subject to the bills requirements ACLI suggests that section 1 of HB 1707 be amended as follows:

“§431:10A-\_\_\_\_ Rate increases; public disclosures. For sixty days prior to the implementation of any rate increase, the commissioner and ~~the an~~ insurer that provides health care coverage shall, at a minimum, make the following information readily available to the public on their respective internet websites, in plain language . . . .

. . .

§431:10A-\_\_\_\_ Claims data to group purchasers . (a) An insurer that provides health care coverage shall~~(a) An insurer shall annually~~ provide claims data at no charge to a group purchaser if the group purchaser requests the claims data; and (b) The insurer shall provide claims data in an aggregated form so that the claims data do not identify or do not provide a reasonable basis from which to identify an individual.

(eb) Nothing in this section shall be construed to prohibit ~~an the~~ insurer and a group purchaser from negotiating the release of additional information not described in this section.

(dc) All disclosures of data to the group purchaser made pursuant to this section shall be in compliance with applicable federal law.”

Again, thank you for the opportunity to testify in opposition to HB 1707, relating to Health Insurance.

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