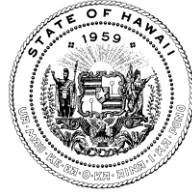




# SB 722

Measure Title:	RELATING TO LONG-TERM CARE INSURANCE.
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.
Companion:	
Package:	None
Current Referral:	HSH, CPN
Introducer(s):	BAKER, CHUN OAKLAND, ENGLISH, ESPERO, WAKAI, Riviere, Ruderman, Taniguchi, L. Thielen



DAVID Y. IGE  
GOVERNOR  
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TO THE SENATE COMMITTEE ON HUMAN SERVICES AND HOUSING

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2015

Thursday, February 5, 2015  
1:20 p.m.

**TESTIMONY ON SENATE BILL NO. 722 – RELATING TO LONG-TERM CARE INSURANCE.**

TO THE HONORABLE SUZANNE CHUN OAKLAND, 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.

**Senate Bill No. 722**  
**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.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
IN OPPOSITION TO SENATE BILL 722,  
RELATING TO LONG TERM CARE INSURANCE

February 5, 2015

Via e mail: [HSHtestimony@capitol.hawaii.gov](mailto:HSHtestimony@capitol.hawaii.gov)

Honorable Senator Suzanne Chun Oakland, Chair  
Committee on Human Services  
State Senate  
Hawaii State Capitol, Conference Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Chair Chun Oakland and Committee Members:

Thank you for the opportunity to testify in opposition to SB 722, 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 information included in this section regarding the “tragic turn of events faced by an elderly couple in Virginia”, we encourage the Committee to secure the facts of this case from the Virginia Bureau of Insurance which reviewed the complaint submitted by the son and the information provided by the insurance company under its complaint resolution process. We strongly believe that delivery of late payment and lapse notifications 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: Section 2:***

***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 SB 722 proposes to require the insurer to in effect provide the insured with an additional 60 days of free insurance.

*Item (b)*

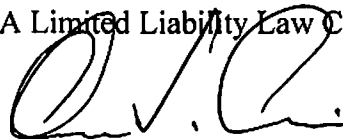
ACLI opposes the proposed changes. The intent of the previous language was to allow reinstatement only if the person or the person’s designee submitted proof of cognitive impairment before the grace period expired. If someone was not cognitively impaired and could have submitted premiums but did not, 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 SB 722 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 SB 722, relating to Long Term Care Insurance, and requests that this Committee defer passage of this bill.

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THE SENATE  
THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

COMMITTEE ON HUMAN SERVICES AND HOUSING

Testimony on S.B. 722  
Hearing: February 5, 2015

(RELATING TO LONG-TERM CARE INSURANCE)

Chair Chun Oakland, Vice Chair Green, 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 in support:

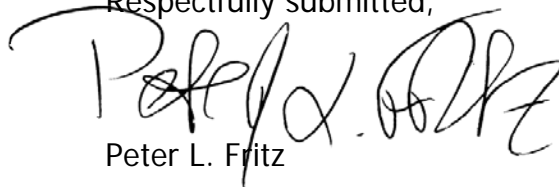
- A LTCI policy is not a form of insurance, when if cancelled, you can simply go to another carrier who may charge a slightly higher premium. If a LTCI policy is inadvertently cancelled after paying substantial premiums for years because of the failure to receive the correspondence from the company that 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 in Hawaii 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 which 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,

A handwritten signature in black ink, appearing to read "Peter L. Fritz". The signature is stylized with a large, sweeping initial "P" and a long, horizontal flourish extending to the right.

Peter L. Fritz

Michael Pirron  
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Richmond, VA 23220  
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January 29, 2015

**Statement in support of SB722 Long-term care insurance**

To whom it may concern:

Thank you for reviewing SB722. 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?



Requiring the use of certified mail or a commercial delivery service such as FedEx or UPS creates a record not only with the insurance company but with an outside third party who has no financial interest in the policy.

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.

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Also, Power of Attorney, and signing additionally for:  
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