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TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Monday, February 12, 2018
11:00 a.m.

TESTIMONY ON HOUSE BILL NO. 2346, H.D. 1, RELATING TO THIRD PARTY ADMINISTRATORS.

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 2346, H.D. 1, Relating to Third Party Administrators. My name is Gordon Ito, and I am the Insurance Commissioner (“Commissioner”) for the Department’s Insurance Division. The Department strongly supports this administration bill, which is a companion to S.B. 2773, and respectfully requests the language in the bill remain unchanged from the original draft as introduced, except for a minor revision in section 2 referenced below.

This bill provides for regulation of third party administrators (“TPAs”). TPAs collect charges or premiums from, or adjust or settle claims on, life insurance coverage or accident and health or sickness insurance coverage. This bill, as originally introduced, is based on Version 2 of the National Association of Insurance Commissioners’ (“NAIC”) Registration and Regulation of Third Party Administrators Guideline (“Guideline”). Hawaii is one of nine states that do not regulate TPAs. Currently, 19 states require a third party administrator license from the department of

insurance, 12 states require a certificate of registration, eight states require a certificate of authority, and two states require either a license or registration. Regulation of TPAs would ensure adequate consumer protection and promote transparency of TPAs operating in Hawaii.

Version 2 of the Guideline, which omits reference to workers' compensation, has been adopted by the majority of states that regulate TPAs. House Draft 1 expands the definition of "administrator" or "third party administrators" from the original draft to include TPAs performing work in annuity, stop-loss, or workers' compensation. While the Department prefers that this bill apply to TPAs working in life insurance and accident and health and sickness insurance, if workers' compensation is to remain in this measure, we would respectfully request that input be provided from the Department of Labor and Industrial Relations, which regulates workers' compensation in this State. Further, additional provisions from Version 1 of the Guideline specifically addressing stop-loss and workers' compensation insurance would need to be reviewed and considered for inclusion in this bill.

The Department believes that licensing TPAs will encourage disclosure of contracts between insurers and TPAs, both to potential insureds and the Commissioner; promote the financial responsibility of TPAs; regulate practices of TPAs in conformity with the general purposes of this bill; and govern the qualifications and procedures for the licensing of TPAs.

House Draft 1 is also amended from the original draft by amending confidentiality and privilege protections of documents, materials, and other information in the possession or control of the Commissioner that were furnished by the TPA, payor, insurance producer, or an employee or agent thereof. On page 9, line 20, to page 10, line 12, the Department would prefer confidentiality language remain unchanged from the original draft as introduced. A majority of states are using the term "confidential and privileged" in the manner and language that the bill, as originally drafted, proposed. Hawaii Revised Statutes title 24 also has existing language that holds confidential and protects from discovery, production, and disclosure information on file with the Commissioner, thereby providing adequate protections without further changing

language from the Guideline in this section. See Hawaii Revised Statutes section 431:2-209(e).

In addition, the Department respectfully requests the following amendment be made to section 2, page 7, lines 18 - 20 of the bill:

“§431- Surety bond required. Prior to the issuance [~~or renewal~~] of the administrator license, the administrator shall file [~~and maintain~~] with the commissioner, and shall maintain in force while so licensed, a surety bond in the form and penal sum acceptable to the commissioner,”

This proposed amended language to section 2 would provide ease and efficiency for the applicant’s initial and continuing licensure process and procedure, as well as consistency with similar statutory provisions applicable to public adjustors.

Finally, the Department notes the defective effective date in section 6 on page 24, line 10.

Thank you for the opportunity to testify in strong support of this measure, and we ask for your favorable consideration.

BEFORE THE
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair

HB 2346, HD1 RELATING TO THIRD PARTY ADMINISTRATORS

TESTIMONY OF
PAUL KAISER
Chief Operating Officer,
Hawaii-Western Management Group

February 12, 2018, 2:00 p.m.
State Capitol Conference Room 329

Chair Takumi, Vice Chair Ichiyama, and Committee Members:

My name is Paul Kaiser, currently the Chief Operating Officer of Hawaii-Western Management Group (HWMG). HWMG supports the intent of HB 2346, HD1, but respectfully requests the following amendments to HB 2346, HD1. These amendments seek to conform the language of the bill to the model act promulgated by the National Association of Insurance Commissioners (NAIC).

By way of background, HWMG is a small, kama'aina third-party administrator providing health insurance management services for a wide range of organizations including Hawaii Medical Assurance Association (HMAA), Charter Communications, Hawaii Electricians Local Union 1186, and labor unions. HWMG is proud to be 100% employee-owned through its Employee Stock Ownership Plan (ESOP).

The purpose of HB 2346, HD1 is to encourage disclosure of contracts between insurers and administrators, promote financial responsibility of administrators, and govern the qualifications and procedures for the licensing of administrators. HWMG fully support these purposes. HWMG also appreciates the amendments incorporated by the House Committee on Intrastate Commerce. As drafted, however, HB 2346, HD1 departs in several respects from the NAIC model bill, and these departures present challenges to administrators.

First, HB 2346, HD1 does not set forth ascertainable standards as to when an administrator is considered "solvent" or "insolvent." As drafted, HB 2346, HD1 requires prospective administrators to show annual audited financial statements for the two most recent years to prove solvency. The NAIC model act, however, sets forth a specific, qualitative standard to prove "solvency" by requiring financial statements showing the applicant had a positive net worth. HWMG respectfully submits the following

amendment to the licensing requirements in HB 2346, HD1 to conform it to the NAIC model act and clarify the financial measurement the third party administrator is being held accountable to:

§431- License required; application.

(a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner.

(b) An administrator shall apply to the commissioner on a form prescribed by the commissioner and shall include the following:

* * *

(5) Annual audited financial statements for the two most recent years that prove the ~~[applicant is solvent]~~ **applicant has a positive net worth** and information the commissioner may require to review the current financial condition of the applicant; and

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

Second, HB 2346, HD1 places licensing requirements on individuals who adjust claims for the administrator, even though the NAIC model act imposes no such requirement. Requiring licensure for such adjusters is unnecessary and will be administratively and financially burdensome. Therefore, HWMG respectfully recommends a deletion of this requirement as follows:

§431- License required; application.

(a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner.

(b) An administrator shall apply to the commissioner on a form prescribed by the commissioner and shall include the following:

* * *

~~[(d) If an administrator employs or has contracted individuals to adjust claims for the administrator, the employees or contracted individuals shall first be licensed as individual adjusters.]~~

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

However, if the Insurance Commissioner believes strongly that this licensing requirement is necessary, then HWMG simply asks this requirement be applied consistently across all entities who employ individuals to adjudicate claims, including,

but not limited to Insurers as identified in HRS Section 431:1-202. If deemed beneficial, this requirement should be imposed across the board.

The foregoing amendments would conform HB 2346, HD1 to the model act promulgated by the NAIC, thereby balancing the State's need for licensure but also reducing unnecessary burden to administrators. HWMG respectfully urges the passage of this measure as amended. HWMG is also actively attempting to schedule a meeting with the Insurance Commissioner to discuss the issues raised herein. Thank you for the opportunity to testify on this matter of critical importance.

LATE

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN OPPOSITION TO HOUSE BILL 2346, HD 1,
RELATING TO THIRD PARTY ADMINISTRATION

February 12, 2018

Honorable Representative Roy M. Takumi, Chair
Committee on Consumer Protection and Commerce
State House of Representatives
Hawaii State Capitol, Conference Room 329
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Takumi and Committee Members:

Thank you for the opportunity to testify in opposition to the provisions in HB 2346, HD 1, Relating to Third Party Administrators, which would amend the definition of an “administrator” or “third party administrator” to include a life insurer issuing and administering an annuity contract.

Our firm represents the American Council of Life Insurers (“ACLI”), a Washington, D.C., based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the policyholders 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 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States. Two hundred twenty-one (221) ACLI member companies currently do business in the State of Hawaii; and they represent 96% of the life insurance premiums and 100% of the annuity considerations in this State.

The apparent intent and purpose of HB 2346 is to regulate third party administrators and not life insurers issuing and administering life and disability insurance policies and annuity contracts.

Yet, as currently worded, HB 2346, HD 1, as amended by the prior committee, would by its terms now apply to life insurers issuing and administering annuities.

Also, the need, therefore, for annuities to be included in the definition of “administrator” or “third party administrator” has not been demonstrated by the proponent of the bill’s amendment, Hawaii-Western Management Group.

Accordingly, ACLI submits that HB 2346, HD 1, be amended to remove the reference to annuities from first sentence of the definition of “administrator” or “third party administrator” on page 2, line 2. Alternatively, the exclusions from the definition of an “administrator” in the first section of the proposed new Article in the numbered paragraphs (3) and (4) on page 2 of the bill, at lines 9 – 16, and paragraph (7) on page 3, at lines 1 – 5 , be amended to include “annuity contracts”.

Again, thank you for the opportunity to testify in opposition to HB 2346, HD 1, Relating to Third Party Administrators.

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