

# SB2774

Measure Title:	RELATING TO INSURANCE.
Report Title:	Insurance; Health Insurance; Corporate Governance; National Association of Insurance Commissioners; Corporate Governance Annual Disclosure Model Act; Trade Name; Assumed Name; Pre-Existing Disclosure; Provider Reimbursement; Reimbursement By Provider; Medical Service Provider; Pharmacist; Contraceptive; Advanced Practice Registered Nurses; Insurance Holding Company System Regulatory Act; Group-Wid
Description:	Amends various portions of the Hawaii Insurance Code under Hawaii Revised Statutes title 24 to update and improve existing Insurance Code provisions.
Companion:	<a href="#">HB2347</a>
Package:	Governor
Current Referral:	CPH
Introducer(s):	KOUCHI (Introduced by request of another party)

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Commerce, Consumer Protection, and Health

From: Cheryl Kakazu Park, Director

Date: February 2, 2018, 9:30 a.m.  
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 2774  
Relating to Insurance

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Thank you for the opportunity to submit testimony on this bill, which would add a new article relating to corporate governance annual disclosures and amend various portions of the Insurance Code. The Office of Information Practices (“OIP”) takes no position on the substance of this bill, but has **concerns** regarding a confidentiality provision in the proposed new article and recommends amendments that it has discussed with the Insurance Division.

On bill page 7, proposed section 431:\_\_\_-F, regarding confidentiality, mandates confidentiality for all Insurance Division records “obtained by, created by, or disclosed to the commissioner or any other person under this article . . .” and states that they “shall not be subject to chapter 92F[.]” OIP has both a technical concern with the phrasing of the exemption and a substantive concern with its breadth.

**OIP’s substantive concern is that this provision is overly broad in covering all records, including blank forms, created by the insurance division to administer this new article.** Generally speaking, OIP does not object to providing confidentiality for the information held by the Insurance

Division that originated in a company's annual disclosure as required by the proposed article. Although the UIPA's frustration exception does protect trade secrets and confidential commercial and financial information, OIP recognizes that companies may feel more comfortable with a specific confidentiality statute applicable to the information they provide in the proposed annual disclosures, and OIP therefore does not object to the confidentiality provision as applied to the annual disclosures and the information they contain. **Rather, OIP's concern is that the proposed confidentiality provision covers all records created by the insurance division in the course of administering the new article, regardless of whether they contain information originating in a company's annual disclosure.** The provision thus makes records confidential that would otherwise be public, such as blank forms the Insurance Division might create for companies to use in reporting under the new article, work schedules, purchase orders, or other administrative records the Insurance Division might create relating to its duties under the new article, or other records that may contain no information derived from any company's disclosure and that would not otherwise fall within an exception to disclosure under the UIPA.

Based on discussions with the Insurance Division, OIP understands that the Insurance Division's intent was not to extend the confidentiality to administrative records that do not contain information derived from a company's disclosure; however, as written, the confidentiality provision would do just that. **OIP therefore recommends an amendment to limit it to records containing information originating in an annual disclosure under the proposed article.** Such a limitation would still allow the Insurance Division to withhold records it creates that discuss and assess information from an annual disclosure, without creating a situation where blank annual disclosure forms must be withheld

by law. Specifically, **OIP recommends that language be inserted into the first sentence of the provision (at bill page 7, lines 5-6) be amended to read, “. . . that are obtained by, created by, or disclosed to the commissioner or any other person under this article, and that contain information originating in a corporate governance annual disclosure under this article, are recognized . . .”**

**OIP also has a technical concern with the phrasing of the UIPA exemption at bill page 7 lines 8-9, which states that the records in question “shall not be subject to chapter 92F[.]” Chapter 92F applies to all government records, and (together with OIP’s administrative rules) requires that even when an agency will deny access because a record is subject to a confidentiality statute or an exception to disclosure, the agency must still respond to the requester to let him or her know that the request is denied and the statutory basis. Thus, by exempting records from chapter 92F, the current language would mean that the Insurance Division had no duty to respond at all to record requests, even to inform the requester of a denial. **OIP understands that the Insurance Division will be recommending an amendment to this language to provide instead that the records “shall not be subject to disclosure pursuant to chapter 92F[.]” OIP supports that amendment.****

Thank you for the opportunity to testify.



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February 2, 2018

The Honorable Rosalyn H. Baker, Chair  
The Honorable Jill N. Tokuda, Vice Chair  
Senate Committee on Commerce, Consumer Protection, and Health

Re: SB 2774 – Relating to Insurance

Dear Chair Baker, Vice Chair Tokuda, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2774, which amends various portions of the Hawaii Insurance Code under Hawaii Revised Statutes title 24 to update and improve existing Insurance Code provisions. HMSA supports the intent of this Bill, but we would like to offer comments for consideration.

HMSA would ask the Committee to consider the following changes and clarifications:

- Section 3: Page 15 - to remove the section being proposed regarding tax implications for the failure to have minimum essential coverage, as it is no longer needed due to the repeal of the Individual mandate.
- Section 3: Page 16 - to add the underlined to the following section to clarify that plans can provide reimbursement to providers both par and non-par accordingly.  
**Reimbursement to providers.** (a) Coverage for services required by this part shall include reimbursement to health care providers who perform services required by this part or to the insured member, as appropriate.
- Section 5: Page 25 - to add the underlined to the following section to clarify that plans can provide reimbursement to providers both par and non-par accordingly.  
**Reimbursement to providers.** (a) Coverage for services required by this part shall include reimbursement to health care providers who perform services required by this article or to the insured member, as appropriate.

HMSA understands that Sections 23 and 24 are being amended to temporarily allow the Insurance Division to carry out stopgap measures, by order or rule, to implement NAIC's Network Adequacy Model Act. We appreciate the Commissioner's intent to streamline the process, but we prefer the public rule making process or legislation to make changes in this area. Also, while the intent is to make this temporary we do not see a sunset provision contained in the bill.

Lastly, we would like to amend Section 3 of the bill to add in stronger notification and language to address the recent changes by the U.S. Department of Labor regarding short term limited duration health plans.

SECTION \_\_. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated and to read as follows:

"§431:1- **Application, Scope and Duration of Coverage.**

- (a) This Act applies to health insurers that offer short-term, limited duration health insurance coverage to individuals in the



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State, and to short-term, limited duration health insurance coverage that is delivered or issued for delivery in the State, including coverage issued outside of this State that covers individuals in this State.

- (b) A short-term, limited duration health insurance coverage policy (even where issued outside of this state) may not cover any person residing in this State or be delivered or issued for delivery in the State unless the policy complies with the provisions of this section and other sections of this Act.
- (c) Any short-term, limited duration health insurance coverage policy that is delivered or issued for delivery in this State must have an expiration date in the contract that is less than 91 days and shall not be renewable either at the option of the issuer or the individual.
- (d) As used in this section, unless the context clearly requires otherwise:

“Group health insurance coverage” means health insurance coverage offered to groups of persons, with or without their dependents, under a policy issued to an employer, an employee organization, or both.

“Health insurance coverage” means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or HMO contract offered by a health insurer.

“Health insurer” means insurance company, insurance service, or insurance organization (including an HMO) that is required to be licensed to engage in the business of insurance in this State and is subject to the laws and regulations of insurance in this State.



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"Individual health insurance coverage" means health insurance coverage offered to individuals other than in connection with group health insurance coverage.

"Medical Care" means amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body.

"Short-term, limited duration health insurance coverage" means health insurance coverage provided to an individual under a contract offered by a licensed health insurer, regardless of the situs of the delivery of the policy or contract, that has a specified, limited duration and does not meet all of the requirements otherwise applicable to individual health insurance coverage.

#### SECTION   . **Disclosure Requirements**

- (a) A health insurer that offers short-term, limited duration health insurance coverage shall, in addition to all other documents required in this State, deliver an outline of coverage to an applicant for or an enrollee in short-term, limited duration coverage delivered or issued for delivery in this state.
- (b) Any short-term, limited duration health insurance coverage policy that is delivered or issued for delivery in this State must display prominently in any application, sales and marketing materials provided in connection with enrollment in such coverage, in at least 14 point type the following: "YOU MAY BE DENIED ENROLLMENT IN THIS POLICY BASED ON YOUR HEALTH STATUS."
- (c) Any short-term, limited duration health insurance coverage policy that is delivered or issued for delivery in this State must display prominently in the contract, in any application, sales and marketing materials provided in connection with



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enrollment in such coverage, and in the outline of coverage for such coverage, in at least 14 point type the following:

- i. "THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL COVERAGE") UNDER THE AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL COVERAGE, YOU WON'T QUALIFY FOR A SPECIAL ENROLLMENT PERIOD TO ENROLL IN INDIVIDUAL HEALTH INSURANCE WHEN THIS COVERAGE ENDS. THIS COVERAGE MAY HAVE SIGNIFICANT LIMITS ON BENEFITS. PLEASE READ CAREFULLY AND COMPARE WITH OTHER HEALTH INSURANCE COVERAGE AVAILABLE IN THIS STATE."
  - ii. "THIS POLICY DOES NOT PROVIDE ALL OF THE BENEFITS PROVIDED BY INDIVIDUAL HEALTH INSURANCE. YOUR BENEFITS UNDER THIS POLICY ARE LIMITED. PLEASE READ THE BENEFIT PROVISIONS AND EXCLUSIONS CAREFULLY TO DETERMINE WHETHER THIS POLICY IS APPROPRIATE FOR YOU."
  - iii. "YOUR DEDUCTIBLE AND COST-SHARING (INCLUDING COPAYMENTS AND COINSURANCE) ARE BASED ON YOUR CONTRACT PERIOD."
  - iv. "PRE-EXISTING CONDITIONS ARE NOT COVERED UNDER THIS POLICY."
- (d) Any identification card for short-term, limited duration health insurance coverage that is delivered or issued for delivery in this State must display prominently the following in bold type: "THIS IS TEMPORARY COVERAGE. THIS POLICY PROVIDES LIMITED BENEFITS."

#### SECTION \_\_. **Filing and Approval**

- (a) Coverage subject to this section may not be delivered or issued for delivery in the State, unless the policy form has been filed with and approved by [the appropriate state authority]. Such requirement applies to coverage issued outside of this state, but otherwise covering a person residing in this State.





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(b) The [appropriate state authority] shall approve short-term, limited duration health insurance coverage contracts if such contract provisions comply with this Act.

SECTION \_\_. **Regulations**

The Insurance Commissioner may promulgate any regulations necessary to carry out the provisions of this Act.

Thank you for allowing us to testify on SB 2774. Your consideration of our comments is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Pono Chong", with a stylized flourish at the end.

Pono Chong  
Vice-President, Government Relations

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
IN SUPPORT OF SB 2774, RELATING TO INSURANCE

February 2, 2018

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

Honorable Senator Rosalyn H. Baker, Chair  
Committee on Commerce, Consumer Protection and Health  
State Senate  
Hawaii State Capitol, Conference Room 229  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Baker and Committee Members:

Thank you for the opportunity to testify in support of SB 2774, relating to Insurance.

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.

ACLI supports legislation which conform Hawaii’s insurance laws to the National Association of Insurance Commissioners (NAIC) Model Acts.

SB 2774 in part adopts the corporate governance and annual disclosure requirements of the NAIC’s Corporate Governance Annual Disclosure Model Act (section 1 of the bill), and amends Hawaii’s Insurance Holding Company System Act by adopting the 2014 revisions to the NAIC’S Holding Company System Regulatory Model Act (sections 4, 14, and 15 of the bill) to provide for group-wide supervision of internationally active insurance groups. These revisions to Hawaii’s insurance laws will enable the State to maintain its accreditation with the NAIC.

Accordingly, ACLI supports the foregoing provisions set forth in the bill.

Again, thank you for the opportunity to testify in support of SB 2774, relating to Insurance.

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