

# SB2775

|                   |   |
|-------------------|---|
| Measure Title:    | RELATING TO THE HAWAII HEALTH INSURANCE GUARANTY ASSOCIATION.   |
| Report Title:     | Health insurance; Guaranty fund; Guaranty association; Hawaii health insurance guaranty association; Hawaii life and disability insurance guaranty association; Insolvency; Medical service organization; Mutual benefit society; Health maintenance organization; Health care provider; Covered claim; Chapter 431; Article 16 |
| Description:      | Creates and establishes an insurance guaranty fund for Hawaii domestic medical service organizations and health maintenance organizations.  |
| Companion:        | <a href="#">HB2348</a>  |
| Package:          | Governor  |
| Current Referral: | CPH, WAM  |
| Introducer(s):    | KOUCHI (Introduced by request of another party)   |



An Independent Licensee of the Blue Cross and Blue Shield Association

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 2775 – Relating to the Hawaii Health Insurance Guaranty Association

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2775, which creates and establishes an insurance guaranty fund for Hawaii domestic medical service organizations and health maintenance organizations.

We appreciate the intent of this Bill and the role that the Insurance Commissioner seeks to play in ensuring that health plans operating in the state remain in good standing.

In 2016, HMSA supported the passage of the NAIC Risk Management and Own Risk Solvency Act (ORSA). This model legislation set forth risk assessment reports and tools for the Commissioner to assess the financial condition of a health plan. Though the model act was passed in 2016, this year (2018) will be the first year the reporting and assessment can occur. Under ORSA, the issuer assesses the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios. Plans analyze all reasonably foreseeable and relevant material risks (i.e., underwriting, credit, market, operational, liquidity risks, etc.) that could have an impact on an insurer's ability to meet its policyholder obligations. We believe the ORSA will help to ensure that consumer's investment is secure.

Also the State's Mutual Benefit Society Act already includes deposit protections in HRS § 432:1-407(b), to protect our members in the event of insolvency. As an affiliate of the Blue Cross Blue Shield Association, HMSA is held to additional risk-based capital and reserve standards. Even with these stringent standards, 92% of our member's premiums go to paying for their medical services and only 8% to administrative costs, federal taxes, and reserve requirements – far exceeding the 80% federal ACA standard.

Thank you for allowing us to provide our comments on SB 2775. Your consideration is appreciated.

Sincerely,

Pono Chong  
Vice President, Government Relations



**Joann Waiters**  
*Regional Vice President, State Relations*

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

February 1, 2018

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:

On behalf of the American Council of Life Insurers (ACLI), my name is Joann Waiters and I would like to thank you for the opportunity to provide comments on Senate Bill 2775, relating to Hawaii Health Insurance Guaranty Association. This bill is being heard before your committee on February 2, 2018.

ACLI is 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 and twenty one (221) of our members are licensed to do business in Hawaii, writing 96 percent of the life premiums and 100 percent of the annuity considerations.

Over the past months, ACLI has actively participated in discussions among legislators, regulators and the broader life and health insurance industry in states and at the National Association of Insurance Commissioners (NAIC) regarding how to update and strengthen our state-based guaranty fund system. The recent Penn Treaty long-term care insurer's failure, among other events, caused us to recognize that changes to the current assessment formula for long-term care insurance insolvencies are needed to more fairly distribute the cost of long-term care insurance insolvencies among companies writing products involving life insurance, health insurance, annuities, and health maintenance organization (HMO).

We commend SB 2775 for bringing HMOs into the guaranty fund system, to benefit Hawaiian consumers using those plans. It is critical that these consumers receive guaranty fund coverage in case an HMO becomes insolvent. At the same time, ACLI Board policy supports the newly revised NAIC Life and Health Insurance Guaranty Association Model Act (Model), which was passed by the full NAIC late 2017.

The Model differs from SB 2775 in a number of significant ways. A few of the more critical points:

The Model brings HMOs into the state's *existing* life and health insurance guaranty association, rather than putting HMOs into a separate, standalone guaranty fund. Bringing ALL carriers who offer similar health benefit coverage results in a larger capacity of the guaranty fund, so that it can protect more consumers facing health coverage failures.

As well, bringing ALL carriers, whether traditional health, or HMO into ONE guaranty fund results in a more competitive and fair health insurance marketplace among those competitors. One guaranty association for life and all health benefit coverage, rather than two stand-alone Associations is also more efficient, financially, which again benefits the Hawaiian consumer.

The Model also broadens the burden for future long-term care insurance failures to include life insurers. ACLI obviously has particular interest in this Model provision.

Why would life insurers agree to take on this additional liability?

Of ACLI's nearly 300 members, only about 12 currently write long-term care insurance, yet the ACLI Board, last year, agreed to support Model revisions that would cause ALL life insurers to assume a great share of the burden of a failed carrier that writes long-term care insurance. ACLI members recognize how critically important the stability of the state guaranty association system and its protections are to consumer confidence in our industry. There simply isn't enough capacity in the system to absorb another significant long-term care insurer insolvency if only the writers of the product, or if only traditional health carriers and LTC insurers are being assessed to fund the long-term insurer insolvency.

Put another way, stabilizing the state-based guaranty association system for future long-term care insurer failures is an *industry* issue, not just a *product* one.

Thus, ACLI respectfully requests that SB 2775 be amended to follow the NAIC Model's amendments and thereby amend existing Hawaii law in Part II of Article 16 of the state's insurance code to conform to the Model.

We would be very pleased to submit a draft of those changes for consideration by this Committee.

Again, we thank you for this opportunity to comment upon SB 2775.

Sincerely,

A handwritten signature in cursive script that reads "Joann Waiters". The signature is written in black ink and is positioned below the word "Sincerely,".

Joann Waiters

# Arbor Strategies, LLC

**Chris Petersen**

703-847-3610

[cpetersen@arborstrategies.com](mailto:cpetersen@arborstrategies.com)

February 1, 2018

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 Chairwoman Baker:

I am writing on behalf of a Coalition<sup>1</sup> of health insurers that represents some of the country's largest major medical insurers and health maintenance organizations. This Coalition urges the Senate Commerce, Consumer Protection, and Health Committee ("Committee") to amend Senate Bill 2775 by replacing the language of the bill with "model language" that was recently adopted by the National Association of Insurance Commissioners ("NAIC"). The NAIC model language can be found in the redlined version of the Life and Health Insurance Guaranty Association Model Act (#520) ("Model Act"). The following is a link to the Model Act for the Committee's consideration<sup>2</sup>: [http://naic.org/documents/cmte\\_ex\\_plenary\\_171221\\_agenda.pdf](http://naic.org/documents/cmte_ex_plenary_171221_agenda.pdf)

We thank the Committee for recognizing that the guaranty fund system needs restructuring in order to ensure the continued stability of the guaranty fund and the health insurers that fund the health accounts of the guaranty fund. In order to accomplish this, we urge the Committee to adopt a solution based on Model Act. We believe the Committee should have two goals, both of which can be addressed by the Model Act language, when addressing the funding of future insolvencies:

1. To more fairly distribute the cost of long term care insolvencies among companies writing life, health, annuity and HMO products; and

---

<sup>1</sup> Aetna, Anthem, Cigna, HCSC and United, who together provide health insurance coverage to more than 227 million members world-wide, are the members of this Coalition.

<sup>2</sup> The NAIC Model Act can be found at the beginning of page three of the link.

## Arbor Strategies, LLC

February 1, 2018

Page | 2

2. To provide stability and fairness for the guaranty funds and for health insurance consumers.

To meet those two goals, the Committee should amend existing law to a) spread future long-term care insurance assessments across not only health writers but also life and annuity writers and b) include mutual benefit societies and HMOs in the assessment formula.

We believe the Committee should include mutual benefit associations and include HMOs as members of the guaranty association, as part of the existing health account. Under the Model Act approach assessments with respect to long-term care insurance policies issued by an insolvent member insurer would be apportioned between the life/annuity and health account.

The NAIC took this approach because it concluded that the existing assessment formula is not sustainable. There are clear differences in treatment between the life insurance industry and the major medical health insurance industry that must be considered when determining appropriate assessment bases for long-term care insolvencies. The Committee should broaden and re-align the assessment base for long-term care insurance related insolvencies among life and health insurers to reflect the evolution of the long-term care insurance market. Any realignment must acknowledge the rapid growth of life insurance and annuity hybrid products, as such products account for approximately 24% of the current long-term care insurance market and 85% of new long-term care insurance sales.

The major medical health insurance industry cannot on its own absorb the cost of future long-term care insolvencies. Long-term care insurance, while classified as “health” policies, are not written by major medical insurers in any material way. Our industry has no more than 3% of the long-term care writings, yet is being asked to shoulder almost 75% of the cost of these insolvencies. The major medical health insurance industry cannot and should not be expected to bear such a disproportionate cost of these insolvencies. Given how very little of today’s long-term care insurance is being written by major medical carriers, passing along this tremendous cost to health care consumers is unfair and is unworkable.

The major medical industry writes very little of today’s long-term care insurance yet is being asked to fund the lion’s share of these insolvencies. This is unworkable in today’s marketplace. The American Council of Life Insurers (“ACLI”) recognizes these inequities and working together at the NAIC we developed a solution that spreads the cost across the **entire** health and life insurance industry. The ACLI and this coalition of health insurers recognizes the societal benefits of a functioning and fair safety net for customers of long term care insurance. We believe that the entire life, annuity, and health insurance industry, including mutual benefit societies and HMOs, should participate in meeting this societal need.

Any new assessment formula must recognize, and make allowances for, how health insurance has evolved. There are new products and new competition. As presently drafted the Senate Bill 2775 favors certain types of health insurance coverage (mutual benefit societies and HMOs) over other types of health insurance

coverage. This creates an unjust and inequitable situation for consumers, who are denied the ability to purchase health insurance products in a robust and competitive market.

Excluding HMOs from the guaranty fund assessment system is an outdated concept. The health insurance market has changed dramatically over the decades since the NAIC originally excluded HMOs from the assessment base of guaranty assessment health accounts. The health insurance market and the HMO market have to a large extent converged, and it is critical that this convergence be considered in designing a properly functioning system to protect consumers in the event of insolvencies and to ensure the long-term stability not only of the guaranty fund system, but also of the health insurance marketplace.

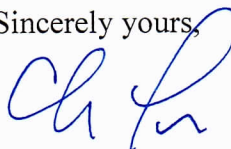
Major medical health insurers, mutual benefit societies and HMOs directly compete against each other and offer similar products. Yet despite this fact, only the major medical writers are required to participate in the social safety net for insurer insolvencies. Despite directly competing with major medical health insurance plans, mutual benefit societies and HMOs are not included in the assessments and therefore are not required to share in the consumer protection mechanism like all other health insurers.

If changes are not made, and as assessments increase, the marketplace will react and will move more and more to an HMO product offering as customers seek cost savings wherever they can find them. Assuming this occurs, it will lower the assessment pool and will result in increased instability and uncertainty for guaranty associations. Companies that compete in the same market, such as mutual benefit societies, HMOs and major medical health insurers, should both be required to shoulder the responsibility of funding the guaranty fund association system. Failing to rationalize the assessment base in this way almost guarantees that markets will destabilize and that consumers will be harmed.

We urge the Committee members to support the NAIC Model Act language as a better approach to ensure equity and stability in the guaranty fund. We also urge the Committee to amend Senate Bill 2775 to include the NAIC's Model Act language.

Please feel free to call me at 703-847-3610 if you have any questions regarding our comments. Thank you.

Sincerely yours,



Chris Petersen  
For Arbor Strategies, LLC