

SB2924

Measure Title: RELATING TO HEALTH INSURANCE.

Report Title: Health Insurance; Creditable Coverage; Individual Mandate; Qualified Taxpayers

Description: Establishes an individual mandate for certain qualified taxpayers to sign up and maintain health insurance throughout the year, or pay a penalty on their individual income tax return.

Companion: [HB2209](#)

Package: None

Current Referral: CPH, WAM

Introducer(s): BAKER, K. RHOADS, S. Chang, Dela Cruz, English, Espero, Galuteria, Harimoto, Ihara, Kidani, Nishihara, Taniguchi, Wakai

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To: The Honorable Rosalyn H. Baker
and Members of the Senate Committee on Commerce, Consumer Protection, and
Health

Date: Tuesday, February 6, 2018
Time: 9:00 A.M.
Place: Conference Room 229, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 2924, Relating to Health Insurance

The Department of Taxation (Department) offers the following comments on S.B. 2924 for the committee's consideration.

S.B. 2924 requires qualified taxpayers to obtain and maintain creditable coverage of health insurance and imposes a penalty on any qualified taxpayer that fails to maintain creditable coverage for more than 63 days. The penalty is to be assessed on taxpayers' individual income tax returns. The bill defines creditable coverage by referring to the various plans and sources of coverage that constitute creditable coverage. The bill is effective for tax years beginning after December 31, 2018.

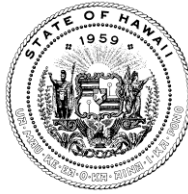
First, the Department has concerns with its ability to properly administer this penalty. The Department is not an expert on health insurance coverage and will be unable to make sophisticated determinations as to what qualifies as creditable coverage and what does not. The Department notes that the bill empowers the insurance commissioner to review the Department's decisions on the applicability of the penalty. This highlights the Department's concern, as it shows that the Department is not the agency best equipped to determine what qualifies as creditable coverage.

For the above reason, the Department recommends requiring another party to certify to taxpayers that they have creditable coverage. This certification would mimic the federal penalty, which requires insurers to issue a statement to those insured to document their coverage.

Second, the Department notes that the penalty itself is not defined in the bill. The Department recommends defining the calculation and amount of the penalty.

Finally, the Department notes that the definition and description of the taxpayers that are affected is unclear and potentially confusing. The Department recommends revisiting the definition of “qualified taxpayers” to clarify who the penalty does and does not apply to.

Thank you for the opportunity to provide comments.



DAVID Y. IGE
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TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Tuesday, February 6, 2018
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2924, RELATING TO HEALTH INSURANCE.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 2924, Relating to Health Insurance. My name is Gordon Ito, and I am the Insurance Commissioner (“Commissioner”) for the Department’s Insurance Division (“Division”). The Department appreciates the intent of this bill, which is a companion to H.B. 2209, and submits the following comments.

The purpose of this bill is to establish an individual mandate for certain qualified taxpayers to obtain and maintain health insurance throughout the year.

This bill seeks to stabilize our health insurance market and provides a valuable opportunity to discuss the important issue of maintaining enrollment numbers in health insurance plans.

At page 10, lines 5 to 7, the Commissioner is required to “establish a process to determine which health plans shall be considered affordable, for the purposes of ... section 235- [.]” Instead of establishing a process, assessing affordability should be based upon criteria similar to the individual mandate process implemented by Massachusetts.

At page 10, lines 9 to 11, the Commissioner is further required to post on the Division website “the list of health plans deemed to be creditable coverage[.]” If the intent of this language is that the Division maintain a comprehensive list of every insurance plan that would possibly qualify as “creditable coverage,” that task would present significant difficulties for Division staff. Many entities that would issue “creditable coverage,” such as all federal government entities, are outside the jurisdiction of the Division.

At page 11, lines 3 to 7, the Commissioner is empowered to “establish an appeals procedure for enforcement actions taken by the department of taxation under section 235- [.]” The Department submits that it may not be appropriate for the Commissioner to preside over appeals of administrative actions by the Department of Taxation (DOTAX), as the Commissioner would then be called upon to review DOTAX’s administrative decisions in matters that are within DOTAX’s scope of expertise.

Thank you for the opportunity to testify on this measure.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Enforce Individual Health Care Mandate Through Tax System

BILL NUMBER: SB 2924; HB 2209

INTRODUCED BY: SB by BAKER, K. RHOADS, S. Chang, Dela Cruz, English, Espero, Galuteria, Harimoto, Ihara, Kidani, Nishihara, Taniguchi, Wakai; HB by TAKUMI

EXECUTIVE SUMMARY: Establishes an individual mandate for certain qualified taxpayers to sign up and maintain health insurance throughout the year or pay a penalty on their individual income tax returns.

SYNOPSIS: Adds a new section to HRS chapter 235 to impose a penalty on any qualified taxpayer who is not covered with affordable, creditable health insurance coverage, or whose dependent is not covered, in any month.

A qualified taxpayer is at least 18 years old and is a resident of Hawaii or has become a resident of Hawaii within the last 63 days.

An individual would be exempt from the penalty if the individual is not required to file a tax return; if the individual or family has income under ___% of the federal poverty level in Hawaii; or if the individual is a nonresident. The amount of the penalty is unspecified.

Adds a new section to HRS chapter 431, Article 2, to give the Insurance Commissioner jurisdiction to determine creditable coverage and whether such coverage is affordable.

EFFECTIVE DATE: Taxable years beginning after December 31, 2017.

STAFF COMMENTS: The proposed measure is a reaction to the Tax Cuts and Jobs Act of 2017's repeal of the individual health care coverage mandate in the Patient Protection and Affordable Care Act of 2010, commonly known as "Obamacare." The proposal basically says, "Even if the national Obamacare law is repealed, we can and will still have it in Hawaii."

The federal individual mandate law, IRC section 5000A, allows for several exemptions, which the bill for the most part ignores. There are good reasons for several of the exemptions, and great care should be taken before deciding to toss them.

For example, what about an individual who is in prison for the whole year? The federal ACA exempts that individual, but this bill would not. If the State is taking care of that individual while in custody, why does that individual need to buy health insurance?

And what about an individual who died during the year? If Grandpa died in February, are we really going to make his widow pay to cover his health insurance for the full year, or penalize her for not having insurance for him if his health insurance terminates upon his death?

Re: SB 2924
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We are assuming, of course, that such exemptions will be recognized under Hawaii law. If the legislature's intent is not to carry over the exemptions, then the public should know that this adaptation of the Obamacare individual mandate is more onerous than that provided in the federal law.

Digested 2/2/2018



An Independent Licensee of the Blue Cross and Blue Shield Association

February 6, 2018

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

Re: SB 2924 – Relating to Health Insurance

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

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to provide comments on SB 2924, which establishes an individual mandate for certain qualified taxpayers to sign up and maintain health insurance throughout the year, or pay a penalty on their individual income tax return.

HMSA commends the Committee for taking a proactive stance in preserving aspects of the Affordable Care Act that were repealed as a result of recent action by the President and Congress. This Bill in particular seeks to make permanent the individual mandate at a state level in order to help maintain the high percentage of individuals who are insured in Hawaii.

We recognize that implementing this proposed mandate would involve significant time, resources, and coordination between agencies and with the private sector; from past experience, we believe the individual mandate requirements would require a coordinated investment in IT programs by both the Tax Department and the plans. We would also urge the Committee to consider how, or if the state will provide financial assistance, or subsidies, for individuals seeking to purchase coverage who demonstrate financial need.

The Committee may also want to consider reviewing not only the Massachusetts' individual mandate model, but also the Maryland's model, where they have adopted innovative alternatives to incentivize people to purchase and maintain coverage.

Thank you for allowing us to comment on SB 2924.

Sincerely,

Pono Chong
Vice-President, Government Relations



THE QUEEN'S HEALTH SYSTEMS

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

From: Paula Yoshioka, Vice President, Government Relations and External Affairs, The Queen's Health Systems

Date: February 5, 2018

Hrg: Senate Committee Commerce, Consumer Protection, and Health Hearing; Tuesday, February 6, 2018 at 9:00AM in Room 229

Re: **Support for SB 2924, Relating to Health Insurance**

My name is Paula Yoshioka, and I am a Vice President at The Queen's Health Systems (QHS). I would like to express my **support** for the intent of SB 2924, Relating to Health Insurance. This measure would keep in place the individual mandate established under the Affordable Care Act (ACA).

Across the nation about 20 million more adults have gained coverage through the ACA and the country has seen the uninsured rate drop by nearly 40 percent or more for every income group.¹ For Hawaii, number of uninsured individuals declined by 46 percent between 2013 and 2016.²

The mission of QHS to provide quality health care services to Native Hawaiians and the people of Hawaii regardless of their ability to pay. QHS is concerned that the dismantling of the ACA would result in thousands of our patients losing coverage. In 2016, QHS absorbed \$55.9 million in Medicaid reimbursement shortfalls that did not cover the full cost of care. As QHS continues to grow and meets the needs of our community, ensuring that our patients have access to health insurance is critical for our health care system.

We commend the legislature for introducing this measure that seeks to protect access to health care coverage for the people of Hawaii. Thank you for your time and attention to this important issue.

¹ United States Department of Health and Human Services, ASPE Issue Brief, "Affordable Care Act Has Led to Historic, Widespread Increase in Health Insurance Coverage",

<https://aspe.hhs.gov/sites/default/files/pdf/207946/ACAHistoricIncreaseCoverage.pdf>

² United States Census Bureau, "Health Insurance Coverage in the United States: 2016",

<https://www.census.gov/content/dam/Census/library/publications/2017/demo/p60-260.pdf>

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

Testimony of
Jonathan Ching
Government Relations Specialist

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

February 6, 2018
9:00 a.m.
Conference Room 229

Re: SB2924, Relating to Insurance

Chair Baker, Vice-Chair Tokuda, and committee members, thank you for this opportunity to provide testimony on SB2924, which establishes a state-level individual mandate.

Kaiser Permanente Hawai'i SUPPORTS SB2924

As the committee is aware, significant uncertainties exist in the individual health insurance market. Last year, the federal government eliminated funding of Cost Sharing Reduction (CSR) payments, which drove up premiums for many consumers seeking coverage in Hawai'i and across the nation. Additionally, Congress and President Trump signed into law tax legislation that reduces the federal individual mandate penalty to zero. Both the elimination of the CSR payments and the penalty associated with the individual mandate has resulted in further uncertainty about the future of the individual market in Hawai'i. For this reason, we support the state's efforts to protect and preserve the individual market through the establishment of a state-level individual mandate.

Kaiser Permanente Hawai'i recognizes that a state-level individual mandate is not a panacea to stabilized markets, but is one component that can be used to provide certainty and stability to insurers. Other tools such as an appropriately structured and funded reinsurance program is another step towards reducing individual premiums and promoting stability in the individual market.

Prior to the enactment of the Patient Protection and Affordable Care Act (ACA) in 2010, states attempting to manage guaranteed issue markets without individual coverage mandates experienced rising premiums and fewer options for consumers. With the enactment of the ACA and the federal individual mandate, many more of our residents obtained affordable health insurance. However, the reduction of the ACA's individual mandate penalty to zero have created a lack of certainty and stability, which are the biggest contributors to premium hikes.

Finally, we request the Committee urge the Office of the Attorney General to research whether mandating the changes sought under SB2924 may have the inadvertent effect of jeopardizing the ongoing existence of the State's Prepaid Health Care Act, given that any substantive changes to the Prepaid Health Care Act can cause the Act to sunset.

We look forward to having the opportunity to work with the Committee to further SB2924, which we see as the best alternative to an enforced federal mandate. Thank you for the opportunity to testify on this measure.

To: Hawaii State Senate Committee on Commerce, Consumer Protection, and Health
Hearing Date/Time: Tuesday, Feb. 6, 2018, 9:00 a.m.
Place: Hawaii State Capitol, Rm. 229
Re: Testimony of Planned Parenthood Votes Northwest and Hawaii in support of S.B. 2924

Dear Chair Baker and Members of the Committee,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in support of S.B. 2924, which seeks to codify in Hawaii state law the individual mandate currently required under the federal Affordable Care Act (“ACA”).

As the ACA is under constant attack by the current administration, it is up to states to ensure that we continue to have the health care that we need. Losing the critical protections established by the ACA would be devastating for the women, men, and families in Hawaii who depend on them.

The ACA established important protections for all Americans, and for women in particular. If the ACA were repealed, 55 million women across the country could be discriminated against simply because of their gender. An additional 560,000 people could be denied coverage based on their pre-existing conditions and over 2 million young people could lose their health insurance entirely.

S.B. 2924 would ensure that, in the event that the federal government repeals the ACA, insurance in Hawaii would continue to be affordable by preserving the “individual mandate.” Without the mandate, insurance will likely become less affordable — with average premiums expected to rise by 10 percent. What’s more, thousands of Hawaii people are estimated to lose coverage because of this move.

As state lawmakers, you can help to ensure that people in Hawaii continue to benefit from a strong health insurance system by passing S.B. 2924.

Thank you for this opportunity to testify in support of this important measure.

Sincerely,
Laurie Field
Hawaii Legislative Director

REQUEST FOR AMENDMENT OF SB 2924 / HB 2209

The Christian Science Committee on Publication for Hawaii respectfully requests that the Hawaii legislature include appropriate religious accommodation from proposed individual health insurance mandates as follows:

Amend SECTION 2 of the bill (Chapter 235, Hawaii Revised Statutes--Creditable coverage; qualified taxpayers), subsection (b) by adding a new subsection (3) as follows:

(3) Has sincerely held religious beliefs which are the basis of his refusal to obtain and maintain creditable coverage during the 12 months of the taxable year for which the return was filed.

Amend SECTION 2 of the bill (Chapter 235, Hawaii Revised Statutes--Creditable coverage; qualified taxpayers), subsection (c) by adding the following language:

(c) . . . An individual who declares a religious objection under subsection (b)(3) of this section shall not be assessed a penalty on the return unless the individual receives medical health care during the taxable year for which the return is filed, in which case the individual shall be liable for providing or arranging for full payment for the medical health care and be subject to assessment of a penalty on the return.

We do not oppose an individual health insurance mandate, or other efforts that further Hawaii's goal of enhancing public access to affordable health care. However, we do have concerns over the proposed individual mandates to the extent they don't leave room for those with sincere religious beliefs, such as Christian Scientists who prefer to use a religious nonmedical method of healing for their health care, to pursue their health care in a manner consistent with those beliefs.

Christian Science is a Bible-based religion and system of spiritual healing that was founded in the late 1800s. Although Christian Science includes no theological dictate opposed to medical treatment, most members routinely turn to prayer (and, in some cases, the services of religious nonmedical providers) rather than conventional medical treatment because they have found it to be effective in addressing illness, injury, and disease. Christian Science practitioners, Christian Science nurses, and Christian Science nursing facilities provide nonmedical services in accordance with the teachings of Christian Science to individuals who have chosen to rely on those teachings for their health needs. In some instances, the services of religious nonmedical providers are covered by public and private health insurance, including Medicare, TRICARE, select Federal Employee Health Benefit Plans and employer-sponsored plans. Currently, there are no individual health plans available through Hawaii's Exchange that would cover the religious nonmedical health care services that this segment of the population actually uses.

The proposed amendment language is modeled on a religious accommodation which was successfully implemented in Massachusetts, the first (and only) state to pass an individual health insurance mandate. The Massachusetts language upon which this amendment is based is found at Mass. Gen. Laws Ann. ch. 111M, § 3, and has been in effect since its enactment in 2005. This accommodation was designed to be broad enough to prevent giving preferences to particular religious beliefs, yet narrow enough to prevent abuse. According to a Massachusetts annual report on its individual

REQUEST FOR AMENDMENT OF SB 2924 / HB 2209 (con't)

mandate, about 0.1% of the population claims the religious objection each year, reflecting minimal impact on the risk pool while protecting minority rights and religious freedom.

The proposed amended religious accommodation is also very similar to a bipartisan proposal currently before Congress to amend the ACA's religious conscience language. This federal legislation seeks to right-size the ACA's religious conscience exemption, which is too narrow and currently applies only to those faiths who object to insurance of any kind, as do the Amish and Mennonites. Hawaii's congressional delegation has demonstrated broad support for this legislative solution, with Senator Brian Schatz leading the Senate bill in the past two Congresses and Senator Hirono co-sponsoring. Congresswoman Hanabusa and former Congressman Takai have cosponsored the House bill.

Improving our health care system through health insurance requirements should not come at the expense of fundamental beliefs and practices that might be held by minority groups. While solutions to Hawaii's health crisis are greatly needed, it is important that such solutions promote, not limit, health options for its citizens. Requiring individuals to purchase health insurance whose cultural and belief systems don't fit within a traditional approach to health care can serve to unfairly diminish the resources of such groups away from the forms of care that best meet their needs. The proposed amendments are necessary to prevent this from happening.

Notably, Hawaii's Prepaid Health Care Act (Chapter 235, Hawaii Revised Statutes), which has required employers to provide certain baseline health benefits through a prepaid group health care plan to employees since its enactment in 1974, includes a religious accommodation for "any individual who pursuant to the teachings, faith, or belief of any group, depends for healing upon prayer or other spiritual means." This provision has been in place since the inception of the Act in 1974, and has not served to frustrate the overriding purposes of the Act. The Hawaii Legislature's historical observance of these concerns lends support and legitimacy to the importance of addressing this request as it relates to the proposals of SB 2924 and HB 2209.

Thank you for your attention to this important issue!

For further information, please contact:

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SB-2924

Submitted on: 2/5/2018 10:45:55 AM

Testimony for CPH on 2/6/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lucia You		Oppose	No

Comments: