



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

335 MERCHANT STREET, ROOM 310
P.O. BOX 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Finance
Wednesday, March 27, 2019
2:30 p.m.
State Capitol, Conference Room 308**

**On the following measure:
S.B. 1210, S.D. 1, H.D. 1, RELATING TO INSURANCE**

Chair Luke and Members of the Committee:

My name is Colin Hayashida, and I am the Insurance Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department supports this administration bill.

This bill is necessary for the State's continued accreditation with the National Association of Insurance Commissioners (NAIC) and will update and improve Hawaii Revised Statutes title 24 (Insurance Code). Specifically, this measure will do the following:

Section 1 of this bill adopts the NAIC's Corporate Governance Annual Disclosure Model Act to maintain the State's accreditation with the NAIC by adding a new article to chapter 431. This bill provides more information on an annual basis to regulators regarding insurers' corporate governance practices. Currently, regulators obtain a significant amount of information on insurers' corporate governance practices during full-scope examinations, which typically occur once every three to five years. However,

information on governance practices, including changes that can substantially impact current and prospective solvency, is not widely available to regulators in the period between onsite examinations. Through the adoption of standards in this area, regulators can ensure that sufficient information on governance practices is available to assess insurer solvency on an annual basis.

Sections 2 and 3 of this bill adopt 2014 revisions to the NAIC's Insurance Holding Company System Regulatory Act to maintain the State's accreditation with the NAIC. This bill provides clear legal authority to a designated state to act as the group-wide supervisor for an internationally active insurance group.

The Department supports this administration bill and requests that it pass out of this committee with the delayed effective date of January 1, 2020. Thank you for the opportunity to testify.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN SUPPORT OF SB 1210, SD 1, HD 1, IN PART, RELATING TO INSURANCE

March 27, 2019

Honorable Representative Sylvia Luke, Chair
Committee on Finance
State House of Representatives
Hawaii State Capitol, Room 308
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Luke and Committee Members:

Thank you for the opportunity to testify in support of SB 1210, SD 1, HD 1, in part, relating to Insurance.

Our firm represents the American Council of Life Insurers (“ACLI”). ACLI advocates on behalf of 280 member companies dedicated to providing products and services that promote consumers’ financial and retirement security. 90 million American families depend on our members for life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, dental and vision and other supplemental benefits. ACLI represents member companies in state, federal and international forums for public policy that supports the industry marketplace and the families that rely on life insurers’ products for peace of mind. ACLI members represent 95 percent of industry assets in the United States. Two hundred twenty-one (221) ACLI member companies currently do business in the State of Hawaii; and they represent 95% of the life insurance premiums and 99% 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 1210, SD 1, HD 1, amends Hawaii’s Insurance Code by adopting the NAIC’s Corporate Governance Annual Disclosure Model Act. This bill provides more information annually to the Insurance Commissioner regarding an insurer’s corporate governance practices, including changes that can impact an insurer’s current and prospective solvency. These revisions are intended to conform Hawaii’s insurance laws to enable the State to maintain its accreditation with the NAIC.

The Model Act recognizes that all documents, materials and other information, including the corporate governance annual disclosure, which an issuer provides to the Insurance Division under the Act as being proprietary and contain trade secrets. As such, under the Model Act all such documents, materials and information “shall be confidential by law and privileged and shall not be disclosed under chapter 92F (the State’s Uniform Information Practices Act) and shall not be subject to subpoena or discoverable or admissible in evidence in any private action.” These provisions are intended to protect the confidentiality of all documents, material and information disclosed to the Insurance Division in its corporate governance annual disclosure particularly because there are references to the sharing, disclosure and receipt of proprietary and trade secret

information with “other governmental” and “international financial regulatory agencies” and “third party consultants” in paragraphs (c)(1) and (c)(2) of Section F of the proposed new Article to be added to Chapter 431 (at page 8, at lines 17 to 22, all of page 9, and page 10 at lines 1 to5).

ACLI supports these amendments.

Sections 4 and 35 of the bill amends Article 10A of Hawaii’s Insurance Code relating to Accident and Health or Sickness Insurance Contracts.

HRS §431-10A-102.5 currently excludes from the definition of “accident insurance”, “health insurance” or “sickness insurance” limited benefit health insurance contracts that pays benefits directly to the insured . . . and in which the amount of the benefit paid is not based upon the actual costs incurred by the insured.” This section, therefore, expressly excludes disability income insurance, long term care and other limited benefit health insurance contracts as being “accident insurance”, “health insurance” or “sickness insurance.”

Unfortunately, §431-10A-102.5 currently is in Part I of Article 10A of the Insurance Code. Part I of Article 10A only governs Individual Accident and Health or Sickness Insurance Policies. I’ve attached the 1st page of Part I of Article 10A, which is the receptacle of §431-10A-102.5, for your information. Provisions governing group and blanket disability insurance is set forth in Part II of Article 10A. I’ve attached the 1st page of Part II of Article 10A for your information.

Thus, because §431-10A-102.5 is currently in Part I of Article 10A of the Insurance Code and that part only governs Individual Accident and Health or Sickness Insurance Policies, Group disability income insurance is considered “accident insurance”, “health insurance” or “sickness insurance” under current law.

Sections 4 and 35 of SB 1210, SD 1, HD 1, amends Hawaii’s Insurance Code by moving the definition of Limited Benefit Health Insurance, currently in Part 1 (§431-10A-102.5), to Part VI of Article 10A of the Code (Miscellaneous Provisions). I’ve attached the 1st page of Part VI of Article 10A for your information.

ACLI supports this amendment and concurs with the bill’s sponsor that the relocation of this provision will finally clarify that the definition of Limited Benefit Health Insurance applies to both individual and group disability income insurance policies – and not merely individual policies as dictated by its current location in the Insurance Code.

ACLI is in strong support of Section 8 of the bill which deletes the optional language in the NAIC’s Standard Valuation Model Law that requires the Insurance Commissioner to adopt a rule whenever a change in the valuation manual is adopted by the NAIC.

Again, thank you for the opportunity to testify in support of SB 1210, SD 1, HD 1, in part, relating to Insurance.

LAW OFFICES OF
OREN T. CHIKAMOTO
A Limited Liability Law Company

Oren T. Chikamoto
1001 Bishop Street, Suite 1750
Honolulu, Hawaii 96813
Telephone: (808) 531-1500
E mail: otc@chikamotolaw.com

Case Notes

As chapter 432D does not cover the field of managed care regulation and because §§432D-2, 432E-1, and this article can be read together and there is no explicit language or policy reason not to give each statute effect, chapter 432D does not repeal chapter 432E by implication. 126 H. 326, 271 P.3d 621 (2012).

Properly licensed HMOs, like plaintiff, were authorized pursuant to §432D-1 to "provide or arrange", at their option, for the closed panel health care services required under the managed care plan program; accident and health insurers were authorized under §431:10A-205(b) to arrange for medical services for members using a defined network of providers, i.e., particular "hospitals or persons"; thus, this article and chapter 432D authorized both accident and health insurers and HMOs as risk-bearing entities, to provide the closed panel product required by the managed care plan contracts. 126 H. 326, 271 P.3d 621 (2012).

PART I. INDIVIDUAL ACCIDENT AND HEALTH OR SICKNESS POLICIES

§431:10A-102.5 Limited benefit health insurance. (a) Except as provided in subsection (b) or elsewhere in this article, when used in this article, the term: "accident insurance", "health insurance", or "sickness insurance" shall not include an accident-only, specified disease, hospital indemnity, long-term care disability, dental, vision, medicare supplement, or other limited benefit health insurance contract that pays benefits directly to the insured or the insured's assigns and in which the amount of the benefit paid is not based upon the actual costs incurred by the insured.

(b) When used in sections 431:10A-104, 431:10A-105, 431:10A-106, 431:10A-107, 431:10A-108, 431:10A-109, 431:10A-110, 431:10A-111, 431:10A-112, 431:10A-113, 431:10A-114, 431:10A-117, 431:10A-118, 431:10A-601, 431:10A-602, 431:10A-603, and 431:10A-604, except as otherwise provided, the terms "accident insurance", "accident and health or sickness insurance", "health insurance", or "sickness insurance" shall include an accident-only, specified disease, hospital indemnity, long-term care, disability, dental, vision, medicare supplement, or other limited benefit health insurance contract regardless of the manner in which benefits are paid; provided that if any of the requirements set forth in the foregoing sections as applied to long-term care insurance conflict with the provisions of article 10H, the provisions of article 10H shall govern and control. [L 2010, c 115, §1; am L 2011, c 12, §1; am L 2014, c 186, §7]

§431:10A-105 Required provisions. Except as provided in section 431:10A-107, each policy of accident and health or sickness insurance delivered or issued for delivery to any person in this State shall contain the provisions set forth below. These provisions shall be in the words in which they appear below; provided that the insurer may substitute corresponding provisions of different wording certified by an officer of the insurer to be in substantial conformance with the wording below that are in each instance not less favorable in any respect to the insured or the beneficiary. The provisions shall be preceded individually by the specified caption or by appropriate individual or group captions or sub-captions that are substantially similar to the specified captions. The provisions required by this section are as follows:

- (1) "Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless the approval is endorsed on or attached to this policy. No agent has authority to change this policy or to waive any of its provisions";
- (2) (A) "Time Limit on Certain Defenses:

(c) Where the ability to make restitution can be demonstrated, any person convicted under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the act or acts for which the person was convicted.

(d) A person, if acting without malice, shall not be subject to civil liability for providing information, including filing a report, furnishing oral or written evidence, providing documents, or giving testimony concerning suspected, anticipated, or completed public or private insurance fraud to a court, the commissioner, the insurance fraud investigations unit, the National Association of Insurance Commissioners, any federal, state, or county law enforcement or regulatory agency, or another insurer if the information is provided only for the purpose of preventing, investigating, or prosecuting insurance fraud, except if the person commits perjury.

(e) This section shall not supersede any other law relating to theft, fraud, or deception. Insurance fraud may be prosecuted under this section, or any other applicable section, and may be enjoined by a court of competent jurisdiction.

(f) An insurer shall have a civil cause of action to recover payments or benefits from any person who has intentionally obtained payments or benefits in violation of this section; provided that no recovery shall be allowed if the person has made restitution under subsection (c). [L 2003, c 125, §2]

PART II. GROUP AND BLANKET DISABILITY INSURANCE

Attorney General Opinions

Section 431:10A-601 applied to all parts of article 10A if the category of policy under consideration included family coverage, as defined in §431:10A-103. Att. Gen. Op. 97-10.

§431:10A-201 Definitions. For the purposes of this article:

- (1) (A) Blanket disability insurance policy means any policy or contract of accident and health or sickness insurance which conforms with the description and complies with one of the following requirements:
- (i) A policy issued to any common carrier of passengers, which carrier shall be deemed the policyholder, covering a group defined as all persons who may become such passengers, and whereby such passengers shall be insured against loss or damage resulting from death or bodily injury either while, or as a result of, being such passengers.
 - (ii) A policy issued in the name of any volunteer fire department, first aid or ambulance squad, or volunteer police organization, which shall be deemed the policyholder, and covering all the members of any such organization against loss from accidents resulting from hazards incidental to duties in connection with such organizations.
 - (iii) A policy issued in the name of any established organization whether incorporated or not, having community recognition and operated for the welfare of the community and its members and not for profit, which shall be deemed the policyholder, and covering all volunteer workers who serve without pecuniary compensation and the members of the organization, against loss from accidents occurring while engaged in the actual performance of duties on behalf of such organization or in the activities thereof.

- (3) The calendar year experience applicable to such insurance offered under this part. Item (3) shall include:
- (A) Premiums earned.
 - (B) Claims paid during the calendar year.
 - (C) The amount of claims reserve established.
 - (D) Administrative expenses.
 - (E) Commissions.
 - (F) Promotional expenses.
 - (G) Taxes.
 - (H) Contingency reserve.
 - (I) Other expenses, and
 - (J) Profit and loss for the year.

The commissioner shall require the association to provide any and all information concerning the operations of the association deemed relevant by the commissioner for inclusion in the report. [L 1987, c 347, pt of §2]

§431:10A-409 Articles of association; agent, membership list; deception.

(a) Any association formed in accordance with this part shall file the following with the commissioner:

- (1) The articles of association;
- (2) All amendments and supplements to the articles of association;
- (3) A designation in writing of a resident of this State as agent for the service of process; and
- (4) A list of insurers who are members of the association and all supplements thereto.

(b) The name of any association or any advertising or promotional material used in connection with extended health insurance to be sold, offered or issued pursuant to this section shall not be such as to mislead or deceive the public. [L 1987, c 347, pt of §2]

§431:10A-410 Violation of other laws. No act done, action taken, or agreement made pursuant to the authority conferred by this part shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this State which does not specifically refer to insurance. [L 1987, c 347, pt of §2]

PART V. LONG-TERM CARE INSURANCE—REPEALED

§§431:10A-521 to 531 REPEALED. L 1999, c 93, §8.

Cross References

For present provisions, see article 10H, this chapter.

[PART VI. MISCELLANEOUS PROVISIONS]

[§431:10A-601] Reciprocal beneficiary family coverage defined; policyholder and employer responsibility for costs; availability. (a) Any other law to the contrary notwithstanding, reciprocal beneficiary family coverage, as defined in subsection (b), shall be made available to reciprocal beneficiaries, as defined in chapter 572C, but only to the extent that family coverage, as defined in section 431:10A-103, is currently available to individuals who are not reciprocal beneficiaries.

(b) As used in this section, "reciprocal beneficiary family coverage" means a policy that insures, originally or upon subsequent amendment, a reciprocal beneficiary who shall be deemed the policyholder, the other party to the policyholder's reciprocal beneficiary relationship registered pursuant to chapter 572C, and dependent children or any child of any other person dependent upon either reciprocal beneficiary.

(c) If a reciprocal beneficiary policyholder incurs additional costs or premiums, if any, by electing reciprocal beneficiary family coverage under this section, the employer may pay additional costs or premiums. [L 1997, c 383, §4; am L 2004, c 122, §37]

Attorney General Opinions

Section applied only to insurers, and not mutual benefit societies or health maintenance organizations. Att. Gen. Op. 97-5.

As provided by subsection (c), an employer does not violate the reciprocal beneficiaries act [L 1997, c 383] if it chooses not to pay any additional cost or premium incurred by the employee in electing reciprocal beneficiary family coverage. Att. Gen. Op. 97-10.

Section applied to all parts of article 10A if the category of policy under consideration included family coverage, as defined in §431:10A-103. Att. Gen. Op. 97-10.

The division will be responsible for enforcement of health insurance provisions of the reciprocal beneficiaries act [L 1997, c 383]; those provisions can only be enforced against insurers, not employers. Att. Gen. Op. 97-10.

The employer is not required to pay the additional costs incurred by an employee's election for reciprocal beneficiary coverage. The focus is on the insurance contract and the policyholder and recog-

nizes that the reciprocal beneficiary, as policyholder, is the one who incurs the cost. Att. Gen. Op. 97-10.

The placement of this section in article 10A makes clear that the legislative intent was to mandate benefits that must be made available by insurers that write contracts of insurance providing family coverage; moreover, the statute specifies that the coverage be made available to reciprocal beneficiaries, not to employers. Att. Gen. Op. 97-10.

There is nothing in the reciprocal beneficiaries act [L 1997, c 383] that would prevent an insurer from making reciprocal beneficiary family coverage available in a policy separate from the policy it uses to make regular family coverage available. Att. Gen. Op. 97-10.

To the extent that the reciprocal beneficiaries act [L 1997, c 383] does impose obligations on insurers, it may provide a basis for affected persons to seek relief by, for example, seeking declaratory relief under chapter 632. Att. Gen. Op. 97-10.

§431:10A-602 Federally funded programs; exemption. Requirements relating to mandated coverages shall not be applicable to any insurer offering accident and health or sickness insurance under a federally funded program under the Social Security Act, as amended; provided that this exemption shall apply only to that part of the insurer's business under the federally funded program. [L 1999, c 159, §1; am L 2003, c 212, §81]

§431:10A-603 Self-employed persons, exemption. The requirements of this article related to mandated coverages for persons insured under accident and sickness policies shall not apply to accident and sickness policies for self-employed persons in this State; provided that this exemption shall apply only to those portions of the accident and sickness policies that cover self-employed persons in this State. [L 2004, c 122, §1]

ARTICLE 10B CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE

§431:10B-101 Purpose. The purpose of this article is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this article is intended to prohibit or discourage reasonable competition. The provisions of this article shall be liberally construed. [L 1987, c 347, pt of §2]



March 26, 2019

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
House Committee on Finance

Re: SB 1210, SD1, HD1 – Relating to Insurance

Dear Chair Luke, Vice Chair Cullen, and Committee Members:

Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify in support of SB 1210, SD1, HD1, which updates the insurance code, to meet the National Association of Insurance Commissioners (NAIC) accreditation requirements, by adopting the NAIC Corporate governance Annual Disclosure Model Act and by adopting revisions to the NAIC Insurance Holding Company System Regulatory Act.

Thank you for allowing us to testify in support of SB 1210, SD1, HD1.

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
Jonathan Ching
Government Relations Specialist

Before:
House Committee on Finance
The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair

March 27, 2019
2:30 p.m.
Conference Room 308

Re: SB 1210, SD1, HD1, Relating to Insurance

Chair Luke, Vice Chair Cullen, and committee members, thank you for this opportunity to provide testimony on SB 1210, SD1, HD1, which meets National Association of Insurance Commissioners (NAIC) accreditation requirements by adopting the NAIC Corporate Governance Annual Disclosure Model Act and adopting revisions to the NAIC Insurance Holding Company System Regulatory Act.

Kaiser Permanente SUPPORTS SB 1210, SD1, HD1.

We appreciate the intent of SB 1210, SD1 HD1 given that the state must adopt the Accreditation Sections of the NAIC Corporate Governance Annual Disclosure Model Act and the NAIC Insurance Holding Company System Regulatory Act to ensure Hawaii meets NAIC accreditation standards by January 1, 2020. Passage of this bill is just the first step toward accreditation because the Insurance Commissioner must also adopt relevant rules to meet accreditation standards.

Thank you for the opportunity to testify on SB 1210, SD1, HD1.