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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Commerce and Consumer Protection
Friday, February 12, 2021
9:30 a.m.
Via Videoconference**

**On the following measure:
S.B. 836, RELATING TO LONG-TERM CARE INSURANCE**

WRITTEN TESTIMONY ONLY

Chair Baker and Members of the Committee:

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

The purpose of this bill is to require the 30-day lapse or termination notices for long-term care policies to be sent by certified mail, priority mail, or commercial delivery service, or other method of delivery requiring proof of delivery.

Hawaii Revised Statutes (HRS) chapter 431, article 10H, currently has several protections in place to ensure policyholders are notified of policy terminations or lapses, with sufficient time for policyholders to address unintentional lapses. HRS section 431:10H-208 sets forth secondary designee requirements for notices to protect against unintentional lapses, while HRS section 431:10H-209 ultimately provides for a 60-day period before policies may lapse or be terminated for nonpayment of premiums.

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Further, HRS section 431:10H-210 allows for reinstatement of lapsed policies up to five months from the date of lapse under certain conditions. Mandating a method that requires proof of delivery does not guarantee the insured or designee received the mailing, as another individual may sign for the mailing receipt. Further, a mandated proof of delivery may increase costs and prolong instability of premiums for long-term care products.

Thank you for the opportunity to testify on this bill.



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**The State Legislature
The Senate
Committee on Commerce and Consumer Protection
Friday, February 12, 2021
9:30 a.m.**

TO: The Honorable Rosalyn Baker, Chair

RE: S.B. 836 Relating to Long Term Care Insurance

Aloha Chair Baker and Members of the Committee:

My name is Keali'i Lopez and I am the State Director for AARP Hawai'i. AARP is a membership organization of people age fifty and over, with nearly 145,000 members in Hawai'i.

AARP Hawai'i supports S.B. 836 which requires the thirty-day lapse or termination notices for long-term care policies to be sent by certified mail, priority mail, or commercial delivery service, or other method of delivery requiring proof of delivery.

Private long-term care insurance plays a role in financing long term care services and support. People purchase these insurance products for their own peace of mind so that they will have additional resources for long term care services and care that they may need in the future. To help avoid inadvertent lapses or terminations of their long-term care insurance for nonpayment of premiums, this bill provides additional consumer protection by clarifying the legal notices to the policy holder of the lapse or cancellation of coverage. AARP believes that the federal and state governments should improve the quality of long term care insurance by enacting the strongest possible consumer protection standards.

Thank you very much for the opportunity to support S.B. 836.

Sincerely,

A handwritten signature in black ink, appearing to read "Keali'i Lopez".

Keali'i Lopez, AARP Hawai'i
State Director

PETER L. FRITZ

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THE SENATE THE THIRTY-FIRST LEGISLATURE REGULAR SESSION OF 2021

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Testimony on S.B. 836
Hearing: February 12, 2021

RELATING TO LONG-TERM CARE INSURANCE

Chair Baker, Vice Chair Chang, and members of the Committee. My name is Peter Fritz. I am an attorney and I am testifying **in strong support** of this bill.

This bill increases the protection against inadvertent termination of a long-term care policy for a lapse in payments. The bill places the burden of proof that notice was mailed on the insurance company. The insurance industry has testified that this protection is unnecessary because there has never been a problem in Hawaii. If it will never be a problem, there will never be any additional costs for the insurance company. However, if a problem does arise, the protection in this bill may prevent the inadvertent termination of a policy or will provide the proof the insurance company with the evidence that it needs to prove that it complied with the statute and mailed the required notices.

Hawaii allows kupuna to designate an additional person to receive notice of termination of a long-term care insurance policy. Designating another person helps to prevent unintentional termination for failure to pay a premium should the policyholder have dementia or some other condition and fails to recognize that the policy was in danger of being terminated. The designee could take appropriate action. The designee cannot take any action if the designee is unaware of the potential termination. If a notice is not mailed to all required parties, the policy remains in force until a notice is mailed to all required parties. Because the notices are generated by a computer, the only proof that a notice was sent is a print out from the computer saying that it executed a command to prepare a notice. This bill would require the insurance company to offer independent proof that the termination notice was sent to all required parties.

Inadvertent termination is not an imaginary problem. Several states have enacted laws that required insurance companies to mail notices by some service that provides independent proof that the notices were sent to all required parties. There was a recent article in Forbes magazine where a reporter wrote about how it was fortunate that while helping her father, she found termination notices that the policy would be terminated in three days. She wrote that she never received her copy of the notices.

The consequences of inadvertent termination are horrendous. The New York Times reported about a case in Virginia. A long-term policy had been obtained to provide benefits for a son's parents. The son was designated as an additional person to receive notices concerning the policy.

When his mother needed long-term care, the son applied for benefits under the policy and learned that the policy was terminated six months earlier. He never received any notices; however, he could not prove that the insurance company did not send notices to him. More than \$50,000 in premiums that had been paid over the years were lost. The cost of a new policy was prohibitive. The family had to sell the parent's condominium and Medicaid was the only available option to provide long-term care benefits for his mother.

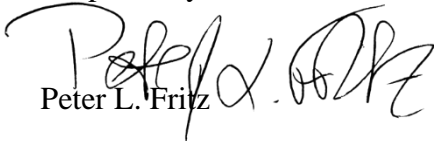
At other hearings, the insurance company said that the computer would provide the proof that the required notices were sent to all required parties. I know from personal experience that the computer is very unreliable because the computer does not know when the notice had been mailed. I am entitled to receive certain thirty-day notices from a trustee. The trustee is a financial institution. I received a notice dated December 17, 2019, but the envelope was postmarked January 9, 2020. I called the trustee and asked when the notice was mailed. I was told December 17. After sending copies of the notice and postmarked envelope to the trustee, I asked the trustee to investigate why the notice was mailed so long after the notice was written. I received a letter from the trustee telling me that they were totally unaware that there was a delay in mailing the notices. In other words the computer was wrong. If I had not saved the envelope, I would not have been able to prove that the letter was not timely mailed. If I never received the notice, I would not have been able to prove that the notice was not mailed. The computer is inaccurate and protection of beneficiaries requires independent proof of mailing.

This bill offers protection against inadvertent termination of a long-term care policy. Adding these provisions to the current statute should not burden the insurance companies because they claim that this is not a problem in Hawaii. However, if there is ever a question about whether a notice was mailed to all of the required parties, having this proof will protect the insurance company.

I respectfully request your support of this bill which carefully protects the needs of senior citizens who, in good faith, are paying very large premiums in relation to their fixed incomes, by not allowing the carriers to cancel a policy unless independent proof is shown that the notice was sent to all the proper parties.

Thank you for the opportunity to testify.

Respectfully submitted,


Peter L. Fritz



SanHi

GOVERNMENT STRATEGIES

A LIMITED LIABILITY LAW PARTNERSHIP

DATE: February 11, 2021

TO: Senator Rosalyn H. Baker
Chair, Committee on Commerce and Consumer Protection
Submitted Via Capitol Website

FROM: Rick Tsujimura

RE: **S.B. 836 - Relating to Long-Term Care Insurance**
Hearing Date: Friday, February 12, 2021 at 9:30 a.m.
Conference Room: 229

Dear Chair Baker, Vice Chair Chang, and Members of the Committee on Commerce and Consumer Protection:

I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm). State Farm appreciates the opportunity to submit comments for S.B. 836, and it understands that the intent of this bill is to protect seniors with long-term care policies; however, current law, based on a NAIC Long-Term Care Insurance Model Regulation (the "Model") (MDL-641 (naic.org)), already provides substantial protections not required for any other insurance product. This Model has been adopted across the country and has proved effective in preventing unintentional lapses in coverage. State Farm urges the Committee to hold the bill.

HRS 431:10H-208 already requires insurers to send notice of lapse or termination of a long-term care policy to at least one other person, designated by the policyholder to receive such notices, thirty days after the actual the actual due date for the premium. This, in effect, allows for 60 days to pay the premium. Like the Model language, it also provides that that the lapse and termination notice must be sent by first class U.S. Mail. Hawaii law has an additional protection, also drawn directly from the Model: HRS 431:10H-210 states the following:

In addition to the requirements of sections 431:10H-208 and 431:10H-209, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificate holder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.
[Emphasis added]

This legislative structure provides a proverbial belt and suspenders approach to protect elderly long-term care policyholders:

- 30-days' notice mailed directly to the insured
- 30-days' notice mailed directly to at least one other designated adult
- A right to reinstatement if requested within five months if the policyholder was cognitively impaired or had a loss of functional capacity during the period of the original termination notice.

No other type of insurance requires these safeguards, and no state has yet enacted laws requiring that the notice be sent solely by certified mail or commercial delivery – and for good reason: such a requirement would increase the cost of these policies tremendously, with very little likelihood of any real benefit for seniors, especially given the protections in current law. Mandating a method that requires proof of delivery does not guarantee the insured or designee received the mailing, as another individual may sign mailing receipt. Mandating proof of delivery will, however, increase costs and prolong instability of premiums for long-term care products.

Thank you for the opportunity to submit these comments.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN OPPOSITION TO SB 836, RELATING TO LONG TERM CARE INSURANCE

February 12, 2021

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

Dear Chair Baker and Members of the Committee:

Thank you for the opportunity to testify in opposition to SB 836, Relating to Long Term Care Insurance.

Our firm represents the American Council of Life Insurers (“ACLI”). The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94% of the industry assets in the United States. Two hundred eighteen (218) ACLI member companies currently do business in the State of Hawaii; and they represent 94% of the life insurance premiums and 99% of the annuity considerations in this State.

Instead of delivery of the lapse/cancellation notice by first class mail as required under current law, SB 836 would require the insurer to prove delivery of the cancellation notice to its recipient by one of three required means:

1. US certified mail, return receipt requested.
2. US priority mail
3. Commercial delivery.

Secondly, the bill requires the cancellation notice to “be marked with the words ‘Cancellation Notice’ or ‘Lapse Notice’ in large font on the front of the envelope or visible through the envelope window.”

Moreover, SB 836 provides that unless the insurer can prove delivery of the lapse/termination notice to its recipients in the manner required the insurer has the additional burden of locating the intended recipients, providing them with the notice and proof of its delivery to them. If the insurer is unable to do so, the insurer “shall demonstrate to the commissioner, upon request, due diligence to locate and notify the policyholder or other designee”

ACLI opposes these proposed changes.

SB 836 is a bill in search of a problem.

With regard to the information included in section 1 of the bill relating to the elderly couple in Virginia that faced a “tragic turn of events”, the facts stated arise out of a complaint filed with Virginia’s Bureau of Insurance by the elderly couple’s son who they designated as the additional person to receive notice of lapse or termination of the policy for the nonpayment of the contract’s premium. The son is said to have never received the cancellation notice.

While Virginia’s law, like Hawaii’s, requires that a notice of non-payment be given by the insurer to the insured and to the insured’s designee, in the case of the elderly couple two separate notices were mailed by the insurer to the husband, two to the wife and one to the son. In addition, the notice of the insured’s right to reinstatement of the contract was mailed to each of the parties – the husband, the wife and their son. Thus, over a five-month period the couple and their son were mailed a total of eight notices relating to their non-payment of the contract’s premium. None of the insurer’s eight mailed notices were ever returned by the US postal service to the insurer. Moreover, as required by Virginia law, the insurer provided the son with the necessary forms for reinstatement of the policy. The son, however, refused to provide the proof required by Virginia’s law (as does Hawaii’s) that either of his parents were cognitively impaired or functionally incapacitated. Based upon these facts, Virginia’s Bureau of Insurance determined that the insurer’s cancellation of the contract was lawful and, thus, did not act on the son’s complaint. It is important to note that in this particular case, the notices were received by the policyholders, but they failed to act. The requirements in this bill would not, therefore, have prevented the policy’s cancellation.

ACLI encourages this Committee to secure the facts of this case from the Virginia Bureau of Insurance which reviewed the son’s complaint submitted by the son and the information provided by the insurance company under its complaint resolution process.

More to the point, ACLI is not aware of any complaint filed by a Hawaii resident that he or she failed to receive timely notice of cancellation or an explanation of his or her rights with respect to a long-term care policy.

The need for proof of delivery of the notice by USPS certified mail, USPS priority mail or commercial delivery to its recipients or proof of its attempted delivery to them in this State has not, therefore, been explained or demonstrated by the bill’s sponsor or anyone else.

Hawaii’s current law is based on the NAIC Long-Term Care Insurance Model Regulation (the “Model”). The Model requires that the lapse and termination notice be sent by first class US mail and only to the addresses provided by the insured. No state has yet enacted laws requiring that the notice be sent solely by certified mail or commercial or other comparable method of delivery¹; nor the obligation to attempt to locate the recipients of the notice and its delivery to them if the addresses provided by the insured are not current or correct – and for good reasons.

¹ The insurer is required to send lapse notice to insured’s and insured’s designee(s), if any, last known address: Oregon – first class mail or e mail, provided that insured and designee, if any, consent to receive the notice by e mail.

Insurance companies want to sell long term care insurance policies and keep them on their books. Companies have, therefore, an economic incentive in making certain that the notice is in fact mailed to the insured to prevent an unintended lapse or cancellation of the policy – as was done in the referenced case in Virginia.

Delivery of the lapse notice by one of the three means of delivery required by the bill (certified mail, priority mail or commercial delivery) is expensive.

Unlike 1st class USPS mail process of “print, fold, insert, meter and mail” delivery by certified mail requires manual intervention which is costly and takes longer to process which delays delivery. Even more expensive is delivery of the notice by US priority mail or commercial delivery, such as UPS or FEDEX.

Further, in the case of certified mail if the recipients of the notice are not present to receive the notice when it is sent out for delivery it is held by the post office for pick-up. In that event, this method of delivery may actually make it more time consuming and difficult for the notice to be received by its intended recipients (particularly now during the COVID-19 pandemic).

So too would the insurer’s cost of establishing the special protocol necessary to implement the bill’s requirement that the cancellation notice be marked in large font on the envelope or visible in the envelope’s window identifying the recipient and the recipient’s address.

Costlier and time consuming still would be the insurer’s obligation to attempt to locate the recipients of the notice if the addresses provided by the insured are not current or otherwise correct. The increased cost of requiring the insurer to prove its attempted delivery of the lapse/termination notice to the insured and other recipients places an undue burden on the insurer that may be passed on to the consumer by increasing the cost of the policy premium at a time when insurers are already being forced to request premium increases.

ACLI strongly believes that delivery of late payment and lapse notifications even by certified mail or by commercial or other comparable methods of delivery does not guarantee that those who receive it will in fact act in a timely manner. Insurers note that certified mail, return receipt requested, is returned by the post office as “unclaimed” at a much higher rate than first class mail returned as “undeliverable.”

The problem with the unintended lapse notifications is not how lapse notifications are mailed; the problem is instead with the insured not fulfilling her/his expected role in preventing policy lapse. Neither the insurance company nor the State’s Insurance Division have regulatory leverage over the insured to provide the insurer with the insured’s and other recipient’s correct

Montana and Virginia – USPS first class mail provided obtains at time of mailing a USPS receipt showing date of mailing, number of items mailed and name and address of insured and designees, if any, or USPS certified mail or USPS certificate of mailing or commercial delivery.

Washington – USPS first class mail, USPS certified mail, commercial delivery or proof of delivery by electronic means meeting statutory requirements.

and current address – and no one can force the recipient to open the mail, read it and take appropriate action.

As a protection against the unintentional lapse of a long-term care insurance policy Hawaii's existing law requires the insurer to obtain the written designation by the insured of at least one other person who is to receive notice of lapse or termination of the policy for nonpayment of premium. Further, the insurer is required to notify the insured of the insured's right to change his designee no less often than every two years. HRS §431:10H-208(b) and (d). By designating an additional recipient of the lapse/termination notice (the "additional notice recipient") who is responsible and who will diligently respond to the lapse notice the insured has at her/his fingertips a simple but effective means of increasing protection against the unintentional lapse of the insured's long-term care insurance policy.

To further protect the unintended lapse of a policy, under current law the earliest date that an insurer may terminate a policy is 65 days after the unpaid premium is due. HRS Section 431:10H-209 provides the following timeline for policy lapse/termination as illustrated in the example below:

- Premium is due 3/1/20 and the Policyholder does not pay.
- Company mails a written notice of nonpayment on 4/1/20 (after the end of the required 30-day grace period) to the Policyholder and to the additional recipient at the address provided by the insured.
- The Policyholder has another 35-day grace period to pay the unpaid premium (the notice is deemed given 5 days after the date of its mailing, 4/6/20, plus an additional 30 days, 5/6/20).
- In total, the Policyholder has 65 days to pay the unpaid premium. During this 65-day period, the policy is in effect and if a claim is triggered during that time and the Policyholder incurs eligible charges, the insurer is responsible for the claim.
- If, however, no payment is received by the 66th day, the policy will lapse and no further benefits will be available.

Moreover, current law provides additional protections to a cognitively impaired insured. If that insured's policy is in fact terminated after the 65-day period referenced above, HRS Section 431:10H-210 provides for reinstatement of the insured's policy for up to five months after the termination date provided payment of past due premiums is made and proof is provided that the insured was cognitively impaired or had a loss of functional capacity before the grace period expired. Thus, an impaired insured has a total of seven months and five days (65 day grace period plus five months) after the premium due date in which to prevent an unintended lapse her/his long term care policy.

For the foregoing reasons ACLI believes that current law provides appropriate protections against the unintended lapse of a long term care policy by granting the insured ample time to reinstate the policy.

ACLI, therefore, respectfully opposes SB 836 and urges this Committee to defer passage of this bill.

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