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Testimony of the Department of Commerce and Consumer Affairs

Before the
House Committee on Human Services & Homelessness
Wednesday, January 29, 2020
8:30 a.m.
State Capitol, Conference Room 329

On the following measure:
H.B. 1870, RELATING TO LONG-TERM CARE INSURANCE

Chair Buenaventura and Members of the Committee:

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

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 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. 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.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS
IN OPPOSITION TO HB 1870, RELATING TO LONG TERM CARE INSURANCE

January 29, 2020

Honorable representative Joy A. San Buenaventura, Chair
Committee on Human Services & Homeless
State House of Representatives
Hawaii State Capitol, Room 329
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair San Buenaventura and Members of the Committee:

Thank you for the opportunity to testify in opposition to HB 1870, 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. ACLI members represent 95 percent of industry assets in the United States. Two hundred eighteen (218) 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.

Instead of delivery of the lapse/cancelation notice by first class mail, HB 1870 proposes to require that the insurer send the notice to the insured and the insured's alternate designee(s) by "certified mail or commercial delivery service or any means of delivery that requires proof of delivery".

ACLI opposes the proposed change.

Except for the bill's effective date, all of the provisions in HB 1870 are identical to those in SB 722, SD 2, which law makers heard and rejected during the 2015 legislative session. Those same provisions were also in HB 102, being the House version of SB 722, which lawmakers also rejected.

HB 1870 is a bill in search of a problem.

With regard to the information included in section 1 of the bill regarding the "tragic turn of events faced by an elderly couple in Virginia", we encourage this Committee to secure the facts of this case from the Virginia Bureau of Insurance which reviewed the complaint submitted by the son and the information provided by the insurance company under its complaint resolution process.

ACLI is not aware of any complaint filed by a Hawaii resident that her or his long term care policy was cancelled as a result of the insured's failure to receive a cancellation notice.

The need for delivery of the notice by certified mail or commercial or other comparable method of delivery 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. No state has yet enacted laws requiring that the notice be sent solely by certified mail or commercial or other comparable method of delivery – and for good reasons.

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 (and the insured's alternate designee) to prevent an unintended lapse or cancellation of the policy.

Delivery of the lapse notice by certified 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. Costlier still is use of a commercial delivery service, such as UPS or FEDEX, or USPS priority mail.

Further, if the insured (or his/her alternate designee) is not present to receive the notice sent by certified mail the notice 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 insured to receive the notice.

ACLI strongly believes that delivery of late payment and lapse notifications even by certified mail or by commercial or other comparable method of delivery does not guarantee that those who receive it will in fact act in a timely manner.

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– and no one can force the insured to open up 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. HRS §431:10H-208(b). By naming an alternate addressee 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.

For the foregoing reasons ACLI must respectfully oppose HB 1870, and urges this Committee to defer passage of this bill.

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HOUSE OF REPRESENTATIVES
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2020

COMMITTEE ON HUMAN SERVICES & HOMELESSNESS

Testimony on H.B. 1870
Hearing: January 29, 2020

RELATING TO LONG-TERM CARE INSURANCE

Chair San Buenaventura, Vice Chair Nakamura, and members of the Committee. My name is Peter Fritz. I am an attorney and I am testifying **in strong support** of this bill. I respectfully request that the Committee consider my proposed revisions to Section 2 of this bill which provide procedural guidance and clarity regarding verification that a notice was sent.

This bill requires the 30-day termination notices for a Long-Term Care Insurance Policy ("LTCI") be sent by a service that provides verification that the notice was sent.

I offer the following in support:

- A trip to the post office is not necessary because labels with postage and tracking can be generated by a computer. I generate mailing labels with tracking on my computer for packages that I send during the holidays. Amazon provides tracking information for the packages it sends to customers.

- A LTCI policy is not a form of insurance, when if cancelled, you can simply go to another carrier who may charge a slightly higher premium. If a LTCI policy is inadvertently cancelled after paying substantial premiums for years because of the failure to receive the correspondence from the company that the policy was being cancelled, the policy holder would not be able to buy a replacement policy that is affordable. There may be no option to protect for future long-term care needs other than Medicaid.

- LTCI plays an important role in financing long-term care. It is in the best interests of both the state's broader long-term care financing system, and, more importantly, the individuals impacted to establish strong consumer protection for cases of unintentional lapse. State governments should improve the quality of LTCI policies by enacting the strongest possible consumer protection standards.

- For large premium policies that insurance companies are underwriting for brokers or their best agents, insurance companies routinely accept and send documents overnight via FedEx or UPS. Hawaii's kupuna deserve no less protection. Please do not accept any insurance industry claims regarding how difficult it would be to send notification by Priority Mail or commercial delivery services because these delivery methods do not require a special trip to the post office.

- The cost of the changes proposed by this bill, when balanced against the consequences of an inadvertent lapse or termination of a LTCI policy, when the cost of a replacement policy may be prohibitively expensive, is strong reason to pass the changes proposed in this bill to help prevent any kupuna or their family in Hawaii finding themselves in such a situation.

- Insurance companies are afforded additional protection should there be a dispute about whether or not notice was mailed to the insured or the insured's designated third-party.

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 with just a token routine notice sent via US mail.

Thank you for the opportunity to testify.

Respectfully submitted,

Peter L. Fritz

Proposed Revised Section 2

SECTION 2. Section 431:l0H-209, Hawaii Revised Statutes, is amended to read as follows:

"§431:10H-209 Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated in section 431:10H-208 at the address provided by the insured for purposes of receiving notice of lapse or termination. [~~Notice shall be given by first class United States mail, postage prepaid and notice may not be given until thirty days after a premium is unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.~~]

(i) Issuers must be able to show:
- (A) Proof that they produced the notice;
- (B) Proof that they sent the notice;
- (C) The name and physical address of the person or persons to whom they sent the notice
- (D) The date that they sent the notice.

(ii) Upon request of the commissioner, to verify that they sent the notice, issuers must be able to provide:
- (A) Proof of sending the notice, which regardless of delivery method, may consist of, but is not limited to a confirmation document that shows the date the issuer mailed the item, the name and address of the insured, and the lapse designee if the insured has named a lapse designee for the policy. Delivery of the notice may occur using one of these or similar methods:
  - (I) Certified mail, which may be proven by obtaining a certificate of mailing from the United States Postal Service;
  - (II) Priority Mail which may be proven by providing the tracking information from the United States Postal Service; or
  - (II) A commercial delivery service;

(iii) An issuer may not give notice until thirty days after a premium is due and unpaid. Notice is deemed to have been given as of five business days after the date that the issuer sent the notice.

(iv) Upon the request of the commissioner, issuers must be able to demonstrate that they use due diligence to attempt to locate policyholders or named lapse designees when they receive notification of nondelivery of lapse notices."