SIXTH DAY

Wednesday, January 27, 1999

The Senate of the Twentieth Legislature of the State of Hawaii, Regular Session of 1999, convened at 5:05 o'clock p.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Norman Okasako, Senior Pastor, Mililani Missionary Church, after which the Roll was called showing all Senators present with the exception of Senator D. Ige who was excused.

The President announced that he had read and approved the Journal of the Fifth Day.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 129 and 130) were read by the Clerk and were placed on file:

Gov. Msg. No. 129, dated January 14, 1999, transmitting a report prepared by the Department of Agriculture in response to H.C.R. No. 202 (1998), requesting the chairperson of the Board of Agriculture to convene a series of meetings to assess and recommend solutions regarding land tenure and financing to assist Hawaii's agricultural development.

Gov. Msg. No. 130, dated January 20, 1999, transmitting the Department of Agriculture's Annual Report for Fiscal Year 1998.

ORDER OF THE DAY

REFERRAL OF SENATE BILLS

The President made the following committee assignments of bills introduced on Tuesday, January 26, 1999:

Senate Bill Referred to:

No. 1018 Committee on Health and Human Services

No. 1019 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1020 Jointly to the Committee on Health and Human Services and the Committee on Judiciary, then to the Committee on Ways and Means

No. 1021 Committee on Health and Human Services

No. 1022 Committee on Health and Human Services, then to the Committee on Judiciary

No. 1023 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1024 Committee on Labor and Environment, then to the Committee on Judiciary

No. 1025 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1026 Committee on Health and Human Services

No. 1027 Jointly to the Committee on Health and Human Services and the Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 1028 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1029 Jointly to the Committee on Labor and Environment and the Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1030 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1031 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1032 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1033 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1034 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1035 Committee on Health and Human Services, then to the Committee on Judiciary

No. 1036 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1037 Committee on Health and Human Services, then to the Committee on Judiciary

No. 1038 Committee on Health and Human Services, then to the Committee on Judiciary

No. 1039 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1040 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1041 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1042 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1043 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1044 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1045 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1046 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1047 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1048 Committee on Health and Human Services, then to the Committee on Judiciary

No. 1049 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1050 Committee on Health and Human Services, then to the Committee on Judiciary

No. 1051 Committee on Health and Human Services, then to the Committee on Judiciary

No. 1052 Committee on Health and Human Services, then to the Committee on Judiciary

No. 1053 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1054 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1055 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1056 Committee on Health and Human Services

No. 1057 Committee on Health and Human Services, then to the Committee on Labor and Environment

No. 1058 Jointly to the Committee on Health and Human Services and the Committee on Judiciary, then to the Committee on Ways and Means

No. 1059 Committee on Economic Development, then to the Committee on Ways and Means

No. 1060 Committee on Economic Development, then to the Committee on Ways and Means

No. 1061 Committee on Economic Development, then to the Committee on Ways and Means

No. 1062 Committee on Economic Development, then to the Committee on Ways and Means

No. 1063 Committee on Economic Development

No. 1064 Committee on Economic Development, then to the Committee on Ways and Means

No. 1065 Committee on Economic Development, then to the Committee on Ways and Means

No. 1066 Committee on Economic Development, then to the Committee on Ways and Means

No. 1067 Jointly to the Committee on Water, Land, and Hawaiian Affairs and the Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 1068 Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Ways and Means

No. 1069 Committee on Government Operations and Housing, then to the Committee on Ways and Means

No. 1070 Committee on Government Operations and Housing, then to the Committee on Ways and Means

No. 1071 Committee on Economic Development, then to the Committee on Ways and Means

No. 1072 Committee on Economic Development, then to the Committee on Ways and Means

No. 1073 Jointly to the Committee on Government Operations and Housing and the Committee on Transportation and Intergovernmental Affairs, then to the Committee on Commerce and Consumer Protection

No. 1074 Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Ways and Means

No. 1075 Committee on Ways and Means

No. 1076 Committee on Government Operations and Housing, then to the Committee on Ways and Means

No. 1077 Committee on Economic Development, then to the Committee on Ways and Means

No. 1078 Committee on Economic Development, then to the Committee on Ways and Means

No. 1079 Committee on Economic Development

No. 1080 Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Ways and Means

No. 1081 Committee on Economic Development, then to the Committee on Ways and Means

No. 1082 Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Ways and Means

No. 1083 Committee on Economic Development, then to the Committee on Water, Land, and Hawaiian Affairs

No. 1084 Committee on Economic Development, then to the Committee on Water, Land, and Hawaiian Affairs

No. 1085 Committee on Economic Development, then to the Committee on Ways and Means

No. 1086 Committee on Economic Development, then to the Committee on Judiciary

No. 1087 Committee on Economic Development, then to the Committee on Ways and Means

No. 1088 Committee on Economic Development, then to the Committee on Judiciary

No. 1089 Committee on Economic Development

No. 1090 Committee on Economic Development

No. 1091 Committee on Economic Development, then to the Committee on Judiciary

No. 1092 Committee on Economic Development

No. 1093 Jointly to the Committee on Water, Land, and Hawaiian Affairs and the Committee on Economic Development, then to the Committee on Ways and Means

No. 1094 Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Ways and Means

No. 1095 Committee on Economic Development, then to the Committee on Judiciary

No. 1096 Committee on Economic Development, then to the Committee on Judiciary

No. 1097 Jointly to the Committee on Economic Development and the Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Ways and Means

No. 1098 Committee on Water, Land, and Hawaiian Affairs

No. 1099 Committee on Economic Development, then to the Committee on Ways and Means

No. 1100 Committee on Government Operations and Housing, then to the Committee on Ways and Means

No. 1101 Committee on Government Operations and Housing, then to the Committee on Commerce and Consumer Protection

No. 1102 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1103 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1104 Committee on Judiciary, then to the Committee on Ways and Means

No. 1105 Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Ways and Means

No. 1106 Committee on Judiciary, then to the Committee on Ways and Means

No. 1107 Committee on Judiciary

No. 1108 Committee on Judiciary, then to the Committee on Ways and Means

No. 1109 Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Judiciary

No. 1110 Committee on Judiciary, then to the Committee on Ways and Means

No. 1111 Committee on Judiciary

No. 1112 Committee on Judiciary

No. 1113 Committee on Judiciary

No. 1114 Committee on Judiciary

No. 1115 Committee on Judiciary

No. 1116 Committee on Judiciary

No. 1117 Committee on Government Operations and Housing

No. 1118 Committee on Judiciary

No. 1119 Committee on Judiciary, then to the Committee on Ways and Means

No. 1120 Committee on Judiciary

No. 1121 Committee on Judiciary, then to the Committee on Ways and Means

No. 1122 Committee on Judiciary

No. 1123 Committee on Judiciary, then to the Committee on Ways and Means

No. 1124 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1125 Committee on Commerce and Consumer Protection

No. 1126 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1127 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1128 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1129 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1130 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1131 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1132 Committee on Commerce and Consumer Protection

No. 1133 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1134 Committee on Commerce and Consumer Protection

No. 1135 Committee on Commerce and Consumer Protection, then to the Committee on Judiciary

No. 1136 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1137 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1138 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1139 Committee on Commerce and Consumer Protection

No. 1140 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1141 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1142 Committee on Commerce and Consumer Protection, then to the Committee on Judiciary

No. 1143 Committee on Commerce and Consumer Protection

No. 1144 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1145 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1146 Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Ways and Means

No. 1147 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1148 Committee on Labor and Environment, then to the Committee on Judiciary

No. 1149 Committee on Labor and Environment

No. 1150 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1151 Committee on Judiciary

No. 1152 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1153 Jointly to the Committee on Labor and Environment and the Committee on Government Operations and Housing, then to the Committee on Ways and Means

No. 1154 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1155 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1156 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1157 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1158 Committee on Judiciary, then to the Committee on Ways and Means

No. 1159 Committee on Judiciary, then to the Committee on Ways and Means

No. 1160 Jointly to the Committee on Commerce and Consumer Protection and the Committee on Health and Human Services, then to the Committee on Judiciary

No. 1161 Jointly to the Committee on Judiciary and the Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1162 Jointly to the Committee on Judiciary and the Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1163 Committee on Judiciary, then to the Committee on Ways and Means

No. 1164 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Judiciary

No. 1165 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Judiciary

No. 1166 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 1167 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Commerce and Consumer Protection

No. 1168 Committee on Transportation and Intergovernmental Affairs

No. 1169 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Judiciary

No. 1170 Committee on Ways and Means

No. 1171 Committee on Ways and Means

No. 1172 Committee on Ways and Means

No. 1173 Committee on Ways and Means

No. 1174 Committee on Ways and Means

No. 1175 Committee on Ways and Means

No. 1176 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1177 Committee on Ways and Means

No. 1178 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1179 Committee on Ways and Means

No. 1180 Committee on Ways and Means

No. 1181 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1182 Jointly to the Committee on Education and Technology and the Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1183 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1184 Jointly to the Committee on Education and Technology and the Committee on Judiciary, then to the Committee on Ways and Means

No. 1185 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1186 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Judiciary

No. 1187 Committee on Education and Technology, then to the Committee on Judiciary

No. 1188 Committee on Economic Development

No. 1189 Committee on Judiciary, then to the Committee on Ways and Means

No. 1190 Committee on Judiciary, then to the Committee on Ways and Means

No. 1191 Jointly to the Committee on Commerce and Consumer Protection and the Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 1192 Jointly to the Committee on Economic Development and the Committee on Judiciary, then to the Committee on Ways and Means

No. 1193 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 1194 Committee on Transportation and Intergovernmental Affairs

No. 1195 Committee on Education and Technology, then to the Committee on Government Operations and Housing

No. 1196 Jointly to the Committee on Health and Human Services and the Committee on Education and Technology, then to the Committee on Ways and Means

No. 1197 Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1198 Committee on Water, Land, and Hawaiian Affairs, then to the Committee on Ways and Means

No. 1199 Committee on Economic Development, then to the Committee on Ways and Means

No. 1200 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Judiciary

No. 1201 Committee on Ways and Means

No. 1202 Committee on Ways and Means

No. 1203 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1204 Committee on Labor and Environment, then to the Committee on Ways and Means

No. 1205 Committee on Commerce and Consumer Protection, then to the Committee on Ways and Means

No. 1206 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Judiciary

No. 1207 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1208 Jointly to the Committee on Education and Technology and the Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 1209 Committee on Education and Technology, then to the Committee on Commerce and Consumer Protection

No. 1210 Jointly to the Committee on Water, Land, and Hawaiian Affairs and the Committee on Economic Development, then to the Committee on Ways and Means

No. 1211 Committee on Economic Development, then to the Committee on Water, Land, and Hawaiian Affairs

No. 1212 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Judiciary

No. 1213 Jointly to the Committee on Transportation and Intergovernmental Affairs and the Committee on Health and Human Services, then to the Committee on Ways and Means

No. 1214 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 1215 Jointly to the Committee on Water, Land, and Hawaiian Affairs and the Committee on Transportation and Intergovernmental Affairs, then to the Committee on Ways and Means

No. 1216 Committee on Transportation and Intergovernmental Affairs

No. 1217 Committee on Government Operations and Housing, then to the Committee on Ways and Means

No. 1218 Jointly to the Committee on Government Operations and Housing and the Committee on Education and Technology, then to the Committee on Ways and Means

No. 1219 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1220 Committee on Economic Development, then to the Committee on Ways and Means

No. 1221 Committee on Education and Technology, then to the Committee on Ways and Means

No. 1222 Committee on Economic Development, then to the Committee on Ways and Means

No. 1223 Jointly to the Committee on Water, Land, and Hawaiian Affairs and the Committee on Economic Development, then to the Committee on Ways and Means

RE-REFERRAL OF SENATE BILLS

The Chair re-referred the following Senate bills that were introduced:

Senate Bill Referred to:

No. 155 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Judiciary

No. 661 Committee on Transportation and Intergovernmental Affairs, then to the Committee on Judiciary

MISCELLANEOUS COMMUNICATIONS

The following communications (Misc. Com. Nos. 1 to 10) were read by the Clerk and were disposed of as follows:

Misc. Com. No. 1, from the County of Kauai, Department of Water, dated December 9, 1998, transmitting the "Proposed C.I.P. Projects, Request for State Aid, 1999 Legislative Session," and Resolution No. 2, 1999-2000 Legislative Budget, that was adopted by the Kauai board of Water Supply on October 15, 1998, was placed on file.

Misc. Com. No. 2, from the County of Hawaii Police Department dated December 18, 1998, transmitting its Annual Misconduct Report, pursuant to Section 92F-13, HRS, was placed on file.

Misc. Com. No. 3, from the County of Maui Police Department dated December 29, 1998, transmitting its 1998 Incidents of Suspension and Discharge Annual Report, pursuant to Act 242, SLH 1995, was placed on file.

Misc. Com. No. 4, from the City and County of Honolulu Police Department dated December 30, 1998, transmitting the 1998 Annual Report pursuant to Act 242, SLH 1995, was placed on file.

Misc. Com. No. 5, from the Hawaii State Bar Association dated December 31, 1998, transmitting the Hawaii Tort Law Study Group Report, pursuant to S.C.R. No. 256 (1997), was placed on file.

Misc. Com. No. 6, from the County of Kauai Police Department dated January 4, 1999, transmitting the 1998 Annual Report pursuant to Act 242, SLH 1995, was placed on file.

Misc. Com. No. 7, from the Committee on Performance Budgeting dated January 5, 1999, transmitting a report on performance budgeting pursuant to Act 230, Section 5, SLH 1998, was placed on file.

Misc. Com. No. 8, from the Hawaii Health Systems Corporation dated January 14, 1999, transmitting a report pursuant to H.C.R. No. 147 (1998), requesting the Hawaii Health Systems Corporation to determine and recommend to the legislature the necessary steps to enhance the corporation's ability to negotiate contracts that determine the reimbursement costs for medical services, was placed on file.

Misc. Com. No. 9, from the Joint Legislative Committee on Long-Term Care dated December 1, 1998, transmitting the joint legislative committee report pursuant to Act 339, SLH 1997, was placed on file.

The Chair having so ordered, Misc. Com. No. 9 is identified as ATTACHMENT "A" to the Journal of this day.

Misc. Com. No. 10, from the Joint Legislative Committee on Long-Term Care Financing dated January 26, 1999, transmitting the joint legislative committee report pursuant to H.C.R. No. 225 (1998), requesting a study to assess strategies for organizing the various forms of residential care providers, was placed on file.

The Chair having so ordered, Misc. Com. No. 10 is identified as ATTACHMENT "B" to the Journal of this day.

Senator Slom rose on a point of personal privilege as follows:

"Mr. President, I rise on a point of personal privilege.

"We've all received the latest Legislative Auditor's report on the audit of the Child Protective Services system. There has been continuing problems and continuing controversy with this agency. I find that it is an embarrassment and it's outrageous what has been going on in the agency.

"We're all aware of the problems with the children. We spend a great deal of time and effort and resources talking about how important the keiki are to us. We have the keiki caucus, we provide legislation, we provide appropriations. But this agency, which is responsible for the care and nurturing of children and particularly those at greatest risk, has shown the greatest reluctance in the lack of leadership to provide changes and to do the things that are necessary.

"My good, close friend Mr. Gary Rodrigues and I share one item in common, and that is Mr. Rodrigues always says that it's not the fault of public employees, it is the fault of management in state government that creates the problems. And I totally concur with him. There is no better example than in Child Protective Services and in the management of the Department of Human Services, or lack of management. And I'm wondering just how long the Governor, who appoints that manager, and how long this Legislature that funds programs and expresses its care and concern for children is going to put up with this situation and an individual who is unable and unwilling to make the changes and do the things that are necessary to protect our children.

"So Mr. President, I would like to see action in this area and I would like to see the removal of the head of the Department of Human Services. Thank you."

Senator Chun Oakland also rose on a point of personal privilege and said:

"Mr. President, I rise on a point of personal privilege.

"I share the concerns of the previous speaker. I do want you to know that the study that was done by the Auditor took place without the benefit of the omnibus bill that we had passed this past session. Since that time, there have been a number of changes -- improved communication between HPD, other police departments and the DHS. There are a number of points in the audit that are very much on point. The CPS roundtable, over the past few years, has worked to develop an omnibus bill that reflects the concerns raised in the auditor's report, which we did pass.

"So I believe that the Legislature has acted very well to address some of the Auditor's concerns as well as our concerns and the community's concerns and I do hope that we can continue this effort in the next session. Thank you."

INTRODUCTION OF SENATE BILLS

On motion by Senator Chun, seconded by Senator Slom and carried unanimously, the Clerk was authorized to receive bills for introduction prior to 7:00 o'clock p.m. In consequence thereof and subsequent to its recessing at 5:13 o'clock p.m., the following bills passed First Reading by title and were deferred:

Senate Bill

No. 1428 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE ALA WAI CANAL WATERSHED IMPROVEMENT PROJECT."

Introduced by: Senators Ihara, Fukunaga, Taniguchi.

No. 1429 "A BILL FOR AN ACT RELATING TO WASTEWATER TREATMENT FACILITIES."

Introduced by: Senator Chun.

No. 1430 "A BILL FOR AN ACT RELATING TO JUVENILE SAFETY."

Introduced by: Senator Buen.

No. 1431 "A BILL FOR AN ACT RELATING TO THE ESTABLISHMENT OF AN AGRICULTURAL WATER SYSTEM FOR UPCOUNTRY MAUI."

Introduced by: Senators Buen, Chun.

No. 1432 "A BILL FOR AN ACT RELATING TO FINANCING AGREEMENTS."

Introduced by: Senators D. Ige, Fukunaga.

No. 1433 "A BILL FOR AN ACT RELATING TO INFORMATION TECHNOLOGY."

Introduced by: Senators D. Ige, Fukunaga, Levin.

No. 1434 "A BILL FOR AN ACT RELATING TO INFORMATION TECHNOLOGY."

Introduced by: Senators D. Ige, Fukunaga.

No. 1435 "A BILL FOR AN ACT RELATING TO TRADEMARKS."

Introduced by: Senator D. Ige.

No. 1436 "A BILL FOR AN ACT RELATING TO PUBLIC EMPLOYMENT."

Introduced by: Senator D. Ige.

No. 1437 "A BILL FOR AN ACT RELATING TO ADULT RESIDENTIAL CARE HOMES."

Introduced by: Senators Kawamoto, Bunda.

No. 1438 "A BILL FOR AN ACT RELATING TO GOVERNMENT PROCUREMENT."

Introduced by: Senators Kawamoto, Bunda, Hanabusa, Iwase, Sakamoto.

No. 1439 "A BILL FOR AN ACT RELATING TO PROCUREMENT."

Introduced by: Senators Kawamoto, Buen, Bunda, Fukunaga, Hanabusa, Inouye, Iwase, Kanno, Nakata, Tam.

No. 1440 "A BILL FOR AN ACT RELATING TO LABOR."

Introduced by: Senators Kawamoto, Hanabusa.

No. 1441 "A BILL FOR AN ACT RELATING TO VETERANS RIGHTS AND BENEFITS."

Introduced by: Senators Kawamoto, Bunda.

No. 1442 "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII."

Introduced by: Senators Inouye, Levin, Buen, Matsuura.

No. 1443 "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS."

Introduced by: Senators Inouye, Taniguchi.

No. 1444 "A BILL FOR AN ACT RELATING TO ROADSIDES."

Introduced by: Senator Inouye, by request.

No. 1445 "A BILL FOR AN ACT RELATING TO LAND EXCHANGE."

Introduced by: Senator Inouye, by request.

No. 1446 "A BILL FOR AN ACT RELATING TO ENVIRONMENTAL IMPACT STATEMENTS."

Introduced by: Senators Nakata, Levin, Taniguchi.

No. 1447 "A BILL FOR AN ACT RELATING TO THE FREE EXERCISE OF RELIGION."

Introduced by: Senators Bunda, Sakamoto, Matsuura, Nakata, Chun Oakland.

No. 1448 "A BILL FOR AN ACT RELATING TO ECONOMIC DEVELOPMENT."

Introduced by: Senators Bunda, Buen, Chumbley, Chun, Chun Oakland, D. Ige, Fukunaga, Ihara, Inouye, Iwase, Kanno, Kawamoto, Levin, M. Ige, Matsuura, Nakata, Sakamoto, Tam, Tanaka, Taniguchi.

No. 1449 "A BILL FOR AN ACT RELATING TO MOTOR VEHICLE RENTAL INDUSTRY."

Introduced by: Senator Bunda.

No. 1450 "A BILL FOR AN ACT RELATING TO FISHING."

Introduced by: Senator Tanaka.

No. 1451 "A BILL FOR AN ACT RELATING TO YOUTH SERVICES."

Introduced by: Senator Chun Oakland.

No. 1452 "A BILL FOR AN ACT RELATING TO HEALTH."

Introduced by: Senator Chun Oakland.

No. 1453 "A BILL FOR AN ACT RELATING TO HISTORIC PRESERVATION."

Introduced by: Senators Matsunaga, Inouye, Taniguchi.

No. 1454 "A BILL FOR AN ACT RELATING TO PERSONAL WATERCRAFT."

Introduced by: Senator Matsunaga.

No. 1455 "A BILL FOR AN ACT RELATING TO PROXIES."

Introduced by: Senator Matsunaga.

No. 1456 "A BILL FOR AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS AND MAKING AN APPROPRIATION FOR THE NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY."

Introduced by: Senator Matsunaga.

No. 1457 "A BILL FOR AN ACT RELATING TO LENDER EXEMPTIONS."

Introduced by: Senator Matsunaga.

No. 1458 "A BILL FOR AN ACT RELATING TO CONDOMINIUMS."

Introduced by: Senator Iwase.

No. 1459 "A BILL FOR AN ACT RELATING TO CONDOMINIUMS."

Introduced by: Senator Iwase.

No. 1460 "A BILL FOR AN ACT RELATING TO CERTIFIED SUBSTANCE ABUSE STAFF."

Introduced by: Senators Ihara, Taniguchi.

No. 1461 "A BILL FOR AN ACT RELATING TO NURSES."

Introduced by: Senators Ihara, Taniguchi.

No. 1462 "A BILL FOR AN ACT RELATING TO ELECTIONS."

Introduced by: Senators Chumbley, Matsunaga, Ihara, Chun, Fukunaga, Levin, Hanabusa, Chun Oakland, D. Ige, Taniguchi, Nakata, Kanno, Tam, Kawamoto, Sakamoto.

No. 1463 "A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION."

Introduced by: Senator Hanabusa, by request.

No. 1464 "A BILL FOR AN ACT RELATING TO THE USE OF RECYCLED OIL."

Introduced by: Senators Nakata, Sakamoto, Bunda, Chumbley, Chun Oakland, D. Ige, M. Ige, Ihara, Levin, Matsuura, Taniguchi.

No. 1465 "A BILL FOR AN ACT RELATING TO THE STATE POST-SECONDARY EDUCATION COMMISSION."

Introduced by: Senators Fukunaga, Levin.

No. 1466 "A BILL FOR AN ACT RELATING TO STATE RISK MANAGEMENT."

Introduced by: Senator Chun.

No. 1467 "A BILL FOR AN ACT RELATING TO MOTOR VEHICLES."

Introduced by: Senator Chun.

No. 1468 "A BILL FOR AN ACT RELATING TO AN OCEAN FLOATING, ALL-NATURAL CLEAN ENERGY POWER STATION."

Introduced by: Senator Mizuguchi, by request.

No. 1469 "A BILL FOR AN ACT RELATING TO THE ADJUDICATION OF TRAFFIC INFRACTIONS."

Introduced by: Senator Mizuguchi, by request.

No. 1470 "A BILL FOR AN ACT RELATING TO STATE OFFICERS AND EMPLOYEES EXCLUDED FROM COLLECTIVE BARGAINING AND MAKING APPROPRIATIONS AND OTHER ADJUSTMENTS."

Introduced by: Senator Mizuguchi, by request.

No. 1471 "A BILL FOR AN ACT RELATING TO GOVERNMENT."

Introduced by: Senator Fukunaga, by request.

No. 1472 "A BILL FOR AN ACT RELATING TO UNLICENSED CONTRACTORS."

Introduced by: Senator Sakamoto.

No. 1473 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR A TWENTY-FOUR HOUR QUICK RESPONSE EMERGENCY MEDICAL SERVICES UNIT FOR MAKAKILO-KAPOLEI."

Introduced by: Senator Kanno.

No. 1474 "A BILL FOR AN ACT RELATING TO FINES."

Introduced by: Senator Kanno.

No. 1475 "A BILL FOR AN ACT RELATING TO THE SCHOOL-TO-WORK OPPORTUNITIES PILOT PROJECT."

Introduced by: Senator Kanno.

No. 1476 "A BILL FOR AN ACT RELATING TO THE PENAL CODE."

Introduced by: Senators Kanno, Chumbley.

No. 1477 "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS TO ASSIST VERTICIL INTERNATIONAL, INC. TO ESTABLISH A MANUFACTURING FACILITY."

Introduced by: Senators Sakamoto, Chun, Fukunaga, D. Ige.

No. 1478 "A BILL FOR AN ACT RELATING TO PLANTS."

Introduced by: Senator Inouye.

No. 1479 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE UNIVERSITY OF HAWAII AT HILO."

Introduced by: Senator Matsuura.

No. 1480 "A BILL FOR AN ACT RELATING TO CONSERVATION DISTRICT LANDS."

Introduced by: Senators Matsuura, Anderson, Buen, Tanaka.

No. 1481 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE HAWAII ISLAND VETERANS MEMORIAL INC."

Introduced by: Senators Matsuura, Levin.

No. 1482 "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII."

Introduced by: Senator Matsuura.

No. 1483 "A BILL FOR AN ACT RELATING TO CORRECTIONS."

Introduced by: Senator Matsuura.

No. 1484 "A BILL FOR AN ACT RELATING TO INCREASING THE PAY FOR PRISON GUARDS TO ALLEVIATE A CRISIS AT HAWAII'S CORRECTIONAL FACILITIES."

Introduced by: Senator M. Ige.

No. 1485 "A BILL FOR AN ACT RELATING TO MINORS."

Introduced by: Senator M. Ige.

No. 1486 "A BILL FOR AN ACT RELATING TO LEGAL REPRESENTATIONS FOR FELIX-WAIHEE CONSENT DECREE LAWSUITS."

Introduced by: Senator M. Ige.

No. 1487 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR A SUBSTANCE ABUSE TREATMENT PROGRAM AT THE WOMEN'S COMMUNITY CORRECTIONAL CENTER."

Introduced by: Senator M. Ige.

No. 1488 "A BILL FOR AN ACT RELATING TO THE KAWAINUI MARSH."

Introduced by: Senator M. Ige.

No. 1489 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR OCEAN PROGRAMS."

Introduced by: Senators Fukunaga, Tam.

No. 1490 "A BILL FOR AN ACT RELATING TO WORKERS' COMPENSATION."

Introduced by: Senator Fukunaga, by request.

No. 1491 "A BILL FOR AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS AND MAKING AN APPROPRIATION FOR CAPITAL IMPROVEMENT PROJECTS IN THE COUNTY OF HAWAII."

Introduced by: Senator Levin.

No. 1492 "A BILL FOR AN ACT RELATING TO PUBLIC LAND LEASES."

Introduced by: Senator Levin.

No. 1493 "A BILL FOR AN ACT RELATING TO KONA COFFEE LANDS."

Introduced by: Senator Levin.

No. 1494 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR THE MICONIA ERADICATION PROGRAM IN THE COUNTY OF HAWAII."

Introduced by: Senator Levin.

No. 1495 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR A HAWAIIAN CULTURAL ENTREPRENEURIAL SCHOOL."

Introduced by: Senator Levin.

No. 1496 "A BILL FOR AN ACT RELATING TO SPECIAL PURPOSE REVENUE BONDS FOR MEDICAL WASTE FACILITY PROJECT DEVELOPMENT."

Introduced by: Senators Buen, Kanno.

No. 1497 "A BILL FOR AN ACT RELATING TO EMPLOYMENT SECURITY."

Introduced by: Senator Slom.

No. 1498 "A BILL FOR AN ACT RELATING TO PERFORMANCE CONTRACTS."

Introduced by: Senator Slom.

No. 1499 "A BILL FOR AN ACT RELATING TO THE RANDOLPH-SHEPPARD REVOLVING ACCOUNT."

Introduced by: Senator Bunda.

No. 1500 "A BILL FOR AN ACT MAKING AN APPROPRIATION TO FUND A COMMUNITY MAPPING PROJECT FOR WAIALUA, O'AHU."

Introduced by: Senator Bunda.

No. 1501 "A BILL FOR AN ACT RELATING TO EDUCATION."

Introduced by: Senators Chumbley, Buen, D. Ige, Inouye, Matsunaga, Tanaka.

No. 1502 "A BILL FOR AN ACT RELATING TO CAMPAIGN SPENDING."

Introduced by: Senators Chumbley, Matsunaga, Chun, Ihara.

No. 1503 "A BILL FOR AN ACT RELATING TO TECHNICAL ASSISTANCE TO MICROENTERPRISES PROVIDED UNDER GRANTS TO NONPROFIT BUSINESS DEVELOPMENT ORGANIZATIONS."

Introduced by: Senators Chumbley, Buen.

No. 1504 "A BILL FOR AN ACT MAKING AN APPROPRIATION FOR EMERGENCY MEDICAL SERVICES."

Introduced by: Senators Kanno, Nakata, Hanabusa, Chumbley, Chun Oakland, Fukunaga, Ihara, Matsunaga, Mizuguchi, Sakamoto, Tam, Taniguchi.

No. 1505 "A BILL FOR AN ACT RELATING TO TAX ON FOOD AND MEDICINE."

Introduced by: Senators Anderson, Slom.

No. 1506 "A BILL FOR AN ACT RELATING TO LIMITATIONS ON ADMINSTRATIVE RULES."

Introduced by: Senators Anderson, Slom.

No. 1507 "A BILL FOR AN ACT RELATING TO THE HURRICANE RELIEF FUND."

Introduced by: Senator Anderson.

No. 1508 "A BILL FOR AN ACT RELATING TO GOVERNMENT."

Introduced by: Senator Anderson.

No. 1509 "A BILL FOR AN ACT RELATING TO KANEOHE BAY."

Introduced by: Senator Anderson.

No. 1510 "A BILL FOR AN ACT RELATING TO INSURANCE."

Introduced by: Senators Taniguchi, Matsunaga, Chumbley.

No. 1511 "A BILL FOR AN ACT MAKING APPROPRIATIONS FOR UNIFORM LAWS."

Introduced by: Senator Taniguchi.

No. 1512 "A BILL FOR AN ACT RELATING TO THE UNIFORM PARTNERSHIP ACT."

Introduced by: Senator Taniguchi.

No. 1513 "A BILL FOR AN ACT RELATING TO CHARTER TOUR OPERATORS."

Introduced by: Senator Taniguchi.

No. 1514 "A BILL FOR AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR CAPITAL IMPROVEMENT PROJECTS IN THE ELEVENTH SENATORIAL DISTRICT."

Introduced by: Senator Taniguchi.

No. 1515 "A BILL FOR AN ACT RELATING TO THE PENAL CODE."

Introduced by: Senator Tam.

No. 1516 "A BILL FOR AN ACT RELATING TO THE UNIVERSITY OF HAWAII."

Introduced by: Senator Tam.

No. 1517 "A BILL FOR AN ACT RELATING TO ACUPUNCTURE PRACTITIONERS."

Introduced by: Senator Tam.

No. 1518 "A BILL FOR AN ACT RELATING TO GOVERNMENT OPERATIONS."

Introduced by: Senator Tam.

No. 1519 "A BILL FOR AN ACT RELATING TO HOUSING."

Introduced by: Senator Tam.

ADJOURNMENT

At 7:00 o'clock p.m., the Senate adjourned until 11:30 o'clock a.m., Thursday, January 28, 1999.

ATTACHMENT "A"

MISC. COMM. NO. 9

Honolulu, Hawaii
December 1, 1998

RE: H.B. No. 147 (Act 339)
H.D. 1
S.D. 1
C.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twentieth State Legislature
Regular Session of 1999
State of Hawaii

Honorable Norman Mizuguchi
President of the Senate
Twentieth State Legislature
Regular Session of 1999
State of Hawaii

Sirs:

Your Joint Legislative Committee on Long-Term Care, appointed pursuant to H.B. No. 147, H.D. 1, S.D. 1, C.D. 1, adopted by the Regular Session of 1997, begs leave to report as follows:

PART I. BACKGROUND

Introduction

The population of residents in Hawaii aged seventy and over is the fastest growing segment of the overall population. The population of disabled persons is also increasing gradually. As people age or become disabled, they need services to help them with the activities of daily living. These services are currently being provided by family members, professional organizations, and institutions and are sometimes entirely lacking. Ideally, a person should be able to age-in-place in a setting of the person's choosing, though this is not always possible. It is incumbent upon the Legislature to help Hawaii's elderly and disabled persons to cope with daily living and to live with dignity. The approach to helping Hawaii's elderly and disabled should be prompted by compassion and caring, although the problem is inextricably one of economics.

Hawaii's citizens are faced with an overwhelming financial burden of caring for their elderly and disabled citizens. The elderly and disabled population needing long-term care (LTC) will continue to grow as the population ages. Nursing home costs often exceed a family's ability to pay, threatening a family's financial self-sufficiency. The cost per year in 1996 in a nursing home averaged about $38,000. This cost is only an average and varies widely across the country. In Hawaii, the cost is substantially more. However, nursing home care is but one component of an array of LTC services options, including care at home and in community-based facilities.

Due to high institutional costs, it is likely that more home- and community-based services will become predominant. Services, such as personal care, chore, respite care, and day care are less costly than

institutional care, but they are still expensive. For example, if one receives skilled nursing care in the home from a nurse three times a week for two hours per visit for a year, the cost is about $12,300. If one receives personal care in the home from a home health aide three times a week for two hours per visit for a year, the cost is about $8,400. These are national averages for 1996, with Hawaii being characteristically higher.

For those who will rely on home- and community-based care, there are social as well as financial costs. To accommodate the demands of caregiving that grow as dependency increases over the years, caregivers (usually the family) work reduced hours at their jobs; adjust or abandon career and personal goals; place their own health in jeopardy; expose themselves to increased debilitation from overwork as they age; and retire earlier than intended, resulting in lower pensions and retirement benefits. This problem is magnified when one considers the high cost of living in Hawaii and the necessity for people to hold two or more jobs. However, people in Hawaii seem to prefer home- and community-based care in spite of these sacrifices.

Current methods of financing LTC involve predominantly Medicaid, private insurance, and personal assets. Medicaid which is limited to financially qualified persons of low income, pays for institutional care (about eighty per cent of all nursing home residents are dependent on Medicaid) and some home- and community-based services. However, Medicaid funding from the federal government cannot be relied upon in the future. Private insurance is not widespread, and most people do not have sufficient personal assets. Medicare does not pay for long-term care.

Since increasing numbers of Hawaii's population will need LTC services, there is a compelling need to create an affordable method of financing those services. Unlike the past, federal and state moneys cannot be relied upon in the future. What Hawaii needs is another method of financing that is affordable and suitable for the majority of residents who do not qualify for Medicaid, do not currently have private LTC insurance, and do not have sufficient personal assets.

No state has a universal (covering all persons) LTC program, whether tax-based or insurance-based, as distinguished from Medicaid programs that cover LTC services as medical coverage for qualified persons. Hawaii would become the first state with a universal LTC program if the recommendations of the JLC are adopted.

Legislative Mandate

Act 339, Session Laws of Hawaii 1997, established the Joint Legislative Committee on Long-Term Care (JLC). The purpose of Act 339 was to "...create a joint legislative committee to develop a sound financial plan to address a problem of compelling state interest, the current and future long-term care needs of the people of Hawaii."

The JLC is composed of eight members: four members of the House of Representatives, of whom three are of the Democratic Party and one is of the Republican Party, all to be appointed by the Speaker of the House; and four members of the Senate, of whom three are of the Democratic Party and one is of the Republican Party, all to be appointed by the President of the Senate.

The members are: Senator Suzanne Chun Oakland and Representative Dennis Arakaki, Co-Chairs; Senators Les Ihara, Jr. (appointed in place of Senator Rosalyn Baker), Andrew Levin, and Sam Slom; and Representatives Marcus Oshiro, Paul Whalen, and Nobu Yonamine.

Approach of the JLC

The JLC held a series of eleven public meetings for input and discussion at the State Capitol on: September 5, 1997; September 29, 1997; October 16, 1997; October 27, 1997; November 13, 1997; January 8, 1998; June 1, 1998; June 30, 1998; August 3, 1998; October 2, 1998 (for status of proceedings); and October 20, 1998 and November 20, 1998(to determine recommendations).

Information was provided by the Department of Human Services, Department of Health, the Executive Office on Aging, the Statewide Council on Developmental Disabilities, county agencies on aging and elderly affairs, life insurers, long-term care insurers, health insurers, health care associations, health care providers, advocacy organizations for the elderly and disabled, long-term care associations, nursing homes, adult residential care homes, business organizations, hospitals, hospices, the University of Hawaii, the Governor's Blue Ribbon Panel on Living and Dying with Dignity, and interested individuals.

Based on the input obtained from the meetings, the JLC issued a "Request for Proposals No. SH2-98 for Competitive Sealed Proposals to Provide a Plan to Finance Long-Term Care in Hawaii" on May 26, 1998, to obtain a preliminary actuarial analysis. A contract was awarded on June 29, 1998, to Dr. Lawrence H. Nitz, Associate Professor of Political Science at the University of Hawaii, who has a background in research and consultation on LTC.

Dr. Nitz presented his recommendations regarding the establishment of a state-sponsored public trust fund verbally at the August 3, 1998, meeting of the JLC. The recommendations were formulated into a proposed financing plan which became an alternative model for the JLC, as explained in Part IV of this report. The plan was presented in outline form to the public by Dr. Nitz on behalf of the JLC in a series of statewide public briefings on: August 13, 1998, at Maui Community College; August 17, 1998, at the State Capitol Auditorium; August 18, 1998, at Pearl City Elementary School; August 19, 1998, at the King Kamehameha Hotel, Kona; August 20, 1998, at the Hawaii Naniloa Hotel, Hilo; August 24, 1998, at Castle High School; and August 25, 1998, at the Kauai County Council Chambers.

The JLC was assisted in research and recording minutes of public meetings and notes on public briefings by the Senate Majority Office (Dennis Chu), House Majority Staff Office (Wes Lum), and Legislative Reference Bureau (Peter Pan). Research was performed to obtain requested information about LTC services and Medicaid programs in Hawaii and other states.

PART II. THE CURRENT STATE OF LONG-TERM CARE IN HAWAII

What is Long-Term Care?

The JLC formulated the following definition of LTC:

"Long-term care is the organization and delivery of a wide range of health and human services to people who are severely disabled or limited in their functional capacities for a relatively long and indefinite period of time. In medical terms, long-term care is chronic care: the aim is management, control of symptoms, and maintenance of function. Long-term care has a vast non-medical dimension, and many individuals requiring long-term care are not sick. They may have been injured, or were born with a developmental disability that limits their activities, but otherwise may be perfectly healthy."

The JLC supplemented this definition with a vision statement:

"Long-term care refers to a comprehensive range of personal, medical, mental health, and social services developed and coordinated to meet the physical, social, and emotional needs of people of all ages with disabilities. These comprehensive services should meet peoples' changing needs over an extended period of time. Long-term care services can be delivered in an institution, the community, or the home."

The definition used by the National Association of Insurance Commissioners' is helpful in understanding the insurance perspective:

"Long-term care involves a wide variety of services for people with a prolonged physical illness, disability or cognitive disorder (such as Alzheimer's disease). Long-term care is not one service, but many different services aimed at helping people with chronic conditions compensate for limitations in their ability to function independently. Long-term care differs from traditional medical care as it is designed to assist a person to maintain his or her level of functioning, as opposed to care or services that are designed to rehabilitate or correct certain medical problems. Long-term care services may include, but are not limited to, help with daily activities at home, such as bathing and dressing, respite care, home health care, adult day care, and care in a nursing home."

Scope of Frailties Requiring LTC Services

Long-term care services typically are required when a person needs assistance with:

1. Mobility: difficulty getting in and out of bed, standing up and sitting down, walking, and moving from bed to chair or visa versa;

2. Bathing: using grab bars or lifts, having a person to help set up the bath and to wash, getting in and out of a tub or shower, and washing the body;

3. Toileting: safely getting to and from the toilet, getting undressed and dressed, cleaning up, and performing basic personal hygiene;

4. Continence: voluntarily controlling bladder and bowel function, caring for incontinence if it occurs, cleaning up after accidents, and someone to remind to go to the bathroom;

5. Dressing: putting on and taking off clothes, and managing buttons and zippers;

6. Eating: shopping for food, cooking and serving food, feeding oneself, grasping utensils, and cleaning face and hands; and

7. Daily Living: going to doctor appointments, shopping, yardwork, doing laundry, cleaning house, going to occasional restaurant meals, and going to library.

Levels of LTC Services: Categories

Community-Based Care - This category of care helps the elderly and disabled maintain independence and encourages continued involvement in their communities. Services include but are not limited to adult day care, adult day health care, nursing level care in specialized homes, foster care, and social and recreational programs at senior citizen centers.

In-Home Care - As capabilities diminish to semi-independence and the elderly or disabled person becomes more homebound and less able to participate fully in the community, LTC services then shift to the home setting. Home-based services seek to support, not supplant, the existing informal (family) support network. Services include homemaking, transportation, home visits from physicians, nurses, therapists, social workers, and attendants who provide medical and personal care, and home modification assistance.

Institutional Care - Usually referring to nursing homes, this level of care is for persons with significantly diminished capabilities that warrant placement in an institution providing medical supervision and nursing care around the clock. There are various levels of institutional care that are licensed for the level of care being provided and the number of patients, including skilled nursing facilities, intermediate care facilities, and adult residential care homes.

Assisted Living Facilities - This is a recent development in LTC. Assisted living facilities are a combination of housing, health care services, and personalized supportive services designed to respond to individual needs and to promote choice, responsibility, independence, privacy, dignity, and individuality. Assisted living facilities provide private living quarters but with communal dining and recreational/social activities, a hybrid of hotel, retirement home, and elderly apartment complex. Residents have their own apartment-like homes, where they are allowed to "age in place." There is usually on-call, on-premises nursing services, health monitoring, and medication administration assistance. Assisted living facilities cost less than nursing homes. In 1996 in Hawaii, estimated costs were in a range of $1,800 to $2,300 per month.

Financing of LTC

Medicaid Coverage - Medicaid is a need-based program of medical coverage, paid for by matching federal and state moneys that pays for medical expenses of a qualified recipient, including hospital, LTC facilities, adult care homes, and some home- and community-based care. Eligibility for Medicaid is determined by federal requirements using a percentage of income formula specific to the type of care.

Medicare Coverage - Medicare is a Social Security program for persons sixty-five years of age and older, or younger for a qualifying disability. There are two parts to Medicare coverages, Part A and Part B.

Part A, for hospital insurance, is mandatory. This covers hospitalization for up to ninety days with a deductible to be paid by the patient for each hospital stay of $736; skilled nursing facility for up to twenty days (total coverage) and an additional eighty days (co-pay required); part-time home health care, intermittent skilled care, home health aide services, durable medical equipment and supplies, and occupational and physical therapy; and hospice care for up to two ninety-day periods, and one thirty-day period and one extension period of indefinite duration if necessary.

Part B, for medical insurance, is voluntary. This covers doctor services and many other medical services, outpatient hospital care, ambulance services, and X-rays, with eighty percent of approved costs being covered after an annual deductible of $100.

It is important to understand that Medicare does not pay for LTC, whether Part A or Part B. It is a health insurance program that individuals pay for as part of Social Security to provide medical and hospital care when individuals are over age sixty-five.

Private Insurance - Insurance policies vary widely in coverages. Some policies cover only stays in nursing homes. Others cover only care in a person's own home. Still others cover both nursing home and home care. In addition, many policies also cover services provided in adult day care centers or other community facilities. Costs of a policy vary widely, depending on the coverages, age of the insured, and underwriting standards.

PART III. PLANS AND OPTIONS CONSIDERED BY THE JLC

Social Insurance

The "Hawaii Family Hope Financing Plan" (Family Hope) is a form of social insurance with mandatory participation by anyone with income above a specified threshold, with automatic coverage for non-working spouses. Family Hope was proposed in House Bill No. 31, Regular Session of 1993, as an outgrowth of two earlier reports submitted to the Legislature by the Executive Office on Aging: one entitled, "Financing Long-Term Care" (January, 1991), and the other on the findings and recommendations of The Long-Term Care Financing Advisory Board (February, 1992). The Advisory Board was created pursuant to Act 133, Session Laws of Hawaii 1991, "to advise the Executive Office on Aging on the establishment of a comprehensive long-term care financing program for Hawaii residents", including the "feasibility of creating a public fund to be administered by a public body."

As proposed in H.B. No. 31, Family Hope would have required a graduated "contribution tax" on income to be paid by "every unmarried resident individual and every married resident individual who does not make a single return jointly with the individual's resident spouse". A "Hawaii Long-Term Care Trust Fund System" would have been established to "...administer a comprehensive long-term care financing program funded by annual mandatory contribution taxes and other sources..." Payments would have been made for covered long-term care services not covered by medical or other insurance, such as: primary institutional LTC benefits (nursing homes), primary noninstitutional LTC benefits (home- and community-based care), and associated noninstitutional LTC benefits (homemaker services, companion services, home meal delivery, and chore services).

As proposed to the JLC by Melvin Sakurai, Ph.D, Family Hope consultant to the Executive Office on Aging, the Family Hope plan was modified to include a mandatory stand-alone "back end" program covering nursing home care financed by mandatory taxes. Benefits would begin after one year of care, with private insurance covering the first year, and a two-part mandatory-voluntary comprehensive program, covering home- and community-based care, which splits benefits into two parts, one covered by the mandatory tax and the other by voluntary LTC private insurance (coverages for each part were not specified).

Both options require the imposition of a dedicated tax. The stand-alone back end program entices private insurers to fill the gap for the first year. The first part of the two-part program is to allow voluntary LTC private insurance to build awareness and public acceptance for the second part, a mandatory tax. Viability of the two-part program could be enhanced by encouraging large employer groups to offer LTC insurance policies to their employees.

Private LTC Insurance

Private insurance to cover LTC is of recent origin in the nation. The first policies were issued in Hawaii in the late 1980's. Only now has there been sufficient actuarial data to "price" such policies, i.e., to determine the claims costs and policy premiums.

Long-term care insurance was authorized in Hawaii in 1989. As defined by section 431:10A-521, HRS:

> "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual annuities and life insurance policies or riders that provide directly or that supplement long-term care insurance. The term also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or loss of functional capacity. Long-term care insurance may be issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations, or any similar organization. Long-term care insurance shall not include any insurance policy offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage."

As of September, 1997, there were fifty mainland-based insurers underwriting LTC policies in Hawaii, according to the Insurance Division. There were no Hawaii-based insurers underwriting LTC policies, other than those acting as agents for mainland insurers. The Hawaii Medical Service Association (HMSA), as a mutual benefit society, has offered LTC policies since 1991. Coverages vary widely from policy to policy, ranging from home health care to nursing home care, including acute hospital care and combinations and variations of coverages.

The JLC considered proposals for universal private LTC insurance in Hawaii, so that everyone would be covered by a policy. The JLC concluded that an LTC insurance policy should have the following features:

1. Funding by a "flat" age-graded advanced-funded guaranteed renewable premium. Age-graded premiums vary according to the insured's age at the time of purchase. The premium should be locked in for the life of the policy. Advance-funding provides for the collection of more

money than actually needed to cover current risk in order to build up reserves to cover future liabilities;

2. "Anti-lapse" protection, so that the policy is not canceled when the insured does not make a premium payment (common occurrence with the elderly who may forget to make a premium payment);

3. Full institutional and community-based LTC benefits;

4. Inflation-adjusted benefit payouts;

5. Reduced paid-up non-forfeiture benefit to provide a reduced level of benefits after a policy lapses;

6. A "take all comers" requirement, so that no one is disqualified from purchasing a policy; and

7. Strong regulatory controls, modeled after the National Association of Insurance Commissioners Model Code.

The JLC considered the following proposals to make private LTC insurance universal:

1. State-funded subsidy to encourage the voluntary individual purchase of qualified private LTC insurance policies, such as purchase vouchers (Since this proposal is not currently feasible due to the State's economy, the JLC did not seriously consider it, but it is a viable possibility after a universal LTC system is implemented);

2. Income tax credits; and

3. Mandatory employer sponsored group LTC insurance benefits, modeled after mandatory prepaid health insurance.

The Insurance Division was unable to provide data on the current number of persons insured under a private LTC insurance policy or on the loss ratios for LTC insurance policies in Hawaii. The JLC was concerned that very few people in Hawaii (or anywhere in the nation) purchase LTC insurance, because the matter does not become a concern until one reaches the age of fifty; the premiums are expensive; and LTC insurance is generally not appropriate for lower-income persons (who could probably rely upon Medicaid).

Expanded Home/Community-Based Services

Expanding home- and community-based services is not a financing strategy, but is an approach to alleviating the necessity for expensive institutional care and reducing LTC costs to manageable levels. Proponents of this approach maintain that providing LTC in the home or in a community setting will keep a person sufficiently healthy to avoid a nursing home, and will satisfy most LTC needs, even for those who are bedridden; therefore institutional care should be reserved for those with the most serious conditions needing the most care. Moreover, the culture in Hawaii prefers at-home care for the elderly and disabled.

The counter argument is that nursing home care can be unavoidable, depending on the severity of a medical condition which is independent of whether or not home- and community-based care is provided.

Strategies for increasing home- and community-based care include providing:

1. More services involving intervention/outreach, prevention/screening, and informational programs;

2. Single point of entry and managed care to channel people away from institutional settings; and

3. Alternative congregate care settings, such as assisted living facilities or adult residential care homes.

While the expansion of home- and community-based services could lower LTC costs to the individual and enhance the quality of life for persons needing LTC, the net total LTC spending for the State as a whole would increase for the following reasons:

1. According to the federal General Accounting Office ("Long-Term Care: Current Issues and Future Directions", 1995): "...while home- and community-based programs were less costly on a per person basis, they generally raised total long-term care costs. Limited reductions in institutional use were more than offset by increased demand for home- and community-based care ...";

2. The frail elderly, whether as a result of their medical condition or as a result of prolonged home- and community-based care, may become so debilitated so as to need institutional care in a nursing home;

3. Early intervention and screening programs would likely identify more persons needing institutional care by uncovering previous unserved needs, thereby prompting delivery of appropriate institutional services earlier and for longer periods; and

4. Payment for non-institutional care is inherently more susceptible to abuse and fraud, although this could be deterred by quality assurance programs and fiscal accounting monitoring.

The State's Department of Human Service believes that Hawaii's unique culture and values postpone costly nursing home care.

German Health Insurance System

Germany provides LTC to its citizens as part of its universal government-sponsored health insurance system. In 1994, the German Parliament established mandatory LTC insurance to provide benefits to persons with physical, mental illness, or other mental incapacity who regularly need help in daily living for at least six months. There are benefits for nursing home care and community-based care. Financing is through a tax on employers and employees of 1.7 percent of income up to $48,000 of income. To compensate employers for the tax, one paid vacation day was given up by employees. The self-employed pay 3.4 percent; an employer tax to cover pensioners is paid by the pension system; and the unemployed have their tax paid for by the unemployment system. The system has generated such a large pool of money that the tax is being adjusted downward.

Administration is through the large number of non-profit, quasi-public insurance companies which administer the national health insurance.

Benefits include: (1) reimbursement for community-based services; (2) cash payments to family caregivers; and (3) payments to nursing homes. Levels of disability are predetermined and schedule of payments for services is established.

Germany has experienced the following benefits in its LTC insurance system:

1. Significant savings in welfare budgets;

2. Greater sense of financial security for middle-class families;

3. Significant increase in family caregiving, with eighty percent electing to have cash paid to a family caregiver;

4. Significant decrease in nursing home admissions;

5. Expansion of private, innovative community-based services due to financial incentives; and

6. More responsiveness to consumers from home care agencies, due to increased competition.

The Kaigo Hoken System of Japan

The Kaigo Hoken System is Japan's government-based plan of providing LTC services for the Twenty-first Century. The plan covers citizens age forty and over. Citizens pay a monthly premium to the local government which acts as an insurer. Coverage is for community-based care and institutional care through a system of reimbursements and co-payment requirements of ten percent. The plan is a departure from Japan's current and traditional tax supported free medical service system. The start date is the year 2000, with mandatory participation for all citizens age forty and over.

Costs for reimbursements for community-based care are calculated to be $1,000 per month for the first level of care up to $2,143 per month for the fifth level of care. Monthly costs for institution-based care are calculated to be $2,071 for intermediate care facilities; $2,285 for skilled nursing facilities; and $3,071 for sub-acute geriatric hospitals. These figures are calculated at seventy-five percent of actual costs and do not include the ten percent co-payments.

Part A and Part B Approach

The JLC considered a two-part approach to financing LTC in Hawaii, modeled after Medicare with mandatory (Part A) and optional (Part B) plans. Under this proposal, the mandatory part would cover institutional or nursing home care supported by a dedicated tax revenue source. The optional Part B portion would cover home- and community-based care.

Private LTC insurance policies vary in their coverage of their home- and community-based benefits; however, most cover "front-end" or lower-level disability assistance, and do not provide enough community-based care; lack anti-lapse provisions (policy terminates for failure to pay the premium); and do not effectively adjust for inflation in paying benefits.

The Part B optional plan considered by the JLC would be a plan publicly sponsored or administered by the private insurance sector, mutual benefit societies, or health maintenance organizations. The plan would provide coverage for two or three years of home- and community-based care with a benefits package to be delineated in an actuarial design that accounts for costs and degrees of impairment. The plan would be offered to all interested persons, with facilitation of purchase through health insurance companies, employers, and labor unions. Policies would contain anti-lapse provisions.

State-Created Private Insurance Company

Concerned that LTC insurance companies could reap financial windfalls at the expense of policyholders in selling policies to employers under an employer mandated scheme, the JLC also explored the possibility of requiring the Hawaii Employers' Mutual Insurance Company (HEMIC) to sell LTC, or creating an entity as a subsidiary of HEMIC to underwrite and market LTC insurance policies to the general public and to government workers. HEMIC was created by Act 261, Session Laws of Hawaii 1996, to sell workers' compensation insurance and employers' liability insurance to companies which could not obtain coverage through insurance companies. These companies were known as assigned risks and were relegated

to the residual market. In effect, HEMIC became an independent insurer for assigned risks. HEMIC has been successful in its underwriting and financial operations.

The JLC is aware that HEMIC is restricted by statute to workers' compensation and employers' liability insurance. However, there are significant advantages to using HEMIC, rather than establishing a public trust fund, including most significantly:

1. Avoiding the financial requirements and solvency risks inherent with a public trust fund;

2. Taking advantage of the existing administrative infrastructure of HEMIC to avoid administrative expenses;

3. Providing a ready market for selling policies through employers; and

4. Providing competition to LTC insurance companies.

This approach provides possibilities of lower premiums.

PART IV. STRUCTURING AN LTC PLAN

Preliminary Actuarial Analysis

Pursuant to a request for proposals (RFP) prepared by the Legislative Reference Bureau, a contract was awarded to Dr. Nitz, who in turn hired John Wilkins, a qualified actuary in LTC insurance and actuarial consultant to the California Public Employees Retirement System (CALPERS), to advise on establishing a public trust fund. After consultation with Mr. Wilkins, Dr. Nitz reported the following:

1. The preliminary analysis took into account current and pending models of LTC in California, Florida, and Ohio. Based on discussions with the JLC members, the CALPERS model was the focus because it is a voluntary program for public employees;

2. Based on Hawaii's difficult economic circumstances, it is more reasonable to implement a totally voluntary, front-end program that provides a three to four year program of home- and community-based services that includes assisted living facilities and adult residential care homes as valid community service options. In order to control costs, CALPERS requested bids nationwide from professional third-party adminstrators to administer the desired package of LTC benefits. Hawaii should do the same and not restrict itself to in-state insurers to achieve similar cost control;

3. Because Hawaii's program is intended to be entirely voluntarily, privately financed, requiring no new taxes, as inexpensive as possible, and covering as many people as possible, the actual number of people covered may be fewer than many expect. Employer programs may reach twenty percent participation at most, but typically do not exceed five to ten percent participation. In order to attain ten percent enrollment, it is necessary to offer low premiums and aggressively market the product. Large groups such as public employee unions, private employee unions, large businesses, and trade association groups, should be targeted for Hawaii's program enrollment. Even if only a small number of members from each group decide to sign up, the gross number of these individuals in the aggregate may form a large enough critical mass to make the program workable and affordable; and

4. Consideration should be given to a state-subsidized program by means of vouchers, tax credits, and direct payments to encourage enrollment.

Mr. Wilkins' findings were submitted to the JLC in the form of a report entitled, "Actuarial Issues for the Proposed Long-Term Care Program of Hawaii", for the development of a state-sponsored LTC program.

Alternatives for a Proposed Plan

The JLC developed alternative proposals for a model LTC plan that would preserve personal assets, promote individual peace of mind, relieve family economic pressure, avoid possible reliance upon Medicaid, and stimulate the economy by nurturing the LTC industry in Hawaii. The first alternative is to create a state-sponsored plan by establishing a public trust fund. The fund would be governed by a board of trustees and operate as an underwriter of LTC policies or as a marketing mechanism. The fund would underwrite or market LTC insurance policies, or both, to government and non-government employees and would be financed by premiums or by taxes.

As a premium-based underwriter, the fund would operate in a manner similar to a private insurance company by collecting
premiums, accumulating reserves, processing and paying claims either directly or through a third-party administrator, and paying administrative costs. This operation is similar to CALPERS. Enrollment in the plan would be voluntary. The plan would target large groups, including employer organizations, labor unions, retiree groups, and trade associations. The board of trustees would hire a private sector third-party administrator to administer the fund, preferably a large mainland company with proven experience in administering LTC programs. In turn, the
administrator would hire an independent actuary to construct the specifications for the program and would also hire private sector care coordinators (case managers) to administer the benefits.

As a marketer, the fund would select a private LTC insurer to underwrite the policy to be sold through the fund. This operation is similar to the Hawaii Public Employees Health Fund (HPEHF) in providing prepaid health insurance to public employees.

A second alternative is to add LTC insurance to HEMIC or create an entity as a subsidiary of HEMIC, as discussed above. This alternative would be financed through premiums from policyholders, who could be government and non-government employees.

A third alternative is for the State to facilitate the purchase of private LTC insurance policies. This can be accomplished through tax incentives. An income tax deduction for employers is an employee benefit that employers may find desirable. The JLC believes that any loss in revenue to the State would not be appreciable and would be more than off-set by the benefits of having large numbers of people insured for LTC. The State would need to increase public awareness about the necessity of planning ahead and purchasing LTC insurance at a young age; mandate the offering of LTC policies through large groups such as state and county governments, private employers, labor organizations, and professional, trade, and occupational associations; and provide income tax deductions for the purchase of LTC policies. The income tax deductions would apply to employees and self-employeds as allowed under Internal Revenue Code section 213(d)(1)(C), (d)(1)(D), (d)(7), and (d)(10) for the amount of premium paid for LTC policies; and to employers, organizations, and associations for the amount of premiums paid in whole or in part for LTC policies purchased by their employees or members.

This alternative has other significant advantages:

1. The State would not become an underwriter or compete with private LTC insurers;

2. Inherent liabilities and solvency concerns of a public trust fund would be avoided;

3. Creating more bureaucracy with its attendant costs to administer a public trust fund would not be necessary; and

4. New private LTC insurance products have been developed and are ready to be mass marketed pending regulatory approval.

PART V. CONCLUSIONS

Findings

1. In the current economy, it is not realistic to propose a universal coverage, mandatory LTC financing package that covers home- and community-based care as well as nursing home care. Additional taxes may cause a burden which the majority of people may not be able to afford.

2. Most payments for home- and community-based LTC services are made by the patients or their families. Paying for these costs through an insurance program would minimize expenditures by patients and their families. The costs of these services can be controlled by LTC insurance underwriting principles. In effect, the risk and burden of payment is shifted to an insurer in return for a payment of a premium. Therefore, it may be useful for the State to promote this form of voluntary insurance by helping to define the most typical package of benefits that individuals would want to cover, assessing the genuine likelihood of needing specific services, and establishing regulatory conditions that would guarantee that benefit payments would be available once premiums had been paid, should the insured person become disabled and need the help promised by the policy.

3. The typical LTC insurance policy is deficient in one or more of the following ways:

- Offering excessive coverage for "front-end" or low-level disability assistance;
- No appreciable coverage for community-based care;
- No anti-lapse protection;
- No adjustment for inflation in paying benefits, resulting in inadequate payments to providers and diminished services; and
- Inadequate regulatory scheme regarding insurance reserves.

4. Consumer groups, notably retiree organizations and labor groups, are interested in LTC insurance coverage that falls within a range that their members feel are affordable. A number of employee organizations have put serious thought and effort into finding such insurance packages, often with only limited success -- the packages were often too expensive, or failed to provide protection in the long run.

5. A state-sponsored public trust fund is financially imprudent at this time due to the State's economic condition. The State should be cautious about taking on added financial exposure. The JLC received numerous questions about the state-sponsored public trust fund and financing plan proposed by Dr. Nitz, first unveiled at a JLC meeting on August 3, 1998, which was before the JLC was aware of HMSA's plan to offer an LTC policy that may meet or closely meet the JLTC criteria and specifications. More questions were raised at the public briefings.

The general public reaction to Dr. Nitz's proposed plan at the public briefings was in support for the plan and commendation for the JLC's efforts, but with recurrent reservations about the affordability of premiums, possible disqualification for some pre-existing conditions, and being too little and too late for senior citizens of the present. It was explained that a non-mandatory, premium-based financing system

cannot have comparable benefits to a universal, mandatory, tax-based system. A tax-based system is able to spread the risk more evenly over a larger population and can accumulate larger reserves over a period of time. However, a mandatory tax is not feasible at the present.

6. HMSA is preparing to offer, subject to regulatory approval, an insurance policy for LTC that is reportedly very similar to the JLC proposal. Furthermore, HMSA reportedly is using the same administrator on the mainland (the best in the country, according to Dr. Nitz) that the JLC would have recommended the State to use, thereby making that administrator unavailable to the State. The JLC was informed that HMSA plans to begin marketing its LTC policy in December, 1998, or January, 1999.

A readily available mass market for HMSA's LTC policy would be the HPEHF, but it is as yet uncertain whether the HPEHF will select HMSA or any other LTC carrier.

7. There are three alternatives for a proposed plan:

- Relying upon private sector LTC insurers to market policies, which could be facilitated by requiring employers to offer a LTC policy to their employees and by enacting tax incentives for employers and employees, and others who purchase a LTC policy; or

- Developing a state-sponsored plan by establishing a public trust fund to underwrite or market LTC policies; or

- Using a state-created entity such as the Hawaii Employers' Mutual Insurance Company to underwrite and to market LTC policies.

Although the first alternative can be implemented immediately because the private insurance market is far ahead of the State in providing for LTC services, the second and third alternatives could serve to cover government as well as non-government employees and would provide a more equitable and efficient manner of providing universal LTC.

8. The need for nursing home care remains unmitigated in spite of home- and community-based care. Most people at some time in their aging will face the prospect of entering a nursing home. The attendant cost of nursing home care is prohibitive for most people. This causes a great deal of worry and anxiety for elders and their families, not just those over fifty years old. A universal LTC program would be incomplete if it did not accommodate nursing home care.

Recommendations

1. The JLC believes that the proposal to increase the availability of private LTC insurance policies has significant potential.

This proposal however, has drawbacks -- notably that the State loses much control over structuring coverages and underwriting standards for a universal LTC program. Accordingly, the JLC recommends that legislation be introduced in the 1999 legislative session to:

- Amend existing long-term care insurance statutes to provide for desirable minimum underwriting requirements consistent with a universal, cost-effective, and voluntary LTC insurance program;

- Require large groups, such as employers and associations, to offer LTC insurance coverage to employees and members at no cost to the employer or association; and

- Provide tax incentives for employers to offer LTC insurance to employees and for employees and self-employeds to purchase LTC insurance.

2. The JLC cannot, at this time, make a recommendation as to an appropriate, adequate, and affordable universal LTC financing plan since there has not been a comprehensive actuarial LTC study. Accordingly, the JLC recommends that the Office of the Governor commission immediately a comprehensive actuarial study of the entire population of the State. The actuarial study should analyze the three JLC alternatives, recommend an alternative, and address whether the plan under the recommended alternative should:

- Be voluntary or mandatory;
- Be administered through private insurance, a state fund, or a state entity as a subsidiary of HEMIC;
- Cover public and private employees, retirees, and other members of the general public;
- Be premium or tax-based funding; and
- Include types of care, such as home- and community-based care, adult residential care homes, assisted living facilities, nursing home care, hospice care, and respite care. (Due to the State's poor economy at this time, the JLC recommends that the State consider including nursing home care as a mandated benefit in any LTC plan, perhaps in three to four years.)

The JLC recommends that the Governor expend the $150,000 budget appropriation to the Hawaii Public Employees Health Fund for fiscal year 1998-1999 (BUF 142, Seq. 95) for an actuarial study on LTC and any available funds under the jurisdiction of the Insurance Division to conduct a comprehensive actuarial LTC study. If the Governor does not expend these funds, the JLC recommends that an appropriation of $300,000 be made to the legislature for this purpose.

3. The Insurance Commissioner recommends, and the JLC concurs:

- That an appropriation be made to enable the Commissioner to hire or contract with a qualified LTC actuary and to hire more staff to adequately review LTC insurance filings; and
- That all LTC insurers, including HMSA, be placed under the Hawaii Life and Disability Insurance Guarantee Association for purposes of offering some form of protection to consumers in case of insolvency.

JLC Co-Chairs Senator Suzanne Chun Oakland and Representative Dennis Arakaki, and other members of the JLC will jointly sponsor the introduction of two bills incorporating these ideas for consideration by the 1999 legislative session.

Respectfully submitted,

MEMBERS ON THE PART OF THE SENATE	MEMBERS ON THE PART OF THE HOUSE
/s/ Suzanne Chun Oakland	/s/ Dennis Arakaki
SUZANNE CHUN OAKLAND, Co-Chair	DENNIS ARAKAKI, Co-Chair

/s/ Les Ihara, Jr.
LES IHARA, JR., Member

/s/ Marcus Oshiro
MARCUS OSHIRO, Member

/s/ Andrew Levin
ANDREW LEVIN, Member

/s/ Paul Whalen
PAUL WHALEN, Member

/s/ Sam Slom
SAM SLOM, Member

/s/ Nobu Yonamine
NOBU YONAMINE, Member

ATTACHMENT "B"

MISC. COMM. NO. 10

Honolulu, Hawaii
Jan 26 1999 , 1998

RE: H.C.R. No. 225
H.D. 1
S.D. 1

Honorable Calvin K. Y. Say
Speaker, House of Representatives
Twentieth State Legislature
Regular Session of 1999
State of Hawaii

Honorable Norman Mizuguchi
President of the Senate
Twentieth State Legislature
Regular Session of 1999
State of Hawaii

Sirs:

Your Joint Legislative Committee on Long-Term Care Financing, created pursuant to Act 339, Session Laws of Hawaii, 1997, and having been directed to report to the Legislature by H.C.R. No. 225, H.D. 1, S.D. 1 (1998) entitled:

"HOUSE CONCURRENT RESOLUTION REQUESTING A STUDY TO ASSESS STRATEGIES FOR ORGANIZING THE VARIOUS FORMS OF RESIDENTIAL CARE PROVIDERS,"

begs leave to report as follows:

PART I. BACKGROUND

Introduction

Hawaii's citizens are faced with an overwhelming financial burden of caring for their elderly and disabled residents. The elderly and disabled population needing long-term care (LTC) will continue to grow as the population ages. The cost of nursing home care is currently the highest of all types of long-term care and is continuing to escalate. Consequently, long-term residential care has become a realistic and cost-effective alternative.

Unfortunately, the organization and regulation of residential care facilities in Hawaii are fragmented. This tends to reduce cost-effectiveness and hamper operational effectiveness of the delivery of residential care services. There is a lack of overall direction and guidance at the state level regarding the delivery of long-term care to Hawaii's residents. Specifically, there is no vision of how residential care facilities and services may be used to alleviate the burden of long-term care in the State. This is reflected in the fragmented structure of regulation for a plethora of residential care category types in both the Hawaii Revised Statutes and the Hawaii Administrative Rules.

There is, therefore, a compelling need to clearly define how residential care facilities and their services can be used. To facilitate this vision, there is a corollary need to re-examine how these facilities are organized for regulatory purposes. Based on a more rational, consolidated, and equitable reorganization of the residential care system, practical operational improvements can then be made to benefit consumers of the system.

Legislative Mandate

Your Joint Legislative Committee (JLC) was created by Act 339, 1997. The JLC members were: Senator Suzanne Chun Oakland and Representative Dennis Arakaki, Co-Chairs; former Senator Roslyn Baker, Senators Andrew Levin, and Sam Slom; and Representatives Marcus Oshiro, Paul Whalen, and Noboru Yonamine.

H.C.R. No. 225, H.D. 1, S.D. 1 (1998), directed the JLC to create a Subcommittee to study long-term care residential facilities in Hawaii. H.C.R. No. 225 also directed the Subcommittee to confer with the Healthcare Association of Hawaii, the American Association of Retired Persons, the Departments of Human Services and Health, the Home Care Association of Hawaii, the Hawaii Long-Term Care Association, the State Planning Council on Developmental Disabilities, the Hawaii Nurses Association, the United Home Care Providers of Hawaii, and the Executive Office on Aging. The Subcommittee members are: Co-Chairs Senator Chun Oakland and Representative Arakaki; Violy Bernadino, Ruth Dias, Maria Etrata, Nancy McGulkin, Kookie Moon-Ng, Bob Ogawa, Roy Pilien, Rose Ann Poyzer, Marilyn Seely, Pat Snyder, Stephan Torak, Joan White, and Helen Yoshimi.

H.C.R. No. 225 also directed the Legislative Reference Bureau to provide research information to the JLC and to assist in drafting the final report.

Approach of the JLC's Subcommittee

The Subcommittee met as a whole on July 22, August 10, August 24, September 8, September 21, October 5, October 19, November 16, and November 24, 1998. In addition, the Subcommittee also met in four separate working subgroups numerous times over the course of the legislative interim.

The Subcommittee conferred with all of the organizations as directed by H.C.R. 225, either through direct membership on the Subcommittee or through participation as additional resource persons invited to attend Subcommittee meetings. These participants included: Espe Cadavona, Yvonne de Luna, Annie Fernandez, Cullen Hayashida, Richard Hioki, Bryan Kagihara, Lita Posis, Angel Ramos, Mildred Ramsey, Kevin Sypniewski, Garrett Toguchi, and Will Young. In addition, information and input were obtained from representatives of the following organizations: Alliance of Residential Care Administrators, Big Island Adult Residential Care Homes, and United Home of Group Operators.

The Subcommittee Co-Chairs were aware that another resolution, namely H.C.R. No. 139 (1998), requested holding a Governor's Conference on the Future Role of the Residential Care Home Industry. Accordingly, the Co-Chairs decided not to mount a duplicative and parallel effort but, instead, build on the work of the Conference. The Co-Chairs believe that this approach is more logical and efficient while appropriately addressing the issues raised in H.C.R. No. 225. Consequently, the Subcommittee examined the three main recommendations that emerged from the Governor's Conference. These recommendations were to:

(1) Use a uniform assessment tool across facility types;

(2) Implement a single entry point concept and process for all non-institutional residential care facilities in Hawaii; and

(3) Improve the regulatory environment to reduce fragmentation in the residential care home industry by consolidating and simplifying organizational categories of facilities, increasing

uniformity of regulations across facility types, and promoting parity of provider reimbursement for similar services regardless of facility type.

The Subcommittee directed its attention to an extensive examination of these three issues and makes the following findings.

PART II. SUBSTANTIVE ISSUES

Guiding Principles: The Subcommittee adopted the following guiding principles in dealing with the three issues named above:

- Achieve and maintain high standards of services for clients.
- Make residential care a consumer-friendly system.
- Streamline and improve by simplifying access to the system.
- Reduce fragmentation and overlap in services.
- Increase uniformity of regulation and reimbursement across facility types.
- Promote reimbursement parity: pay providers on the basis of cost of services and not facility type or site of service delivery.

1. Uniform Assessment Tool

The Problem: The Subcommittee recognized that not all long-term care residents have the same needs or require the same level of care. The current system is fragmented. Different types of residential care service providers offer different, similar, and sometimes overlapping services. To comply with different state laws and funding source mandates, agencies and service providers are forced to use separate assessment tools for their residents. In other words, residents are often assessed more than once by more than one agency or service provider in order to receive the appropriate services and as their needs change over time. Moreover, data elements that are not standardized may not be easily shared between agencies or providers.

This inefficient redundancy and lack of uniformity can be at least partially alleviated if patient assessment can be done more uniformly. Data that are collected must be standardized so that they can be shared without modification by agencies and providers. Agencies and providers need to agree on a minimum data set and to standardize all data elements in a common assessment tool. Supplementing this approach, a re-organization of categories or types of service providers (see "3. Regulatory Environment" below) should also help to reduce differences and enhance uniform collection of data.

The Subcommittee met as a whole and in a working subgroup on this subject and noted that the Minimum Data Set (MDS) is already federally required as the assessment tool for skilled nursing facility-(SNF) and intermediate care facility-level (ICF) residents. Because of its comprehensive nature, the MDS contains information for service planning. In Hawaii, Department of Human Services Forms 1147 and 1150 are intended for use as financial eligibility determination tools and as indicators for service planning and placements. The Subcommittee also discussed and ruled out several other systems, including a proprietary client-tracking software system used by the Executive Office on Aging, which were all found to be inappropriate for the purpose.

Finding: After much discussion and the efforts of a working subgroup, the Subcommittee finds that:

- The use of a uniform assessment tool or tools conforms with and acts to further the goals as enumerated in the guiding principles stated previously.
- A uniform assessment tool that contains standardized data collected from clients of residential care facilities in Hawaii will help to reduce system fragmentation, increase efficiency and effectiveness of the system, enhance quality of care for residents, and help to make the system more consumer-friendly.

Recommendations: The Subcommittee recommends that:

- A much scaled-down 6-page version of the Medicaid waiver program's social and health assessment forms, fashioned by the working subgroup, should be used as an assessment tool in all residential care settings above the adult residential care home level. However, the name of this assessment tool should not be in any way associated with, or be reminiscent of, the MDS tool.
- The 1-page form currently being used by the Department of Health termed the "Level of Care Evaluation" should be updated to assure placement of only non-nursing facility level clients, and should be used for all adult residential care homes (ARCH).
- The data elements in the scaled-down tool and the 1-page ARCH tool should be standardized to reduce the need to obtain identical data later on, and to allow different providers to access and share standard information. The data elements should be consistent with the 2-page information and referral screening form, administered at the time of entry, termed the "Coordinated Screening Form (SEPC)," that is recommended for use in the single entry point process (see 2. "Single Entry Point" below). Only one modification needs to be made to the 2-page form by adding the item "attending physician."
- The two tools are meant to elicit basic data that can be shared but does not preclude any agency or provider from obtaining any additional information, as required.

2. Single Entry Point: Concept and Implementation

The Problem: Individuals who potentially require residential long-term care generally do not know how to get care. Many know they need help but cannot articulate their needs in terms of the services that are available in the community. Many do not know what services are available. If they do, they may not know whether they are eligible to receive care, where to get it, and who to ask about it. Hawaii's citizens cannot be expected to be familiar with the confusing jargon, departmental and agency jurisdictional distinctions, or the intricacies and idiosyncrasies of funding requirements that affect their eligibility for services. These intricacies sometimes confuse even those in the industry. What is needed is a simple, uniform, and highly professional way to allow anyone who needs care to easily and quickly access the care appropriate to that person's individual circumstances.

Discussion over the past several years has refined the concept of a single entry point (SEP) for long-term care in general. However, the scope of the Subcommittee's work is limited to residential care. Nevertheless, the concept remains the same. An SEP is meant to serve as a simple and uniform, yet sophisticated and comprehensive information and referral system to allow people easy access into the system. An SEP is similar to a one-stop triage system. An individual is given an initial screening to determine the person's needs so that a quick and accurate referral can be made to the appropriate agency or service provider.

The Subcommittee met as a whole and in a working subgroup on the SEP concept and clarified that the uniform, universal "assessment" done at the time of entry into the system via the SEP is actually an initial information and referral "screening" to determine an appropriate referral. After entry, the accepting agency or service provider uses a uniform universal assessment tool (see "1. Uniform Assessment Tool" above) to develop an appropriate individual service plan. Depending on requirements agencies or providers are mandated to comply with, or on client's individual needs, the agency or service provider may refine a service plan by using further specialized assessments or interviews.

The Subcommittee examined the SEP model proposed by the coordinating committee created by Act 301, Session Laws of Hawaii, 1996, that mandated the Department of Human Services to design and develop a single entry point system for long-term care. That SEP model proposed using the four county area agencies on aging as part of the Executive Office on Aging's Aging Network. It also proposed to contract with ASK-2000 to enhance and update relevant long-term care data including service providers and types of services by provider.

Findings: After much discussion and the efforts of a working subgroup, the Subcommittee finds that:

- The institution of a single entry point conforms with and acts to further the goals as enumerated in the guiding principles stated previously.
- An SEP process for clients requiring long-term residential care should be simple, quick, professional, uniform, consumer-friendly, and accurate.
- The SEP system should provide an information and referral screening function for potential clients of long-term residential care.
- The SEP system should serve the non-elderly (those under 60 years of age), the elderly, and disabled persons of all ages.
- The SEP process should include the conduct of a uniform initial screening for all potential clients at the time of entry (see 1. "Uniform Assessment Tool", above, regarding the "Coordinated Screening Form (SEPC)").
- The SEP system should be implemented by exploiting existing resources to reduce duplication of effort. This should be done by:

    - Financially augmenting the intake and assessment services for persons aged 60 and older that are already being performed by the Executive Office on Aging (EOA).
    - Contracting with ASK-2000, an information and referral organization, to provide initial information and referral screening for the non-elderly under age 60.

- The SEP should not be expanded into a comprehensive client-tracking system which, by its nature, focuses on data after a client is already in the system.
- An SEP system needs to educate the public and help especially those with long-term care needs to become aware of the entire range of long-term care options.

Recommendations: The Subcommittee recommends that:

- The single entry point system should provide simple, quick, uniform, and consumer-friendly access to the system through professional and accurate information and referral screening for potential clients of long-term residential care services.
- The State should establish a single entry point system by funding the Executive Office on Aging (EOA) to augment its Aging Network to perform information and referral initial screening for all persons aged 60 and older. As part of its funded task, the EOA is to expand its screening and referral program to coordinate similar services to be provided by ASK-2000, or other providers as appropriate, for clients under age 60. Development of this system should begin in July, 1999.
- The State should provide similar information and referral initial screening for all persons under age 60 by funding the EOA to subcontract with ASK-2000, a proven local information and referral organization, or other providers, as appropriate. Development of this part of the system should begin in July, 1999.
- Funding for the entire EOA-operated SEP system should include one-time start-up as well as annual operating costs.

3. Regulatory Environment: Overall Vision and Consolidation

The Problem: The elderly and disabled populations in Hawaii are rapidly growing even as the State's resources to meet the long-term needs of these individuals are dwindling. Institutional nursing home care is the costliest. Yet, many people do not need to be institutionalized but can make use of less expensive alternatives such as residential care services. However, several obstacles prevent maximal use of these residential options. First, most people are not aware of the full range of care options. Second, it is difficult to access the system. A single entry point system and the use of universal assessment tools in the previous two sections help to address these two problems. Third, the fragmented structure of residential care in Hawaii and its sheer complexity hamper the efficient and effective delivery of residential care services.

There is no overall unifying framework for the various types of residential care facility types. The following facility types are currently defined, regulated, and authorized under different statutes, a situation

that creates confusion even for those in the industry and that gives rise to disparities in provider reimbursement for similar services:

1. Types I and II Adult Residential Care Homes (ARCH):

    - Defined in §321-15.1 Hawaii Revised Statutes.
    - Regulated by Department of Health in §321-15.6, HRS.
    - Rate of payment authorized by Department of Human Services in : §346-53, HRS.
    - (Same as Type I ARCH.)

2. Developmental Disabilities Domiciliary Homes:

    - Not specifically defined in HRS.
    - Regulated by Department of Health in §321-15.9, HRS.
    - Rate of payment authorized by Department of Health in §321-15.9, HRS, but based on payments authorized by Department of Human Services in §346-53, HRS.

3. Adult Foster Homes (for developmentally disabled):

    - Defined in §321-11.2, HRS.
    - Regulated by Department of Health in §321-11.2, HRS.
    - Rate of payment authorized by Department of Health in §321-11.2, HRS, but based on payments authorized by the Department of Human Services in §346-53, HRS.

4. Adult Foster Homes(for elderly):

    - Not specifically defined, regulated, or authorized in HRS but operate as "adult waiver foster homes" under Department of Human Services rules under broad HRS authorization for "duties generally" in §346-14, HRS.

5. ICF-MR Homes:

    - Not specifically regulated in HRS except that in §333F-2(c)(9), HRS, the Department of Health is required to provide "community residential alternatives for persons with developmental disabilities or mental retardation, including group homes and homes meeting ICF/MR standards."

6. Maluhia Waitlist Project:

    - Authorized by Act 165, Session Laws of Hawaii, 1994 (but will sunset on 6/30/99 pursuant to Act 341, SLH 1997).

7. Extended Care ARCHs (Types I and II):

    - Defined and regulated by Department of Health in §323D-2, HRS.
    - Further defined as "expanded adult residential care home" in §321-15.1, HRS.
    - Regulated as "expanded adult residential care home" in §321-15.61 and §321-15.62, HRS.
    - Rate of payment authorized by Department of Human Services in §346-53 and §346-53.4, HRS.

H.C.R. No. 225 inappropriately cited several "facility types." First, the Subcommittee specifically excluded special treatment facilities from the scope of its report because of the short-term nature of services provided in this type of facility. Second, "respite home" is not a facility category type and has no authorization in the statutes although "respite care" can be provided in existing facility types. Third,

"supportive living is a concept and not a facility type nor a specific package of services. Finally, "assisted living facilities" are only defined in the statutes but are not specifically authorized or regulated. However, as of the date of this report, rules are currently being proposed for adoption to regulate assisted living facilities and have reached the public hearing stage.

The Subcommittee met as a whole and in a working subgroup to examine ways to streamline and consolidate the structure of the residential care industry in Hawaii. Input was sought and received from the industry. Discussion focused on consolidating the various facility types to improve efficiency and to promote parity of reimbursement for the type of services provided regardless of the facility type in which the services are provided.

Findings: After much discussion and the efforts of a working subgroup, the Subcommittee finds that:

- Re-organizing the structure of the residential long-term care industry in Hawaii to streamline and consolidate facility types to provide more uniform regulation and to promote parity of reimbursement, conforms with and acts to further the goals as enumerated in the guiding principles stated previously.
- Consolidation and streamlining acts to improve efficiency and effectiveness of service delivery, improve access to the system, encourage maintenance of high standards of service quality by facilitating system monitoring, and promotes parity of reimbursement for services provided regardless of facility type.

Recommendations: The Subcommittee recommends that:

- Long-term residential care facility types in Hawaii should be statutorily re-organized by consolidating facility types to the extent practical and should be regulated in a more streamlined and uniform manner. The statutes should clearly state the intent to consolidate and to provide a unified framework for all long-term residential care in the State.
- All residential care facilities should be placed in three categories:

  (1) Basic residential care facilities

    - Adult residential care facilities, Type I and Type II.
    - Developmental disabilities domiciliary homes.
    - Adult foster homes for the developmentally disabled.

  (2) Expanded (ICF/SNF-level) residential care facilities:

    - Expanded adult residential care homes (re-named from "extended care adult residential homes"), Type I and Type II.
    - "Adult foster waiver homes" (informally referred to in the past as "adult foster homes for the elderly").
    - Developmental disabilities domiciliary homes (ICF/SNF-level).
    - Adult foster homes for the developmentally disabled (ICF/SNF-level).

  (3) Specialized residential care facilities:

    - ICF-MR homes.

- After an appropriate transition period, all residential care facilities for adults must be licensed, to be required by statute.
- After an appropriate transition period, all care providers providing care in residential care facilities for adults in the State must be licensed, to be required by statute.

- The Department of Health should be the single department responsible for all statutory licensing. However, additional staffing must be provided to accommodate the increased workload.
- Statutes that authorize and regulate these facilities should:

  - Impose uniform requirements for all facility types within each of the three residential care categories.
  - Use uniform terminology and definitions across all three residential care categories.
  - Establish specific requirements for each specific facility type within a residential care category, if necessary, to comply with federal and other requirements, while maintaining quality of care for residents.
  - Mandate the Department of Health to adopt rules to implement the re-organization.
  - Include a provision to respect the resident's right of self-determination about choosing where to live.
  - Include a provision to respect the provider's right to not accept a potential resident based on the provider's belief that the provider is not qualified to provide the required adequate and appropriate care.

- The State, through its departments, including, but not limited to the Departments of Labor and Industrial Relations, Human Services, and Health, should work with private sector residential care organizations to educate and train all residential care providers to improve the quality of residential care in the State.
- Parity of reimbursement for residential care should be promoted. Reimbursement for residential care services should be rational and tied to the type of service provided to the resident, regardless of facility type or residential care category.

  - To provide the foundation upon which to base parity of reimbursement, the Department of Human Services, with the assistance of the Department of Health and the residential care industry, should first comprehensively review and categorize all residential care services that are provided in the State and determine existing reimbursement rates for these services.

- To encourage aging in place, subject to the resident's right to self-determination and the provider's right of choice to not accept a potential resident, if a provider lacks the ability to meet the resident's needs, the provider should obtain training to upgrade the provider's skills to meet licensing and training requirements.

Your Joint Legislative Committee has reviewed and approved the report of the subcommittee, as presented above. Accordingly, the JLC recommends that legislation be introduced in the 1999 legislative session to implement the recommendations outlined in the three sections above. Co-Chairs Senator Suzanne Chun Oakland and Representative Dennis Arakaki, and other members of the JLC will jointly sponsor the necessary legislation.

With the filing of this report, the business of the Subcommittee created to study long-term care residential facilities in Hawaii is completed.

Respectfully submitted,

MEMBERS ON THE PART OF THE SENATE	MEMBERS ON THE PART OF THE HOUSE

/s/ Suzanne Chun Oakland
SUZANNE CHUN OAKLAND, Co-Chair

/s/ Dennis Arakaki
DENNIS ARAKAKI, Co-Chair

/s/ Andrew Levin
ANDREW LEVIN, Member

/s/ Marcus Oshiro
MARCUS OSHIRO, Member

/s/ Sam Slom
SAM SLOM, Member

/s/ Paul Whalen
PAUL WHALEN, Member

/s/ Les Ihara, Jr.
LES IHARA, JR., Member

/s/ Noboru Yonamine
NOBORU YONAMINE, Member