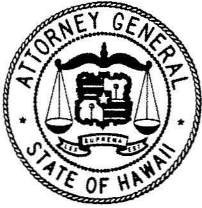


TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:
H.B. NO. 1598, RELATING TO HEALTHCARE.

LATE
Testimony

BEFORE THE:
HOUSE COMMITTEE ON HEALTH

DATE: Wednesday, February 6, 2008 **TIME:** 8:00 AM
LOCATION: State Capitol, Room 329
Deliver to: Committee Clerk, Room 436, 5 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lee-Ann N.M. Brewer, Deputy Attorney General.

Chair Green and Members of the Committee:

The Department of the Attorney General has a number of concerns with this bill.

House Bill No. 1598 seeks to establish a system of universal healthcare insurance in the State of Hawaii, by creating a new entity that will ultimately be the single payer for healthcare financing in the State. This is a complex issue, and the bill as written does not provide sufficient information to appropriately evaluate the programmatic and legal impact. Our most significant concerns are set forth below.

Placement Within Department of Taxation:

The bill creates the State healthcare insurance planning and financing authority ("the Authority"), established within the Department of Taxation for administrative support purposes. Pursuant to section 26-10, Hawaii Revised Statutes, the Department of Taxation is charged with administering and enforcing the tax revenue laws of the State and collecting all taxes and other payments payable thereunder. Except for the anticipated imposition of income and general excise taxes (page 19, lines 12-17), the Authority's duties as defined in this bill are outside the scope of the Department of Taxation's statutory authority.

Moreover, the State Constitution at article VII, section 2, provides that the Legislature shall set the rate or rates of any tax. This measure charges the Authority with assessing temporary progressive income and general excise surtaxes, but does not set the rate of the tax. (Page 19, line 12-17) The bill also contemplates other revenue collection activities, with possible sources including medicare/medicaid, prepaid healthcare act, and employee union trust fund. (Page 9, lines 7-14) Similar measures introduced in past legislative sessions have identified the medical portion of workers compensation, no fault insurance, and other insurances as possible funding sources. Depending on how these revenues are identified and collected, they may be an unlawful tax under article VII, section 2 of the State Constitution.

The members of the Authority will be responsible for determining costs of the system, and methods of financing and transition mechanisms, including retraining of affected personnel. (Page 17, lines 6-11) The Authority will also, among other things, maintain a trust fund, negotiate and receive all healthcare revenue, be the single-payer of universal healthcare financing, and conduct enrollment activities. (Page 19, line 7 to page 20, line 4) Because its primary function is the provision of health insurance, much of which will be for Hawaii's low income population, it would be more appropriate to place the Authority within the Department of Health or the Department of Human Services, which share common purposes and related functions, as required by article V, section 6 of the State Constitution.

Transition Provisions

The Authority is not given authority to adopt rules. Even if rule-making authority were granted, a transition of the various functions described below would involve substantial rights and responsibilities documented in administrative rules adopted by no less than four different agencies. Given the complexity and importance of the programs involved, very careful attention must be

given to the transition mechanisms to avoid negative impact on the State and its residents. This includes, but is not limited to, effective transfer of resources, personnel, policies and procedures, and contracts.

State Health Planning and Development Agency (SHPDA)

This bill makes no provision for systematic transfer of SHPDA functions from the Department of Health, including, among other things, oversight of the state health planning and development special fund, operation of the statewide health coordinating council, and administration of the Department of Health's certificate of need program. This bill does not repeal chapter 343D, part II of the Hawaii Revised Statutes, nor provide another mechanism for the Authority to perform these functions under SHPDA's current statutory authority.

Medicaid Program

Appointing the Authority as the State of Hawaii "liaison" with the federal Centers for Medicare and Medicaid Services appears intended to designate the Authority as the state Medicaid agency. The State Attorney General must certify the identification of the designated state Medicaid agency and the legal authority under which it administers or supervises administration of the program, including the power to adopt binding administrative rules. 42 C.F.R. §431.10(b). Currently, section 346-14(7), Hawaii Revised Statutes, gives the Department of Human Services the authority to administer the medical assistance programs, and the Attorney General has so certified. This bill does not repeal section 346-14(7), nor does the bill specifically authorize the Authority to administer the medical assistance programs, either by creating new statutory authority or by making the section 346-14(7) authority applicable to the Authority.

Additionally, the designated state Medicaid agency must submit and follow a State Plan under Title XIX of the Social Security Act, which is subject to approval by the Centers for Medicare and

Medicaid Services. Failure to comply with an approved State Plan can result in the loss of federal Medicaid funding. Appointing the Authority as the new state Medicaid agency requires that a State Plan amendment be filed by the Governor and approved by the Centers for Medicare and Medicaid services.

This bill also contemplates absorbing federal Medicaid funds into the Authority's trust fund (page 9, lines 7-16; page 19, lines 7-9); however, this does not appear to be possible under Medicaid law. Such a novel use of Medicaid funds would require approval by the Centers for Medicare and Medicaid Services which, if approved, will likely include significant restrictions on how funding is calculated and utilized.

Hawaii Prepaid Health Care Act & Hawaii Employer Union Health Benefits Trust Fund

The bill at page 18, lines 12-21, anticipates transfer of prepaid health care act and Hawaii employer union health benefits trust fund functions to the Authority. The Employee Retirement Income Security Act ("ERISA") contains a sweeping preemption provision that provides ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 USC § 1144(a). The Hawaii Prepaid Health Care Act exists pursuant to a congressional exemption from ERISA, and any substantive amendments to the Hawaii Prepaid Health Care Act are subject to preemption by ERISA.

It is not clear whether the bill intends for the Authority to assume the Prepaid Health Care Act functions by continuing its existence under the current ERISA exemption, or for the Authority to replace the Prepaid Health Care Act's employer-sponsored coverage, resulting in elimination of the Prepaid Health Care Act. As noted above, any substantive amendments to the Prepaid Health Care Act are subject to preemption by ERISA.

Likewise, transfer of the functions currently performed by the Hawaii employer union health benefits trust fund ("the trust fund"),

which provides health benefits for public employees, must ensure seamless transfer of members, compliance with applicable state statutes and rules, and transition of obligations currently addressed by collective bargaining agreements and health plan contracts. The existing statutory authority for the trust fund under chapter 87A, Hawaii Revised Statutes, is not repealed, and the bill does not provide any other guidance as to how the trust fund's functions are to be transferred to the Authority.

No Requirements for Expertise

The Authority trustee-members are elected. Except for age and residency requirements, there are no standards for professional qualifications for any trustee-members. Professional qualifications for some or all of the trustee-members would appear to be advisable considering the magnitude of the Authority's responsibilities.

Implementation Deadlines are Insufficient:

Effective November 5, 2008, after election of the Authority trustee-members, the Authority is to (1) assume the functions of SHPDA, (2) become "the new State of Hawaii liaison with the centers for medicare and medicaid services and other federal healthcare agencies," and (3) assume prepaid health care act functions and the Hawaii employer union health benefits trust fund. (Page 18, lines 12-21)

Major modifications to the Hawaii Revised Statutes, Hawaii Administrative Rules, and contractual relationships would be required in order for the Authority to assume any or all of these functions. In addition, the Medicaid program may not be changed except in compliance with federal law and approval from the centers for medicare and medicaid services, and substantive changes to the Prepaid Health Care Act are subject to preemption by ERISA.

Changes of this magnitude, if allowed by applicable law, will require substantial planning, and could not commence by November 5, 2008, as provided in this bill. Failure to appropriately transition these functions could result in, among other things, interruption of

health care services to Hawaii residents, including current Medicaid recipients and public employees, and loss of federal Medicaid funding.

Other concerns

The Medicaid program and other health insurers are "covered entities" subject to the administrative simplification provisions of the Health Insurance Portability and Accountability Act (HIPAA), which establishes protections for the privacy and security of health information. The Authority would be a covered entity that must comply with HIPAA privacy and security regulations. Compliance requirements are extensive. The bill should build in time and resources for the Authority to evaluate and implement required HIPAA compliance measures.

There is no appropriation included in this bill, although it specifies blank salaries for the executive director, Authority chairperson, and other member-directors. The bill also fails to provide for administrative support costs, including costs related to the central unified electronic health information system database. (Page 13, line 20)

As noted above, we are unable to evaluate the full legal impact of this bill because it does not provide sufficient detail regarding how the Authority is to perform the numerous functions contemplated by this measure. Nonetheless, even as written, the bill presents numerous concerns, both legal and programmatic.

Thank you for the opportunity to testify on this bill.

000142

The Twenty-Third Legislature
Regular Session of 2008

HOUSE OF REPRESENTATIVES
Committee on Health
Rep. Josh Green, M.D., Chair
Rep. John Mizuno, Vice Chair
Committee on Human Services & Housing
Rep. Maile S.L. Shimabukuro, Chair
Rep. Karl Rhoads, Vice Chair

State Capitol, Conference Room 329
Wednesday, February 6, 2008; 8:00 a.m.

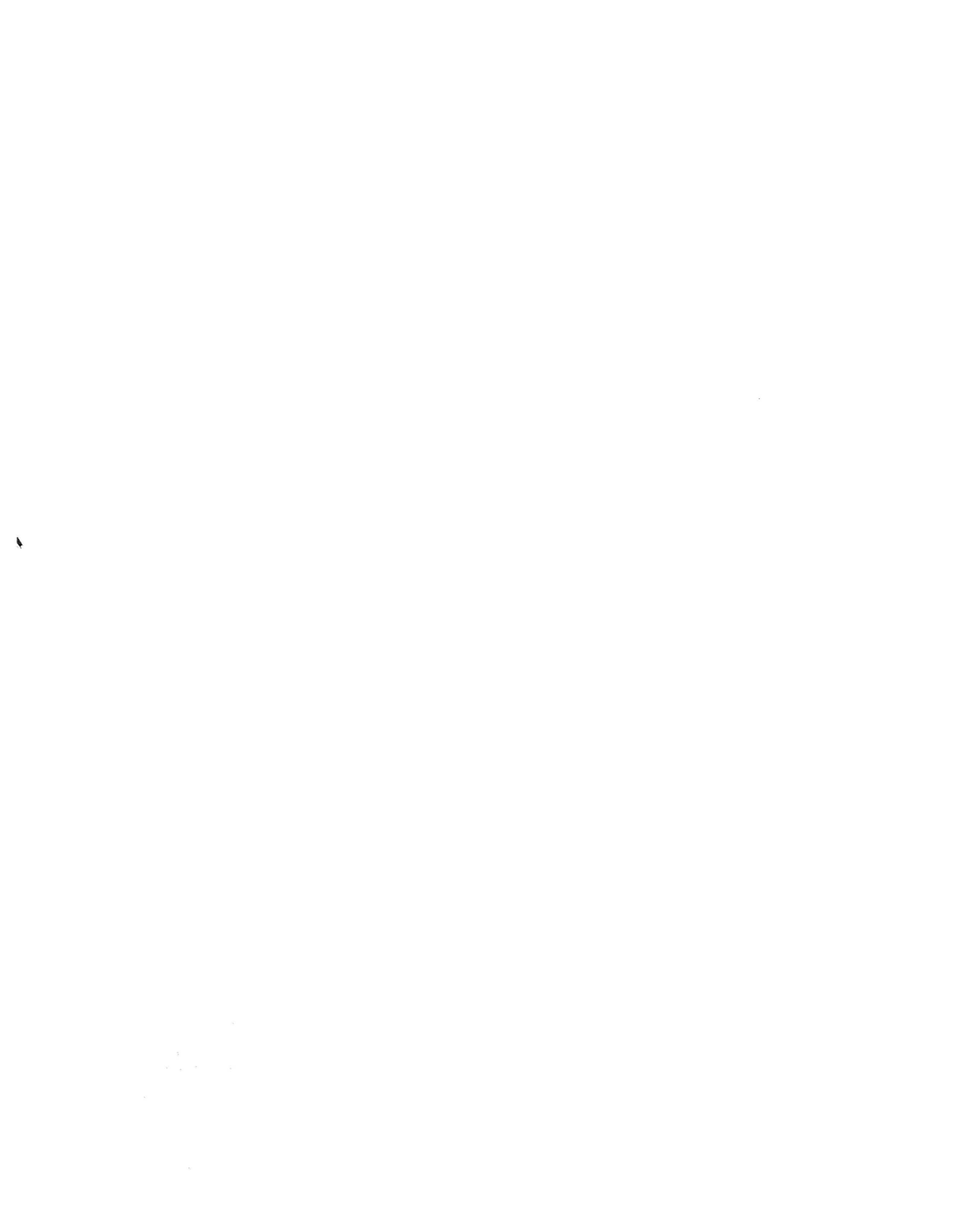
STATEMENT OF THE ILWU LOCAL 142 ON H.B. 1598
RELATING TO HEALTHCARE

The ILWU Local 142 supports the concept of H.B. 1598, which establishes an agency to operate a single-payer universal healthcare insurance system.

Quality, affordable health care should a right for all Americans. But in this country, health care is controlled by big business, and profit (even for so-called non-profits) is what drives who gets care and what kind of care it will be.

A single-payer system such as exists in Canada would seem to be the ideal. However, other models perhaps need to be considered before we proceed to establish an agency to implement a single payer vision.

Therefore, we urge the Legislature to authorize a study of various models for universal health care, including the single-payer system, and illustrate how those models would work in Hawaii. The Legislature must reach a consensus that universal health care is needed and possible to achieve.



To: Rep. Josh Green
Rep. John Mizuno
House Health Committee

From: Renee Ing (524-3332, POB 23094
Hon 96823)

Re: hb 1598 - Universal
Healthcare

My testimony in support of hb 1598 is in the attached flyer (that I'll be going over).

A SINGLE-PAYER SYSTEM [like Canada's] versus U.S. PRIVATE HEALTH [Insurance co.] FINANCE SYSTEM

CANADA'S SINGLE-PAYER SYSTEM VS U.S. PRIVATE HEALTH FINANCE SYSTEM

❖ "**ALL MEDICALLY NECESSARY CARE**" GIVEN TO EVERYONE **FOR LIFE** — for every Medical Condition that you need healthcare for

1. **ALL EMERGENCY CARE IS GIVEN RIGHT AWAY** — Non-emergency health care is prioritized and given after emergencies are taken care of
2. **NO CO-PAYS or DEDUCTIBLES** — Patients are not billed for the medical care they receive
3. **NO CAPS ON AMOUNT OF CARE GIVEN** — Catastrophic health problems treated until they're cured

❖ HUNDREDS OF PRIVATE HEALTH SYSTEMS — with **ANNUALLY RENEWABLE PREMIUMS** usually only provide a **DEFINED BENEFIT PACKAGE** with:

1. **EXCLUSIONS**—eg. for pre-existing conditions, etc. May need to prove you have health coverage to get care
2. **CO-PAYS & DEDUCTIBLES RISING**--You pay more up front but coverage stays the same or is lessened
3. **CAPS LIMIT AMOUNT OF CARE,** length of stays allowed yearly—even if the medical problem has not yet been cured (eg. Catastrophic illness like cancer)

❖ **SINGLE-PAYER HEALTH SYSTEMS CONTROL HEALTHCARE COSTS**

1. **ADMINISTRATIVE COST**= 16% [2003 Harvard study]
2. **NO PROFIT** in a publicly administered system — though medical providers are generally private
3. **ONE COMPUTER SYSTEM= catch** Duplication Patterns of Fraud & **Malpractice = Reducing Costs**
4. NO NEED for MARKETING Costs, High CEO PAY
5. **PREVENTIVE CARE = Huge Cost Savings**
6. **ONLY PAY ONCE** for healthcare—No need for other Private Health Insurance, nor Work Comp, etc.

VS

❖ **HUNDREDS OF U.S. PRIVATE HEALTH ENTITIES MAXIMIZE HEALTH COSTS**

1. **ADMINISTRATIVE COST**= 31% [2003 Harvard study]
2. **PROFITS**
3. **MALPRACTICE COSTS**
4. PR/ MARKETING Costs, large CEO compensations, High PRESCRIPTION DRUG COSTS paid by patients
5. **UNTREATED ILLNESS becomes serious & costly**
6. **MULTIPLE PAYMENTS** for care—Private Health Insurance + Medical in auto insurance + Work Comp, etc

❖ **SINGLE-PAYER** HEALTHCARE—with one government entity collecting health premiums and paying the health bills **maximizes money for care**, minimizes money wasted, **costs**

❖ **UNIVERSAL** HEALTHCARE created by having everyone get **private health insurance will keep the huge waste** in the U.S. health system—maximizing profitability. Healthcare now **costs**

CANADA = $ 3,500/per person/ per year **VS** **UNITED STATES = $ 7,000**/person/ year

HB 1598—A workable Single-Payer Universal Healthcare Law for Hawaii is in the 2008 Legislative session. KOKUA 5 4 5 -1 9 8 9

■ **HB 1598 includes a RE-TRAINING FUND to retrain employees (who now work in the health insurance industry) for other jobs** ■

HALF the MONEY can COVER ALL the PEOPLE

SINGLE PAYER Health Care

EVERYONE POOLS RESOURCES

■ Everyone puts all their health care premiums **into a single government Health Insurance Fund**—everyone is in one pool—which **covers everyone for life.**

■ UNUSED HEALTH PREMIUMS from we, the 90% of the population who're healthier (ie. not needing much health care now) can cover ** the health care needs of the 10% who presently need a lot (61.8%) of healthcare services.

■ **WHEN YOU'RE IN THE 10%** and needing care, **the other 90% covers you.**

■ The government only handles Health care Financing (collection and payment as a public service), while the Medical Care is largely provided by privately run medical institutions and private practitioners.

[** Pay-as-you-Go]

■ Everyone is fully covered for All Medically Necessary Health Care —including catastrophic illnesses. There are no Medical Bankruptcies.

PRIVATE Healthcare a Business

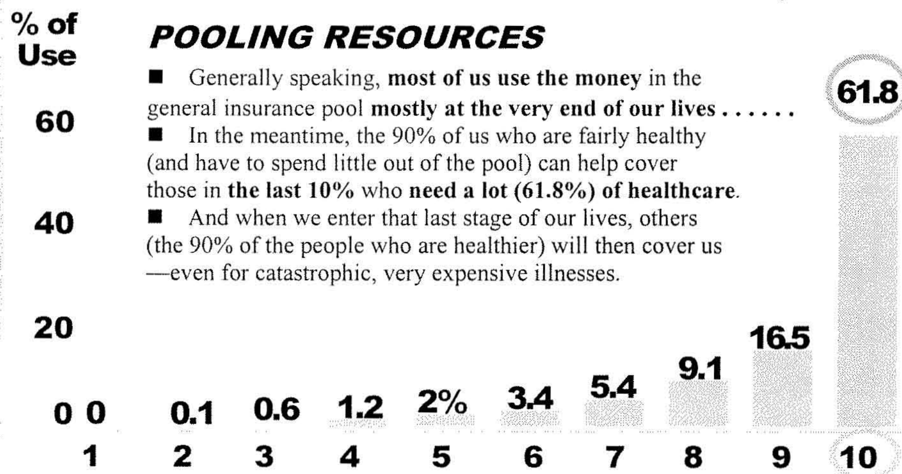
U.S. WASTE DOUBLES COST

■ Multiple Private Healthcare Finance Bureaucracies waste healthcare dollars on a Complex of Varying Plans and Administration, Huge CEO Pay & benefits, Ads for Market Share, Medical Review, Profitability, etc.

■ **COSTLY U.S. HEALTHCARE =**
47 Million UN-INSURED (no coverage).
60+ Million UNDER-insured (they pay for health coverage but can't get care because of high cost of co-pays, deductibles, etc.)
200 Million with varying "Defined Benefit Packages" which don't cover the full cost of Catastrophic Illness—which leads to **one-half of all U.S. Bankruptcies.**

■ Creating Universal Healthcare by expanding private U.S. health insurance to cover everyone is extremely costly, keeping the waste and problems we have now.

A FEW PEOPLE ACCOUNT for MOST HEALTH $PENDING



Drafted by Renee Ing, Published by Jim Brewer/EmployeesTODAYAdvocacy Media—267-0117
EmployeesTODAY.org - *EmployeesTODAY* TV - Power of Knowledge Democracy College - ETMag
1/7/08

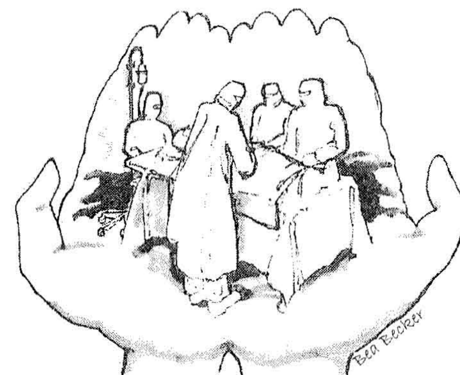
We All Can Have Healthcare Freedom & Security with "Single-Payer"* Universal Healthcare

DRAFT COPY

*Canadian Healthcare, Social Security, and Medicare are Single-Payer systems

FREEDOM — to go to the Doctor, or to the Clinic of your choice

SECURITY of having High Quality Medical Care when you need it—for your lifetime.



GETTING SINGLE-PAYER UNIVERSAL HEALTHCARE IS IN OUR HANDS

FREEDOM from fear — of Debt and even Bankruptcy — from high medical bills

SECURITY your Health Insurance has no cap which limits the medically necessary health care you receive

QUIZ: *Does YOUR present health insurance give you full coverage for all medically necessary conditions? If you got leukemia and needed **2 years** of hospitalization and medical care—-would you receive care until cured ?*

QUIZ: *WHICH kind of health insurance would give you **full coverage** for all medically needed care ?*

HB 1598—A workable Single-Payer Universal Healthcare Law Bill for Hawaii will be in the 2008 Legislative session. Please KOKUA! Renee Ing 545-1989