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TO THE HOUSE COMMITTEE ON CONSUMER  
PROTECTION & COMMERCE

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2010

Wednesday, February 17, 2010  
2:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2350, H.D. 1 – RELATING TO LIMITED BENEFIT  
HEALTH INSURANCE.**

TO THE HONORABLE ROBERT HERKES, CHAIR, AND MEMBERS OF THE  
COMMITTEE:

My name is J.P. Schmidt, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department offers the following comments on this bill.

The purpose of this bill is to add a new section to Article 10A, Hawaii Revised Statutes ("HRS") chapter 431, that excludes any new provision enacted after July 1, 2010, from applying to accident-only, specified disease, hospital indemnity, long-term care, or other limited benefit health insurance policies (except Medicare supplement policies), unless the provision expressly states that it is applicable to such policies. The House Draft 1 added disability, dental, vision, and Medicare supplement policies to the list of excluded limited benefit health insurance policies to the new section.

HRS § 431:1-205 defines "accident and health or sickness insurance" to refer to disability insurance. House Draft 1 refers to "disability" and it is unclear whether this is intended to refer to "accident and health or sickness insurance" or disability income policies.

We thank this Committee for the opportunity to present testimony on this matter.

# MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

February 16, 2010

Honorable Robert N. Herkes, Chair  
Honorable Glenn Wakai, Vice Chair  
Committee on Consumer Protection and Commerce  
House of Representatives  
State Capitol  
415 South King Street  
Honolulu, Hawaii 96813

Re: H.B. No. 2350, H.D.1 RELATING TO LIMITED BENEFIT HEALTH INSURANCE

Dear Chair Herkes, Vice Chair Wakai, and Committee Members:

On behalf of the American Family Life Assurance Company of Columbus (AFLAC), we respectfully submit the following written testimony in strong support of H.B. No. 2350, H.D. 1, relating to limited benefit health insurance, which is to be heard by your Committee on Consumer Protection and Commerce on February 17, 2010.

Supplementary or limited benefit health insurance policies provide consumers with the option of purchasing additional coverage for certain defined risks. For example, a cancer policy may provide a consumer with additional insurance to pay for costs associated with cancer that are not normally covered by a primary health insurance policy, such as travel costs. Other types of supplemental policies include accident-only or hospital indemnity policies, which similarly may provide coverage for out-of-pocket costs, rather than the direct costs of treatment. Limited benefit health insurance policies are generally indemnity-type policies in which the benefits are paid directly to the insured to be used in whatever way the insured decides, rather than as reimbursements to the providers.

Because the nature of limited benefit health insurance policies is fundamentally different from primary health insurance policies, the requirements imposed upon primary health insurance policies can be inappropriate for limited benefit health insurance policies. For example, Hawai'i law mandates that health insurance policies provide coverage for certain diabetes-related training, *etc.* See Hawaii Revised Statutes ("HRS") § 431:10A-121. While this may be an appropriate requirement for a primary policy of health insurance, it would not be appropriate to mandate this benefit for limited benefit health insurance policies. For example, a Hawai'i consumer that purchases a cancer policy has made the choice to insure against certain costs associated with cancer, possibly because of family history or other reasons specific to the consumer. However, if Hawai'i law also requires that the cancer policy include coverage for certain diabetes-related treatments, in effect, the law will force the consumer to purchase additional unwanted coverage at a higher price or, in the worst case, cause the consumer to be unable to purchase the desired cancer policy at all. Moreover, because Hawai'i law already requires that the consumer's *primary* health insurance policy cover the diabetes-related treatments, it is duplicative, unnecessary and ultimately wasteful to require that the supplemental

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policy cover it as well. Similarly, requirements that relate to reimbursement levels should not apply to limited benefit policies, because these policies generally pay benefits to the insured directly and without regard to cost, whereas primary health insurance policies are reimbursement policies in which the benefits are paid to the providers, rather than the insured.

Although coverage under limited benefit health insurance policies is triggered by accident or health-related occurrences, as discussed above, the nature of these policies is entirely different from primary health insurance policies. HRS chapter 431:10A does not specifically distinguish limited benefit health insurance policies from primary health insurance policies. However, the Hawai'i Legislature has recognized that limited benefit health insurance policies are a different insurance product, as certain provisions of HRS chapter 431:10A specifically except limited benefit health insurance policies. *See, e.g.,* HRS § 431:10A-121 ("Each policy of accident and health or sickness insurance providing coverage for health care, other than an accident-only, specified disease, hospital indemnity, medicare supplement, long-term care, or other limited benefit health insurance policy, that is issued or renewed in this State, shall provide coverage for outpatient diabetes self-management training, education, equipment, and supplies . . .").

Each year, the Hawai'i Legislature considers a large number of bills relating to health insurance, including various mandated benefit bills, reimbursement bills, *etc.* Almost without exception, these measures are intended to address issues relating to primary health insurance policies, but may have unintended and undesirable effects if applied to limited benefit health insurance policies. H.B. No. 2350, H.D. 1 would help to avoid these unintended consequences, creating a general exception for limited benefit health insurance from HRS chapter 431:10A, so that future laws regulating health insurance policies apply to limited benefit health insurance policies only if these laws specifically state that they are intended to apply to limited benefit health insurance policies.

Similar carve-outs have been enacted in Arizona, California, Georgia, Indiana, Louisiana, Minnesota, North Carolina, North Dakota, Oregon, Texas, Utah and West Virginia.

For the foregoing reasons, we strongly support H.B. No. 2350, H.D. 1. Thank you for your consideration of the foregoing.

Very truly yours,

MCCORRISTON MILLER MUKAI MACKINNON LLP



Peter J. Hamasaki