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TO THE HOUSE COMMITTEE ON HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Wednesday, February 11, 2015
8:35 a.m.

TESTIMONY ON HOUSE BILL NO. 1467 – RELATING TO THE HAWAII HEALTH CONNECTOR.

TO THE HONORABLE DELLA AU BELATTI, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department takes no position on the bill, and submits the following comments on this bill.

The purposes of this bill are to: enable the Hawaii Health Connector ("Connector") to offer large group coverage to insurers beginning on January 1, 2017; require insurer participation in the Connector if an insurer has a share of the small group Hawaii market that exceeds 20 percent; amend the current definition of "small employer" under section 431:2-201.5, Hawaii Revised Statutes; end transitional renewal health insurance policies beginning January 1, 2016; and require health insurers to provide notice to group health plans offering continuation coverage about options to secure coverage through the Connector.

The Department notes that amending the definition of small employer to increase it to 100 employees, and ceasing transitional renewal health policies will subject certain businesses to rate increases due to the elimination of the use of loss experience in rating. These increases could be significant.

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

HAWAIʻI HEALTH
CONNECTOR

The Honorable Della Au Belatti
Chair, House Committee on Health

The Honorable Justin H. Woodson
Vice Chair, House Committee on Health

Re: Testimony regarding H.B. 1283 and H.B. 1467, Relating to the Hawaii Health Connector.

Hearing scheduled for February 11, 2014, at 8:35 a.m.

Chair Belatti, Vice Chair Woodson, and members of the Committee on Health,

My name is Jeff Kissel, Executive Director of the Hawaiʻi Health Connector (the "Connector"), speaking on behalf of the Connector and its Board of Directors.

It is a pleasure to be with you today to discuss H.B. 1283 and H.B. 1467.

H.B. 1283

At the end of 2014, the Connector submitted its Annual Report and Sustainability Plan. The report shows that the Connector is a viable, sustainable resource. The Connector is already earning a significant return on our investment as millions of dollars of federal tax subsidies are paid to many of our 19,500 clients now. As enrollment grows, the Connector has the potential to earn an additional $500 million in federal tax subsidies for the residents of our community. The Connector is proving itself as a more valuable resource as the provisions of the ACA are better understood. The Connector was able to implement a program to transfer about $30 million in annual costs from the Basic Health Hawaii program to the federal government ,while providing additional coverage and choice of plans for the recipients.

The Connector works in conjunction with state government and private industry to achieve our goal of harmonizing the benefits of Hawaii's forward-thinking Prepaid Healthcare Act of 1974 with the Affordable Care Act to deliver access to health, wellness and preventive care to every resident of our state.

In testimony I provided to the Legislative Oversight Committee on December 29, 2014, I discussed how the State of Hawaii provided support for HEMIC, in part to address an inability for Hawaii's business to secure Workers Compensation insurance. I was working as a commercial insurance agent in Hawaii and remember the vigorous public discussion and debate, including significant opposition. That debate centered on the presumption, that without substantiation, there weren't enough uninsured or at-risk employers to justify the cost of HEMIC. In the end, the enabling legislation was passed.

Today, HEMIC not only provides workers compensation insurance at competitive rates, while earning a profit, it actually supports the overall profitability of the commercial insurance industry.

For the record, it is important that we point out that we recognize that the actual method the State used to bring HEMIC into existence differs from the proposal for the Connector. The concept, however, is the same. HEMIC received relief from a requirement to maintain reserves, contribute to the Hurricane Relief Fund, and was not required to comply with other financial requirements imposed on new insurance companies for up to 10 years. During that time, if HEMIC failed to perform financially, the State would have had to assume responsibility for the financial losses associated with those commitments. If memory serves, HEMIC achieved its goals and relieved the State of the risks and obligations it assumed in about 5 years. Today it is earning a profit and has accumulated the requisite surplus to achieve an "A" rating from AM Best, the largest rating agency for the insurance industry.

Even though the Connector is not an insurance company, and is committed to operate as a non-profit, it has the potential to bring those same economic, and health benefits to our community. While H.B. 1283 is similar to the legislation that made HEMIC a reality, there is one important difference; the Connector offers all of the people of the State of Hawaii an opportunity to benefit from direct federal subsidy of hundreds of millions of dollars, while at the same time enjoying healthier, longer and more productive lives.

Today, more than 19,500 Hawaii residents are enrolled in plans through the Hawaii Health Connector. This compares with just over 2,000 at the same time last year. Momentum is building, daily enrollments are increasing as more and more of our citizens experience a better quality enrollment process supported by improved technology, better trained staff and faster access to lower the cost of health insurance plans.

In addition, by establishing a State Based Exchange (SBE), Hawaii has been able to participate in the expanded Medicaid program that is now providing Medicaid benefits to more than

50,000 new participants at virtually no cost to the State. In fact, by expanding Medicaid and offering access to health care through the Connector, our community is not just saving many millions of dollars each year in unreimbursed health care costs, but also providing for a healthier more productive population.

The federal government through the Affordable Care Act funded the development and initial operation of our State Based Exchange. It did not provide the "startup" capital necessary to support operations until the Connector insures sufficient lives to start to pay its own operating expenses. Like most businesses, it will take time to develop sufficient revenue to cover the cost of operation. We provided detailed financial information in our Annual Report and Sustainability Plan that shows when the Connector is likely to break even and generate surplus revenue.

It is important to recognize the difference between generating a surplus and sustainability. Nearly all enterprises require operating capital to pay expenses until they can turn a profit. The Connector is no exception. There is an important difference, however. While investors in start-up enterprises must usually wait to achieve a return on investment, the people of Hawaii are already receiving a substantial return on the Connector. In its first 3 years of operation, as our Annual Report shows, health insurance purchased through the Connector generated more than $55 million in direct federal tax subsidies to businesses and the residents of Hawaii. The expanded Medicaid program together with the insured enrollment on the Connector is already reducing the uncompensated costs that are passed along to the rest of us.

Also, as we complete the Basic Health Hawaii transition, there is an added benefit. Effective March 1st, about $30 million per year in the medical costs for just one group of 7,500 individuals will be transferred from our community to the Federal Government through the Connector under the terms of the Affordable Care Act.

Honorable Members of the House of Representatives, this is not a discussion of funding a loss for an indeterminate period of time. It is choice about whether or not to facilitate a commitment of up to $28 million over the next six years, that will be repaid, to continue to return the immediate benefits I just discussed and then generate not just half a billion dollars in direct federal tax payments but also the substantial return to each and every family, our businesses and the community resulting from a healthier, more productive population.

H.B. 1467

HAWAI‘I HEALTH
CONNECTOR

With transitional or “grandmothered plans,” individuals and small businesses must chose from among 40 plans on the Connector. The array of plans from which an individual or small businesses must chose is overwhelming. It causes unnecessary confusion and adds very little value to Hawaii’s already robust options under Prepaid Care Act of 1974. Based on the Connector’s experience with customers over the last two enrollment periods, and for the purpose of simplifying choices, we would support a reduction in the number of offerings as proposed by the legislation. We feel this would be beneficial to our customers and all Hawaii residents.

Considering Hawaii’s economy has an unusually large economy of employers with 100 employees or fewer, we would like to offer them the opportunity to select from the plans on the Connector. We believe our efforts to attract more insurance companies to the Small Business Health Options Program (SHOP), combined with the fully functional technology in SHOP ,will be beneficial to the business community.

With nearly 30,000 individuals on unemployment, and presumably a very high percentage of those individuals with families, it is imperative that they become aware of the potential savings through the programs that provide tax credits (advanced premium tax credits) and other cost-sharing reductions which lower the overall price of health care when an individual’s income declines. We support notification of all recipients of unemployment benefits that they may be eligible so that they may be able to move from the high cost of COBRA coverage to an ACA plan, while they continue to search for employment.

Thank you for providing an opportunity to testify on these bills.

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Health
Wednesday, February 11, 2015 at 8:35 A.M.
Conference Room 329, State Capitol

RE: HOUSE BILL 1467 RELATING TO THE HAWAII HEALTH CONNECTOR

Chair Belatti, Vice Chair Creagan, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** HB 1467, which enables the Hawaii health connector to offer large group coverage to insurers and requires insurer participation in the connector if an insurer has a share of the small group market in the State that exceeds 20 per cent. Further expands the potential small businesses market in the connector by amending the current definition of "small employer" under section 431:2-201.5, Hawaii Revised Statutes. Beginning January 1, 2016, ends transitional renewal policies in Hawaii and requires health insurers to provide notice to group health plans offering continuation coverage about options to secure affordable coverage under the connector.

The Chamber is the largest business organization in Hawaii, representing over 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber believes that private companies should have a choice of whether or not to participate in the health connector, rather than being required to participate due to their control of shares. We believe that no company should be forced to participate in a government program.

We respectfully ask the committee to defer this measure. Thank you for the opportunity to testify.

HPCA
HAWAI'I PRIMARY CARE ASSOCIATION

House Committee on Health
The Hon. Della Au Belatti, Chair
The Hon. Richard P. Creagan, Vice Chair

Testimony on House Bill 1467

<u>Relating to the Hawaii Health Insurance Exchange</u>
Submitted by Nani Medeiros, Public Affairs and Policy Director
February 4, 2015, 8:35 am, Room 329

The Hawaii Primary Care Association (HPCA), which represents the federally qualified community health centers (FQHC) in Hawaii, supports House Bill 1467, which calls for a number of measures to strengthen the Hawaii Health Connector.

Under the Affordable Care Act (ACA), the intent behind creating state health insurance exchanges was to have a venue for competitive insurance plan comparison so as to provide for better premium rates to consumers. The HPCA finds House Bill 1467 to be very much in line with that goal, mandating that all plans in the state carrying a 20% market share of the SHOP program or better participate in the exchange.

Additionally, the HPCA supports changing the definition of "small employers" in Hawaii from 50 to the nationally accepted threshold of 100 employees. Such measures will encompass a greater number of businesses in the state, providing a stronger Connector and a better marketplace for consumers.

Thank you for the opportunity to testify and we look forward to further discussion on this important matter.

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February 11,, 2015

The Honorable Della Au Belatti, Chair
The Honorable Richard P. Creagan, Vice Chair
House Committee on Health

Re: HB 1467 – Relating to the Hawaii Health Connector

Dear Chair Au Belatti, Vice Chair Creagan and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 1467, which requires (1) a plan with at least 20 percent of the small group market to participate in the Hawaii Health Connector (Connector); (2) changes to the definition of "small group" to include businesses with up to 100 employees; (3) end transitional health plans effective January 1, 2016; (4) requires additional notification requirements for plans; and (5) authorizes the Connector to offer large group insurance coverage beginning January 1, 2017. HMSA opposes the portion of this Bill that relates to mandated issuer participation in the Connector, and we have no comment its other provisions.

The provision of this Bill requiring participation in the Connector by a plan with at least 20 percent of the small group market seems to be modeled against a provision affecting plans in federally facilitated exchanges (FFEs). HMSA is aware that the federal HHS has issued a regulation which would prohibit plans with more than a 20 percent share of the small group market from participating in the individual market of an FFE unless the plan also offers at least one small group market plan through the federally-facilitated SHOP. However, that is very different from what the provision of HB 1467. The federal regulation gives the insurer a choice – the insurer is only forced to participate in the SHOP if it chooses to participate in the individual marketplace. HB 1467 does not provide the issuer the choice of not offering individual plans through the Connector.

Given the 20 percent threshold in the Bill, HB 1467 would require HMSA to return to participate in the SHOP. In so doing, it would place us in a competitive disadvantage with other issuers who are not subject to the 20 percent market share threshold and are able to offer health insurance coverage without being encumbered by the administrative, technical, and financial burdens of participating in the SHOP.

As you may be aware, HMSA chose not to participate in the SHOP because the costs of working around the largely inoperable information technology functions were significant, and were not offset by any benefit to the plan. Small businesses by a wide margin were choosing to buy directly from the plans rather than going through the SHOP. HMSA's members were frustrated by the problems they experienced with the Connector, and HMSA was not readily able to resolve their concerns because the files were owned by the Connector. HMSA staff was also distracted from other major, priority projects to continually try to work out problems with file transfers.

We are advised that forcing us to participate in the SHOP, as well as the individual exchange, raises constitutional issues.

- First, the uncompensated economic impact on HMSA of being forced to participate in the SHOP may be an unconstitutional regulatory taking. The takings clause provides that private property shall not "be taken for public use, without just compensation." [Lingle v. Chevron USA. Inc., 544 U.S. 528 (2005)]. One of the primary justifications for the takings clause is to prevent government from "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" [Armstrong v. United States, 364 U.S. 40, 49 (1960); see also Monongahela Nav. Co. v. United States, 148 U.S. 312, 325 (1893)].

- HMSA's decision to leave the SHOP was driven by serious business concerns. The right to join or leave groups of a person's own choosing has been held to be an essential part of the freedom of speech under the First Amendment to the U.S. Constitution. A plan should not be compelled to engage in speech in the form of marketing its small group plans on the Connector. By compelling HMSA's participation in the SHOP marketplace, HB 1467 also violates HMSA's freedom of association.

- HMSA is not the only plan which has chosen not to participate in the SHOP. However, by focusing solely on HMSA – which is the effect of the 20 percent market share trigger in Hawaii – this legislation is singling out one insurer to bear the burden of financing the Connector's sustainability. We believe that may constitute a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, which provides that no state shall deny to any person within its jurisdiction "the equal protection of its laws.

Thank you for the opportunity to testify in opposition to HB 1467.

Sincerely,

Jennifer Diesman
Vice President
Government Relations