SB2665

Measure Title:	RELATING TO HEALTH SAVINGS ACCOUNT PROGRAMS.
Report Title:	Health Savings Account Program; Insurance Code; Mutual Benefit Society; Health Maintenance Organizations
Description:	Authorizes employers to establish group health savings accounts in addition to group accident and health or sickness insurance policies, group hospital and medical service plan contracts, and HMO plans issued or renewed after July 1, 2016.
Companion:	
Package:	None
Current Referral:	CPH, WAM
Introducer(s):	BAKER, CHUN OAKLAND, Gabbard, Keith-Agaran, Kidani, Riviere, Tokuda

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, February 3, 2016
9:00 a.m.

TESTIMONY ON SENATE BILL NO. 2665 – RELATING TO HEALTH SAVINGS ACCOUNT PROGRAMS.

TO THE HONORABLE ROSALYN H. BAKER, 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 purpose of this bill is to establish optional health savings account programs for employees who are part of, or will be part of, their respective employers' group policies. The Department submits the following comments.

Currently, high deductible health insurance policies associated with tax-preferred savings accounts are available in the market. These accounts are not all the same and vary by their purposes and how they're set up but essentially operate in the same manner: by having moneys in savings accounts available to policyholders to pay for their out-of-pocket health care costs.

The Department supports the intent of having employers offering their employees opportunities to choose health savings account programs as alternatives to being part of group policies. We understand that employees' lifestyles may dictate better matches with health savings account programs rather than enrolling in group plans and the

Department encourages policyholders becoming better familiarized with their healthcare needs and coverages.

We note that this bill requires employers contribute the entire annual amount to employees' health savings accounts prior to the first day of employees being covered and that unused funds in the accounts become the property of the respective employees at the end of the taxable year. Because of the fluidity of members in Hawai`i's workforce, situations may arise where employees' health savings accounts are filled at the beginning by employers only to see these same employees move on to other work opportunities before the year's conclusion. This potential situation, of employers not realizing the full value of their expended costs, may cause employers to rethink their offering of these health savings accounts to their employees.

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

TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:
S.B. NO. 2665, RELATING TO HEALTH SAVINGS ACCOUNT PROGRAMS.

BEFORE THE:
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Wednesday, February 3, 2016 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Daniel K. Jacob, Deputy Attorney General

Chair Baker and Members of the Committee:

The Department of the Attorney General provides comments regarding legal concerns that this bill may be preempted by the federal Employee Retirement Income Security Act (ERISA).

The purpose of this bill is to authorize employers to establish health savings accounts in conjunction with group accident and health or sickness insurance policies, group hospital and medical service plan contracts, and Health Maintenance Organization plans.

We believe this bill may be subject to ERISA preemption. ERISA is a comprehensive federal legislative scheme that regulates the administration of private employee benefit and pension plans and establishes standards relating to the administration of these plans. In enacting ERISA, Congress included a sweeping preemption provision that provides in relevant part, ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C.A. § 1144(a).[1] This bill relates to an employee welfare benefit plan because it mandates that, when an employer offers health care coverage with a health savings account, on the election of the employee, the employer shall administer the plan in

---

[1] The subsection, in full, provides as follows:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

specific manners, including but not limited to: requiring employers to contribute annual amounts, providing declarations of understanding from the insurer to the employees, and immediately removing any employees and dependents from the program if the employer knows the program is not in compliance with the law. Accordingly, this bill's attempt to regulate employer provided welfare benefit plans likely subjects it to ERISA's preemption.

Although exemptions from ERISA's expansive preemption exist, we do not believe that this bill falls within any of them. Of these exemptions, the insurance savings clause is most noteworthy for the purpose of this discussion. The insurance savings clause found within ERISA permits states to regulate the business of insurance, regardless of its direct or indirect effect on employer welfare benefit plans. 29 U.S.C. § 1144(b)(2)(A). In order to be deemed a law that regulates insurance and be saved from preemption, the law "must satisfy two requirements. First, the state law must be specifically directed toward entities engaged in insurance. Second, the state law must substantially affect the risk pooling arrangement between the insurer and the insured." *Kentucky Ass'n of Health Plans, Inc. v. Miller*, 538 U.S. 329, 342 (2003). The proposals in this bill, although embedded in the insurance code, are not specifically directed towards entities engaged in insurance. As discussed above, this bill, in multiple sections, mandates that an employer administer an employee welfare benefit plan in specific manners. Accordingly, this bill is not specifically directed at entities engaged in insurance and fails the first requirement. Therefore, it may not be saved from ERISA preemption under the insurance savings clause.

Additionally, although Hawaii's Prepaid Health Care Act (PHCA) relates to an employee benefit plan, it is not preempted because Congress amended ERISA to exempt Hawaii's PHCA from preemption. The exemption, however, is narrow and applies only to the PHCA as it existed on September 2, 1974, and not to amendments to the PHCA "to the extent it provides for more than the effective administration" of the PHCA. 29 U.S.C.A. § 1144(b)(5)(B)(ii).[2] This bill may

[2] 29 U.S.C.A. § 1144(b)(5)(B)(ii) provides as follows:

> Nothing in subparagraph (A) shall be construed to exempt from subsection (a) of this section -

fall outside of that exemption because it creates an alternative to comply with Hawaii's PHCA, and, therefore, appears to provide for more than the effective administration of the PHCA.

For the foregoing reasons we respectfully request that this bill be held.

(ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

UHA
HEALTH INSURANCE | Better Health • Better Life

February 1, 2016

The Honorable Rosalyn H. Baker, Chair
The Honorable Michelle N. Kidani, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health

Re: SB 2665 – Relating to Health Savings Account Programs

Dear Chair Baker, Vice Chair Kidani and Members of the Committee:

My name is Howard Lee and I am President and Chief Executive Officer of University Health Alliance (UHA), a Hawaii mutual benefit society.

UHA appreciates the opportunity to testify in support of SB 2665, which would give employers in the state the opportunity to offer and for the labor force to receive contributions to health savings accounts (HSA). The intent of an HSA is its funds can be used to pay or reimburse qualified medical expenses, and that the contributions can be accumulated over the years or distributed on a tax-free basis.

We would respectfully request the Committee see fit to pass this measure. Thank you for the opportunity to testify today.

Sincerely,

Howard KF Lee

Howard Lee
President and CEO

Topa Financial Center 700 Bishop Street, Suite 300 T 808.532.4000 F 866.572.4393
Bishop Street Tower Honolulu, Hawaii 96813-4100 800.458.4600 www.uhahealth.com

ALEXANDER & BALDWIN, INC.

822 Bishop Street
Honolulu, Hawaii 96813
P.O. Box 3440
Honolulu, HI 96801-3440
www.alexanderbaldwin.com
Tel (808) 525-6611
Fax (808) 525-6652

SB 2665
RELATING TO HEALTH SAVINGS ACCOUNT PROGRAMS

PAUL T. OSHIRO
MANAGER – GOVERNMENT RELATIONS
ALEXANDER & BALDWIN, INC.

FEBRUARY 3, 2016

Chair Baker and Members of the Senate Committee on Commerce, Consumer Protection & Health:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin (A&B) on SB 2665, "A BILL FOR AN ACT RELATING TO HEALTH SAVINGS ACCOUNT PROGRAMS." We support this bill.

The purpose of this bill is to facilitate the establishment of health savings account programs in Hawaii.

We understand that Health Savings Account Programs consist of high deductible health plans with a Health Savings Account approved pursuant to HRS Chapter 393. These programs generally allow employers and employees to fund a Health Savings Account to finance current or future out of pocket health costs. Contributions to Health Savings Accounts are tax advantaged, with all distributions from the account tax free. Funds are property of the employee as soon as the funds are placed into the Health Savings Account and any unused employer and/or employee funds remain in the account for the life of the enrolled employee.

We support this bill as we believe that it will provide an additional health insurance option for both employers and employees. The tax advantaged deposits and expenditures from the Health Savings Account for medical expenses are envisioned to be an attractive benefit for employees. In addition, the personal control that one would have in expending funds from this account may also be a desirable alternative to other health plans.

Based on the aforementioned, we respectfully request your favorable consideration on this bill.

STERLING
ADMINISTRATION

P.O. Box 71107, Oakland CA 94612 Toll Free Phone: 800-617-4729 Toll Free Fax: 877-517-4729 www.sterlingadministration.com

January 31, 2016

Testimony on SB 2665, February 3 , Room 229

Senator Baker and Members of this Committee:

I am pleased to offer this testimony in support of proposed legislation that will facilitate the establishment of health savings accounts (HSA) in Hawaii, outlined in Senate Bill No. 2665.

My name is Cora Tellez, founder and CEO of Sterling Administration, an administrator of health savings accounts since 2004. We are privileged to serve as administrator for the HSA program when the state employees (EUTF) offered the program in 2010. And more recently when UHA offered the program to its employees in 2015.

Our experience in administering the HSA program for UHA and for over 2500 employer clients on the mainland affirms the following:

1) HSAs are valued by employees because the funds in their account belong to them and are available to use for medical services now and in the future.

2) Because HSA funds belong to employees and are portable (meaning they can take the funds with them if they leave their jobs), employees exhibit more careful decision-making when it comes to purchases of elective procedures. We see more use of therapeutically equivalent generic drugs vs brand drugs, for example.

3) We have no evidence to suggest that UHA employees have used their HSA funds for non-qualified purposes. Our debit cards restrict the use of these funds to those merchants that qualify as service providers acceptable to the IRS. Our experience reveals a 10-15% HSA employee adoption rate amongst our employer clients, however, UHA's adoption rate is at 60%; reflecting what we believe is a strong interest in the program.

4) Employers also value HSAs because they help promote greater cost-consciousness on the part of their employees and encourage ownership of health care decision making. Often the collective behavior of their employees from more thoughtful consideration of alternative procedures, use of generics vs. brand drugs, enhanced use of primary care doctors, among others, result in lower medical utilization, which could translate to lower medical premium.

Sterling's experience strongly affirms the positive benefits of HSAs. We believe that Hawaii employees and employers will benefit from the availability of the HSA program, and that now is the time to encourage its adoption.

I would be pleased to answer any questions you may have about UHA's experience with HSAs and about HSAs in general.

Sincerely,

Cora M. Tellez

Cora M. Tellez
Founder and CEO

OUTRIGGER
ENTERPRISES GROUP

Charles R. Kelley, MD
Chairman of the Board

SB 2665
RELATING TO HEALTH SAVINGS ACCOUNTS

DR. CHARLES KELLEY
CHAIR OF THE BOARD OF DIRECTORS
OUTRIGGER ENTERPRISES, INC.

February 3, 2016

Chair Baker and Members of the Senate Committee on Commerce, Consumer Protection and Health:

Aloha. I am Dr. Charles Kelley, submitting this testimony in strong support of SB 2665, which proposes to authorize health savings accounts in Hawaii.

I testify as Chair of the Board of Directors of Outrigger Enterprises, Inc. Our locally founded, owned and operated hospitality company currently employs almost 2,200 hosts throughout Hawai'i and spends over $20 million every year on medical, dental and vision benefits for them and their families. We are proud to offer our employees outstanding health care insurance coverage which substantially exceeds the minimum employer requirements under the Prepaid Health Care Act.

I also testify as a medical doctor who practiced internal and occupational medicine in Hawai'i for over a decade before joining Outrigger. I know firsthand from my practice that there is great diversity throughout Hawaii's workforce in health care needs, delivery and financial circumstance.

In both capacities I have long supported health savings accounts for the basic reason that I believe strongly Hawaii citizens including employees and their families should have greater options in how they save and pay for their health care needs to match the diversity in their own circumstances. I also believe strongly that better mechanisms are needed to assist Hawaii's workers to save in their working years to pay for health care needs in retirement that are not covered by Medicare or Medicaid.

As I talk with Outrigger's employees, I encounter many who, after twenty, thirty or more years of employment are clearly ready to retire. And I ask them: "Why don't you retire now if you're ready and enjoy your retirement years?" A common response to my question is: "I need to continue my medical insurance, which I cannot afford on my own."

What a shame. If those employees had been in an employer supported and subsidized HAS plan for even a portion of their working years, many of them would have built up an account balance large enough to pay for their health needs in retirement.

The employer-based insurance programs that we have today are a "use it or lose it" system. In other words, the employer pays the insurance premium and if the employee does not use those funds for health care costs, they "lose it" at the end of the year. Nothing accumulates.

On the other hand, an HSA combined with a High-Deductible Health Care Plan is a "use it if you need it, or save it if you don't" plan. Individual tax-advantaged payroll deductions contributed to an HSA can accumulate over the years to provide a comfortable retirement nest egg. I believe employees should have this option if it works best for their own situations.

Our health care system is complicated and there are a lot of details to consider. The advantages of HSAs have proven themselves in other states and they will work here in Hawaii. They are not for every employee and we would like to offer our employees the choice of either one of the currently approved health care plans or a Health Savings Account combined with a High Deductible Health Care Plan. During our annual enrollment period we will educate our employees on the pros and cons of each type of plan and help them choose the option that makes the most sense for their personal situation. Both options offer the same protective coverage for catastrophic medical illness.

Health savings plans are not something new. They have been around for a long time elsewhere in our country, have proven advantageous for many employees, and, whether or not employees choose them, they like having the choice. Because they also encourage greater individual decision making toward preventive healthcare and treatment options, they offer a valuable contribution to our overall nationwide effort to control rising health care costs for employers and employees alike.

Let's move forward and make them possible here in Hawai'i. At Outrigger we are dedicated to working with you, the administration and the community to fashion legislation that achieves that goal in a way that is fully consistent with the commitments we have made to each other under the Prepaid Health Care Act.