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TO THE HOUSE COMMITTEE ON FINANCE

**TWENTY-NINTH LEGISLATURE
Regular Session of 2018**

Wednesday, April 4, 2018
1:30 p.m.

**TESTIMONY ON SENATE BILL NO. 2773, S.D. 2, H.D. 2, RELATING TO THIRD
PARTY ADMINISTRATORS.**

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE
COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on S.B. 2773, S.D. 2, H.D. 2, Relating to Third Party Administrators. My name is Gordon Ito, and I am the Insurance Commissioner ("Commissioner") for the Department's Insurance Division. The Department strongly supports this administration bill and offers the following comments.

This bill provides for regulation of third party administrators ("TPAs"). TPAs collect charges or premiums from, or adjust or settle claims on, life insurance, accident and health or sickness, self-insurance, stop loss, and workers' compensation coverage. This bill is based on the National Association of Insurance Commissioners' ("NAIC") Registration and Regulation of Third Party Administrators Guideline.

NAIC Guidelines, in general, differ from NAIC Model Acts and Model Rules in that NAIC accreditation for a state is not dependent on the state's adoption of Guidelines. Rather, NAIC Guidelines offer states opportunities to tailor bright lines of

insurance law to guide states when they are adopting measures particular to their own needs and purposes.

Hawaii is one of nine states that do not regulate TPAs. Currently, 19 states require TPA licenses from their respective departments of insurance, 12 states require certificates of registration, eight states require certificates of authority, and two states require either licenses or registrations. The differences in states' approaches reflect NAIC Guidelines' flexibilities and deference given to states in knowing their own required needs. Regulation of TPAs as proposed in this bill would ensure adequate consumer protection and promote transparency of TPAs operating in Hawaii.

The Department believes that licensing TPAs will encourage disclosure of contracts between insurers and TPAs, both to potential insureds and the Commissioner; promote the financial responsibilities of TPAs; regulate practices of TPAs in conformity with the general purposes of this bill; and govern the qualifications and procedures for the licensing of TPAs.

The Department also notes the defective effective date in section 6, page 24, line 11. Thank you for the opportunity to testify in strong support of this measure, and we ask for your favorable consideration.

BEFORE THE

HOUSE COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

SB 2773 SD2, HD2 RELATING TO THIRD PARTY ADMINISTRATORS

TESTIMONY OF

PAUL KAISER

**Chief Operating Officer,
Hawaii-Western Management Group**

April 4, 2018, 1:30 p.m.
State Capitol Conference Room 308

Chair Luke, Vice Chair Cullen, and Committee Members:

My name is Paul Kaiser, currently the Chief Operating Officer of Hawaii-Western Management Group (HWMG). HWMG supports the intent of SB 2773 SD2, HD2, but believes certain amendments should be strongly considered. As opposed to reiterating the same five amendments from previous testimonies, I want to focus on and prioritize two of those for the committee's consideration. These amendments are critical in order to successfully manage and run a business within Hawaii and simply seek additional clarity and equity in the proposed legislation.

By way of background, HWMG is a small, kama'aina third-party administrator providing health insurance management services for a wide range of organizations including Hawaii Medical Assurance Association (HMAA), Charter Communications, Hawaii Electricians Local Union 1186, and labor unions. HWMG is proud to be 100% employee-owned through its Employee Stock Ownership Plan (ESOP).

The purpose of SB 2773 SD2, HD2 is to encourage disclosure of contracts between insurers and administrators, promote financial responsibility of administrators, and govern the qualifications and procedures for the licensing of administrators. HWMG fully support these goals. As drafted, however, SB 2773 SD2, HD2 contains ambiguous terms, which are difficult to manage since the law could potentially be interpreted differently by the person/entity charged with enforcement. In addition, the proposed legislation contains an inequity that departs from common practice in all other states, which would put HWMG at a distinct competitive disadvantage to other entities who process medical claims in the state of Hawaii.

First, SB 2773 SD2, HD2 does not set forth ascertainable standards as to when an administrator is considered "solvent" or "insolvent." As drafted, SB 2773 SD2, HD2 requires prospective administrators to show annual audited financial statements for the

two most recent years to prove solvency. Nine other states set forth a specific, qualitative standard to prove “solvency” by requiring financial statements showing the applicant had a positive net worth. The NAIC Model Act also proposes the use of the term “positive net worth” in its guidance. We are simply requesting the same with a desire to have clear requirements included in this legislation and avoid subjective criteria, which may be interpreted differently depending upon who is enforcing these requirements. As a company, how can we properly plan and manage the business if the financial requirements could potentially change from year to year? In this regard, HWMG respectfully submits the following amendments to the licensing requirements in SB 2773 SD2, HD2 to conform it to the NAIC model act:

§431- License required; application.

(a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner.

(b) An administrator shall apply to the commissioner on a form prescribed by the commissioner and shall include the following:

* * *

(5) Annual audited financial statements for the two most recent years that prove the ~~[applicant is solvent]~~ **applicant has a positive net worth** and information the commissioner may require to review the current financial condition of the applicant; and

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

Second, SB 2773 SD2, HD2 places licensing requirements on individuals who adjust claims for the administrator, even though the NAIC model act imposes no such requirement. In fact, the preamble of the NAIC Model Act specifically states: “As a practical matter, licensure requirements are not cleanly met by an individual.” Requiring licensure for such adjusters is unnecessary and does nothing but add additional costs and make HWMG uncompetitive. Claim adjudicators who work for HWMG have the same job responsibilities and skill sets as those who adjudicate claims for insurers and mutual benefit societies. I was unable to find a similar requirement in any other state and we are having difficulty understanding the logic of having such a requirement. Therefore, our recommendation would be to delete this requirement.

§431- License required; application.

(a) No person shall act as or hold out to be an administrator in this State without a license as an administrator issued by the commissioner.

(b) An administrator shall apply to the commissioner on a form prescribed by the commissioner and shall include the following:

* * *

~~[(d) If an administrator employs or has contracted individuals to adjust claims for the administrator, the employees or contracted individuals shall first be licensed as individual adjusters.]~~

(Additional language bolded and underscored; deleted language bracketed and struck-through.)

However, if the Insurance Commissioner believes strongly this licensing requirement is beneficial, then HWMG simply asks this requirement be applied consistently across all entities who employ individuals to adjudicate claims, including, but not limited to Insurers as identified in HRS Section 431:1-202. If deemed appropriate, this requirement should be imposed across the board and applied equitably to all companies who process medical claims.

We support all five amendments submitted in previous testimonies, but feel the need to emphasize the two noted above in order to make SB 2773 SD2, HD2 a better law, thereby balancing the State's need for licensure but also reducing unnecessary burden to administrators. HWMG respectfully urges the passage of this measure as amended. HWMG met with the Insurance Commissioner previously to discuss the issues raised herein, but has not received any feedback.

Thank you for the opportunity to testify on this matter of critical importance.
