ACT 245

H.B. NO. 2638

A Bill for an Act Relating to the Hawaii Long-Term Care Financing Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Congressional Budget Office expects the national expenditures for long-term care services for people age sixty-five years and older to grow through the year 2040 (''Projections of Expenditures for Long-Term Care Services for the Elderly,'' March 1999, Congressional Budget Office). The main reason for the growth is that the U.S. population is aging, and elderly people receive the most long-term care services because they are more likely than younger people to have some kind of functional limitation. Many ''baby boomers'' will begin to reach the age of sixty-five years in 2011. In addition, more elderly people will reach advanced ages of eighty-five years and older than in the past because of declining mortality rates. These trends will cause the proportion of the population that is elderly, which was just under thirteen per cent in 1995, to rise to twenty per cent in 2040. More importantly, the population over age eighty-five, the segment most likely to require long-term care, will grow over three times its current size by 2040.

In Hawaii, according to a report by the Hawaii Health Information Corporation and the HMSA Foundation (''Health Trends in Hawaii,'' Fifth Ed., 2001, hereinafter referred to as the ''HMSA report''), the State's population growth was greatest among the elderly between 1990 and 1999. The number of residents aged sixty-five to seventy-four years increased thirteen per cent compared to the national average of one per cent. The number of those aged seventy-five years and older increased by sixty-two per cent compared to the national average of twenty-four per cent. On a county level, all counties experienced significant growth in their elderly populations, with Honolulu experiencing the greatest increase from five per cent in 1970 to fourteen per cent in 1999. Since statehood, the overall proportion of elderly to total population has increased from roughly five per cent in 1960 to fourteen per cent in 1999.

As the ''baby boomer'' generation ages, these figures are projected to increase and cause a host of social and economic demands. Aging brings increasing risks of concomitant chronic health diseases such as cancer, cardiovascular disease, and stroke, all of which necessitate intense daily care in the later years of life.

The legislature finds that people in Hawaii are living longer, due in large measure to the State's excellent health care. However, it would be ironic if the State could not care for the elderly who have benefited from the enhanced health care received in their younger years. According to the HMSA report, ''[t]he increasing proportion of elderly in Hawaii's population signals the need to monitor the ability of health care resources to meet the elderly's greater need for services, including the distribution of those services to the Neighbor Islands.'' Furthermore, according to the HMSA report, ''[t]he proportion of the population deemed 'work age' (19-65) is decreasing relative to the elderly, raising questions about the social burdens this decreasing cohort must bear.'' These factors pose important questions for health care and public policy.

The legislature further finds that the dynamics of extended families in Hawaii will change radically, placing impossible financial and social hardships on Hawaii families. As people age or become disabled, they need services to help them with activities of daily living. Although the problem is one of economics, the approach to helping Hawaii's elderly and disabled should be prompted by compassion and caring.

The legislature further finds that because increasing numbers of Hawaii's residents will need long-term care services, there is a compelling need to create an affordable method of financing those services. What Hawaii needs is a method of financing that is affordable and suitable for the majority of residents. Current methods of financing long-term care in Hawaii involve medicaid, private insurance, and personal assets. Medicaid eligibility is qualified by income limits. Private long-term care insurance is not widespread, and most people do not have sufficient personal assets to pay for long-term care services. Contrary to popular belief, medicare pays for only the initial hospitalization stay (acute care) of a patient for a limited number of days.

This Act is a product of the joint special committee of the legislature, formed pursuant to Senate Concurrent Resolution No. 23, C.D. 1, 2001, to develop and implement a plan for a dedicated source of revenue to support the long-term care needs of all citizens in the State regardless of income.

The purpose of this Act is to enact the Hawaii long-term care financing program to provide a universal and affordable system of providing for long-term care. It is the intent of this Act to provide an equitable and affordable system of long-term care for the people of Hawaii. Benefits for program participants are intended to be primary over long-term care benefits from private insurance companies and medicaid.

Furthermore, it is intended that this program promote individual choice and discretion in selecting and paying for long-term care services. It is not the intent of this Act to duplicate benefits for individuals already covered by long-term care insurance policies.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
HAWAII LONG-TERM CARE FINANCING PROGRAM

§ **-1 Definitions.** As used in this chapter:

"Activities of daily living" means at least bathing, continence, dressing, eating, toileting, and transferring.

"Board of trustees" means the board of trustees charged with the general administration of this program under section -3.

"Long-term care services" means a broad range of supportive services needed by individuals with physical or mental impairments and have lost or never acquired the ability to function independently.

"Program" means the Hawaii long-term care financing program set forth in this chapter.

§ **-2 Hawaii long-term care financing program; establishment.** There is established the Hawaii long-term care financing program, which shall be placed with the department of budget and finance for administrative purposes. The purpose of this program shall be to provide a universal and affordable system of providing for long-term care. The program shall be administered by a board of trustees.

§ **-3 Composition of the board.** (a) The board of trustees of the Hawaii long-term care financing program shall consist of five regular members and one ex-officio non-voting member to be appointed by the governor as provided in section 26-34; provided that:

(1) The terms of members shall be six years; and
(2) The initial appointments may be staggered in accordance with section 26-34(a).

(c) The members of the board of trustees shall have experience in accounting, business, finance, law, or other similar fields, and experience equivalent to five years as an officer or manager of a viable business, community, or organization involved with insurance management, portfolio management, health care management, or similar field. The composition of the board of trustees shall represent a diversity of relevant experience.

(d) The board of trustees shall elect a chairperson from among themselves. The trustees shall serve without compensation.

§ -4 **Fiduciary and other obligations of the board of trustees.** (a) The board of trustees shall:

(1) Have and maintain a fiduciary obligation for the program;
(2) Discharge their duties solely in the best interest of the program;
(3) Not knowingly participate in or undertake to conceal an act or omission of a trustee, when the act or omission is known to be a breach of fiduciary responsibility; or fail to discharge specific fiduciary responsibilities in a manner that enables another trustee to commit a breach; or having knowledge of a breach, fail to take whatever action that is reasonable and appropriate under the circumstances to remedy the breach;
(4) Act with the care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent trustee, acting in a like capacity and familiar with similar matters would use in conducting an enterprise of similar character and purpose; and
(5) Maintain proper books of accounts and records of the administration of the program.

(b) The board of trustees may contract with a qualified entity to administer the program or to process claims for benefit payments, or both; provided that the entity shall be appropriately licensed under chapter 431. Selection of the entity shall be subject to chapter 103D; provided that the insurance commissioner shall advise the board of trustees in selection of the entity.

(c) In lieu of subsection (b), the board of trustees may contract with a qualified entity to assume the risk of underwriting loss under the program at a capitated rate of payment to the entity. The entity shall be appropriately licensed under chapter 431 and adequately capitalized. Selection of the entity shall be subject to chapter 103D; provided that the state insurance commissioner shall advise the board of trustees in the selection of the entity. An entity selected under this subsection shall perform the functions under subsection (b), in addition to assuming the risk.

§ -5 **Hawaii long-term care benefits fund.** (a) There is established in the state treasury the Hawaii long-term care benefits fund, into which shall be deposited moneys collected as long-term care taxes. The department of budget and finance shall deposit the moneys in federally insured financial institutions in Hawaii to preserve the balance and ensure a reasonable return under prevailing interest rates. Investments of the moneys may be made subject to the requirements of this chapter.

(b) Expenditures from the fund shall be made solely for the purpose of making benefit payments and the cost of administration.

(c) Notwithstanding any law to the contrary, moneys in the fund shall not be transferred to another fund at any time nor for any purpose.

(d) Costs for the administration of the program shall be paid from moneys in the Hawaii long-term care benefits fund as follows:

(1) Up to four per cent of the total monthly deposit into the fund to cover general administrative expenses; and

(2) Up to four per cent of the total monthly amount of claims paid out from the fund may be used to pay for administrative expenses related to claims processing.

§ -6 **Investments.** (a) With the advice of the director of finance to ensure investment soundness, the board of trustees shall invest moneys in the Hawaii long-term care benefits fund solely in:

(1) Obligations of any of the following classes:
   (A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that the principal of and interest on such obligations are payable in currency of the United States, or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;
   (B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and
   (C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;

(2) Obligations eligible by law for purchase in the open market by federal reserve banks;

(3) Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on such contracts to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system's securities portfolios; covered put and call options on securities; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing paragraphs; and

(4) Any other investments deemed secure on the advice of the state director of finance.

(b) The board of trustees shall submit to the legislature no later than January 1 of every year, an annual report for the preceding fiscal year. The annual report shall include information concerning:

(1) Investments, including the types and amounts;
(2) Current balance in the fund;
(3) Projected liabilities for the upcoming year;
(4) Current reserve requirements to meet the projected liabilities for the upcoming year;
(5) Amount of claims paid and taxes received in the year immediately preceding the issuance of the report; and
(6) Any other useful information to determine the fiscal soundness of the fund.

§ -7 **Annual audits of the Hawaii long-term care benefits fund.** The auditor shall conduct an audit of the Hawaii long-term care benefits fund annually for the first three years from the date the fund first receives deposits, and every three years thereafter; provided that the auditor may modify the time periods after the first three years as appropriate to the circumstances. The auditor shall publish a report of the results of every audit, including any recommendations.

§ -8 **Qualified long-term care services.** (a) To be eligible for benefit payments for long-term care services under the program, a qualifying individual shall:

(1) Need assistance with two or more activities of daily living; or
(2) Be afflicted with Alzheimer's disease or dementia.

(b) An individual qualifying for long-term care services under the program shall have written certification from a physician licensed under chapter 453 or 460, or an advanced practice registered nurse recognized under section 457-8.5, assigned by the board of trustees certifying that the individual requires one or more long-term care services for the period of time during which the individual receives the benefits under the program. The written certification shall specify that the individual:

(1) Is unable to perform, without substantial assistance from another individual, at least two of six activities of daily living for a period of at least ninety days due to a loss of functional capacity; or
(2) Requires substantial supervision to protect the individual from threats to health and safety to self or others due to severe cognitive impairment.

(c) The written certification required by subsection (b) shall be subject to approval by the board of trustees.''

SECTION 3. (a) The governor shall appoint a temporary board of trustees, pursuant to section 26-41, Hawaii Revised Statutes, which shall be placed within the department of health, executive office on aging, for administrative purposes to serve beginning July 1, 2002, until June 30, 2003, to design the Hawaii long-term care financing program, based upon consideration of the actuarial report submitted to the legislature by the executive office on aging in 2002, and the report of the joint legislative committee on long term care financing of 2001, as stipulated by Senate Concurrent Resolution No. 23, C.D. 1, regular session of 2001, including:

(1) Determining the amount of and means of collection of a tax or fee;
(2) Determining the nature of and amount of benefits; and
(3) Recommending a third-party administrator.

(b) The members of the temporary board of trustees shall have experience in accounting, business, finance, law, or other similar fields, and experience equivalent to five years as an officer or manager of a viable business, community, or organization involved with insurance management, portfolio management, health care management, or similar field. The composition of the board of trustees shall represent a diversity of relevant experience.

(c) The members of the temporary board of trustees shall elect a chairperson from among themselves. The trustees shall serve without compensation.

SECTION 4. The temporary board of trustees shall report its findings and recommendations, including proposed legislation to effectuate the Hawaii long-term care financing program established by this Act, to the legislature no later than twenty days prior to the convening of the regular session of 2003.

SECTION 5. (a) The temporary board of trustees shall cause to be prepared an actuarial report and actuarial opinion, as defined by the Actuarial Standards Board of the American Academy of Actuaries. The report and opinion shall be prepared by a member of the American Academy of Actuaries who is a fellow of the

Society of Actuaries, certifying that the program is in actuarial balance. Costs of the actuarial report shall be deemed an administrative expense under section 235-3(b)(1), Hawaii Revised Statutes.

(b) The actuarial report shall contain a statement by the actuary certifying that the techniques and methods used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. The report shall include:

(1) An estimate of the expected future income to and disbursements to be made from the Hawaii long-term care benefits fund during each of the next ensuing ten fiscal years;
(2) A projection of the tax rates necessary to keep the Hawaii long-term care benefits fund actuarially sound over the short-range and long-range future periods;
(3) A statement of actuarial assumptions and methods used to determine costs and a detailed explanation of any change in actuarial assumptions or methods;
(4) The current and projected number of participants and beneficiaries and the current and projected paid in taxes, benefit payments, current and permanent benefit credits earned, and the like, aggregated by current and past Hawaii taxpayer status and age;
(5) The current value of accumulated assets of the Hawaii long-term care financing program and the value of assets used by the actuary in any computation of the amount of required taxes; and
(6) The results of short-range and long-range actuarial sensitivity analyses.

(c) All work products, papers, documents, and data used or prepared by the actuary in preparing the actuarial report shall be public documents within the meaning of chapter 92F, Hawaii Revised Statutes.

(d) The actuarial report shall be completed in a timely fashion to enable the temporary board of trustees to submit its report to the legislature before the convening of the regular session of 2003.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of $100,000 or so much thereof as may be necessary for fiscal year 2002-2003 to design the Hawaii long-term care financing program.

The sum appropriated shall be expended by the department of health, executive office on aging for the purposes of this Act.

SECTION 7. If any provision of this Act is in conflict with federal law, this Act shall be interpreted to be congruent with the federal law.

SECTION 8. This Act shall take effect upon its approval; provided that section 2 shall take effect on July 1, 2003, and section 6 take effect on July 1, 2002.

(Approved July 1, 2002.)