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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Commerce, Consumer Protection, and Health  
Thursday, February 20, 2020  
10:00 a.m.  
State Capitol, Conference Room 229**

**On the following measure:  
S.B. 2336, S.D. 1, RELATING TO LONG-TERM CARE INSURANCE**

**WRITTEN TESTIMONY ONLY**

Chair Baker and Members of the Committee:

My name is Colin Hayashida, and I am the Commissioner of the Department of Commerce and Consumer Affairs' (Department) Insurance Division. The Department appreciates the intent of this bill and offers the following comments.

The purpose of this bill is to require the 30-day lapse or termination notices for long-term care policies to be sent by certified mail or commercial delivery service, or other method of delivery requiring proof of delivery.

The Department submitted prior testimony pointing to existing consumer protections for Hawaii's long-term care policyholders in Hawaii Revised Statutes sections 431:10H-208, 431:10H-209, and 431:10H-210. These consumer protections include policyholder and secondary designee notifications, extended time for premium payment, and policy reinstatement terms, respectively.

The focus of the proposed amendments toward mandating proof of delivery, instead of proof of mailing, is a cost that will be passed onto policyholders in the form of increased premiums. Mandating proof of delivery does not guarantee the insured or designee received the mailing, as another individual may sign for the mailing receipt. Even if received, there is no guarantee the insured understands the imminence of a policy lapsing, as was the case of the Virginia policyholder couple, whose confusion allowed their long-term care insurance to lapse.

Given the above concerns, the Committee may wish to consider allowing the insurer to provide proof of mailing by a United States Postal Service (USPS) certificate of mailing. This option is modeled after the revised Virginia code regarding long-term care policies.

Additionally, to assist the policyholder's or designee's comprehension of the policy lapsing, the Department recommends that "Cancellation Notice" or "Lapse Notice" appear in large font on the front of the envelope, or through the envelope window, of the USPS first class mail. This practice is similar to that employed by utility companies. It would also serve to alert a caregiver or friend who may assist the policyholder regarding their policy.

Thank you for the opportunity to testify on this bill.

TESTIMONY OF THE AMERICAN COUNCIL OF LIFE INSURERS  
IN OPPOSITION TO SB 2336, SD 1, RELATING TO LONG TERM CARE INSURANCE

February 20, 2020

Honorable Senator Rosalyn H. Baker, Chair  
Committee on Consumer Protection and Health  
State Senate  
Hawaii State Capitol, Room 229  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Baker and Members of the Committee:

Thank you for the opportunity to testify in opposition to SB 2336, SD 1, Relating to Long Term Care Insurance.

Our firm represents the American Council of Life Insurers (“ACLI”). The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 of the industry assets in the United States. ACLI members represent 95 percent of industry assets in the United States. Two hundred eighteen (218) ACLI member companies currently do business in the State of Hawaii; and they represent 95% of the life insurance premiums and 99% of the annuity considerations in this State.

Instead of delivery of the lapse/cancellation notice by first class mail as required under current law, SB 2336, SD 1, would require the insurer to prove delivery of the cancellation notice to its recipient by one of three required means.:

1. US certified mail, return receipt requested.
2. US priority mail
3. Commercial delivery.

Moreover, SB 2336, SD 1, provides that unless the insurer can prove delivery of the lapse/termination notice to its recipients in the manner required the insurer has the additional burden of locating the intended recipients, providing them with the notice and proof of its delivery to them. If the insurer is unable to do so, the insurer “shall demonstrate to the commissioner, upon request, due diligence [sic] to locate and notify the policyholder or named designed [sic] . . . .”

ACLI opposes these proposed changes.

SB 2336, SD 1 is a bill in search of a problem.

ACLI is not aware of any complaint filed by a Hawaii resident that her or his long term care policy was cancelled as a result of the insured's failure to receive a cancellation notice.

The need for proof of delivery of the notice by USPS certified mail, USPS priority mail or commercial delivery to its recipients or proof of its attempted delivery to them in this State has not, therefore, been explained or demonstrated by the bill's sponsor or anyone else.

Hawaii's current law is based on the NAIC Long-Term Care Insurance Model Regulation (the "Model"). The Model requires that the lapse and termination notice be sent by first class US mail and only to the addresses provided by the insured. No state has yet enacted laws requiring that the notice be sent solely by certified mail or commercial or other comparable method of delivery<sup>1</sup>; nor the obligation to attempt to locate the recipients of the notice and its delivery to them if the addresses provided by the insured are not current or correct – and for good reasons.

Insurance companies want to sell long term care insurance policies and keep them on their books. Companies have, therefore, an economic incentive in making certain that the notice is in fact mailed to the insured to prevent an unintended lapse or cancellation of the policy.

Delivery of the lapse notice by one of the three means of delivery required by the bill (certified mail, priority mail or commercial delivery) is expensive.

Unlike 1<sup>st</sup> class USPS mail process of "print, fold, insert, meter and mail" delivery by certified mail requires manual intervention which is costly and takes longer to process which delays delivery. Even more expensive is delivery of the notice by US priority mail or commercial delivery, such as UPS or FEDEX.

Further, in the case of certified mail if the recipients of the notice are not present to receive the notice when it is sent out for delivery it is held by the post office for pick-up. In that event, this method of delivery may actually make it more time consuming and difficult for the notice to be received by its recipients.

Costlier and time consuming still is the insurer's obligation to attempt to locate the recipients of the notice if the addresses provided by the insured are not current or otherwise correct. The increased cost of requiring the insurer to prove its attempted delivery of the lapse/termination notice to the insured and other recipients places an undue burden on the insurer that may be passed on to the consumer by increasing the cost of the policy premium at a time when insurers are already being forced to request premium increases.

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<sup>1</sup> The insurer is required to send lapse notice to insured's and insured's designee(s), if any, last known address:

Oregon – first class mail or e mail, provided that insured and designee, if any, consent to receive the notice by e mail.

Montana and Virginia – USPS first class mail provided obtains at time of mailing a USPS receipt showing date of mailing, number of items mailed and name and address of insured and designees, if any, or USPS certified mail or USPS certificate of mailing or commercial delivery.

Washington – USPS first class mail, USPS certified mail, commercial deliver or proof of delivery by electronic means meeting statutory requirements.

ACLI strongly believes that delivery of late payment and lapse notifications even by certified mail or by commercial or other comparable methods of delivery does not guarantee that those who receive it will in fact act in a timely manner.

The problem with the unintended lapse notifications is not how lapse notifications are mailed; the problem is instead with the insured not fulfilling her/his expected role in preventing policy lapse. Neither the insurance company nor the State's Insurance Division have regulatory leverage over the insured to provide the insurer with the insured's and other recipient's correct and current address – and no one can force the recipient to open up the mail, read it and take appropriate action.

As a protection against the unintentional lapse of a long-term care insurance policy Hawaii's existing law requires the insurer to obtain the written designation by the insured of at least one other person who is to receive notice of lapse or termination of the policy for nonpayment of premium. Further, the insurer is required to notify the insured of the insured's right to change his designee no less often than every two years. HRS §431:10H-208(b) and (d). By designating an additional recipient of the lapse/termination notice (the "additional notice recipient") who is responsible and who will diligently respond to the lapse notice the insured has at her/his fingertips a simple but effective means of increasing protection against the unintentional lapse of the insured's long-term care insurance policy.

To further protect the unintended lapse of a policy, under current law the earliest date that an insurer may terminate a policy is 65 days. HRS Section 431:10H-209 provides the following timeline for policy lapse/termination as illustrated in the example below:

- Premium is due 3/1/20 and the Policyholder does not pay.
- Company mails a written notice of nonpayment on 4/1/20 (after the end of the required 30 day grace period) to the Policyholder and to the additional recipient at the address provided by the insured.
- The Policyholder has another 35 day grace period to pay the unpaid premium (the notice is deemed given 5 days after the date of its mailing, 4/6/20, plus an additional 30 days, 5/6/20).
- In total, the Policyholder has 65 days to pay the unpaid premium. During this 65 day period, the policy is in effect and if a claim is triggered during that time and the Policyholder incurs eligible charges, the insurer is responsible for the claim.
- If, however, no payment is received by the 66th day, the policy will lapse and no further benefits will be available.

Moreover, current law provides additional protections to a cognitively impaired insured. If that insured's policy is in fact terminated after the 65 day period referenced above, HRS Section 431:10H-210 provides for reinstatement of the insured's policy for five months after the termination date provided payment of past due premiums is made and proof is provided that the insured was cognitively impaired or had a loss of functional capacity before the grace period expired. Thus, an impaired insured has a total of seven months and five days (65 day grace

period plus five months) after the premium due date in which to prevent an unintended lapse her/his long term care policy.

For the foregoing reasons ACLI believes that current law provides appropriate protections against the unintended lapse of a long term care policy by granting the insured ample time to reinstate the policy.

ACLI, therefore, respectfully opposes SB 2336, SD 1, and urges this Committee to defer passage of this bill.

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