



GOV. MSG. NO. 1004

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

June 29, 2007

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 29, 2007, the following bill was signed into law:

SB1410 SD1 HD1 CD1

A BILL FOR AN ACT RELATING TO INSURANCE.  
(ACT 233)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

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# A BILL FOR AN ACT

RELATING TO INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The purpose of this Act is to conform current  
2 statutes to the recommendations of the National Association of  
3 Insurance Commissioners to bring Hawaii's insurance laws into  
4 conformity with the federal law and national standards as  
5 follows:

6 (1) Part I authorizes the insurance commissioner to adopt  
7 rules to implement model standards that are being  
8 developed by the National Association of Insurance  
9 Commissioners to implement the directives of the  
10 federal Military Personnel Financial Services  
11 Protection Act (Public Law No. 109-290), which was  
12 signed into law in 2006 to protect members of the  
13 United States armed forces from unscrupulous practices  
14 regarding sales of insurance, financial, and  
15 investment products. The Military Personnel Financial  
16 Services Protection Act requires the states to  
17 implement its directives by September 29, 2007;



- 1 (2) Part II focuses on long-term care by promoting the
- 2 availability of long-term care insurance, protecting
- 3 applicants for long-term care insurance from unfair or
- 4 deceptive sales or enrollment practices, updating
- 5 standards for long-term care insurance, and
- 6 facilitating flexibility and innovation in the
- 7 development of long-term care insurance coverage; and
- 8 (3) Part III enables the sharing of information by the
- 9 insurance commissioner with the insurance regulatory
- 10 agencies of foreign countries, including the sharing
- 11 of confidential information, to facilitate the
- 12 regulation of the insurance industry.

PART I

14 SECTION 2. Chapter 431, Hawaii Revised Statutes, is  
15 amended by adding to article 2 a new section to be appropriately  
16 designated and to read as follows:

17 "§431:2-A Sales to members of the armed forces. Pursuant  
18 to the Military Personnel Financial Services Protection Act,  
19 Pub. L. No. 109-290, the commissioner shall have the authority  
20 to adopt rules to protect service members of the United States  
21 armed forces from dishonest and predatory life insurance sales  
22 practices by declaring certain life insurance practices,



1 identified in the rules, to be false, misleading, deceptive, or  
2 unfair."

3 PART II

4 SECTION 3. Chapter 431, Hawaii Revised Statutes, is  
5 amended by adding to part I of article 10H three new sections to  
6 be appropriately designated and to read as follows:

7 **"§431:10H-AAA Denial of claims; compliance requirements.**

8 (a) If a claim under a long-term care insurance contract is  
9 denied, the issuer, within sixty days of the date of a written  
10 request by the policyholder or certificate holder, or a  
11 representative thereof shall:

12 (1) Provide a written explanation of the reasons for the  
13 denial; and

14 (2) Make available all information directly related to the  
15 denial.

16 (b) Any policy or rider advertised, marketed, or offered  
17 as long-term care or nursing home insurance shall comply with  
18 this article.

19 **§431:10H-BBB Delivery of the contract or certificate of**  
20 **insurance.** If an application for a long-term care insurance  
21 contract or certificate is approved, the issuer shall deliver



1 the contract or certificate of insurance to the applicant no  
2 later than thirty days after the date of approval.

3 §431:10H-CCC Producer training requirements. (a)

4 Effective on the date that is one year following the enactment  
5 by the State of legislation establishing the long-term care  
6 partnership program as provided in Title VI, Section 6021 of the  
7 Federal Deficit Reduction Act of 2005, an individual may not  
8 sell, solicit, or negotiate long-term care insurance unless the  
9 individual is licensed as an insurance producer for accident,  
10 health, or life insurance and has completed a one-time training  
11 course and ongoing training every twenty-four months thereafter.  
12 This training shall meet the requirements set forth in  
13 subsections (c) and (d). The producer training requirements  
14 provided in this section shall be required of every producer  
15 selling, soliciting, or negotiating long-term care insurance.

16 (b) The training requirements of subsections (c) and (d)  
17 may be approved as continuing education courses under section  
18 431:9A-153.

19 (c) The one-time training required under this section  
20 shall be no less than eight hours and the ongoing training  
21 required by this section shall be no less than four hours for  
22 every twenty-four month period thereafter.



- 1        (d) The training required under this section shall consist  
2 of topics related to long-term care insurance, long-term care  
3 services, and, if applicable, qualified state long-term care  
4 insurance partnership programs, including but not limited to:
- 5        (1) State and federal regulations and requirements and the  
6 relationship between qualified state long-term care  
7 insurance partnership programs and other public and  
8 private coverage of long-term care services, including  
9 medicaid;
- 10       (2) Available long-term care services and providers;
- 11       (3) Changes or improvements in long-term care services or  
12 providers;
- 13       (4) Alternatives to the purchase of long-term care  
14 insurance;
- 15       (5) The effect of inflation on benefits and the importance  
16 of inflation protection; and
- 17       (6) Consumer suitability standards and guidelines.
- 18       (e) The training required by this section shall not  
19 include training that is insurer or company product specific or  
20 that includes any sales or marketing information, materials, or  
21 training other than those required by state or federal law.



1       (f) Insurers subject to article 10H, chapter 431, shall  
2 obtain verification that a producer received training required  
3 by this section before a producer is permitted to sell, solicit,  
4 or negotiate the insurer's long-term care insurance products,  
5 maintain records subject to the State's record retention  
6 requirements, and make that verification available to the  
7 commissioner upon request.

8       (g) Insurer's subject to article 10H, chapter 431, shall  
9 maintain records with respect to the training of its producers  
10 concerning the distribution of its partnership policies that  
11 will allow the commissioner to provide assurance to the State's  
12 medicaid agency that producers have received the training  
13 required by this section and that producers have demonstrated an  
14 understanding of the partnership policies and their relationship  
15 to public and private coverage of long-term care, including  
16 medicaid, in the State. These records shall be maintained in  
17 accordance with the State's record retention requirements and  
18 shall be made available to the commissioner upon request.

19       (h) The satisfaction of training requirements in any state  
20 shall be deemed to satisfy the training requirements provided in  
21 this section."



1 SECTION 4. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding to part II of article 10H seven new sections  
3 to be appropriately designated and to read as follows:

4 **"§431:10H-DDD Electronic enrollment for group policies.**

5 (a) In the case of a group defined in paragraph (1) of the  
6 definition of "group long-term care insurance" in section  
7 431:10H-104, any requirement that a signature of an insured be  
8 obtained by an agent or insurer shall be deemed satisfied if:

- 9 (1) The consent is obtained by telephonic or electronic  
10 enrollment by the group policyholder or insurer. A  
11 verification of enrollment information shall be  
12 provided to the enrollee;
- 13 (2) The telephonic or electronic enrollment provides  
14 necessary and reasonable safeguards to assure the  
15 accuracy, retention, and prompt retrieval of records;  
16 and
- 17 (3) The telephonic or electronic enrollment provides  
18 necessary and reasonable safeguards to assure that the  
19 confidentiality of individually identifiable  
20 information and privileged information is maintained.





1        (b) The insurer shall make available, upon request of the  
2 commissioner, records that will demonstrate the insurer's  
3 ability to confirm enrollment and coverage amounts.

4        §431:10H-EEE Required disclosure of rating practices to  
5 consumers. (a) This section shall apply as follows:

6        (1) Except as provided in paragraph (2), this section  
7 applies to any long-term care policy or certificate  
8 issued in this State on or after January 1, 2008; and

9        (2) For certificates issued on or after July 1, 2007,  
10 under a group long-term care insurance policy as  
11 defined in paragraph (1) of the definition of "group  
12 long-term care insurance" in section 431:10H-104,  
13 which policy was in force on July 1, 2007, this  
14 section shall apply on the policy anniversary  
15 following July 1, 2007.

16        (b) Other than for policies for which no applicable  
17 premium rate or rate schedule increases can be made, insurers  
18 shall provide all of the information listed in this subsection  
19 to the applicant at the time of application or enrollment;  
20 unless the method of application does not allow for delivery at  
21 that time. In such a case, an insurer shall provide all of the  
22 information listed in this subsection to the applicant no later



1 than at the time of delivery of the policy or certificate as  
2 follows:

3 (1) A statement that the policy may be subject to rate  
4 increases in the future;

5 (2) An explanation of potential future premium rate  
6 revisions and the policyholder's or certificate  
7 holder's option in the event of a premium rate  
8 revision;

9 (3) The premium rate or rate schedules applicable to the  
10 applicant that will be in effect until a request is  
11 made for an increase;

12 (4) A general explanation for applying premium rate or  
13 rate schedule adjustments that shall include:

14 (A) A description of when premium rate or rate  
15 schedule adjustments will be effective (e.g.,  
16 next anniversary date or next billing date); and

17 (B) The right to a revised premium rate or rate  
18 schedule as provided in paragraph (3) if the  
19 premium rate or rate schedule is changed;

20 (5) With respect to disclosure of premium rate increases:

21 (A) Information regarding each premium rate increase  
22 on this policy form or similar policy forms over



1           the past ten years for this State or any other  
2           state that, at a minimum, identifies:

3           (i) The policy forms for which premium rates  
4           have been increased;

5           (ii) The calendar years when the policy form was  
6           available for purchase; and

7           (iii) The amount or per cent of each increase.

8           The percentage may be expressed as a  
9           percentage of the premium rate prior to the  
10           increase and may also be expressed as  
11           minimum and maximum percentages if the rate  
12           increase is variable by rating  
13           characteristics;

14           (B) The insurer, in a fair manner, may provide  
15           additional explanatory information related to the  
16           rate increases;

17           (C) An insurer may exclude from the disclosure  
18           premium rate increases that only apply to blocks  
19           of business acquired from other nonaffiliated  
20           insurers or the long-term care policies acquired  
21           from other nonaffiliated insurers when those  
22           increases occurred prior to the acquisition;



1           (D) If an acquiring insurer files for a rate increase  
2           on a long-term care policy form acquired from  
3           nonaffiliated insurers or a block of policy forms  
4           acquired from nonaffiliated insurers on or before  
5           the later of July 1, 2007, or the end of a  
6           twenty-four-month period following the  
7           acquisition of the block or policies, the  
8           acquiring insurer may exclude that rate increase  
9           from the disclosure. However, the nonaffiliated  
10          selling company shall include the disclosure of  
11          that rate increase in accordance with  
12          subparagraph (A); and

13          (E) If the acquiring insurer in subparagraph (D)  
14          files for a subsequent rate increase, even within  
15          the twenty-four-month period, on the same policy  
16          form acquired from nonaffiliated insurers or  
17          block of policy forms acquired from nonaffiliated  
18          insurers referenced in subparagraph (D), the  
19          acquiring insurer shall make all disclosures  
20          required by this paragraph, including disclosure  
21          of the earlier rate increase referenced in  
22          subparagraph (D).



1        (c) An applicant shall sign an acknowledgment at the time  
2 of application, unless the method of application does not allow  
3 for signature at that time, that the insurer made the disclosure  
4 required under subsection (b) (1) to (5). If due to the method  
5 of application the applicant cannot sign an acknowledgment at  
6 the time of application, the applicant shall sign no later than  
7 at the time of delivery of the policy or certificate.

8        (d) An insurer shall use the forms in Appendices B and F  
9 of the April, 2002, NAIC Model Long-Term Care Insurance Model  
10 Regulation to comply with the requirements of subsections (b)  
11 and (c).

12        (e) An insurer shall provide notice of an upcoming premium  
13 rate schedule increase to all policyholders or certificate  
14 holders, if applicable, at least forty-five days prior to the  
15 implementation of the premium rate schedule increase by the  
16 insurer. The notice shall include the information required by  
17 subsection (b) when the rate increase is implemented.

18        §431:10H-FFF Initial filing requirements. (a) This  
19 section applies to any long-term care policy issued in this  
20 State after December 31, 2007.



1        (b) An insurer shall provide the information listed in  
2 this subsection to the commissioner thirty days prior to making  
3 a long-term care insurance form available for sale as follows:

4        (1) A copy of the disclosure documents required in section  
5        431:10H-221; and

6        (2) An actuarial certification consisting of at least the  
7        following:

8            (A) A statement that the initial premium rate  
9            schedule is sufficient to cover anticipated costs  
10           under moderately adverse experience and that the  
11           premium rate schedule is reasonably expected to  
12           be sustainable over the life of the form with no  
13           future premium increases anticipated;

14           (B) A statement that the policy design and coverage  
15           provided have been reviewed and taken into  
16           consideration;

17           (C) A statement that the underwriting and claims  
18           adjudication processes have been reviewed and  
19           taken into consideration;

20           (D) A complete description of the basis for contract  
21           reserves that are anticipated to be held under  
22           the form, to include:



- 1           (i) Sufficient detail or sample calculations  
2           provided so as to have a complete depiction  
3           of the reserve amounts to be held;
- 4           (ii) A statement that the assumptions used for  
5           reserves contain reasonable margins for  
6           adverse experience;
- 7           (iii) A statement that the net valuation premium  
8           for renewal years does not increase (except  
9           for attained-age rating where permitted);  
10           and
- 11           (iv) A statement that the difference between the  
12           gross premium and the net valuation premium  
13           for renewal years is sufficient to cover  
14           expected renewal expenses; or if such a  
15           statement cannot be made, a complete  
16           description of the situations where this  
17           does not occur; provided that an aggregate  
18           distribution of anticipated issues may be  
19           used as long as the underlying gross  
20           premiums maintain a reasonably consistent  
21           relationship; provided further that if the  
22           gross premiums for certain age groups are



1                   inconsistent with this requirement, the  
2                   commissioner may request a demonstration  
3                   under subsection (c) based on a standard age  
4                   distribution; and

5           (E) With respect to premium rate schedules:

6                   (i) A statement that the premium rate schedule  
7                   is not less than the premium rate schedule  
8                   for existing similar policy forms also  
9                   available from the insurer except for  
10                   reasonable differences attributable to  
11                   benefits; or

12                   (ii) A comparison of the premium schedules for  
13                   similar policy forms that are currently  
14                   available from the insurer with an  
15                   explanation of the differences.

16           (c) The commissioner may request an actuarial  
17 demonstration that benefits are reasonable in relation to  
18 premiums. The actuarial demonstration shall include either  
19 premium and claim experience on similar policy forms, adjusted  
20 for any premium or benefit differences, or relevant and credible  
21 data from other studies, or both. If the commissioner asks for  
22 additional information under this subsection, the period in





1 subsection (b) does not include the period during which the  
2 insurer is preparing the requested information.

3 §431:10H-GGG Licensing. A producer is not authorized to  
4 sell, solicit, or negotiate with respect to long-term care  
5 insurance except as authorized by article 9A.

6 §431:10H-HHH Premium rate schedule increases. (a) This  
7 section shall apply as follows:

8 (1) Except as provided in paragraph (2), this section  
9 applies to any long-term care policy or certificate  
10 issued in this State after December 31, 2007; and

11 (2) For certificates issued after June 30, 2007, under a  
12 group long-term care insurance policy, as defined in  
13 paragraph (1) of the definition of "group long-term  
14 care insurance" in section 431:10H-104, which policy  
15 was in force on July 1, 2007, this section shall apply  
16 on the policy anniversary following July 1, 2007.

17 (b) An insurer shall provide notice of a pending premium  
18 rate schedule increase, including an exceptional increase, to  
19 the commissioner at least thirty days prior to the notice to the  
20 policyholders and shall include:

21 (1) Information required by section 431:10H-221;

22 (2) A certification by a qualified actuary that:



- 1           (A) If the requested premium rate schedule increase  
2           is implemented and the underlying assumptions,  
3           which reflect moderately adverse conditions, are  
4           realized, no further premium rate schedule  
5           increases are anticipated; and
- 6           (B) The premium rate filing is in compliance with  
7           this section;
- 8           (3) An actuarial memorandum justifying the rate schedule  
9           change request that includes:
- 10           (A) Lifetime projections of earned premiums and  
11           incurred claims based on the filed premium rate  
12           schedule increase and the method and assumptions  
13           used in determining the projected values,  
14           including reflection of any assumptions that  
15           deviate from those used for pricing other forms  
16           currently available for sale; provided that:
- 17           (i) Annual values for the five years preceding  
18           and the three years following the valuation  
19           date shall be provided separately;
- 20           (ii) The projections shall include the  
21           development of the lifetime loss ratio,



1                   unless the rate increase is an exceptional  
2                   increase;  
3           (iii) The projections shall demonstrate compliance  
4                   with subsection (c); and  
5           (iv) For exceptional increases, the projected  
6                   experience should be limited to the  
7                   increases in claims expenses attributable to  
8                   the approved reasons for the exceptional  
9                   increase. If the commissioner determines,  
10                   as provided in paragraph (4) of the  
11                   definition of "exceptional increase" in  
12                   section 431:10H-104, that offsets may exist,  
13                   the insurer shall use appropriate net  
14                   projected experience;  
15           (B) Disclosure of how reserves have been incorporated  
16                   in this rate increase whenever the rate increase  
17                   will trigger a contingent benefit upon lapse;  
18           (C) Disclosure of the analysis performed to determine  
19                   why a rate adjustment is necessary, which pricing  
20                   assumptions were not realized and why, and what  
21                   other actions taken by the company have been  
22                   relied on by the actuary;



1           (D) A statement that policy design, underwriting, and  
2           claims adjudication practices have been taken  
3           into consideration; and

4           (E) If it is necessary to maintain consistent premium  
5           rates for new certificates and certificates  
6           receiving a rate increase, the insurer shall file  
7           composite rates reflecting projections of new  
8           certificates;

9           (4) A statement that renewal premium rate schedules are  
10           not greater than new business premium rate schedules  
11           except for differences attributable to benefits,  
12           unless sufficient justification is provided to the  
13           commissioner; and

14           (5) Sufficient information for the review of the premium  
15           rate schedule increase by the commissioner.

16           (c) All premium rate schedule increases shall be  
17           determined in accordance with the following requirements:

18           (1) Exceptional increases shall provide that seventy per  
19           cent of the present value of projected additional  
20           premiums from the exceptional increase shall be  
21           returned to policyholders in benefits;



- 1        (2) Premium rate schedule increases shall be calculated so  
2        that the sum of the accumulated value of incurred  
3        claims, without the inclusion of active life reserves,  
4        and the present value of future projected incurred  
5        claims, without the inclusion of active life reserves,  
6        will not be less than the sum of the following:
- 7        (A) The accumulated value of the initial earned  
8        premium times fifty-eight per cent;
- 9        (B) Eighty-five per cent of the accumulated value of  
10       prior premium rate schedule increases on an  
11       earned basis;
- 12       (C) The present value of future projected initial  
13       earned premiums times fifty-eight per cent; and
- 14       (D) Eighty-five per cent of the present value of  
15       future projected premiums not in subparagraph (C)  
16       on an earned basis;
- 17       (3) If a policy form has both exceptional and other  
18       increases, the values in paragraph (2) (B) and (D)  
19       shall also include seventy per cent for exceptional  
20       rate increase amounts; and
- 21       (4) All present and accumulated values used to determine  
22       rate increases shall use the maximum valuation



1 interest rate for contract reserves, as applicable, as  
2 specified in sections 431:5-303 and 431:5-307. The  
3 actuary shall disclose as part of the actuarial  
4 memorandum the use of any appropriate averages.

5 (d) For each rate increase that is implemented, the  
6 insurer shall file for review by the commissioner updated  
7 projections, as provided in subsection (b) (3) (A), annually for  
8 the next three years, and include a comparison of actual results  
9 to projected values. The commissioner may extend the period to  
10 greater than three years if actual results are not consistent  
11 with projected values from prior projections. For group  
12 insurance policies that meet the conditions in subsection (k),  
13 the projections required by this subsection shall be provided to  
14 the policyholder in lieu of filing with the commissioner.

15 (e) If any premium rate in the revised premium rate  
16 schedule is greater than two hundred per cent of the comparable  
17 rate in the initial premium schedule, lifetime projections, as  
18 provided in subsection (b) (3) (A), shall be filed for review by  
19 the commissioner every five years following the end of the  
20 required period in subsection (d). For group insurance policies  
21 that meet the conditions in subsection (k), the projections



1 required by this subsection shall be provided to the  
2 policyholder in lieu of filing with the commissioner.

3 (f) If the commissioner has determined that the actual  
4 experience following a rate increase does not adequately match  
5 the projected experience and that the current projections under  
6 moderately adverse conditions demonstrate that incurred claims  
7 will not exceed proportions of premiums specified in subsection  
8 (c), the commissioner may require the insurer to implement any  
9 of the following:

- 10 (1) Premium rate schedule adjustments; or  
11 (2) Other measures to reduce the difference between the  
12 projected and actual experience.

13 In determining whether the actual experience adequately  
14 matches the projected experience, consideration should be given  
15 to subsection (b) (3) (E), if applicable.

16 (g) If the majority of the policies or certificates to  
17 which the increase is applicable are eligible for the contingent  
18 benefit upon lapse, the insurer shall file:

- 19 (1) A plan, subject to the commissioner's approval, for  
20 improved administration or claims processing designed  
21 to eliminate the potential for further deterioration  
22 of the policy form requiring further premium rate



1 schedule increases, or both, or to demonstrate that  
2 appropriate administration and claims processing have  
3 been implemented or are in effect; otherwise the  
4 commissioner may impose the condition in subsection  
5 (h); and

6 (2) The original anticipated lifetime loss ratio and the  
7 premium rate schedule increase that would have been  
8 calculated according to subsection (c), had the  
9 greater of the original anticipated lifetime loss  
10 ratio or fifty-eight per cent been used in the  
11 calculations described in subsection (c) (2) (A) and  
12 (C).

13 (h) For a rate increase filing that meets the following  
14 criteria, the commissioner shall review, for all policies  
15 included in the filing, the projected lapse rates and past lapse  
16 rates during the twelve months following each increase to  
17 determine if significant adverse lapsing has occurred or is  
18 anticipated:

19 (1) The rate increase is not the first rate increase  
20 requested for the specific policy form or forms;

21 (2) The rate increase is not an exceptional increase; and





1       (3) The majority of the policies or certificates to which  
2           the increase is applicable are eligible for the  
3           contingent benefit upon lapse.

4       If significant adverse lapsing has occurred, is anticipated  
5       in the filing, or is evidenced in the actual results as  
6       presented in the updated projections provided by the insurer  
7       following the requested rate increase, the commissioner may  
8       determine that a rate spiral exists. Following the  
9       determination that a rate spiral exists, the commissioner may  
10       require the insurer to offer, without underwriting, to all in  
11       force insureds, subject to the rate increase, the option to  
12       replace existing coverage with one or more reasonably comparable  
13       products being offered by the insurer or its affiliates;  
14       provided that the offer shall be subject to the approval of the  
15       commissioner, be based on actuarially sound principles but not  
16       on attained age, and provide that maximum benefits under any new  
17       policy accepted by an insured shall be reduced by comparable  
18       benefits already paid under the existing policy.

19       The insurer shall maintain the experience of all the  
20       replacement insureds separate from the experience of insureds  
21       originally issued the policy forms. In the event of a request  
22       for a rate increase on the policy form, the rate increase shall



1 be limited to the lesser of the maximum rate increase determined  
2 based on the combined experience or the maximum rate increase  
3 determined based only on the experience of the insureds  
4 originally issued the form plus ten per cent.

5 (i) If the commissioner determines that the insurer has  
6 exhibited a persistent practice of filing inadequate initial  
7 premium rates for long-term care insurance, the commissioner, in  
8 addition to subsection (h), may prohibit the insurer from either  
9 of the following:

- 10 (1) Filing and marketing comparable coverage for a period  
11 of up to five years; or  
12 (2) Offering all other similar coverages and limiting  
13 marketing of new applications to the products subject  
14 to recent premium rate schedule increases.

15 (j) Subsections (a) to (i) shall not apply to policies for  
16 which the long-term care benefits provided by the policy are  
17 incidental, as defined in section 431:10H-104, if the policy  
18 complies with all of the following provisions:

- 19 (1) The interest credited internally to determine cash  
20 value accumulations, including long-term care, if any,  
21 are guaranteed not to be less than the minimum



- 1           guaranteed interest rate for cash value accumulations
- 2           without long-term care set forth in the policy;
- 3       (2) The portion of the policy that provides insurance
- 4           benefits, other than long-term care coverage, meets
- 5           the nonforfeiture requirements as applicable in any of
- 6           the following:
- 7           (A) Section 431:10D-104; and
- 8           (B) Section 431:10D-107;
- 9       (3) The policy meets the disclosure requirements of
- 10           sections 431:10H-113 and 431:10H-114;
- 11       (4) The portion of the policy that provides insurance
- 12           benefits, other than long-term care coverage, meets
- 13           the requirements as applicable in the following:
- 14           (A) Policy illustrations as required by part IV of
- 15           article 10D; and
- 16           (B) Disclosure requirements, as applicable, in
- 17           article 431:10D; and
- 18       (5) An actuarial memorandum is filed with the commissioner
- 19           that includes:
- 20           (A) A description of the basis on which the long-term
- 21           care rates were determined;
- 22           (B) A description of the basis for the reserves;



- 1           (C) A summary of the type of policy, benefits,  
2           renewability, general marketing method, and  
3           limits on ages of issuance;
- 4           (D) A description and a table of each actuarial  
5           assumption used. For expenses, an insurer shall  
6           include per cent of premium dollars per policy  
7           and dollars per unit of benefits, if any;
- 8           (E) A description and a table of the anticipated  
9           policy reserves and additional reserves to be  
10           held in each future year for active lives;
- 11           (F) The estimated average annual premium per policy  
12           and the average issue age;
- 13           (G) A statement as to whether underwriting is  
14           performed at the time of application. The  
15           statement shall indicate whether underwriting is  
16           used and, if used, the statement shall include a  
17           description of the type or types of underwriting  
18           used, such as medical underwriting or functional  
19           assessment underwriting. Concerning a group  
20           policy, the statement shall indicate whether the  
21           enrollee or any dependent will be underwritten  
22           and when that underwriting occurs; and



1           (H) A description of the effect of the long-term care  
2           policy provision on the required premiums,  
3           nonforfeiture values, and reserves on the  
4           underlying insurance policy, both for active  
5           lives and those in long-term care claim status.

6           (k) Subsections (f) and (h) shall not apply to group  
7           insurance policies as defined in paragraph (1) of the definition  
8           of "group long-term care insurance" in section 431:10H-104  
9           where:

10           (1) The policies insure two hundred fifty or more persons  
11           and the policyholder has five thousand or more  
12           eligible employees of a single employer; or

13           (2) The policyholder, and not the certificate holders,  
14           pays a material portion of the premium, which shall  
15           not be less than twenty per cent of the total premium  
16           for the group in the calendar year prior to the year a  
17           rate increase is filed.

18           (l) "Exceptional increase" for purposes of this section  
19           shall be as defined in section 431:10H-104.

20           §431:10H-III Additional standards for benefit triggers for  
21           qualified long-term care insurance contracts. (a) For purposes  
22           of this section, the following definitions apply:



1       "Chronically ill individual" has the meaning prescribed for  
2 this term by section 7702B(c)(2)(A) of the Internal Revenue Code  
3 of 1986, as amended. Under this provision, a chronically ill  
4 individual means any individual who has been certified by a  
5 licensed health care practitioner as:

6       (1) Being unable to perform (without substantial  
7 assistance from another individual) at least two  
8 activities of daily living for a period of at least  
9 ninety days due to a loss of functional capacity; or

10       (2) Requiring substantial supervision to protect the  
11 individual from threats to health and safety due to  
12 severe cognitive impairment.

13       "Chronically ill individual" shall not include an  
14 individual otherwise meeting these requirements unless within  
15 the preceding twelve-month period a licensed health care  
16 practitioner has certified that the individual meets these  
17 requirements.

18       "Licensed health care practitioner" means a physician, as  
19 defined in section 1861(r)(1) of the Social Security Act, and  
20 any registered professional nurse, licensed social worker, or  
21 other individual who meets requirements prescribed by the  
22 Secretary of the Treasury.



1       "Maintenance or personal care services" means any care the  
2 primary purpose of which is the provision of needed assistance  
3 with any of the disabilities as a result of which the individual  
4 is a chronically ill individual (including the protection from  
5 threats to health and safety due to severe cognitive  
6 impairment).

7       "Qualified long-term care services" means services that  
8 meet the requirements of section 7702B(c)(1) of the Internal  
9 Revenue Code of 1986, as amended, as follows: necessary  
10 diagnostic, preventive, therapeutic, curative, treatment,  
11 mitigation and rehabilitative services, and maintenance or  
12 personal care services which are required by a chronically ill  
13 individual and are provided pursuant to a plan of care  
14 prescribed by a licensed health care practitioner.

15       (b) A qualified long-term care insurance contract shall  
16 pay only for qualified long-term care services received by a  
17 chronically ill individual provided pursuant to a plan of care  
18 prescribed by a licensed health care practitioner.

19       (c) A qualified long-term care insurance contract shall  
20 condition the payment of benefits on a determination of the  
21 insured's inability to perform activities of daily living for an



1 expected period of at least ninety days due to a loss of  
2 functional capacity or to severe cognitive impairment.

3 (d) Certifications regarding activities of daily living  
4 and cognitive impairment required pursuant to subsection (c)  
5 shall be performed by a licensed health care practitioner.

6 (e) Certifications required pursuant to subsection (d) may  
7 be performed by a licensed health care practitioner at the  
8 direction of the carrier as is reasonably necessary with respect  
9 to a specific claim, except that when a licensed health care  
10 practitioner has certified that an insured is unable to perform  
11 activities of daily living for an expected period of at least  
12 ninety days due to a loss of functional capacity and the insured  
13 is claiming payment of benefits, the certification may not be  
14 rescinded and additional certifications may not be performed  
15 until after the expiration of the ninety-day period.

16 (f) Qualified long-term care insurance contracts shall  
17 include a clear description of the process for appealing and  
18 resolving disputes with respect to benefit determinations.

19 §431:10H-JJJ Penalties. In addition to any other  
20 penalties provided by the laws of this State, any insurer or  
21 producer found to have violated any requirement of this State  
22 relating to the regulation of long-term care insurance or the





1 marketing of such insurance shall be subject to a fine of up to  
2 three times the amount of any commissions paid for each policy  
3 involved in the violation or up to \$10,000, whichever is  
4 greater."

5 SECTION 5. Section 431:10H-104, Hawaii Revised Statutes,  
6 is amended by adding three new definitions to read as follows:

7 "Exceptional increase" means only those increases filed by  
8 an insurer that are extraordinary and for which the commissioner  
9 determines the need for the premium rate increase is justified:

10 (1) Due to:

11 (A) Changes in laws or rules applicable to long-term  
12 care coverage in this State; or

13 (B) Increased and unexpected utilization that affects  
14 the majority of insurers of similar products;

15 (2) Except as provided in section 431:10H-232, exceptional  
16 increases are subject to the same requirements as  
17 other premium rate schedule increases;

18 (3) The commissioner may request a review by an  
19 independent actuary or a professional actuarial body  
20 of the basis for a request that an increase be  
21 considered an exceptional increase; and



1       (4) The commissioner, in determining that the necessary  
2       basis for an exceptional increase exists, shall also  
3       determine any potential offsets to higher claims  
4       costs.

5       "Incidental", as used in section 431:10H-HHH(j), means that  
6       the value of the long-term care benefits provided is less than  
7       ten per cent of the total value of the benefits provided over  
8       the life of the policy. These values shall be measured as of  
9       the date of issue.

10       "Qualified long-term care insurance contract" or "federally  
11       tax-qualified long-term care insurance contract" means an  
12       individual or group insurance contract that meets the  
13       requirements of section 7702B(b) of the Internal Revenue Code of  
14       1986, as amended, as follows:

15       (1) The only insurance protection provided under the  
16       contract is coverage of qualified long-term care  
17       services. A contract shall not fail to satisfy the  
18       requirements of this paragraph by reason of payments  
19       being made on a per diem or other periodic basis  
20       without regard to the expenses incurred during the  
21       period to which the payments relate;



- 1        (2) The contract does not pay or reimburse expenses  
2        incurred for services or items to the extent that the  
3        expenses are reimbursable under Title XVIII of the  
4        Social Security Act, as amended, or would be so  
5        reimbursable but for the application of a deductible  
6        or coinsurance amount. The requirements of this  
7        paragraph do not apply to expenses that are  
8        reimbursable under Title XVIII of the Social Security  
9        Act only as a secondary payor. A contract shall not  
10       fail to satisfy the requirements of this paragraph by  
11       reason of payments being made on a per diem or other  
12       periodic basis without regard to the expenses incurred  
13       during the period to which the payments relate;
- 14       (3) The contract is guaranteed renewable, within the  
15       meaning of section 7702B(b) (1) (C) of the Internal  
16       Revenue Code of 1986, as amended;
- 17       (4) The contract does not provide for a cash surrender  
18       value or other money that can be paid, assigned,  
19       pledged as collateral for a loan, or borrowed except  
20       as provided in paragraph (5);
- 21       (5) All refunds of premiums and all policyholder dividends  
22       or similar amounts under the contract are to be



1           applied as a reduction in future premiums or to  
2           increase future benefits, except that a refund on the  
3           event of death of the insured or a complete surrender  
4           or cancellation of the contract cannot exceed the  
5           aggregate premiums paid under the contract; and  
6           (6) The contract meets the consumer protection provisions  
7           set forth in section 7702B(g) of the Internal Revenue  
8           Code of 1986, as amended.

9           "Qualified long-term care insurance contract" or "federally  
10          tax-qualified long-term care insurance contract" also means the  
11          portion of a life insurance contract that provides long-term  
12          care insurance coverage by rider or as part of the contract and  
13          that satisfies the requirements of section 7702B(b) and (e) of  
14          the Internal Revenue Code of 1986, as amended."

15           SECTION 6. Section 431:10H-104, Hawaii Revised Statutes,  
16           is amended by amending the definition of "long-term care  
17           insurance" to read as follows:

18            "Long-term care insurance" means any insurance policy or  
19           rider advertised, marketed, offered, or designed to provide  
20           coverage for not less than twelve consecutive months for each  
21           covered person on an expense incurred, indemnity, prepaid, or  
22           other basis, for one or more necessary or medically necessary



1 diagnostic, preventive, therapeutic, rehabilitative,  
2 maintenance, or personal care services, provided in a setting  
3 other than an acute care unit of a hospital. The term includes  
4 group and individual annuities and life insurance policies or  
5 riders that provide directly or that supplement long-term care  
6 insurance. The term also includes a policy or rider that  
7 provides for payment of benefits based upon cognitive impairment  
8 or loss of functional capacity. The term shall also include  
9 qualified long-term care insurance contracts. Long-term care  
10 insurance may be issued by insurers, fraternal benefit  
11 societies, nonprofit health, hospital, and medical service  
12 corporations, prepaid health plans, health maintenance  
13 organizations, or any similar organization to the extent they  
14 are otherwise authorized to issue life or health insurance.

15 Long-term care insurance shall not include any insurance  
16 policy [~~which~~] that is offered primarily to provide basic  
17 medicare supplement coverage, basic hospital expense coverage,  
18 basic medical-surgical expense coverage, hospital confinement  
19 indemnity coverage, major medical expense coverage, disability  
20 income or related asset-protection coverage, accident only  
21 coverage, specified disease or specified accident coverage, or  
22 limited benefit health coverage.



1 With regard to life insurance, this term does not include  
 2 life insurance policies [~~which~~] that accelerate the death  
 3 benefit specifically for one or more of the qualifying events of  
 4 terminal illness, medical conditions requiring extraordinary  
 5 medical intervention, or permanent institutional confinement,  
 6 and [~~which~~] that provide the option of a lump-sum payment for  
 7 those benefits and in which neither the benefits nor the  
 8 eligibility for the benefits is conditioned upon the receipt of  
 9 long-term care.

10 Notwithstanding any other provision contained herein, any  
 11 product advertised, marketed, or offered as long-term care  
 12 insurance shall be subject to this article."

13 SECTION 7. Section 431:10H-111, Hawaii Revised Statutes,  
 14 is amended to read as follows:

15 "[+]§431:10H-111[+] **Right to return; free look provision.**

16 Long-term care insurance applicants shall have the right to  
 17 return the policy or certificate within thirty days of its  
 18 delivery and to have the premium refunded if, after examination  
 19 of the policy or certificate, the applicant is not satisfied for  
 20 any reason. Long-term care insurance policies and certificates  
 21 shall have a notice prominently printed on the first page or  
 22 attached thereto stating in substance that the applicant shall



1 have the right to return the policy or certificate within thirty  
2 days of its delivery and to have the premium refunded if, after  
3 examination of the policy or certificate, other than a  
4 certificate issued pursuant to a policy issued to a group  
5 defined in paragraph (1) of the definition of "group long-term  
6 care insurance" in section 431:10H-104, the applicant is not  
7 satisfied for any reason. This section shall also apply to a  
8 denial of an application for a long-term care contract. Any  
9 refund shall be made within thirty days of the return or  
10 denial."

11 SECTION 8. Section 431:10H-112, Hawaii Revised Statutes,  
12 is amended by amending subsection (b) to read as follows:

13 "(b) The outline of coverage shall include:

14 (1) A description of the principal benefits and coverage  
15 provided in the policy;

16 (2) A statement of the principal exclusions, reductions,  
17 and limitations contained in the policy;

18 (3) A statement of the terms under which the policy or  
19 certificate, or both, may be continued in force or  
20 discontinued, including any reservation in the policy  
21 of a right to change premium. Continuation or



- 1 conversion provisions of group coverage shall be  
2 specifically described;
- 3 (4) A statement that the outline of coverage is a summary  
4 only, not a contract of insurance, and that the policy  
5 or group master policy contains governing contractual  
6 provisions;
- 7 (5) A description of the terms under which the policy or  
8 certificate may be returned and premium refunded;  
9 [and]
- 10 (6) A brief description of the relationship of costs of  
11 care and benefits[-]; and
- 12 (7) A statement that discloses to the policyholder or  
13 certificate holder whether the policy is intended to  
14 be a federally tax-qualified long-term care insurance  
15 contract under section 7702B(b) of the Internal  
16 Revenue Code of 1986, as amended."

17 SECTION 9. Section 431:10H-114, Hawaii Revised Statutes,  
18 is amended by amending subsection (a) to read as follows:

19 "(a) At the time of policy delivery, a policy summary  
20 shall be delivered for an individual life insurance policy that  
21 provides long-term care benefits within the policy[-] or by  
22 rider. In the case of direct response solicitations, the





1 insurer shall deliver the policy summary upon the applicant's  
2 request, but regardless of the request shall make delivery no  
3 later than at the time of policy delivery. In addition to  
4 complying with all applicable requirements, the policy summary  
5 shall also include:

- 6 (1) An explanation of how the long-term care benefit  
7 interacts with other components of the policy,  
8 including deductions from death benefits;
- 9 (2) An illustration of the amount of benefits, the length  
10 of benefit, and the guaranteed lifetime benefits if  
11 any, for each covered person;
- 12 (3) Any exclusions, reductions, and limitations on  
13 benefits of long-term care;
- 14 (4) A statement that any long-term care inflation  
15 protection option required by section 431:10H-220 is  
16 not available under this policy;
- 17 (5) If applicable to the policy type, the summary shall  
18 also include a disclosure of the effects of exercising  
19 other rights under the policy, a disclosure of  
20 guarantees related to long-term care costs of  
21 insurance charges, and current and projected maximum  
22 lifetime benefits; and



1 (6) The provisions of the policy summary listed above may  
2 be incorporated into a basic illustration required to  
3 be delivered or into the life insurance policy summary  
4 [~~which~~] that is required to be delivered."

5 SECTION 10. Section 431:10H-201, Hawaii Revised Statutes,  
6 is amended to read as follows:

7 "[~~§~~431:10H-201~~]~~ Policy definitions. (a) No long-term  
8 care insurance policy delivered or issued for delivery in this  
9 State shall use the terms set forth in this section, unless the  
10 terms are defined in the policy and the definitions satisfy the  
11 following requirements:

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

14 "Acute condition" means that the individual is medically  
15 unstable. This individual requires frequent monitoring by  
16 medical professionals such as physicians and registered nurses,  
17 in order to maintain the individual's health status.

18 "Adult day care" means a program for six or more  
19 individuals, of social and health-related services provided  
20 during the day in a community group setting for the purpose of  
21 supporting frail, impaired elderly or other disabled adults who  
22 can benefit from care in a group setting outside the home.



1 "Bathing" means washing oneself by sponge bath, or in  
2 either a tub or shower, including the task of getting into or  
3 out of the tub or shower.

4 "Cognitive impairment" means a deficiency in a person's  
5 short- or long-term memory, orientation as to person, place, and  
6 time, deductive or abstract reasoning, or judgment as it relates  
7 to safety awareness.

8 "Continence" means the ability to maintain control of bowel  
9 and bladder function, or when unable to maintain control of  
10 bowel or bladder function, the ability to perform associated  
11 personal hygiene (including caring for catheter or colostomy  
12 bag).

13 "Dressing" means putting on and taking off all items of  
14 clothing and any necessary braces, fasteners, or artificial  
15 limbs.

16 "Eating" means feeding oneself by getting food into the  
17 body from a receptacle (such as a plate, cup, or table) or by a  
18 feeding tube or intravenously.

19 "Hands-on assistance" means physical assistance (minimal,  
20 moderate, or maximal) without which the individual would not be  
21 able to perform the activity of daily living.



1 "Home health care services" means medical and nonmedical  
2 services, provided to ill, disabled, or infirm persons in their  
3 residences. These services may include homemaker services,  
4 assistance with activities of daily living, and respite care  
5 services.

6 "Medicare" shall be defined as "The Health Insurance for  
7 the Aged Act, Title XVIII of the Social Security Amendments of  
8 1965 as Then Constituted or Later Amended[~~,"~~]", or Title I,  
9 Part I of Public Law 89-97, as Enacted by the Eighty-Ninth  
10 Congress of the United States of America and popularly known as  
11 the Health Insurance for the Aged Act, as then constituted and  
12 any later amendments or substitutes thereof, or words of similar  
13 import.

14 "Mental or nervous disorder" means neurosis,  
15 psychoneurosis, psychopathy, psychosis, or mental or emotional  
16 disease or disorder, and shall not be defined beyond these  
17 terms.

18 "Personal care" means the provision of hands-on services to  
19 assist an individual with activities of daily living.

20 "Skilled nursing care", [~~"intermediate care"~~], "personal  
21 care", "home care", "specialized care", "assisted living care",  
22 and other services shall be defined in relation to the level of



1 skill required, the nature of the care, and the setting in which  
2 care must be delivered.

3 "Toileting" means getting to and from the toilet, getting  
4 on and off the toilet, and performing associated personal  
5 hygiene.

6 "Transferring" means moving into or out of a bed, chair, or  
7 wheelchair.

8 (b) All providers of services, including but not limited  
9 to a "skilled nursing facility", "extended care facility",  
10 [~~"intermediate care facility"~~], "convalescent nursing home",  
11 "personal care facility", and "assisted living facility",  
12 "home care agency", and "specialized care providers" shall be  
13 defined in relation to the services and facilities required to  
14 be available and the licensure, certification, registration, or  
15 degree status of those providing or supervising the services.  
16 The definition may require that the provider be appropriately  
17 licensed [or], certified[-], or registered; provided that when  
18 the definition so requires, it shall also state what  
19 requirements a provider shall meet in lieu of licensure,  
20 certification, or registration when the state in which the  
21 service is to be furnished does not require a provider of these  
22 services to be licensed, certified, or registered, or when the



1 state licenses, certifies, or registers the provider of services  
2 under another name."

3 SECTION 11. Section 431:10H-202, Hawaii Revised Statutes,  
4 is amended to read as follows:

5 " ~~[§]~~ §431:10H-202 ~~[§]~~ **Renewability.** (a) The terms  
6 "guaranteed renewable" and "noncancellable" shall not be used in  
7 any individual long-term care insurance policy without further  
8 explanatory language in accordance with the disclosure  
9 requirements of section 431:10H-211. A policy issued to an  
10 individual shall not contain renewal provisions other than  
11 guaranteed renewable or noncancellable.

12 (b) The term "guaranteed renewable" may be used only when  
13 the insured has the right to continue the long-term care  
14 insurance in force by the timely payment of premiums and when  
15 the insurer has no unilateral right to make any change in any  
16 provision of the policy or rider while the insurance is in  
17 force, and cannot decline to renew, except that rates may be  
18 revised by the insurer on a class basis.

19 (c) The term "noncancellable" means the insured has the  
20 right to continue the long-term care insurance in force by the  
21 timely payment of premiums during which period the insurer has



1 no right to unilaterally make any change in any provision of the  
2 insurance or in the premium rate.

3 (d) The term "level premium" may only be used when the  
4 insurer does not have the right to change the premium.

5 (e) In addition to the other requirements of this section,  
6 a qualified long-term care insurance contract shall be  
7 guaranteed renewable, within the meaning of section  
8 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as  
9 amended."

10 SECTION 12. Section 431:10H-203, Hawaii Revised Statutes,  
11 is amended to read as follows:

12 "[+]§431:10H-203[+] **Limitations and exclusions.** (a) A  
13 policy may not be delivered or issued for delivery in this State  
14 as long-term care insurance if the policy limits or excludes  
15 coverage by type of illness, treatment, medical condition, or  
16 accident, except as follows:

- 17 (1) Preexisting conditions or diseases;  
18 (2) Mental or nervous disorders; however, this shall not  
19 permit exclusion or limitation of benefits on the  
20 basis of Alzheimer's disease;  
21 (3) Alcoholism and drug addiction;



- 1 (4) Illness, treatment, or medical condition arising out  
2 of:
- 3 (A) War or act of war, whether declared or  
4 undeclared;
- 5 (B) Participation in a felony, riot, or insurrection;
- 6 (C) Service in the armed forces or units auxiliary  
7 thereto;
- 8 (D) Suicide (sane or insane), attempted suicide, or  
9 intentionally self-inflicted injury; or
- 10 (E) Aviation (this exclusion applies only to non-  
11 fare-paying passengers); [~~or~~]
- 12 (5) Treatment provided in a government facility (unless  
13 required by law), services for which benefits are  
14 available under medicare or other governmental program  
15 (except medicaid), any state or federal workers'  
16 compensation, employer's liability, or occupational  
17 disease law, or any motor vehicle insurance law,  
18 services provided by a member of the covered person's  
19 immediate family, and services for which no charge is  
20 normally made in the absence of insurance[-]; i





1       (6) Expenses for services or items available or paid under  
2       another long-term care insurance or health insurance  
3       policy; or

4       (7) In the case of a qualified long-term care insurance  
5       contract, expenses for services or items to the extent  
6       that the expenses are reimbursable under Title XVIII  
7       of the Social Security Act or would be so reimbursable  
8       but for the application of a deductible or coinsurance  
9       amount.

10       (b) This section is not intended to prohibit exclusions  
11 and limitations by type of provider [~~or territorial~~  
12 ~~limitations~~]. However, no long-term care issuer may deny a  
13 claim because services are provided in a state other than the  
14 state of policy issue under the following conditions:

15       (1) When the state other than the state of policy issue  
16       does not have the provider licensing, certification,  
17       or registration required in the policy, but where the  
18       provider satisfies the policy requirements outlined  
19       for providers in lieu of licensure, certification,  
20       registration; or



1        (2) When the state other than the state of policy issue  
2                    licenses, certifies, or registers the provider under  
3                    another name.

4        For purposes of this subsection, "state of policy issue"  
5 means the state in which the individual policy or certificate  
6 was originally issued.

7        (c) This section is not intended to prohibit territorial  
8 limitations."

9        SECTION 13. Section 431:10H-211, Hawaii Revised Statutes,  
10 is amended to read as follows:

11        "[+]§431:10H-211[+] Disclosure; renewability. (a)  
12 Individual long-term care insurance policies shall contain a  
13 renewability provision. The provision shall be appropriately  
14 captioned, shall appear on the first page of the policy, and  
15 shall clearly state the duration, where limited, of renewability  
16 and the duration of the term of coverage for which the policy is  
17 issued and for which it may be renewed. This provision shall  
18 not apply to policies that do not contain a nonrenewability  
19 provision, and under which the right to nonrenew is reserved  
20 solely to the policyholder.

21        (b) A long-term care insurance policy or certificate,  
22 other than one where the insurer does not have the right to



1 change the premium, shall include a statement that premium rates  
2 may change."

3 SECTION 14. Section 431:10H-216, Hawaii Revised Statutes,  
4 is amended to read as follows:

5 " ~~[f]~~ §431:10H-216 ~~[f]~~ **Disclosure of tax consequences.** With  
6 regard to life insurance policies that provide for an  
7 accelerated benefit for long-term care, a disclosure is required  
8 at the time of application for the policy and at the time the  
9 accelerated benefit payment request is submitted that receipt of  
10 these accelerated benefits may be taxable, and that assistance  
11 should be sought from a personal tax advisor. The disclosure  
12 statement shall be prominently displayed on the first page of  
13 the policy and any other related documents. This section shall  
14 not apply to qualified long-term care insurance contracts."

15 SECTION 15. Section 431:10H-218, Hawaii Revised Statutes,  
16 is amended by amending subsection (f) to read as follows:

17 "(f) Every insurer or other entity selling or issuing  
18 long-term care insurance benefits shall maintain a record of all  
19 policy or certificate rescissions, both state and countrywide,  
20 except those that the insured voluntarily effectuated. Every  
21 insurer shall annually furnish this information to the insurance  
22 commissioner in the format prescribed by the National



1 Association of Insurance Commissioners in Appendix A to the  
2 [~~July 1998~~] April, 2002, NAIC Long-Term Care Insurance Model  
3 Regulation."

4 SECTION 16. Section 431:10H-221, Hawaii Revised Statutes,  
5 is amended by amending subsections (c) and (d) to read as  
6 follows:

7 "(c) Upon determining that a sale will involve  
8 replacement, an insurer, other than an insurer using direct  
9 response solicitation methods, or its producer, shall furnish  
10 the applicant, prior to issuance or delivery of the individual  
11 long-term care insurance policy, a notice regarding replacement  
12 of accident and health or sickness or long-term care coverage.  
13 One copy of the notice shall be retained by the applicant and an  
14 additional copy signed by the applicant shall be retained by the  
15 insurer. The required notice shall be provided in the same  
16 manner as shown in [~~Section 12(C) of the July 1998~~] section 14C  
17 of the April, 2002, NAIC Long-Term Care Insurance Model  
18 Regulation.

19 (d) Insurers using direct response solicitation methods  
20 shall deliver a notice regarding replacement of accident and  
21 health or sickness or long-term care coverage to the applicant  
22 upon issuance of the policy. The required notice shall be



1 provided in the same manner as shown in [~~Section 12(D) of the~~  
2 ~~July 1998~~] section 14D of the April, 2002, NAIC Long-Term Care  
3 Insurance Model Regulation."

4 SECTION 17. Section 431:10H-222, Hawaii Revised Statutes,  
5 is amended to read as follows:

6 "§431:10H-222 Reporting requirements. (a) Every insurer  
7 shall maintain records for each producer of the producer's  
8 amount of replacement sales as a per cent of the producer's  
9 total annual sales and the amount of lapses of long-term care  
10 insurance policies sold by the producer as a per cent of the  
11 producer's total annual sales.

12 (b) Every insurer shall report annually by June 30 the ten  
13 per cent of its producers with the greatest percentages of  
14 lapses and replacements as measured in subsection (a). The form  
15 shall be in the format contained in Appendix G to the April,  
16 2002, NAIC Long-Term Care Insurance Model Regulation.

17 (c) Reported replacement and lapse rates do not alone  
18 constitute a violation of insurance laws or necessarily imply  
19 wrongdoing. The reports are for the purpose of reviewing more  
20 closely producer activities regarding the sale of long-term care  
21 insurance.



1 (d) Every insurer shall report annually by June 30 the  
2 number of lapsed policies as a per cent of its total annual  
3 sales and as a per cent of its total number of policies in force  
4 as of the end of the preceding calendar year. The form shall be  
5 in the format contained in Appendix G to the April, 2002, NAIC  
6 Long-Term Care Insurance Model Regulation.

7 (e) Every insurer shall report annually by June 30 the  
8 number of replacement policies sold as a per cent of its total  
9 annual sales and as a per cent of its total number of policies  
10 in force as of the end of the preceding calendar year. The form  
11 shall be in the format contained in Appendix G to the April,  
12 2002, NAIC Long-Term Care Insurance Model Regulation.

13 (f) For [~~purposes of this section, "policy" means only~~  
14 ~~long term care insurance and "report" means on a statewide~~  
15 ~~basis.] qualified long-term care insurance contracts, every  
16 insurer shall report annually by June 30, the number of claims  
17 denied for each class of business, expressed as a percentage of  
18 claims denied. The form shall be in the format contained in  
19 Appendix E to the April, 2002, NAIC Long-Term Care Insurance  
20 Model Regulation.~~

21 (g) Reports required under this section shall be filed  
22 with the commissioner.



1        (h) For purposes of this section:

2        "Claim" means a request for payment of benefits under an in  
3 force policy regardless of whether the benefit claimed is  
4 covered under the policy or any terms or conditions of the  
5 policy have been met. Claims shall be subject to the definition  
6 of "denied".

7        "Denied" means the insurer refuses to pay a claim for any  
8 reason other than for claims not paid for failure to meet the  
9 waiting period or because of an applicable preexisting  
10 condition.

11        "Policy" means only long-term care insurance.

12        "Report" means on a statewide basis."

13        SECTION 18. Section 431:10H-226, Hawaii Revised Statutes,  
14 is amended to read as follows:

15        "~~§~~431:10H-226 ~~§~~ **Loss ratio.** (a) Benefits under long-  
16 term care insurance policies shall be deemed reasonable in  
17 relation to premiums; provided that the expected loss ratio is  
18 at least sixty per cent, calculated in a manner that provides  
19 for adequate reserving of the long-term care insurance risk. In  
20 evaluating the expected loss ratio due consideration shall be  
21 given to all relevant factors, including:



- 1 (1) Statistical credibility of incurred claims experience
- 2 and earned premiums;
- 3 (2) The period for which rates are computed to provide
- 4 coverage;
- 5 (3) Experienced and projected trends;
- 6 (4) Concentration of experience within early policy
- 7 duration;
- 8 (5) Expected claim fluctuation;
- 9 (6) Experience refunds, adjustments, or dividends;
- 10 (7) Renewability features;
- 11 (8) All appropriate expense factors;
- 12 (9) Interest;
- 13 (10) Experimental nature of the coverage;
- 14 (11) Policy reserves;
- 15 (12) Mix of business by risk classification, if applicable;
- 16 and
- 17 (13) Product features such as long elimination periods,
- 18 high deductibles, and high maximum limits.
- 19 (b) For purposes of this section, the commissioner shall
- 20 consult with a qualified long-term care actuary.
- 21 (c) Subsection (a) shall not apply to life insurance
- 22 policies that accelerate benefits for long-term care. A life





1 insurance policy that funds long-term care benefits entirely by  
2 accelerating the death benefit is considered to provide  
3 reasonable benefits in relation to premiums paid, if the policy  
4 complies with all of the following provisions:

- 5 (1) The interest credited internally to determine cash  
6 value accumulations, including long-term care, if any,  
7 are guaranteed not to be less than the minimum  
8 guaranteed interest rate for cash value accumulations  
9 without long-term care set forth in the policy;
- 10 (2) The portion of the policy that provides life insurance  
11 benefits meets the nonforfeiture requirements for life  
12 insurance;
- 13 (3) The policy meets the disclosure requirements of  
14 section 431:10H-114 as applicable;
- 15 (4) Any policy illustration that meets the applicable  
16 requirements for policy illustration;
- 17 (5) An actuarial memorandum is filed with the insurance  
18 division that includes:
- 19 (A) A description of the basis on which the long-term  
20 care rates were determined;
- 21 (B) A description of the basis for the reserves;



- 1 (C) A summary of the type of policy, benefits,  
2 renewability, general marketing method, and  
3 limits on ages of issuance;
- 4 (D) A description and a table of each actuarial  
5 assumption used. For expenses, an insurer shall  
6 include per cent of premium dollars per policy  
7 and dollars per unit of benefits, if any;
- 8 (E) A description and a table of the anticipated  
9 policy reserves and additional reserves to be  
10 held in each future year for active lives;
- 11 (F) The estimated average annual premium per policy  
12 and the average issue age;
- 13 (G) A statement as to whether underwriting is  
14 performed at the time of application. The  
15 statement shall indicate whether underwriting is  
16 used, and if used, the statement shall include a  
17 description of the type or types of underwriting  
18 used such as medical underwriting or functional  
19 assessment underwriting. Concerning a group  
20 policy, the statement shall indicate whether the  
21 enrollee or any dependent will be underwritten  
22 and when underwriting occurs; and



1 (H) A description of the effect of the long-term care  
2 policy provision on the required premiums,  
3 nonforfeiture values, and reserves on the  
4 underlying life insurance policy, both for active  
5 lives and those in long-term care claim status.

6 (d) This section shall apply to all long-term care  
7 insurance policies or certificates except those covered under  
8 sections 431:10H-FFF and 431:10H-HHH."

9 SECTION 19. Section 431:10H-229, Hawaii Revised Statutes,  
10 is amended to read as follows:

11 **"§431:10H-229 Standards for marketing.** (a) Every  
12 insurer, health care service plan, or other entity marketing  
13 long-term care insurance coverage in this State, directly or  
14 through producers, shall:

15 (1) Establish marketing procedures to assure that any  
16 comparison of policies by its producers will be fair  
17 and accurate;

18 (2) Establish marketing procedures to assure excessive  
19 insurance is not sold or issued;

20 (3) Display prominently by type, stamp, or other  
21 appropriate means, on the first page of the outline of  
22 coverage and policy the following:



1 "Notice to buyer: This policy may not cover all of  
2 the costs associated with long-term care incurred by  
3 the buyer during the period of coverage. The buyer is  
4 advised to review carefully all policy limitations.";

- 5 (4) Inquire and otherwise make every reasonable effort to  
6 identify whether a prospective applicant or enrollee  
7 for long-term care insurance currently has long-term  
8 care insurance and the types and amounts of any such  
9 insurance[~~r~~], except that in the case of qualified  
10 long-term care insurance contracts, an inquiry into  
11 whether a prospective applicant or enrollee for  
12 long-term care insurance has accident and sickness  
13 insurance is not required;

- 14 (5) Every insurer or entity marketing long-term care  
15 insurance shall establish auditable procedures for  
16 verifying compliance with subsection (a);

- 17 (6) If the state in which the policy or certificate is to  
18 be delivered or issued for delivery has a senior  
19 insurance counseling program approved by the  
20 commissioner, the insurer, at solicitation, shall  
21 provide written notice to the prospective policyholder  
22 or certificate holder of a state senior insurance



1 counseling program including the name, address, and  
2 telephone number of the program; ~~and~~

3 (7) For long-term care health insurance policies and  
4 certificates, use the terms "noncancellable" or "level  
5 premium" only when the policy or certificate conforms  
6 to section 431:10H-202[-];

7 (8) Provide copies of the disclosure forms required in  
8 section 431:10H-EEE(c) to the applicant; and

9 (9) Provide an explanation of contingent benefit upon  
10 lapse provided for in section 431:10H-233(f).

11 (b) In addition to the acts or practices prohibited in  
12 article 13 ~~[of this chapter]~~, all of the following acts and  
13 practices are prohibited:

14 (1) Twisting. Knowingly making any misleading  
15 representation or incomplete or fraudulent comparison  
16 of any insurance policies or insurers for the purpose  
17 of inducing, or tending to induce, any person to  
18 lapse, forfeit, surrender, terminate, retain, pledge,  
19 assign, borrow on, or convert any insurance policy or  
20 to take out a policy of insurance with another  
21 insurer.



1 (2) High pressure tactics. Employing any method of  
2 marketing having the effect of or tending to induce  
3 the purchase of insurance through force, fright,  
4 threat, whether explicit or implied, or undue pressure  
5 to purchase or recommend purchase of insurance.

6 (3) Cold lead advertising. Making use directly or  
7 indirectly of any method of marketing which fails to  
8 disclose in a conspicuous manner that a purpose of the  
9 method of marketing is solicitation of insurance and  
10 that contact will be made by an insurance producer or  
11 insurance company.

12 (4) Misrepresentation. Falsifying a material fact in  
13 selling or offering to sell a long-term care insurance  
14 policy."

15 SECTION 20. Section 431:10H-230, Hawaii Revised Statutes,  
16 is amended by amending subsection (f) to read as follows:

17 "(f) The association shall also:

18 (1) At the time of the association's decision to endorse,  
19 engage the services of a person with expertise in  
20 long-term care insurance not affiliated with the  
21 insurer to conduct an examination of the policies,  
22 including benefits, features, and rates, and update



1 the examination thereafter in the event of material  
2 change;

3 (2) Actively monitor the marketing efforts of the insurer  
4 and its producers; and

5 (3) Review and approve all marketing materials or other  
6 insurance communications used to promote sales or sent  
7 to members regarding the policies or certificates.

8 This subsection shall not apply to qualified long-term care  
9 insurance contracts."

10 SECTION 21. Section 431:10H-231, Hawaii Revised Statutes,  
11 is amended by amending subsection (c) to read as follows:

12 "(c) To determine whether the applicant meets the  
13 standards developed by the issuer, the producer and issuer shall  
14 develop procedures that take the following into consideration:

15 (1) The ability to pay for the proposed coverage and other  
16 pertinent financial information related to the  
17 purchase of the coverage;

18 (2) The applicant's goals or needs with respect to  
19 long-term care and the advantages and disadvantages of  
20 insurance to meet these goals or needs; and

21 (3) The values, benefits, and costs of the applicant's  
22 existing insurance, if any, when compared to the



1 values, benefits, and costs of the recommended  
2 purchase or replacement.

3 The issuer, and where a producer is involved, the producer shall  
4 make reasonable efforts to obtain the information set out above.  
5 The efforts shall include presentation to the applicant, at or  
6 prior to application, the "Long-Term Care Insurance Personal  
7 Worksheet". The personal worksheet used by the issuer shall  
8 contain, at a minimum, information in the format contained in  
9 Appendix B of the [~~July 1998~~] April, 2002, NAIC Long-Term Care  
10 Insurance Model Regulation, in not less than twelve-point type.  
11 The issuer may request the applicant to provide additional  
12 information to comply with its suitability standards. A copy of  
13 the issuer's personal worksheet shall be filed with the  
14 commissioner."

15 SECTION 22. Section 431:10H-231, Hawaii Revised Statutes,  
16 is amended by amending subsection (e) to read as follows:

17 "(e) The sale or dissemination outside the company or  
18 agency by the issuer or producer of information obtained through  
19 the personal worksheet in Appendix B of the [~~July 1998~~] April,  
20 2002, NAIC Long-Term Care Insurance Model Regulation is  
21 prohibited."





1 SECTION 23. Section 431:10H-231, Hawaii Revised Statutes,  
2 is amended by amending subsections (g) and (h) to read as  
3 follows:

4 "(g) At the same time as the personal worksheet is  
5 provided to the applicant, the disclosure form entitled "Things  
6 You Should Know Before You Buy Long-Term Care Insurance" shall  
7 be provided. The form shall be in the format contained in  
8 Appendix C to the [~~July 1998~~] December, 2006, NAIC Long-Term  
9 Care Insurance Model Regulation, in not less than twelve-point  
10 type.

11 (h) If the issuer determines that the applicant does not  
12 meet its financial suitability standards, or if the applicant  
13 has declined to provide the information, the issuer may reject  
14 the application. In the alternative, the issuer shall send the  
15 applicant a letter similar to the [~~July 1998~~] April, 2002, NAIC  
16 Long-Term Care Insurance Model Regulation, Appendix D. However,  
17 if the applicant has declined to provide financial information,  
18 the issuer may use some other method to verify the applicant's  
19 intent. Either the applicant's returned letter or a record of  
20 the alternate method of verification shall be made part of the  
21 applicant's file."



1 SECTION 24. Section 431:10H-233, Hawaii Revised Statutes,  
2 is amended to read as follows:

3 " ~~[§]~~431:10H-233 ~~[§]~~ **Nonforfeiture benefit requirement.**

4 (a) This section does not apply to life insurance policies  
5 containing accelerated long-term care benefits.

6 (b) To comply with the requirement to offer a  
7 nonforfeiture benefit pursuant to section 431:10H-116, the  
8 following shall be met:

9 (1) A policy or certificate offered with nonforfeiture  
10 benefits shall have coverage elements, eligibility,  
11 benefit triggers, and benefit length that are the same  
12 as coverage to be issued without nonforfeiture  
13 benefits. The nonforfeiture benefit included in the  
14 offer shall be the benefit described in subsection  
15 ~~[(h)]~~ (j); and

16 (2) The offer shall be in writing if the nonforfeiture  
17 benefit is not otherwise described in the outline of  
18 coverage or other materials given to the prospective  
19 policyholder.

20 (c) If the offer required to be made under section  
21 431:10H-116 is rejected, the insurer shall provide the  
22 contingent benefit upon lapse described in this section. Even



1 if this offer is accepted for a policy with a fixed or limited  
2 premium paying period, the contingent benefit on lapse in  
3 subsection (g) shall still apply.

4 (d) After rejection of the offer required under section  
5 431:10H-116, for individual and group policies without  
6 nonforfeiture benefits issued after June 30, 2000, the insurer  
7 shall provide a contingent benefit upon lapse.

8 (e) If a group policyholder elects to make the  
9 nonforfeiture benefit an option to the certificate holder, a  
10 certificate shall provide either the nonforfeiture benefit or  
11 the contingent benefit upon lapse.

12 (f) The contingent benefit on lapse shall be triggered  
13 every time an insurer increases the premium rates to a level  
14 which results in a cumulative increase of the annual premium  
15 equal to or exceeding the percentage of the insured's initial  
16 annual premium set forth in the table below based on the  
17 insured's issue age, and the policy or certificate lapses within  
18 one hundred twenty days of the due date of the premium so  
19 increased. Unless otherwise required, policyholders and  
20 certificate holders shall be notified at least thirty days prior  
21 to the due date of the premium reflecting the rate increase.

22 Triggers for a Substantial Premium Increase



Per Cent Increase Over

Initial Premium

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
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21  
22

Issue Age

29 and under  
30-34  
35-39  
40-44  
45-49  
50-54  
55-59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72

200%  
190%  
170%  
150%  
130%  
110%  
90%  
70%  
66%  
62%  
58%  
54%  
50%  
48%  
46%  
44%  
42%  
40%  
38%  
36%



1	73	34%
2	74	32%
3	75	30%
4	76	28%
5	77	26%
6	78	24%
7	79	22%
8	80	20%
9	81	19%
10	82	18%
11	83	17%
12	84	16%
13	85	15%
14	86	14%
15	87	13%
16	88	12%
17	89	11%
18	90 and over	10%

19        (g) A contingent benefit on lapse shall also be triggered  
20 for policies with a fixed or limited premium paying period every  
21 time an insurer increases the premium rates to a level that  
22 results in a cumulative increase of the annual premium equal to



1 or exceeding the percentage of the insured's initial annual  
 2 premium set forth below based on the insured's issue age, the  
 3 policy or certificate lapses within one hundred and twenty days  
 4 of the due date of the premium so increased, and the ratio in  
 5 subsection (i) (2) is forty per cent or more. Unless otherwise  
 6 required, policyholders shall be notified at least thirty days  
 7 prior to the due date of the premium reflecting the rate  
 8 increase.

9 Triggers for a Substantial Premium Increase

10 Per Cent Increase Over

11 <u>Issue Age</u>	<u>Initial Premium</u>
12 <u>Under 65</u>	<u>50%</u>
13 <u>65-80</u>	<u>30%</u>
14 <u>Over 80</u>	<u>10%</u>

15 This provision shall be in addition to the contingent benefit  
 16 provided by subsection (f) and where both are triggered, the  
 17 benefit provided shall be at the option of the insured.

18 [~~(g)~~] (h) On or before the effective date of a substantial  
 19 premium increase as defined in subsection (f), the insurer  
 20 shall:

21 (1) Offer to reduce policy benefits provided by the  
 22 current coverage without the requirement of additional



1 underwriting so that required premium payments are not  
2 increased;

3 (2) Offer to convert the coverage to a paid-up status with  
4 a shortened benefit period in accordance with the  
5 terms of subsection ~~[(h)-]~~ (j). This option may be  
6 elected at any time during the one-hundred-twenty-day  
7 period referenced in subsection (f); and

8 (3) Notify the policyholder ~~[and]~~ or certificate holder  
9 that a default or lapse at any time during the one-  
10 hundred-twenty-day period under subsection (f) shall  
11 be deemed to be the election offer to convert in  
12 paragraph (2) ~~[-]~~, unless the automatic option in  
13 subsection (i)(3) applies.

14 (i) On or before the effective date of a substantial  
15 premium increase as defined in subsection (g) above, the insurer  
16 shall:

17 (1) Offer to reduce policy benefits provided by the  
18 current coverage without the requirement of additional  
19 underwriting so that required premium payments are not  
20 increased;

21 (2) Offer to convert the coverage to a paid-up status  
22 where the amount payable for each benefit is ninety



1 per cent of the amount payable in effect immediately  
2 prior to lapse times the ratio of the number of  
3 completed months of paid premiums divided by the  
4 number of months in the premium paying period. This  
5 option may be elected at any time during the one-  
6 hundred-twenty-day period referenced in subsection  
7 (g); and

8 (3) Notify the policyholder or certificate holder that a  
9 default or lapse at any time during the one-hundred-  
10 twenty-day period referenced in subsection (g) shall  
11 be deemed to be the election of the offer to convert  
12 in paragraph (2) if the ratio is forty per cent or  
13 more.

14 [~~h~~] (j) Benefits continued as nonforfeiture benefits,  
15 including contingent benefits upon lapse~~7~~ in accordance with  
16 subsection (f) but not (g), are described in this subsection, as  
17 follows:

18 (1) For purposes of this subsection, attained age rating  
19 is defined as a schedule of premiums starting from the  
20 issue date which increases age at least one per cent  
21 per year prior to age fifty, and at least three per  
22 cent per year beyond age fifty;





- 1           (2) For purposes of this subsection, the nonforfeiture  
2           benefit shall be of a shortened benefit period  
3           providing paid-up long-term care insurance coverage  
4           after lapse. The same benefits (amounts and frequency  
5           in effect at the time of lapse but not increased  
6           thereafter) shall be payable for a qualifying claim,  
7           but the lifetime maximum dollars or days of benefits  
8           shall be determined as provided in paragraph (3);
- 9           (3) The standard nonforfeiture credit shall be equal to  
10          one hundred per cent of the sum of all premiums paid,  
11          including the premiums paid prior to any changes in  
12          benefits. The insurer may offer additional shortened  
13          benefit period options, as long as the benefits for  
14          each duration equal or exceed the standard forfeiture  
15          credit for that duration. However, the minimum  
16          nonforfeiture credit shall not be less than thirty  
17          times the daily nursing home benefit at the time of  
18          lapse. In either event, the calculation of the  
19          nonforfeiture credit is subject to the limitation of  
20          subsection ~~[(i)]~~ (k);
- 21          (4) The nonforfeiture benefit ~~[and contingent benefit upon~~  
22          lapse] shall begin not later than the end of the third



1 year following the policy or certificate issue  
2 date~~[-]~~; provided that the contingent benefit upon  
3 lapse shall be effective during the first three years  
4 and thereafter;

5 (5) Notwithstanding the [~~preceding sentence, except~~]  
6 provisions in paragraph (4), for a policy or  
7 certificate with [~~a contingent benefit upon lapse or a~~  
8 ~~policy or certificate with~~] attained age rating, the  
9 nonforfeiture benefit shall begin on the earlier of:

10 (A) The end of the tenth year following the policy or  
11 certificate issue date; or

12 (B) The end of the second year following the date the  
13 policy or certificate is no longer subject to  
14 attained age rating; and

15 [~~5~~] (6) Nonforfeiture credits may be used for all care  
16 and services qualifying for benefits under the terms  
17 of the policy or certificate, up to the limits  
18 specified in the policy or certificate.

19 [~~i~~] (k) All benefits paid by the insurer while the  
20 policy or certificate is in premium paying status and in paid up  
21 status shall not exceed the maximum benefits which would be



1 payable if the policy or certificate had remained in premium  
2 paying status.

3 ~~[(j)]~~ (l) There shall be no difference in the minimum  
4 nonforfeiture benefits as required under this section for group  
5 and individual policies.

6 ~~[(k)]~~ (m) The requirements set forth in this section shall  
7 become effective July 1, 2000, and shall apply as follows:

8 (1) This section shall apply to any long-term care policy  
9 issued in this State after June 30, 2000; and

10 (2) For certificates issued after June 30, 2000, under a  
11 group long-term care insurance policy as defined in  
12 paragraph (1) under the definition of "group long-term  
13 care insurance" in section 431:10H-104, which policy  
14 was in force on July 1, 2000, this section shall not  
15 apply~~[-]~~;

16 provided that the provisions in subsections (c), (g), and (i)  
17 that pertain to contingent benefits for a policy with a fixed or  
18 limited premium paying period shall apply to any long-term care  
19 insurance policy or certificate issued in the State after  
20 December 31, 2007; provided further that for new certificates on  
21 a group policy as defined in section 431:10H-104, the provisions  
22 in subsections (c), (g), and (i) that pertain to contingent



1 benefits for a policy with a fixed or limited premium paying  
2 period shall apply after July 1, 2008.

3 ~~[(1)]~~ (n) Premiums charged for a policy or certificate  
4 containing nonforfeiture benefits or contingent benefit on lapse  
5 shall be subject to the loss ratio requirements of section  
6 431:10H-226 or 431:10H-HHH, whichever is applicable, treating  
7 the policy as a whole.

8 ~~[(m)]~~ (o) To determine whether contingent nonforfeiture  
9 upon lapse provisions are triggered under subsection (f), a  
10 replacing insurer that purchases or assumes a block or blocks of  
11 long-term care insurance policies from another insurer shall  
12 calculate the percentage increase based on the initial annual  
13 premium paid by the insured when the policy was first purchased  
14 from the original insurer.

15 (p) A nonforfeiture benefit for qualified long-term care  
16 insurance contracts that are level premium contracts shall be  
17 offered that meets the following requirements:

18 (1) The nonforfeiture provision shall be appropriately  
19 captioned;

20 (2) The nonforfeiture provision shall provide a benefit  
21 available in the event of a default in the payment of  
22 any premiums and shall state that the amount of the



1           benefit may be adjusted subsequent to being initially  
2           granted only as necessary to reflect changes in  
3           claims, persistency, and interest as reflected in  
4           changes in rates for premium paying contracts approved  
5           by the commissioner for the same contract form; and

6           (3) The nonforfeiture provision shall provide at least one  
7           of the following:

8           (A) Reduced paid-up insurance;

9           (B) Extended term insurance;

10          (C) Shortened benefit period; or

11          (D) Other similar offerings approved by the  
12           commissioner."

13           SECTION 25. Section 431:10H-235, Hawaii Revised Statutes,  
14 is amended to read as follows:

15           "~~431:10H-235~~ **Standard format outline of coverage;**  
16 **group and individual policies.** This section implements,  
17 interprets, and makes specific, the provisions of section  
18 431:10H-112 in prescribing a standard format and the content of  
19 an outline of coverage, as follows:

20           (1) The outline of coverage shall be a freestanding  
21           document, using no smaller than ten-point type;



- 1 (2) The outline of coverage shall contain no material of  
2 an advertising nature;
- 3 (3) Text that is capitalized or underscored in the  
4 standard format outline of coverage may be emphasized  
5 by other means that provide prominence equivalent to  
6 the capitalization or underscoring;
- 7 (4) Use of the text and sequence of text of the standard  
8 format outline of coverage is mandatory, unless  
9 otherwise specifically indicated; and
- 10 (5) The format for outline of coverage shall be  
11 substantially similar to the Outline of Coverage in  
12 [~~Section 25~~] section 29 of the [~~July 1998~~] April,  
13 2002, NAIC Long-Term Care Insurance Model Regulation."

14 **PART III**

15 SECTION 26. Section 431:2-209, Hawaii Revised Statutes, is  
16 amended by amending subsection (e) to read as follows:

17 "(e) The following records and reports on file with the  
18 commissioner shall be confidential and protected from discovery,  
19 production, and disclosure for so long as the commissioner deems  
20 prudent:

- 21 (1) Complaints and investigation reports;



- 1 (2) Working papers of examinations, complaints, and  
2 investigation reports;
- 3 (3) Proprietary information, including trade secrets,  
4 commercial information, and business plans, which, if  
5 disclosed may result in competitive harm to the person  
6 providing the information;
- 7 (4) Any documents or information received from the National  
8 Association of Insurance Commissioners, the federal  
9 government, insurance regulatory agencies of foreign  
10 countries, or insurance departments of other states,  
11 territories, and commonwealths that are confidential in  
12 other jurisdictions. The commissioner [~~shall be~~  
13 ~~authorized to~~] may share information, including  
14 otherwise confidential information, with the National  
15 Association of Insurance Commissioners, the federal  
16 government, insurance regulatory agencies of foreign  
17 countries, or insurance departments of other states,  
18 territories, and commonwealths so long as the statutes  
19 or regulations of the other jurisdictions permit them  
20 to maintain the same level of confidentiality as  
21 required under Hawaii law."



1 SECTION 27. In codifying the new sections added by  
2 sections 2, 3, and 4 of this Act, the revisor of statutes shall  
3 substitute appropriate section numbers for the letters used in  
4 designating the new sections in this Act.

5 SECTION 28. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 29. This Act shall take effect on July 1, 2007.



GOVERNOR OF THE STATE OF HAWAII

Approved this day: JUN 29 2007

