
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 10A a new section to be appropriately designated and to read as follows:

"§431:10A- Prohibition on rescissions of coverage. (a)

Notwithstanding sections 431:10-226.5 and 431:10A-106 to the contrary, a group health plan or health insurance insurer shall not rescind coverage under a health benefit plan with respect to an individual, including a group to which the individual belongs or family coverage in which the individual is included, after the individual is covered under the plan, unless:

(1) The individual or a person seeking coverage on behalf of the individual performs an act, practice, or omission that constitutes fraud;

(2) The individual makes an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage; or

(3) The individual fails to timely pay required premiums or contributions toward the cost of coverage; provided



1 that the rescission is in compliance with federal
2 regulations.

3 As used in this subsection, "a person seeking coverage on
4 behalf of the individual" shall not include an insurance
5 producer or employee or authorized representative of the health
6 carrier.

7 (b) A health carrier shall provide at least thirty days
8 advance written notice to each plan enrollee or, for individual
9 health insurance coverage, to each primary subscriber, who would
10 be affected by the proposed rescission of coverage before
11 coverage under the plan may be rescinded in accordance with
12 subsection (a) regardless of whether, in the case of group
13 health insurance coverage, the rescission applies to the entire
14 group or only to an individual within the group.

15 (c) This section applies regardless of any applicable
16 contestability period."

17 SECTION 2. Chapter 432, Hawaii Revised Statutes, is
18 amended by adding a new section to article 1 to be appropriately
19 designated and to read as follows:

20 "**§432- Prohibition on rescissions of coverage.** (a)
21 Notwithstanding sections 431:10-226.5 and 431:10A-106 to the
22 contrary, a society shall not rescind coverage under a health



1 benefit plan with respect to an individual, including a group to
2 which the individual belongs or family coverage in which the
3 individual is included, after the individual is covered under
4 the plan, unless:

5 (1) The individual or a person seeking coverage on behalf
6 of the individual performs an act, practice, or
7 omission that constitutes fraud;

8 (2) The individual makes an intentional misrepresentation
9 of material fact as prohibited by the terms of the
10 plan or coverage; or

11 (3) The individual fails to timely pay required premiums
12 or contributions toward the cost of coverage; provided
13 that the rescission is in compliance with federal
14 regulations.

15 As used in this subsection, "a person seeking coverage on
16 behalf of the individual" shall not include an insurance
17 producer or employee or authorized representative of the health
18 carrier.

19 (b) A society shall provide at least thirty days advance
20 written notice to each plan enrollee or, for individual health
21 insurance coverage, to each primary subscriber, who would be
22 affected by the proposed rescission of coverage before coverage



1 under the plan may be rescinded in accordance with subsection
2 (a) regardless of whether, in the case of group health insurance
3 coverage, the rescission applies to the entire group or only to
4 an individual within the group.

5 (c) This section applies regardless of any applicable
6 contestability period."

7 SECTION 3. Chapter 432D, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§432D- Prohibition on rescissions of coverage. (a)
11 Notwithstanding sections 431:10-226.5 and 431:10A-106 to the
12 contrary, a health maintenance organization shall not rescind
13 coverage under a health benefit plan with respect to an
14 individual, including a group to which the individual belongs or
15 family coverage in which the individual is included, after the
16 individual is covered under the plan, unless:

17 (1) The individual or a person seeking coverage on behalf
18 of the individual performs an act, practice, or
19 omission that constitutes fraud;

20 (2) The individual makes an intentional misrepresentation
21 of material fact as prohibited by the terms of the
22 plan or coverage; or



1 (3) The individual fails to timely pay required premiums
2 or contributions toward the cost of coverage; provided
3 that the rescission is in compliance with federal
4 regulations.

5 As used in this subsection, "a person seeking coverage on
6 behalf of the individual" shall not include an insurance
7 producer or employee or authorized representative of the health
8 carrier.

9 (b) A health maintenance organization shall provide at
10 least thirty days advance written notice to each plan enrollee
11 or, for individual health insurance coverage, to each primary
12 subscriber, who would be affected by the proposed rescission of
13 coverage before coverage under the plan may be rescinded in
14 accordance with subsection (a) regardless of whether, in the
15 case of group health insurance coverage, the rescission applies
16 to the entire group or only to an individual within the group.

17 (c) This section applies regardless of any applicable
18 contestability period."

19 SECTION 4. Section 431:1-209, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "**§431:1-209 General casualty insurance defined.** General
22 casualty insurance includes vehicle insurance as defined in



1 section 431:1-208, and accident and health or sickness insurance
2 as defined in section 431:1-205[, ~~and in addition is insurance.~~]
3 when issued as an incidental coverage with or supplemental to
4 liability insurance. In addition, general casualty insurance is
5 insurance:

- 6 (1) Against legal liability for the death, injury, or
7 disability of any human being, or from damage to
8 property;
- 9 (2) Of medical, hospital, surgical, and funeral benefits
10 to persons injured, irrespective of legal liability of
11 the insured, when issued with or supplemental to
12 insurance against legal liability for the death,
13 injury, or disability of human beings;
- 14 (3) Of the obligation accepted by, imposed upon, or
15 assumed by employers under law for death, disablement,
16 or injury to employees;
- 17 (4) Against loss or damage by burglary, theft, larceny,
18 robbery, forgery, fraud, vandalism, malicious
19 mischief, confiscation, or wrongful conversion,
20 disposal, or concealment, or from any attempt of any
21 of the foregoing; also insurance against loss or
22 damage to moneys, coins, bullion, securities, notes,



1 drafts, acceptances, or any other valuable papers or
2 documents, resulting from any cause, except while in
3 the mail;

4 (5) Upon personal effects of individuals, by an all-risk
5 type of policy commonly known as the personal property
6 floater;

7 (6) Against loss or damage to glass and its appurtenances
8 resulting from any cause;

9 (7) Against any liability and loss or damage to property
10 resulting from accidents to or explosions of boilers,
11 pipes, pressure containers, machinery, or apparatus;

12 (8) Against loss of or damage to any property of the
13 insured resulting from the ownership, maintenance, or
14 use of elevators, except loss or damage by fire;

15 (9) Against loss or damage to any property caused by the
16 breakage or leakage of sprinklers, water pipes, or
17 containers, or by water entering through leaks or
18 openings in buildings;

19 (10) Against loss or damage resulting from failure of
20 debtors to pay their obligations to the insured
21 (credit insurance);



- 1 (11) Against loss of or damage to any domesticated or wild
2 animal resulting from any cause (livestock insurance);
- 3 (12) Against loss of or damage to any property of the
4 insured resulting from collision of any other object
5 with such property, but not including collision to or
6 by vessels, craft, piers, or other instrumentalities
7 of ocean or inland navigation (collision insurance);
- 8 (13) Against legal liability of the insured, and against
9 loss, damage, or expense incident to a claim of such
10 liability, and including any obligation of the insured
11 to pay medical, hospital, surgical, and funeral
12 benefits to injured persons, irrespective of legal
13 liability of the insured, arising out of the death or
14 injury of any person, or arising out of injury to the
15 economic interest of any person as the result of
16 negligence in rendering expert, fiduciary, or
17 professional service (malpractice insurance);
- 18 (14) Against any contract of warranty or guaranty which
19 promises service maintenance, parts replacement,
20 repair, money, or any other indemnity in the event of
21 loss of or damage to a motor vehicle or any part
22 thereof from any cause, including loss of or damage to



1 or loss of use of the motor vehicle by reason of
2 depreciation, deterioration, wear and tear, use,
3 obsolescence, or breakage if made by a warrantor or
4 guarantor who or which as such is doing an insurance
5 business; provided that service contracts, as defined
6 and meeting the requirements of chapter 481X, shall
7 not be subject to chapter 431.

8 The doing or proposing to do any business in
9 substance equivalent to the business described in this
10 section in a manner designed to evade the provisions
11 of this section is the doing of an insurance business;
12 and

13 (15) Against any other kind of loss, damage, or liability
14 properly the subject of insurance and not within any
15 other class or classes or type of insurance as defined
16 in sections 431:1-204 to 431:1-211, if such insurance
17 is not contrary to law or public policy."

18 SECTION 5. Section 431:2-209, Hawaii Revised Statutes, is
19 amended by amending subsection (d) to read as follows:

20 "(d) Three years after the [~~year to which they relate,~~]
21 date filed or within three years of the due date prescribed for
22 the filing of the tax report, whichever is later, the



1 commissioner may destroy [~~any foreign or alien insurer's~~] the
2 tax reports[7] of any foreign or alien insurers, surplus lines
3 brokers, or independently procured insureds, or similar records
4 or reports now or hereafter in the commissioner's possession."

5 SECTION 6. Section 431:2-402, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) The branch may review and take appropriate action on
8 complaints [~~relating to insurance fraud.~~] of fraud relating to
9 insurance under title 24, including chapters 431, 432, and 432D,
10 but excluding workers' compensation insurance under chapter
11 386."

12 SECTION 7. Section 431:10A-102.5, Hawaii Revised Statutes,
13 is amended by amending subsection (b) to read as follows:

14 "(b) When used in sections 431:10A-104, 431:10A-105,
15 431:10A-106, 431:10A-107, 431:10A-108, 431:10A-109, 431:10A-110,
16 431:10A-111, 431:10A-112, 431:10A-113, 431:10A-114, 431:10A-117,
17 431:10A-118, 431:10A-601, 431:10A-602, 431:10A-603, and
18 431:10A-604, except as otherwise provided, the terms "accident
19 insurance", "accident and health or sickness insurance", "health
20 insurance", or "sickness insurance" shall include an accident-
21 only, specified disease, hospital indemnity, long-term care,
22 disability, dental, vision, medicare supplement, or other



1 limited benefit health insurance contract regardless of the
2 manner in which benefits are paid."

3 SECTION 8. Section 431:11A-101, Hawaii Revised Statutes,
4 is amended by amending the definition of "licensed insurer" or
5 "insurer" to read as follows:

6 ""Licensed insurer" or "insurer" means any person, firm,
7 association, or corporation duly licensed to transact a property
8 or casualty insurance business in this State. The following are
9 not licensed insurers for the purposes of this article:

10 ~~[(1) All risk retention groups as defined in the Superfund~~
11 ~~Amendments Reauthorization Act of 1986, P.L. No. 99-~~
12 ~~499, 100 Stat. 1613 (1986), and the Risk Retention~~
13 ~~Act, 15 U.S.C. section 3901 et seq. (1982 and Supp.~~
14 ~~1986), and chapter 431K;~~

15 ~~+(2)]~~ (1) All residual market pools and joint underwriting
16 authorities or associations; and

17 ~~[(+3)]~~ (2) Captive ~~[insurers]~~ insurance companies as defined
18 in section 431:19-101~~[-]~~, other than risk retention
19 captive insurance companies."

20 SECTION 9. Section 431:14G-103, Hawaii Revised Statutes,
21 is amended to read as follows:



1 "[+]§431:14G-103[+] **Making of rates.** (a) Rates shall not
2 be excessive, inadequate, or unfairly discriminatory and shall
3 be reasonable in relation to the costs of the benefits provided.

4 (b) Except to the extent necessary to meet subsection (a),
5 uniformity among managed care plans in any matters within the
6 scope of this section shall be neither required nor prohibited.

7 (c) Eighty per cent of all investment income on the
8 reserves net of investment manager fees shall be applied to the
9 rate determination and filing of the managed care plan. This
10 requirement may be waived or adjusted by the commissioner if the
11 commissioner determines it would impair the minimum reserve
12 requirements or solvency of the managed care plan."

13 SECTION 10. Section 431:19-101, Hawaii Revised Statutes,
14 is amended by amending the definition of "captive insurance
15 company" to read as follows:

16 "'Captive insurance company" or "captive insurer" means a
17 class 1 company, class 2 company, class 3 company, class 4
18 company, or class 5 company formed or authorized under this
19 article."

20 SECTION 11. Section 431M-2, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "**S431M-2 Policy coverage.** (a) All individual and group
2 accident and health or sickness insurance policies issued in
3 this State, individual or group hospital or medical service plan
4 contracts, and nonprofit mutual benefit society, fraternal
5 benefit society, and health maintenance organization health plan
6 contracts shall include within their hospital and medical
7 coverage the benefits of alcohol dependence, drug dependence,
8 and mental [~~illness~~] health treatment services [~~provided in~~
9 ~~section 431M-4~~], except that this section shall not apply to
10 insurance policies that are issued solely for single diseases,
11 or otherwise limited, specialized coverage.

12 (b) The policies and contracts set forth in subsection (a)
13 shall not impose any financial requirements or treatment
14 limitations on mental health or substance use disorder benefits
15 that are more restrictive than the predominant financial
16 requirements and treatment limitations, either quantitative or
17 nonquantitative, imposed on medical and surgical benefits in
18 accordance with the Mental Health Parity and Addiction Equity
19 Act of 2008."

20 SECTION 12. Section 432:1-406, Hawaii Revised Statutes, is
21 amended by amending the definition of "uncovered expenditures"
22 to read as follows:



1 ""Uncovered expenditures" means the costs to the mutual
2 benefit society for health care services that are the obligation
3 of the mutual benefit society, for which a member may be liable
4 in the event of the mutual benefit society's insolvency, and for
5 which no alternative arrangements have been made that are
6 acceptable to the commissioner. Uncovered expenditures include
7 but are not limited to out-of-area services, referral services,
8 and hospital services. Uncovered expenditures do not include
9 expenditures for services when a provider has agreed not to bill
10 the member even though the provider is not paid by the mutual
11 benefit society, or for services that are guaranteed, insured,
12 or assumed by a person or organization other than a mutual
13 benefit society."

14 SECTION 13. Section 432:2-102, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Nothing in this article shall exempt fraternal
17 benefit societies from the provisions and requirements of part
18 IV of article 2, part IV of article 3, and article 15 of chapter
19 431, and ~~[of section 431:2-215.]~~ sections 431:2-215, 431:3-303,
20 431:3-304, and 431:3-305."



1 SECTION 14. Section 432D-1, Hawaii Revised Statutes, is
2 amended by amending the definition of "uncovered expenditures"
3 to read as follows:

4 ""Uncovered expenditures" means the costs to the health
5 maintenance organization for health care services that are the
6 obligation of the health maintenance organization, for which an
7 enrollee may also be liable in the event of the health
8 maintenance organization's insolvency, and for which no
9 alternative arrangements have been made that are acceptable to
10 the commissioner. Uncovered expenditures include but are not
11 limited to out-of-area services, referral services, and hospital
12 services. Uncovered expenditures do not include expenditures
13 for services when a provider has agreed not to bill the enrollee
14 even though the provider is not paid by the health maintenance
15 organization, or for services that are guaranteed, insured, or
16 assumed by a person or organization other than the health
17 maintenance organization."

18 SECTION 15. Section 432D-19, Hawaii Revised Statutes, is
19 amended by amending subsection (d) to read as follows:

20 "(d) Article 2, article 2D, part IV of article 3, article
21 6, part III of article 7, article 9A, article 13, article 14G,
22 and article 15 of chapter 431, and sections 431:3-301 [and],



1 431:3-302, 431:3-303, 431:3-304, and 431:3-305, and the powers
2 granted by those provisions to the commissioner shall apply to
3 health maintenance organizations, so long as the application in
4 any particular case is in compliance with and is not preempted
5 by applicable federal statutes and regulations."

6 SECTION 16. Section 432G-1, Hawaii Revised Statutes, is
7 amended by amending the definition of "uncovered expenditures"
8 to read as follows:

9 ""Uncovered expenditures" means the costs to the dental
10 insurer for dental care services that are the obligation of the
11 dental insurer, for which an enrollee may also be liable in the
12 event of the dental insurer's insolvency, and for which no
13 alternative arrangements have been made that are acceptable to
14 the commissioner. Uncovered expenditures include but are not
15 limited to out-of-area services, referral services, and hospital
16 services. Uncovered expenditures shall not include expenditures
17 for services when a provider has agreed not to bill the enrollee
18 even though the provider is not paid by the dental insurer, or
19 for services that are guaranteed, insured, or assumed by a
20 person or organization other than the dental insurer."

21 SECTION 17. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 18. This Act shall take effect on July 1, 2050.



Report Title:

Insurance; Rescission of Coverage; Health Benefit Plans; General Casualty Insurance; Tax Records; Insurance Fraud Investigations; Long-term Care Insurance; Captive Insurance; Reserves

Description:

Prohibits rescission of coverage under health benefit plans in most circumstances; requires written notice prior to rescission. Clarifies a requirement with regard to companies with general casualty insurance authority. Clarifies retention requirements for tax records for surplus line brokers and independently procured insureds. Allows the insurance fraud investigations branch to take appropriate action in certain instances. Includes long-term care insurance as part of limited benefit health insurance. Amends definitions relating to captive insurance companies. Specifies certain rate making requirements for managed care plans. Makes other amendments to conform to National Association of Insurance Commissioners model laws and the federal Patient Protection and Affordable Care Act. Effective 7/1/2050. (SD2)

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