

JAN 20 2017

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# A BILL FOR AN ACT

RELATING TO HEALTH INSURANCE.

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

1           SECTION 1. The legislature finds that the Patient  
2 Protection and Affordable Care Act of 2010 (Affordable Care Act)  
3 has resulted in an estimated 20,000,000 Americans gaining health  
4 insurance coverage. The provisions under the Affordable Care  
5 Act that afforded coverage to the uninsured include the medicaid  
6 expansion, health insurance marketplace coverage, and changes in  
7 private insurance that permit young adults to remain on their  
8 parent's health insurance plans and require health insurance  
9 plans to cover people with preexisting health conditions.  
10 According to a report from the United States Department of  
11 Health and Human Services, 6,100,000 uninsured young adults ages  
12 nineteen to twenty-five have gained health insurance coverage  
13 thanks to the Affordable Care Act. This is especially important  
14 as young adults were particularly likely to be uninsured before  
15 the law went into effect.

16           The federal Department of Health and Human Services  
17 recently reported that since the enactment of the Affordable



1 Care Act, 54,000 residents of Hawaii have gained health  
2 insurance coverage. In addition to residents who would  
3 otherwise be uninsured, hundreds of thousands of Hawaii  
4 residents with employer, medicaid, individual market, or  
5 medicare coverage have also benefited from new protections under  
6 the Affordable Care Act. Even with the robust coverage of  
7 Hawaii's Prepaid Health Care Act, the benefits of the Affordable  
8 Care Act in Hawaii have been widespread. The Act expanded  
9 medicaid eligibility and strengthened the program for those  
10 already eligible. The State has saved millions in uncompensated  
11 care costs and has been able to improve behavioral health  
12 outcomes for various beneficiaries. For Hawaii residents,  
13 individual market coverage is now dramatically better than  
14 before the enactment of the Affordable Care Act.

15 Unfortunately, the future of the Affordable Care Act is now  
16 uncertain. The incoming Presidential Administration campaigned  
17 on the promise to repeal the Affordable Care Act. Republicans  
18 in Congress have also backed the incoming President-Elect's  
19 promise to repeal and replace the Affordable Care Act. On  
20 January 12, 2017, Senate Republicans took their first major step  
21 toward repealing the Affordable Care Act, when they approved a



1 budget blueprint that would allow Republicans to gut the  
2 Affordable Care Act without the threat of a Democratic  
3 filibuster.

4       The repeal of the Affordable Care Act will have widespread  
5 ramifications. According to recent data from the Urban  
6 Institute, 86,000 fewer people in Hawaii would have health  
7 insurance in 2019 if the Affordable Care Act is repealed.  
8 States are poised to lose significant federal funds if  
9 marketplace subsidies and the medicaid expansion end. For  
10 Hawaii, a repeal of the Affordable Care Act means the loss of  
11 \$47,000,000 in federal marketplace spending in 2019 and a loss  
12 of \$532,000,000 between 2019 and 2028. Hawaii would also lose  
13 \$306,000,000 in federal medicaid funding in 2019 and  
14 \$3,700,000,000 between 2019 and 2028.

15       The legislature further finds that repealing the Affordable  
16 Care Act would destabilize the individual insurance market, due  
17 to a combination of several factors, including the pending loss  
18 of subsidies, elimination of the requirement to buy health  
19 insurance, and the requirement that insurers sell to all  
20 purchasers. Such factors will likely cause individual insurance



1 prices to rise and may cause healthier individuals to drop  
2 health insurance coverage.

3       The Urban Institute estimates that repealing the Affordable  
4 Care Act without an adequate replacement plan that ensures  
5 affordable coverage would take health insurance coverage away  
6 from 29,800,000 people nationwide by 2019, more than doubling  
7 the total number of uninsured to 58,700,000.

8       As of January 2017, there is not yet a firm plan or  
9 agreement regarding the future of the Affordable Care Act.  
10 However, the President-Elect has demanded Congress immediately  
11 repeal and replace the Act. The legislature concludes that due  
12 to the uncertainty over the Affordable Care Act, it is important  
13 to preserve certain important aspects of the Act for residents  
14 in Hawaii.

15       Accordingly, the purpose of this Act is to ensure certain  
16 benefits under the Affordable Care Act, which may not otherwise  
17 be available under the State's Prepaid Health Care Act, remain  
18 available under Hawaii law, including:

- 19       (1) Preserving the individual mandate that requires  
20             taxpayers to have qualified health insurance coverage  
21             throughout the year or pay a penalty;



- 1           (2) Ensuring all health insurers, mutual benefit  
2           societies, and health maintenance organizations in the  
3           State, including health benefits plans under chapter  
4           87A, Hawaii Revised Statutes, include ten essential  
5           health care benefits, plus additional contraception  
6           and breastfeeding coverage benefits;
- 7           (3) Extending dependent coverage for adult children until  
8           the children turn twenty-six years of age;
- 9           (4) Prohibiting health insurance entities from imposing a  
10          preexisting condition exclusion; and
- 11          (5) Prohibiting health insurance entities from using an  
12          individual's gender to determine premiums or  
13          contributions.

14          SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
15          amended by adding a new section to be appropriately designated  
16          and to read as follows:

17          "§235-    Qualifying health insurance coverage. (a) For  
18          each month beginning after December 31, 2017, an individual  
19          shall ensure that the individual, and any dependent of the  
20          individual, is covered with qualifying health insurance coverage  
21          for the month.



1        (b) If a taxpayer, or a dependent for whom the taxpayer is  
2 liable under paragraph (2), fails to meet the requirement of  
3 subsection (a) for one or more months, then a penalty shall be  
4 imposed on the taxpayer in an amount determined pursuant to  
5 subsection (c); provided that:

6        (1) Any penalty imposed by this section with respect to  
7 any month shall be included with a taxpayer's return  
8 under section 235-92 for the taxable year which  
9 includes that month; and

10       (2) If a penalty is imposed for any month on an individual  
11 and the individual:

12       (A) Is a dependent of another taxpayer for the other  
13 taxpayer's taxable year, the other taxpayer shall  
14 be liable for the penalty; or

15       (B) Files a joint return for the taxable year, the  
16 individual and the spouse of the individual shall  
17 be jointly liable for such penalty.

18       (c) The amount of the penalty imposed by this section on  
19 any taxpayer for any taxable year pursuant to subsection (b)  
20 shall be equal to the sum of the monthly penalty amounts



1 determined under subsection (d) for months in the taxable year  
2 during which one or more such failures occurred.

3 (d) The monthly penalty amount with respect to any  
4 taxpayer for any month during which any failure described  
5 pursuant to subsection (b) occurred is an amount equal to one-  
6 twelfth of the greater of the following amounts:

7 (1) A flat rate of \$695; or

8 (2) 2.5 per cent of the excess of the taxpayer's household  
9 income for the taxable year over the amount of gross  
10 income with respect to the taxpayer for the taxable  
11 year.

12 (e) If an individual has not attained the age of eighteen  
13 as of the beginning of a month, the applicable dollar amount for  
14 the penalty with respect to such individual for the month shall  
15 be equal to one-half of the applicable dollar amount for the  
16 calendar year in which the month occurs.

17 (f) For every calendar year beginning after December 31,  
18 2018, the applicable dollar amount for the penalty under  
19 subsection (d)(1) shall be \$695, increased by an amount equal to  
20 \$695 multiplied by the cost of living adjustment determined  
21 pursuant to title 26 United States Code section 1(f)(3).



1        (g) For purposes of this section, "qualifying health  
 2 insurance coverage" means any plan, policy, contract,  
 3 certificate, or agreement, regardless of form, offered or  
 4 administered by any person or entity, including but not limited  
 5 to an insurer governed by chapter 431, a mutual benefit society  
 6 governed by chapter 432, a health maintenance organization  
 7 governed by chapter 432D, a preferred provider organization, a  
 8 point of service organization, a health insurance issuer, a  
 9 fiscal intermediary, a payor, a prepaid health care plan, and  
 10 any other mixed model, that provides for the financing or  
 11 delivery of health care services or benefits."

12        SECTION 3. Chapter 431, Hawaii Revised Statutes, is  
 13 amended by adding four new sections to article 10A to be  
 14 appropriately designated and to read as follows:

15        "§431:10A- Essential health care benefits. (a) Every  
 16 policy of accident and health or sickness insurance issued or  
 17 renewed in this State shall include at least the following  
 18 essential health care benefits:

- 19        (1) Ambulatory patient services;
- 20        (2) Emergency services;
- 21        (3) Hospitalization benefits;



- 1        (4) Pregnancy, maternity, and newborn care;
- 2        (5) Mental health and substance use disorder services,
- 3            including behavioral health treatment, mental and
- 4            behavioral health inpatient services, and substance
- 5            use disorder treatment;
- 6        (6) Prescription drug coverage;
- 7        (7) Rehabilitative and habilitative services and devices;
- 8        (8) Laboratory services;
- 9        (9) Preventive and wellness services and chronic disease
- 10           management; and
- 11        (10) Pediatric services, including oral and vision care.
- 12        (b) Policies of accident and health or sickness insurance
- 13 delivered or issued for delivery in this State shall also
- 14 include the following additional benefits:
- 15        (1) Contraceptive coverage; including contraceptive
- 16            methods and counseling, as prescribed by a health care
- 17            provider; and
- 18        (2) Breastfeeding coverage, including breastfeeding
- 19            support, counseling, and equipment for the duration of
- 20            breastfeeding;



1 provided that a health insurer shall not impose any cost-sharing  
2 requirements, including copayments, coinsurance, or deductibles,  
3 on a policyholder or individual with respect to the benefits  
4 covered under this subsection.

5 (c) This section shall not apply to policies that provide  
6 coverage for specified diseases or other limited benefit  
7 coverage, as provided pursuant to section 431:10A-102.5.

8 §431:10A- Extension of dependent coverage. A group  
9 accident and health or sickness insurance policy and a health  
10 insurer offering group or individual accident and health or  
11 sickness insurance coverage that provides dependent coverage of  
12 children shall continue to make such coverage available for an  
13 adult child until the child turns twenty-six years of age.  
14 Nothing in this section shall require a policy or health insurer  
15 to make coverage available for a child of a child receiving  
16 dependent coverage.

17 §431:10A- Prohibition of preexisting condition  
18 exclusions. (a) An accident and health or sickness insurance  
19 policy issued or renewed in this State shall not impose any  
20 preexisting condition exclusion.



1        (b) For purposes of this section, a "preexisting condition  
2 exclusion" means a limitation or exclusion of benefits  
3 (including a denial of coverage) based on the fact that the  
4 condition was present before the effective date of coverage (or  
5 if coverage is denied, the date of the denial) under a group or  
6 individual accident and health or sickness insurance policy,  
7 whether or not any medical advice, diagnosis, care, or treatment  
8 was recommended or received before that day and includes any  
9 condition.

10        The term "preexisting condition exclusion" includes any  
11 limitation or exclusion of benefits (including a denial of  
12 coverage) applicable to an individual as a result of information  
13 relating to an individual's health status before the  
14 individual's effective date of coverage (or if coverage is  
15 denied, the date of the denial) under a group or individual  
16 accident and health or sickness insurance policy, such as a  
17 condition identified as a result of a pre-enrollment  
18 questionnaire or physical examination given to the individual,  
19 or review of medical records relating to the pre-enrollment  
20 period.



1           §431:10A- Prohibited discrimination in premiums or  
2 contributions. A group accident and health or sickness  
3 insurance policy and a health insurer offering group or  
4 individual accident and health or sickness insurance coverage  
5 issued or renewed in this State shall not require an individual,  
6 as a condition of enrollment or continued enrollment under the  
7 policy, to pay a premium or contribution based on the  
8 individual's gender that is greater than the premium or  
9 contribution for a similarly situated individual of the opposite  
10 gender who is covered under the same policy."

11           SECTION 4. Chapter 432, Hawaii Revised Statutes, is  
12 amended by adding four new sections to article 1 to be  
13 appropriately designated and to read as follows:

14           "§432:1- Essential health care benefits. (a) Every  
15 hospital or medical service plan contract issued or renewed in  
16 this State shall include at least the following essential health  
17 care benefits:

- 18           (1) Ambulatory patient services;  
19           (2) Emergency services;  
20           (3) Hospitalization benefits;  
21           (4) Pregnancy, maternity, and newborn care;



- 1        (5) Mental health and substance use disorder services,
- 2            including behavioral health treatment, mental and
- 3            behavioral health inpatient services, and substance
- 4            use disorder treatment;
- 5        (6) Prescription drug coverage;
- 6        (7) Rehabilitative and habilitative services and devices;
- 7        (8) Laboratory services;
- 8        (9) Preventive and wellness services and chronic disease
- 9            management; and
- 10       (10) Pediatric services, including oral and vision care.
- 11       (b) Hospital or medical service plan contracts delivered
- 12 or issued for delivery in this State shall also include the
- 13 following additional benefits:
- 14       (1) Contraceptive coverage; including contraceptive
- 15            methods and counseling, as prescribed by a health care
- 16            provider; and
- 17       (2) Breastfeeding coverage, including breastfeeding
- 18            support, counseling, and equipment for the duration of
- 19            breastfeeding;
- 20 provided that a mutual benefit society shall not impose any
- 21 cost-sharing requirements, including copayments, coinsurance, or



1 deductibles, on a member or subscriber with respect to the  
2 benefits covered under this subsection.

3 (c) This section shall not apply to policies that provide  
4 coverage for specified diseases or other limited benefit  
5 coverage, as provided pursuant to section 431:10A-102.5.

6 §432:1- Extension of dependent coverage. A group  
7 hospital or medical service plan contract and a mutual benefit  
8 society offering group or individual hospital and medical  
9 service plan contracts that provides dependent coverage of  
10 children shall continue to make such coverage available for an  
11 adult child until the child turns twenty-six years of age.  
12 Nothing in this section shall require a plan contract to make  
13 coverage available for a child of a child receiving dependent  
14 coverage.

15 §432:1- Prohibition of preexisting condition exclusions.

16 (a) A hospital or medical service plan contract issued or  
17 renewed in this State shall not impose any preexisting condition  
18 exclusion.

19 (b) For purposes of this section, a "preexisting condition  
20 exclusion" means a limitation or exclusion of benefits  
21 (including a denial of coverage) based on the fact that the



1 condition was present before the effective date of coverage (or  
2 if coverage is denied, the date of the denial) under a group or  
3 individual hospital and medical service plan contract, whether  
4 or not any medical advice, diagnosis, care, or treatment was  
5 recommended or received before that day and includes any  
6 condition.

7       The term "preexisting condition exclusion" includes any  
8 limitation or exclusion of benefits (including a denial of  
9 coverage) applicable to an individual as a result of information  
10 relating to an individual's health status before the  
11 individual's effective date of coverage (or if coverage is  
12 denied, the date of the denial) under a group or individual  
13 hospital and medical service plan contract, such as a condition  
14 identified as a result of a pre-enrollment questionnaire or  
15 physical examination given to the individual, or review of  
16 medical records relating to the pre-enrollment period.

17       §432:1- Prohibited discrimination in premiums or  
18 contributions. A group hospital or medical service plan  
19 contract and a mutual benefit society offering group or  
20 individual hospital and medical service plan contracts issued or  
21 renewed in this State shall not require an individual, as a



1 condition of enrollment or continued enrollment under the plan  
2 contract, to pay a premium or contribution based on the  
3 individual's gender that is greater than the premium or  
4 contribution for a similarly situated individual of the opposite  
5 gender who is covered under the same plan contract."

6 SECTION 5. Chapter 432D, Hawaii Revised Statutes, is  
7 amended by adding four new sections to be appropriately  
8 designated and to read as follows:

9 "§432D- Essential health care benefits. (a) Every  
10 health maintenance organization policy, contract, plan, or  
11 agreement issued or renewed in this State shall include at least  
12 the following essential health care benefits:

- 13 (1) Ambulatory patient services;
- 14 (2) Emergency services;
- 15 (3) Hospitalization benefits;
- 16 (4) Pregnancy, maternity, and newborn care;
- 17 (5) Mental health and substance use disorder services,  
18 including behavioral health treatment, mental and  
19 behavioral health inpatient services, and substance  
20 use disorder treatment;
- 21 (6) Prescription drug coverage;



1        (7) Rehabilitative and habilitative services and devices;

2        (8) Laboratory services;

3        (9) Preventive and wellness services and chronic disease  
4            management; and

5        (10) Pediatric services, including oral and vision care.

6        (b) Every health maintenance organization policy,  
7 contract, plan, or agreement delivered or issued for delivery in  
8 this State shall also include the following additional benefits:

9            (1) Contraceptive coverage; including contraceptive  
10            methods and counseling, as prescribed by a health care  
11            provider; and

12            (2) Breastfeeding coverage, including breastfeeding  
13            support, counseling, and equipment for the duration of  
14            breastfeeding;

15 provided that a health maintenance organization shall not impose  
16 any cost-sharing requirements, including copayments,  
17 coinsurance, or deductibles, on an enrollee or subscriber with  
18 respect to the benefits covered under this subsection.

19            (c) This section shall not apply to policies that provide  
20 coverage for specified diseases or other limited benefit  
21 coverage, as provided pursuant to section 431:10A-102.5.



1        §432D- Extension of dependent coverage. A group  
2 contract and a health maintenance organization offering group or  
3 individual policies, contracts, plans, or agreements that  
4 provides dependent coverage of children shall continue to make  
5 such coverage available for an adult child until the child turns  
6 twenty-six years of age. Nothing in this section shall require  
7 a policy, contract, plan, or agreement to make coverage  
8 available for a child of a child receiving dependent coverage.

9        §432D- Prohibition of preexisting condition exclusions.

10 (a) A health maintenance organization policy, contract, plan,  
11 or agreement issued or renewed in this State shall not impose  
12 any preexisting condition exclusion.

13 (b) For purposes of this section, a "preexisting condition  
14 exclusion" means a limitation or exclusion of benefits  
15 (including a denial of coverage) based on the fact that the  
16 condition was present before the effective date of coverage (or  
17 if coverage is denied, the date of the denial) under a group or  
18 individual health maintenance organization policy, contract,  
19 plan, or agreement, whether or not any medical advice,  
20 diagnosis, care, or treatment was recommended or received before  
21 that day and includes any condition.



1        The term "preexisting condition exclusion" includes any  
2 limitation or exclusion of benefits (including a denial of  
3 coverage) applicable to an individual as a result of information  
4 relating to an individual's health status before the  
5 individual's effective date of coverage (or if coverage is  
6 denied, the date of the denial) under a group or individual  
7 health maintenance organization policy, contract, plan, or  
8 agreement, such as a condition identified as a result of a pre-  
9 enrollment questionnaire or physical examination given to the  
10 individual, or review of medical records relating to the pre-  
11 enrollment period.

12        §432D- Prohibited discrimination in premiums or  
13 contributions. A group contract and a health maintenance  
14 organization offering group or individual policies, contracts,  
15 plans, or agreements issued or renewed in this State shall not  
16 require an individual, as a condition of enrollment or continued  
17 enrollment under a policy, contract, plan, or agreement, to pay  
18 a premium or contribution based on the individual's gender that  
19 is greater than the premium or contribution for a similarly  
20 situated individual of the opposite gender who is covered under  
21 the same policy, contract, plan, or agreement."



# S.B. NO. 403

1 SECTION 6. Notwithstanding any other law to the contrary,  
 2 the requirements for essential health care benefits, extension  
 3 of dependent coverage, and prohibition of preexisting condition  
 4 exclusions required under sections 3, 4, and 5 of this Act shall  
 5 apply to all health benefits plans under chapter 87A, Hawaii  
 6 Revised Statutes, issued, renewed, modified, altered, or amended  
 7 on or after the effective date of this Act.

8 SECTION 7. New statutory material is underscored.

9 SECTION 8. This Act shall take effect upon its approval.

10

INTRODUCED BY:

*[Handwritten signature]*  
Randy H. Baker  
Pod & Pod  
John C. ...  
Clarence ...  
Margaret ...  
Michelle ...  
[Signature]



# S.B. NO. 403

**Report Title:**

Health Insurance; Individual Mandate; Essential Benefits;  
Covered Services; Extended Coverage; Preexisting Conditions

**Description:**

Ensures certain benefits under the federal Affordable Care Act are preserved under Hawaii law, including: preserving the individual health insurance mandate for taxpayers; requiring all health insurance entities, including health benefits plans under chapter 87A, HRS, to include ten essential health care benefits, plus additional contraception and breastfeeding coverage benefits; extending dependent coverage for adult children until the children turn twenty-six years of age; prohibiting health insurance entities from imposing a preexisting condition exclusion; and prohibiting health insurance entities from using an individual's gender to determine premiums or contributions.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

