

S.B. NO. 954

JAN 25 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. Chapter 431, Hawaii Revised Statutes, is  
2 amended by adding to part I of article 10A two new sections to  
3 be appropriately designated and to read as follows:  
4           "§431:10A-    Protection against insolvency. (a) Every  
5 contract for an accident and health or sickness insurance policy  
6 between an insurer and a provider of health care services shall  
7 be in writing and provide that in the event the insurer fails to  
8 pay for health care services as set forth in the contract, the  
9 insured shall not be liable to the provider for any sums owed by  
10 the insurer. If a contract with a provider has not been reduced  
11 to writing as required by this subsection or fails to contain  
12 the required prohibition, the provider shall not collect or  
13 attempt to collect from the insured sums owed by the  
14 insurer. No provider or its agent, trustee, or assignee may  
15 maintain any action at law against an insured to collect sums  
16 owed by the insurer.  
17           (b) The commissioner shall require that each insurer has a  
18 plan for handling insolvency that allows for continuation of

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1 benefits for the duration of the contract period for which  
2 premiums have been paid and continuation of benefits to insureds  
3 confined on the date of insolvency in an inpatient facility,  
4 until their discharge or expiration of benefits. In considering  
5 the plan, the commissioner may require:

6 (1) Insurance to cover the expenses to be paid for  
7 continued benefits after the insolvency;

8 (2) Provisions in provider contracts that obligate the  
9 provider to provide services for the duration of the  
10 period after the insurer's insolvency for which  
11 premium payment has been made and until the insured is  
12 discharged from the inpatient facility;

13 (3) Insolvency reserves;

14 (4) Acceptable letters of credit; or

15 (5) Any other arrangement acceptable to the commissioner  
16 to ensure that benefits are continued as specified  
17 above.

18 (c) An agreement to provide health care services between a  
19 provider and an insurer shall require that a provider give the  
20 organization at least sixty days' advance notice in the event of  
21 termination.

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1           §431:10A- Required disclaimer. Any limited benefit plan  
2 policy, application, or sales brochure that provides coverage  
3 for accident and sickness, excluding specified disease, long-  
4 term care, disability income, medicare supplement, dental, or  
5 vision shall disclose in a conspicuous manner and in not less  
6 than fourteen-point boldface type the following, or  
7 substantially similar, statement:

8           "THIS IS NOT QUALIFYING HEALTH COVERAGE ("MINIMUM ESSENTIAL  
9 COVERAGE") THAT SATISFIES THE HEALTH COVERAGE REQUIRMENT OF THE  
10 AFFORDABLE CARE ACT. IF YOU DON'T HAVE MINIMUM ESSENTIAL  
11 COVERAGE, YOU MAY OWE AN ADDITIONAL PAYMENT WITH YOUR TAXES."

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

15           "§431:16- Recoupment of assessment. (a) Each member  
16 insurer not subject to section 431:16-213 shall annually recoup  
17 the assessments paid in the preceding years by the insurer under  
18 this part. The recoupment shall be recovered by means of a  
19 surcharge on premiums charged for policies for life, dental, and  
20 accident and health or sickness insurance policies or contracts.  
21 Prior to recoupment, each member insurer shall submit its plan  
22 for recoupment to the commissioner for approval. The surcharge

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1 shall be at a uniform percentage rate reasonably calculated to  
2 recoup the assessment paid by the member insurer. Any excess  
3 recovery by a member insurer shall be credited pro rata to that  
4 member insurer's policyholders' premiums in the succeeding year  
5 unless there has been a subsequent assessment, in which case the  
6 excess will be used to pay the amount of the subsequent  
7 assessment. If a member insurer fails to recoup the entire  
8 amount of its assessment in the first year under the procedure  
9 provided in this section, it may repeat the procedure in  
10 succeeding years until the full assessment is recouped.

11 (b) Each insurer shall provide to the Hawaii life and  
12 disability insurance guaranty association an accounting of its  
13 recoupments. The Hawaii life and disability insurance guaranty  
14 association shall compile the insurers' accountings and submit  
15 it as part of its annual report to the commissioner.

16 (c) The amount of and reason for any surcharge shall be  
17 separately stated on any billing sent to an insured. The  
18 surcharge shall not be considered premiums for any other purpose  
19 including the determination of producer commissions.

20 (d) An insurer shall not apply for recoupment for  
21 assessments if credits for assessments paid are sought under  
22 section 431:16-213."

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1 SECTION 3. Section 431:10-104, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§431:10-104 General readability requirements. In  
4 addition to any other requirements of law, no contract shall be  
5 delivered or issued for delivery in this State unless:

6 (1) The text is in plain language[~~7~~] and achieving a  
7 minimum score of forty on the Flesch reading ease test  
8 or an equivalent score on any other comparable test  
9 prescribed by the commissioner under section 431:10-  
10 105(a);

11 (2) The contract is printed, except for specification  
12 pages, schedules, and tables, in not less than ten-  
13 point type[~~7, one point leaded~~];

14 (3) The style, arrangement, and general appearance of the  
15 contract give no undue prominence to any endorsements,  
16 riders, or other portions of the text; and

17 (4) A table of contents or an index of principal sections  
18 is provided with the contract when the text consists  
19 of more than three thousand words printed on three or  
20 less pages or when the text has more than three pages,  
21 regardless of the total number of printed words[~~7, and~~

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1       ~~(5) For any short term health insurance policies that~~  
2           ~~impose preexisting conditions provisions, any policy,~~  
3           ~~application, or sales brochure shall disclose in a~~  
4           ~~conspicuous manner in not less than fourteen point~~  
5           ~~bold face type the following statement:~~

6                   ~~"THIS POLICY EXCLUDES COVERAGE FOR CONDITIONS FOR~~  
7           ~~WHICH MEDICAL ADVICE, DIAGNOSIS, CARE, OR TREATMENT~~  
8           ~~WAS RECOMMENDED OR RECEIVED DURING THE [insert~~  
9           ~~exclusion period] IMMEDIATELY PRECEDING THE EFFECTIVE~~  
10           ~~DATE OF COVERAGE." ] ."~~

11       SECTION 4. Section 431:10A-118.3, Hawaii Revised Statutes,  
12 is amended by amending subsection (e) to read as follows:

13       "(e) As used in this section unless the context requires  
14 otherwise:

15       "Actual gender identity" means a person's internal sense of  
16 being male, female, a gender different from the gender assigned  
17 at birth, a transgender person, or neither male nor female.

18       "Gender transition" means the process of a person changing  
19 the person's outward appearance or sex characteristics to accord  
20 with the person's actual gender identity.

21       "Perceived gender identity" means an observer's impression  
22 of another person's actual gender identity or the observer's own

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1 impression that the person is male, female, a gender different  
2 from the gender [~~designed~~] assigned at birth, a transgender  
3 person, or neither male nor female.

4 "Transgender person" means a person who has gender identity  
5 disorder or gender dysphoria, has received health care services  
6 related to gender transition, adopts the appearance or behavior  
7 of the opposite sex, or otherwise identifies as a gender  
8 different from the gender assigned to that person at birth."

9 SECTION 5. Section 431:16-202, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) The purpose of this part is to protect, subject to  
12 certain limitations, the persons specified in section 431:16-203  
13 against failure in the performance of contractual obligations[~~7~~]  
14 under life [~~and~~], dental, and accident and health or sickness  
15 insurance policies and [~~annuity contracts~~] annuities specified  
16 in section 431:16-203(b), because of the impairment or  
17 insolvency of the member insurer that issued the policies or  
18 contracts."

19 SECTION 6. Section 431:16-203, Hawaii Revised Statutes, is  
20 amended by amending subsections (b) and (c) to read as follows:

21 "(b) (1) This part shall provide coverage to the persons  
22 specified in subsection (a) for direct, nongroup life,

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1           dental, or accident and health or sickness policies or  
2           ~~[annuity policies or contracts]~~ annuities, for  
3           certificates under direct group life, dental, or  
4           accident and health or sickness policies or ~~[annuity~~  
5           ~~policies or contracts]~~ annuities, and for supplemental  
6           contracts to any of these, in each case issued by  
7           member insurers except as limited by this part.

8           Annuity contracts and certificates under group  
9           ~~[annuity contracts]~~ annuities include allocated  
10          funding agreements, structured settlement annuities,  
11          and any immediate or deferred ~~[annuity contracts]~~  
12          annuities.

13          (2) This part shall not provide coverage for:

14           (A) Any portion of a policy or contract not  
15           guaranteed by the insurer, or under which the  
16           risk is borne by the policy or contract owner;

17           (B) Any policy or contract of reinsurance, unless  
18           assumption certificates have been issued pursuant  
19           to the reinsurance policy or contract;

20           (C) Any portion of a policy or contract to the extent  
21           that the rate of interest on which it is based:

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- 1 (i) Averaged over the period of four years prior  
2 to the date on which the association becomes  
3 obligated with respect to such policy or  
4 contract, exceeds a rate of interest  
5 determined by subtracting two percentage  
6 points from Moody's Corporate Bond Yield  
7 Average averaged for that same four-year  
8 period or for such lesser period if the  
9 policy or contract was issued less than four  
10 years before the association became  
11 obligated; and
- 12 (ii) On or after the date on which the  
13 association becomes obligated with respect  
14 to such policy or contract, exceeds the rate  
15 of interest determined by subtracting three  
16 percentage points from Moody's Corporate  
17 Bond Yield Average as most recently  
18 available;
- 19 (D) Any portion of a policy or contract issued to a  
20 plan or program of an employer, association, or  
21 other person to provide life, dental, accident  
22 and health or sickness, or annuity benefits to

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1           its employees, members, or other persons to the  
2           extent that the plan or program is self-funded or  
3           uninsured, including but not limited to benefits  
4           payable by an employer, association, or other  
5           person under:

6           (i) A Multiple Employer Welfare Arrangement as  
7                 defined in section 514 of the Employee  
8                 Retirement Income Security Act of 1974, as  
9                 amended;

10          (ii) A minimum premium group insurance plan;

11          (iii) A stop-loss group insurance plan; or

12          (iv) An administrative services only contract;

13          (E) Any portion of a policy or contract to the extent  
14                 that it provides dividends, experience rating  
15                 credits, or voting rights, or provides that any  
16                 fees or allowances be paid to any person,  
17                 including the policy or contract holder, in  
18                 connection with the service to or administration  
19                 of such policy or contract;

20          (F) Any policy or contract issued in this State by a  
21                 member insurer at a time when it was not licensed

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- 1 or did not have a certificate of authority to  
2 issue such policy or contract in this State;
- 3 (G) Any portion of a policy or contract to the extent  
4 that the assessments required by this part with  
5 respect to the policy or contract are preempted  
6 or otherwise not permitted by federal or state  
7 law;
- 8 (H) Any obligation that does not arise under the  
9 express written terms of the policy or contract  
10 issued by the insurer to the contract owner or  
11 policy owner, including without limitation:
- 12 (i) Claims based on marketing materials;
- 13 (ii) Claims based on side letters, riders, or  
14 other documents that were issued by the  
15 insurer without meeting applicable policy  
16 form filing or approval requirements;
- 17 (iii) Misrepresentations of or regarding policy  
18 benefits;
- 19 (iv) Extra-contractual claims; or
- 20 (v) A claim for penalties or consequential or  
21 incidental damages;

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- 1           (I) Any contractual agreement that establishes the
- 2           member insurer's obligations to provide a book
- 3           value accounting guaranty for defined
- 4           contribution benefit plan participants by
- 5           reference to a portfolio of assets that is owned
- 6           by the benefit plan or its trustee, which in each
- 7           case is not an affiliate of the member insurer;
- 8           (J) Any unallocated [~~annuity contract~~] annuity;
- 9           (K) Any portion of a policy or contract to the extent
- 10          it provides for interest or other changes in
- 11          value to be determined by the use of an index or
- 12          other external reference stated in the policy or
- 13          contract, but that have not been credited to the
- 14          policy or contract, or as to which the policy or
- 15          contract owner's rights are subject to
- 16          forfeiture, as of the date the member insurer
- 17          becomes an impaired or insolvent insurer under
- 18          this part. If a policy's or contract's interest
- 19          or changes in value are credited less frequently
- 20          than annually, then for purposes of determining
- 21          the values that have been credited and are not
- 22          subject to forfeiture under section 431:16-

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1           403(b)(2)(L), the interest or change in value  
2           determined by using the procedures defined in the  
3           policy or contract shall be credited as if the  
4           contractual date of crediting interest or  
5           changing values was the date of impairment or  
6           insolvency and shall not be subject to  
7           forfeiture; or

8           (L) Any policy or contract providing any hospital,  
9           medical, prescription drug, dental, or other  
10          health care benefits pursuant to part C or part D  
11          of subchapter XVIII, chapter 7, title 42 of the  
12          United States Code, commonly known as medicare  
13          part C and D, or any regulations adopted pursuant  
14          thereto.

15          (c) The benefits for which the association may become  
16          liable shall in no event exceed the lesser of:

17          (1) The contractual obligations for which the insurer is  
18          liable or would have been liable if it were not an  
19          impaired or insolvent insurer; or

20          (2) With respect to any one life, regardless of the number  
21          of policies or contracts:

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- 1 (A) \$300,000 in life insurance death benefits, but  
2 not more than \$100,000 in net cash surrender and  
3 net cash withdrawal values for life insurance;
- 4 (B) In accident and health or sickness insurance  
5 benefits:
- 6 (i) \$100,000 for coverages not defined as  
7 disability insurance or basic hospital,  
8 medical, and surgical insurance, or major  
9 medical insurance or long-term care  
10 insurance, including any net cash surrender  
11 and net cash withdrawal values;
- 12 (ii) \$300,000 for disability insurance and  
13 \$300,000 for long-term care insurance; or
- 14 (iii) \$500,000 for basic hospital, medical, and  
15 surgical insurance or major medical  
16 insurance;
- 17 (C) \$3,000 per dental insurance policy per year;
- 18 [~~(C)~~] (D) \$250,000 in the present value of annuity  
19 benefits, including net cash surrender and net  
20 cash withdrawal values; or
- 21 [~~(D)~~] (E) With respect to each payee of a structured  
22 settlement annuity, or beneficiary or

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1 beneficiaries of the payee if deceased, \$250,000  
2 in present value annuity benefits, in the  
3 aggregate, including net cash surrender and net  
4 cash withdrawal values, if any."

5 SECTION 7. Section 431:16-205, Hawaii Revised Statutes, is  
6 amended by amending the definitions of "member insurer" and  
7 "supplemental contract" to read as follows:

8 "Member insurer" means any insurer licensed or who holds a  
9 certificate of authority to transact in this State any kind of  
10 insurance for which coverage is provided under section 431:16-  
11 203, and includes any insurer whose license or certificate of  
12 authority in this State may have been suspended, revoked, not  
13 renewed, or voluntarily withdrawn, but does not include:

- 14 ~~[(1) A nonprofit hospital or medical service organization;~~  
15 ~~(2) A health maintenance organization;~~  
16 ~~(3)]~~ (1) A fraternal benefit society;  
17 ~~[(4)]~~ (2) A mandatory state pooling plan;  
18 ~~[(5)]~~ (3) A mutual assessment company or any entity that  
19 operates on an assessment basis;  
20 ~~[(6)]~~ (4) An insurance exchange;

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1           ~~[-(7)]~~ (5) An organization that has a certificate or  
2                   license limited to the issuance of charitable gift  
3                   annuities; or

4           ~~[-(8)]~~ (6) Any entity similar to any of the above.

5           "Supplemental contract" means a written agreement entered  
6 into for the distribution of proceeds under a life, dental, or  
7 health [~~, or annuity~~] policy or [~~life, health, or annuity~~]  
8 contract or an annuity."

9           SECTION 8. Section 431:16-206, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11           "(a) There is created a nonprofit legal entity to be known  
12 as the Hawaii life and disability insurance guaranty  
13 association. All member insurers shall be and remain members of  
14 the association as a condition of their authority to transact  
15 insurance in this State. The association shall perform its  
16 functions under the plan of operation established and approved  
17 under section 431:16-210 and shall exercise its powers through a  
18 board of directors established under section 431:16-207. For  
19 purposes of administration and assessment the association shall  
20 maintain [~~three~~] four accounts:

21           (1) The life insurance account;

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- 1           (2) The accident and health or sickness insurance account;  
2                   [and]  
3           (3) The annuity account [-]; and  
4           (4) The dental insurance account."

5           SECTION 9. Section 431:16-208, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

7           "(b) If a member insurer is an insolvent insurer, the  
8 association shall, in its discretion:

- 9           (1) (A) Guarantee, assume, or reinsure, or cause to be  
10                   guaranteed, assumed, or reinsured, the policies  
11                   or contracts of the insolvent insurer; or  
12           (B) Assure payment of the contractual obligations of  
13                   the insolvent insurer; and  
14           (C) Provide such moneys, pledges, guarantees, or  
15                   other means as are reasonably necessary to  
16                   discharge such duties; or  
17           (2) Provide benefits and coverages in accordance with the  
18                   following provisions:  
19           (A) With respect to life, dental, and accident and  
20                   health or sickness insurance policies and  
21                   annuities, assure payment of benefits for  
22                   premiums identical to the premiums and benefits

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1 (except for terms of conversion and renewability)  
2 that would have been payable under the policies  
3 of the insolvent insurer, for claims incurred:

4 (i) With respect to group policies and  
5 contracts, not later than the earlier of the  
6 next renewal date under the policies or  
7 contracts or forty-five days, but in no  
8 event less than thirty days, after the date  
9 on which the association becomes obligated  
10 with respect to the policies; and

11 (ii) With respect to non-group policies,  
12 contracts, and annuities, not later than the  
13 earlier of the next renewal date (if any)  
14 under the policies or contracts or one year,  
15 but in no event less than thirty days, from  
16 the date on which the association becomes  
17 obligated with respect to the policies or  
18 contracts.

19 (B) Make diligent efforts to provide all known  
20 insureds or annuitants (for non-group policies  
21 and contracts), or group policy owners with  
22 respect to group policies and contracts, thirty

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1 days' notice of the termination of the benefits  
2 provided.  
3 (C) With respect to non-group life [~~and~~], dental, and  
4 accident and health or sickness insurance  
5 policies and annuities covered by the  
6 association, make available to each known insured  
7 or annuitant, or owner if other than the insured  
8 or annuitant, and with respect to an individual  
9 formerly insured or formerly an annuitant under a  
10 group policy who is not eligible for replacement  
11 group coverage, make available substitute  
12 coverage on an individual basis in accordance  
13 with subparagraph (D), if the insureds or  
14 annuitants had a right under law or the  
15 terminated policy to convert coverage to  
16 individual coverage or to continue an individual  
17 policy or annuity in force until a specified age  
18 or for a specified time, during which the insurer  
19 had no right unilaterally to make changes in any  
20 provision of the policy or annuity or had a right  
21 only to make changes in premium by class.

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- 1 (D) (i) In providing the substitute coverage required  
2 under subparagraph (C), the association may  
3 offer either to reissue the terminated  
4 coverage or to issue an alternative policy.
- 5 (ii) Alternative or reissued policies shall be  
6 offered without requiring evidence of  
7 insurability, and shall not provide for any  
8 waiting period or exclusion that would not  
9 have applied under the terminated policy.
- 10 (iii) The association may reinsure any alternative  
11 or reissued policy.
- 12 (E) (i) Alternative policies adopted by the  
13 association shall be subject to the approval  
14 of the domiciliary commissioner or the  
15 receivership court. The association may  
16 adopt alternative policies of various types  
17 for future issuance without regard to any  
18 particular impairment or insolvency.
- 19 (ii) Alternative policies shall contain at least  
20 the minimum statutory provisions required in  
21 this State and provide benefits that shall  
22 not be unreasonable in relation to the

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1 premium charged. The association shall set  
2 the premium in accordance with a table of  
3 rates which it shall adopt. The premium  
4 shall reflect the amount of insurance to be  
5 provided and the age and class of risk of  
6 each insured, but shall not reflect any  
7 changes in the health of the insured after  
8 the original policy was last underwritten.

9 (iii) Any alternative policy issued by the  
10 association shall provide coverage of a type  
11 similar to that of the policy issued by the  
12 impaired or insolvent insurer, as determined  
13 by the association.

14 (F) If the association elects to reissue terminated  
15 coverage at a premium rate different from that  
16 charged under the terminated policy, the premium  
17 shall be set by the association in accordance  
18 with the amount of insurance provided and the age  
19 and class of risk, subject to approval of the  
20 domiciliary insurance commissioner or by a court  
21 of competent jurisdiction.

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1 (G) The association's obligations with respect to  
2 coverage under any policy of the impaired or  
3 insolvent insurer or under any reissued or  
4 alternative policy shall cease on the date such  
5 coverage or policy is replaced by another similar  
6 policy by the policyholder, the insured, or the  
7 association.

8 (H) When proceeding under subsection (b) (2) with  
9 respect to any policy or contract carrying  
10 guaranteed minimum interest rates, the  
11 association shall assure the payment or crediting  
12 of a rate of interest consistent with section  
13 431:16-203 (b) (2) (C) ."

14 SECTION 10. Section 431:16-209, Hawaii Revised Statutes,  
15 is amended by amending subsection (c) to read as follows:

16 "(c) (1) The amount of any Class A assessment shall be  
17 determined by the board of directors and may be  
18 authorized and called on a pro rata or non-pro rata  
19 basis. If pro rata, the board of directors may  
20 provide that it be credited against future Class B  
21 assessments. A non-pro rata assessment shall not  
22 exceed \$300 per member insurer in any one calendar

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1 year. The amount of any Class B assessment shall be  
2 allocated for assessment purposes among the accounts  
3 pursuant to an allocation formula which may be based  
4 on the premiums or reserves of the impaired or  
5 insolvent insurer or any other standard deemed by the  
6 board of directors in its sole discretion as being  
7 fair and reasonable under the circumstances.

8 (2) Class B assessments against member insurers for [each]  
9 the account to which each is assigned shall be in the  
10 proportion that the premiums received on business in  
11 this State by each assessed member insurer on policies  
12 or contracts covered [~~by each~~] in the assigned account  
13 for the three most recent calendar years for which  
14 information is available preceding the year in which  
15 the insurer became impaired or insolvent, as the case  
16 may be, bears to the premiums received on business in  
17 this State for the calendar years by [~~all~~] the  
18 assessed member insurers.

19 (3) Assessments for funds to meet the requirements of the  
20 association with respect to an impaired or insolvent  
21 insurer shall not be authorized or called until  
22 necessary to implement the purposes of this part.

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1           Classification of assessments under subsection (b) and  
2           computation of assessments under this subsection shall  
3           be made with a reasonable degree of accuracy,  
4           recognizing that exact determinations may not always  
5           be possible. The association shall notify each member  
6           insurer in the assigned account of its anticipated pro  
7           rata share of an authorized assessment not yet called  
8           within one hundred eighty days after the assessment is  
9           authorized."

10           SECTION 11. Section 431:16-209, Hawaii Revised Statutes,  
11 is amended by amending subsection (e) to read as follows:

12           "(e) (1) Subject to the provisions of paragraph (2), the  
13           total of all assessments authorized by the association  
14           with respect to a member insurer [~~for~~] in each account  
15           shall not in any one calendar year exceed two per cent  
16           of the insurer's average premiums received in this  
17           State on the policies and contracts covered by the  
18           account during the three calendar years preceding the  
19           year in which the insurer became an impaired or  
20           insolvent insurer.

21           (2) If two or more assessments are authorized in one  
22           calendar year with respect to insurers that become

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1           impaired or insolvent in different calendar years, the  
2           average annual premiums for purposes of the aggregate  
3           assessment percentage limitation referenced in this  
4           section shall be equal and limited to the higher of  
5           the three-year average annual premiums for the  
6           applicable account as calculated pursuant to this  
7           section.

8           (3) If the maximum assessment, together with the other  
9           assets of the association in any account, does not  
10          provide in any one year in either account an amount  
11          sufficient to carry out the responsibilities of the  
12          association, the necessary additional funds shall be  
13          assessed as soon thereafter as permitted by this part.

14          The board of directors may provide in the plan of operation  
15          a method of allocating funds among claims, whether relating to  
16          one or more impaired or insolvent insurers, when the maximum  
17          assessment will be insufficient to cover anticipated claims."

18          SECTION 12. Section 431:16-210, Hawaii Revised Statutes,  
19          is amended by amending subsection (c) to read as follows:

20          "(c) The plan of operation shall, in addition to  
21          requirements enumerated elsewhere in this part:

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- 1 (1) Establish procedures for handling the assets of the  
2 association;
- 3 (2) Establish the amount and method of reimbursing members  
4 of the board of directors under section 431:16-207(c);
- 5 (3) Establish regular places and times for meetings,  
6 including telephone conference calls of the board of  
7 directors;
- 8 (4) Establish procedures for records to be kept of all  
9 financial transactions of the association, its agents,  
10 and the board of directors;
- 11 (5) Establish the procedures whereby selections for the  
12 board of directors will be made and submitted to the  
13 commissioner;
- 14 (6) Establish any additional procedures for assessments  
15 under section 431:16-209;
- 16 (7) Contain additional provisions necessary or proper for  
17 the execution of the powers and duties of the  
18 association;
- 19 (8) Establish procedures to remove a director for cause,  
20 including the case in which a director is affiliated  
21 with a member insurer that becomes an impaired or  
22 insolvent insurer; [~~and~~]

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1           (9) Require the board of directors to establish a policy  
2           and procedure for addressing conflicts of  
3           interests[-]; and

4           (10) Establish notification procedures for assigning  
5           insurers to their respective accounts under section  
6           431:16-206. "

7           SECTION 13. Section 431:16-213, Hawaii Revised Statutes,  
8           is amended to read as follows:

9           "**§431:16-213 Credits for assessments paid.** (a) [A] If  
10          applicable, a member insurer may offset against its premium tax  
11          liability (or liabilities) to this State an assessment described  
12          in section 431:16-209(h) to the extent of twenty per cent of the  
13          amount of such assessment for each of the five calendar years  
14          following the year in which such assessment was paid. In the  
15          event a member insurer should cease doing business, all  
16          uncredited assessments may be credited against its premium tax  
17          liability (or liabilities) for the year it ceases doing  
18          business.

19          (b) Any sums which are acquired by refund, pursuant to  
20          section 431:16-209(f), from the association by member insurers,  
21          and which have theretofore been offset against premium taxes as  
22          provided in subsection (a) shall be paid by the association to

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1 the commissioner and by the commissioner deposited with the  
2 state director of finance for credit to the general fund of this  
3 State.

4 (c) An insurer shall not apply for credits for assessments  
5 paid if recoupment for assessments are sought under section  
6 431:16- ."

7 SECTION 14. Section 431:16-218, Hawaii Revised Statutes,  
8 is amended to read as follows:

9 **"§431:16-218 Prohibited advertisement of association act**  
10 **in insurance sales; notice to policyholders.** (a) No person,  
11 including an insurer[~~7~~] and [a] its producer or affiliate [~~of an~~  
12 ~~insurer~~], shall make, publish, disseminate, circulate, or place  
13 before the public[~~7~~] or cause directly or indirectly[~~7~~] to be  
14 made, published, disseminated, circulated, or placed before the  
15 public, in any newspaper, magazine, or other publication, [~~or in~~  
16 ~~the form of a notice, circular, pamphlet, letter, or poster, or~~  
17 over any radio station or television station, or in any other  
18 way, any oral or written advertisement, announcement, or  
19 statement [~~7~~, ~~written or oral, which~~] that uses the [~~existence of~~  
20 ~~the~~] Hawaii life and disability insurance guaranty association  
21 [~~of this State~~] for [~~the purpose of~~] sales, solicitation, or  
22 inducement to purchase any form of insurance covered by the

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1 Hawaii Life and Disability Insurance Guaranty Association Act.  
2 This section shall not apply to the Hawaii life and disability  
3 insurance guaranty association or any other entity [~~which~~] that  
4 does not sell or solicit insurance.

5 (b) Within one hundred eighty days of July 1, 1988, the  
6 association shall prepare a summary document describing the  
7 general purposes and current limitations of this part and  
8 complying with subsection (c). This document shall be submitted  
9 to the commissioner for approval. Sixty days after receiving  
10 [~~such~~] the approval, no insurer may deliver a policy or contract  
11 described in section 431:16-203 to a policyholder or contract  
12 holder unless the document is delivered to the policyholder or  
13 contract holder at the time of delivery of the policy or  
14 contract, except if subsection (d) applies. The document  
15 [~~should~~] shall also be available upon request by a policyholder.  
16 The distribution, delivery [~~of~~], contents, or interpretation of  
17 this document shall not mean that [~~either~~] the policy [~~or the~~],  
18 contract, or [~~the~~] its holder [~~thereof~~] would be covered in the  
19 event of the impairment or insolvency of a member insurer. The  
20 description document shall be revised by the association as  
21 amendments to this part may require. Failure to receive this  
22 document does not give the policyholder, contract holder,

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1 certificate holder, or insured any greater rights than those  
2 stated in this part.

3 (c) The document prepared under subsection (b) shall  
4 contain a clear and conspicuous disclaimer on its face. The  
5 commissioner shall promulgate a rule establishing the form and  
6 content of the disclaimer [~~—The disclaimer~~] that shall:

7 (1) State the name and address of the Hawaii life and  
8 disability insurance guaranty association and the  
9 insurance division;

10 (2) Prominently warn the policy or contract holder that  
11 the Hawaii life and disability insurance guaranty  
12 association may not cover the policy or, if coverage  
13 is available, [~~it~~] the policy will be subject to  
14 substantial limitations and exclusions and be  
15 conditioned on continued residence in this State;

16 (3) State that the insurer and its producers are  
17 prohibited by law from using the [~~existence of the~~]  
18 Hawaii life and disability insurance guaranty  
19 association for [~~the purpose of~~] sales, solicitation,  
20 or inducement to purchase any form of insurance;

21 (4) Emphasize that the policy or contract holder should  
22 not rely on coverage under the Hawaii life and

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1           disability insurance guaranty association when  
2           selecting an insurer; and  
3           (5) Provide other information as directed by the  
4           commissioner.  
5           (d) No insurer or producer may deliver a policy or  
6 contract described in section 431:16-203(b) (1) and excluded  
7 under section 431:16-203(b) (2) (A) from coverage under this part,  
8 unless the insurer or producer, prior to or at the time of  
9 delivery, gives the policy or contract holder a separate written  
10 notice [~~which~~] that clearly and conspicuously discloses that the  
11 policy or contract is not covered by the Hawaii life and  
12 disability insurance guaranty association. The commissioner  
13 shall by rule specify the form and content of the notice."  
14           SECTION 15. Section 432:1-102, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:  
16           "(b) Article 2, article 2D, parts II and IV of article 3,  
17 article 6, part III of article 7, article 9A, article 13,  
18 article 14G, [~~and~~] article 15, and article 16 of chapter 431,  
19 sections 431:3-301, 431:3-302, 431:3-303, 431:3-304, 431:3-305,  
20 431:10-102, 431:10-225, 431:10-226.5, and 431:10A-116(1) and  
21 (2), and the powers granted by those provisions to the  
22 commissioner[~~r~~] shall apply to managed care plans, health

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1 maintenance organizations, or medical indemnity or hospital  
2 service associations that are owned or controlled by mutual  
3 benefit societies, so long as the application in any particular  
4 case is in compliance with and [~~is~~] not preempted by applicable  
5 federal statutes and regulations."

6 SECTION 16. Section 432:1-607.3, Hawaii Revised Statutes,  
7 is amended by amending subsection (e) to read as follows:

8 "(e) As used in this section unless the context requires  
9 otherwise:

10 "Actual gender identity" means a person's internal sense of  
11 being male, female, a gender different from the gender assigned  
12 at birth, a transgender person, or neither male nor female.

13 "Gender transition" means the process of a person changing  
14 the person's outward appearance or sex characteristics to accord  
15 with the person's actual gender identity.

16 "Perceived gender identity" means an observer's impression  
17 of another person's actual gender identity or the observer's own  
18 impression that the person is male, female, a gender different  
19 from the gender [~~designed~~] assigned at birth, a transgender  
20 person, or neither male nor female.

21 "Transgender person" means a person who has gender identity  
22 disorder or gender dysphoria, has received health care services

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1 related to gender transition, adopts the appearance or behavior  
2 of the opposite sex, or otherwise identifies as a gender  
3 different from the gender assigned to that person at birth."

4 SECTION 17. Section 432D-19, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§432D-19 Statutory construction and relationship to other**  
7 **laws.** (a) Except as provided in subsection (d) and otherwise  
8 provided in this chapter, the insurance laws and hospital or  
9 medical service corporation laws of this State shall not apply  
10 to the activities authorized and regulated under this chapter of  
11 any health maintenance organization granted a certificate of  
12 authority under this chapter. This chapter shall not apply to  
13 an insurer or a hospital or medical service corporation licensed  
14 and regulated pursuant to the insurance laws or [~~the~~] hospital  
15 or medical service corporation laws of this State, except with  
16 respect to [~~its~~] health maintenance organization activities  
17 authorized and regulated pursuant to this chapter.

18 (b) Solicitation of enrollees by a health maintenance  
19 organization granted a certificate of authority[~~]~~ or by its  
20 representatives[~~]~~ shall not be construed to violate any  
21 [~~provision of~~] law relating to solicitation or advertising by  
22 health professionals.

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1 (c) Any health maintenance organization granted a  
2 certificate of authority under this chapter shall not be deemed  
3 to be practicing medicine or osteopathic medicine and shall be  
4 exempt from the provision [of] in chapter 453 relating to the  
5 practice of medicine or osteopathic medicine.

6 (d) Article 2, article 2D, part IV of article 3, article  
7 6, part III of article 7, article 9A, article 13, article 14G,  
8 [~~and~~] article 15, and article 16 of chapter 431, and sections  
9 431:3-301, 431:3-302, 431:3-303, 431:3-304, 431:3-305, 431:10-  
10 225, and 431:10-226.5, and the powers granted by those  
11 provisions to the commissioner shall apply to health maintenance  
12 organizations, so long as the application in any particular case  
13 is in compliance with and [~~is~~] not preempted by applicable  
14 federal statutes and regulations."

15 SECTION 18. Section 432D-26.3, Hawaii Revised Statutes, is  
16 amended by amending subsection (e) to read as follows:

17 "(e) As used in this section unless the context requires  
18 otherwise:

19 "Actual gender identity" means a person's internal sense of  
20 being male, female, a gender different from the gender assigned  
21 at birth, a transgender person, or neither male nor female.



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**Report Title:**

Health Care Provider; Accident and Health or Sickness Insurance; Insolvency; Continuation of Benefits; Limited Benefit Plan; Short-Term Health Insurance; Preexisting Condition; Disclaimer; Affordable Care Act; General Readability Requirements; Flesch Reading Ease Test; Perceived Gender Identity; Life and Disability Insurance Guaranty Association; Member Insurer

**Description:**

Updates Hawaii Revised Statutes title 24 by: requiring health care providers to continue providing services during a health insurer insolvency; moving the short-term health insurance preexisting disclosure requirement from section 431:10-104(5) to chapter 431, article 10A; amending the definition of "perceived gender identity" to correct a technical drafting error; including health insurers as part of the guaranty association; and making technical, nonsubstantive amendments for clarity and consistency.

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

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## JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO HEALTH INSURANCE.

PURPOSE: This measure makes various health insurance-related amendments and additions to the Hawaii Insurance Code under Hawaii Revised Statutes (HRS) title 24 (Code), including:

- (1) Requiring health care providers to continue providing services during the insolvency of a health insurer in adding a new section to chapter 431, article 10A, part I;
- (2) Moving the short-term health insurance pre-existing disclosure requirement currently in section 431:10-104(5) to a new section in chapter 431, article 10A, part I, as a more appropriate placement in the Code for this statute, and amending section 431:10-104(5) by removing the disclosure requirement;
- (3) Including health insurers as part of the Hawaii Life and Disability Insurance Guaranty Association by adding a new section to chapter 431, article 16, part II, and amending chapter 431, article 16, chapter 432, and chapter 432D. Specific amendments cover sections 431:16-202(a), 431:16-203(b) and (c), 431:16-205, 431:16-206(a), 431:16-208(b), 431:16-209(c) and (e), 431:16-210(c), 431:16-213, 431:16-218, 432:1-102(b), and 432D-19;
- (4) Correcting a technical drafting error in the definition of "perceived gender identity" by amending sections 431:10A-118.3(e), 432:1-607.3(e), and 432D-26.3(e); and

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- (5) Making technical, nonsubstantive amendments for clarity and consistency.

MEANS:

Add two new sections to part I of article 10A of chapter 431, and a new section to part II of article 16 of chapter 431 and amend sections 431:10-104(5), 431:10A-118.3(e), 431:16-202(a), 431:16-203(b) and (c), 431:16-205, 431:16-206(a), 431:16-208(b), 431:16-209(c) and (e), 431:16-210(c), 431:16-213, 431:16-218, 432:1-102(b), 432:1-607.3(e), 432D-19, and 432D-26.3(e), HRS.

JUSTIFICATION:

- (1) This bill maintains consistency by requiring health care providers to continue providing services during an insolvency, in the same way the providers for mutual benefit societies and health maintenance organizations must continue providing services during an insolvency.
- (2) This bill moves the newly enacted HRS section 431:10-104(5) to article 10A, which is the more appropriate section for the short-term health insurance pre-existing disclosure requirement.
- (3) This bill creates a mechanism for paying covered claims under health insurance policies to avoid excessive delay in payment and to minimize financial loss to claimants or policyholders due to health insurer insolvency.
- (4) This bill corrects a technical drafting error by replacing "designed" with "assigned" in the definition of "perceived gender identity" and accordingly conforms State law to federal guidance on gender identity.

Impact on the public: This bill protects consumers by ensuring they will continue to

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obtain services from health care providers in the event of insolvency. Additionally, the housekeeping amendments in this bill clarify existing statutes and conform State law to federal law.

Impact on the department and other agencies:  
Amending HRS sections 431:10A-118.3(e), 432:1-607.3(e), and 432D-26.3(e) to correct a technical drafting error in the definition of "perceived gender identity" may have a minimal, non-fiscal impact the Department of Health and the Department of Labor and Industrial Relations. For all other amendments, there is no impact.

GENERAL FUNDS: None.

OTHER FUNDS: Compliance Resolution Fund.

PPBS PROGRAM  
DESIGNATION: CCA-106.

OTHER AFFECTED  
AGENCIES: The Department of Health and the Department of Labor and Industrial Relations.

EFFECTIVE DATE: Upon approval.