
A BILL FOR AN ACT

RELATING TO THE HAWAII HEALTH INSURANCE GUARANTY ASSOCIATION.

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

1 SECTION 1. Currently, the State has two insurance guaranty
2 associations that provide payment mechanisms for eligible
3 covered claims when insurers are insolvent. The first, the
4 Hawaii insurance guaranty association, covers direct property
5 and liability contracts. The second, the Hawaii life and
6 disability insurance guaranty association, covers life and
7 accident and health or sickness insurance policies and insurance
8 contracts.

9 Under the Hawaii life and disability insurance guaranty
10 association, member insurers are composed of Hawaii licensed
11 carriers that provide life and accident and health or sickness
12 insurance policies and insurance contracts. However, medical
13 service organizations and health maintenance organizations are
14 excluded from being Hawaii life and disability insurance
15 guaranty association members. As a result, these organizations
16 are not assessed to help pay the claims of an insolvent Hawaii
17 life and disability insurance guaranty association member.



1 However, there is no guaranty association to assist a
2 financially insolvent medical service organization and health
3 maintenance organization. The vast majority of Hawaii's
4 residents maintain health insurance plans through these
5 organizations.

6 Accordingly, the purpose of this Act is to protect Hawaii's
7 health insurance policyholders and health care providers in case
8 a medical service organization or health maintenance
9 organization experiences financial insolvency.

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

13 **"PART . HAWAII HEALTH INSURANCE GUARANTY ASSOCIATION**

14 **§431:16-A Title.** This part shall be known as the Hawaii
15 Health Insurance Guaranty Association Act.

16 **§431:16-B Purpose.** (a) The purpose of this part is to
17 protect, subject to certain limitations, policy owners and
18 health care providers against failure in the performance of
19 contractual obligations under insurance policies issued by
20 licensees under part 1 of chapter 432 and chapter 432D, and
21 dental insurance policies issued by licensees under chapter



1 432G, because of the impairment or insolvency of the member
2 insurer that issued the policies or contracts.

3 (b) To provide this protection, an association of insurers
4 is created to pay benefits and to continue coverages as limited
5 herein, and members of the association are subject to assessment
6 to provide funds to carry out the purpose of this part.

7 **§431:16-C Scope.** This part shall apply to insurance
8 policies issued by licensees under part 1 of chapter 432 and
9 chapter 432D, and dental insurance policies issued by licensees
10 under chapter 432G. Limited benefit health insurance policies,
11 as defined in section 431:10A-102.5, are not included in this
12 part.

13 **§431:16-D Coverage and limitations.** (a) This part shall
14 provide coverage to policy owners for the policies and contracts
15 specified in subsection (b).

16 (b) (1) This part shall provide coverage to the persons who
17 have coverage under insurance policies issued by
18 licensees under part 1 of chapter 432 and chapter
19 432D, and dental insurance policies issued by
20 licensees under chapter 432G, and for supplemental



1 contracts to any of these, in each case issued by
2 member insurers except as limited by this part.

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

4 (A) Any portion of a policy or contract not
5 guaranteed by the insurer or under which the risk
6 is borne by the policy or contract owner;

7 (B) Any policy or contract of reinsurance, unless
8 assumption certificates have been issued pursuant
9 to the reinsurance policy or contract;

10 (C) Any portions of insurance policies issued by
11 licensees under part 1 of chapter 432 and chapter
12 432D, and dental insurance policies issued by
13 licensees under chapter 432G, to a plan or
14 program of an employer, association, or other
15 person to provide accident and health or sickness
16 insurance to its employees, members, or other
17 persons to the extent that the plan or program is
18 self-funded or uninsured, including but not
19 limited to benefits payable by an employer,
20 association, or other person under:



- 1 (i) A multiple employer welfare arrangement as
2 described in section 514 of the Employee
3 Retirement Income Security Act of 1974, as
4 amended;
- 5 (ii) A minimum premium group insurance plan;
6 (iii) A stop-loss group insurance plan; or
7 (iv) An administrative services only contract;
- 8 (D) Any policy or contract issued in this State by a
9 member insurer at a time when it was not licensed
10 or did not have a certificate of authority to
11 issue such policy or contract in this State;
- 12 (E) Any portion of a policy or contract to the extent
13 that the assessments required by this part with
14 respect to the policy or contract are preempted
15 or otherwise not permitted by federal or state
16 law;
- 17 (F) Any obligation that does not arise under the
18 express written terms of the policy or contract
19 issued by the insurer to the contract owner or
20 policy owner, including without limitation:
21 (i) Claims based on marketing materials;



(ii) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(iii) Misrepresentations of or regarding policy benefits;

(iv) Extra-contractual claims; or

(v) A claim for penalties or consequential or incidental damages; or

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

(c) The benefits for which the association may become liable for insurance policies issued by licensees under part 1 of chapter 432 and chapter 432D shall in no event exceed the lesser of:



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

(2) With respect to any one life, regardless of the number of insurance policies issued by licensees under part 1 of chapter 432 and chapter 432D:

(A) \$100,000 for coverages not defined as disability insurance or basic hospital, medical, and surgical insurance, or major medical insurance or long-term care insurance, including any net cash surrender and net cash withdrawal values; or

(B) \$500,000 for basic hospital, medical, and surgical insurance or major medical insurance.

(d) (1) The benefits for a dental insurance policy issued under chapter 432G shall be subject to section 432G-6(e)(1) prior to any benefits for which the association may become liable under (d)(2).

(2) In the event of an insolvency, the combined benefits to be received by the policyholder from the dental insurance policy, any insurance obtained pursuant to section 432G-6(e)(1), and the association shall not



1 exceed the lesser of the dental insurance policy's
2 benefit limit or \$3,000.

3 (e) In no event shall the association be obligated to
4 cover more than an aggregate of \$300,000 in benefits with
5 respect to any one life under subsection (c) except with respect
6 to benefits for basic hospital, medical, and surgical insurance
7 and major medical insurance under subsection (c)(2)(B), in which
8 case the aggregate liability of the association shall not exceed
9 \$500,000 with respect to any one individual.

10 (f) The limitations set forth in this section are
11 limitations on the benefits for which the association is
12 obligated before taking into account its subrogation and
13 assignment rights or the extent to which those benefits could be
14 provided out of the assets of the impaired or insolvent insurer
15 attributable to covered policies. The costs of the
16 association's obligations under this part may be met by the use
17 of assets attributable to covered policies or reimbursed to the
18 association pursuant to its subrogation and assignment rights.

19 (g) In performing its obligations to provide coverage
20 under section 431:16-I, the association shall not be required to
21 guarantee, assume, reinsure, or perform, or cause to be



1 guaranteed, assumed, reinsured, or performed, the contractual
2 obligations of the insolvent or impaired insurer under a covered
3 policy or contract that do not materially affect the economic
4 values or economic benefits of the covered policy or contract.

5 **§431:16-E Construction.** This part shall be liberally
6 construed to effect the purpose under section 431:16-B, which
7 shall constitute an aid and guide to interpretation.

8 **§431:16-F Definitions.** As used in this part:

9 "Association" means the Hawaii health insurance guaranty
10 association created under section 431:16-G.

11 "Authorized assessment" or "authorized", when used in the
12 context of assessments, means a resolution by the board of
13 directors that has been passed whereby an assessment will be
14 called immediately or in the future from member insurers for a
15 specified amount.

16 "Called assessment" or "called", when used in the context
17 of assessments, means a notice that has been issued by the
18 association to member insurers requiring that an authorized
19 assessment be paid within the time frame set forth within the
20 notice.



1 "Contractual obligation" means any obligation under a
2 policy or contract or certificate under a group policy or
3 contract, or portion thereof for which coverage is provided
4 under section 431:16-D.

5 "Covered policy" means any policy, contract, or portion of
6 a policy or contract for which coverage is provided under
7 section 431:16-D.

8 "Extra-contractual claims" shall include but not be limited
9 to claims relating to bad faith in the payment of claims,
10 punitive or exemplary damages, or attorneys' fees and costs.

11 "Impaired insurer" means a member insurer that after
12 July 1, 2019, is not an insolvent insurer and is placed under an
13 order of rehabilitation or conservation by a court of competent
14 jurisdiction.

15 "Insolvent insurer" means a member insurer that after
16 July 1, 2019, is placed under an order of liquidation by a court
17 of competent jurisdiction with a finding of insolvency.

18 "Insurer" or "member insurer" means any insurer licensed
19 under part 1 of chapter 432, chapter 432D, and chapter 432G, and
20 includes any insurer whose license or certificate of authority
21 in this State under part 1 of chapter 432, chapter 432D, or



1 chapter 432G may have been suspended, revoked, not renewed, or
2 voluntarily withdrawn.

3 "Owner", "policy holder", "policy owner", or "contract
4 owner" means the person who is identified as the legal owner
5 under the terms of the policy or contract. The terms "owner",
6 "contract owner", and "policy owner" do not include persons with
7 a mere beneficial interest in a policy or contract.

8 "Person" means any individual, corporation, limited
9 liability company, partnership, association, governmental body
10 or entity, or voluntary organization.

11 "Premiums" means amounts and considerations received on
12 covered policies or contracts less premiums, considerations, and
13 deposits returned thereon, and less dividends and experience
14 credits thereon. The term "premiums" does not include any
15 amounts or consideration received for any policies or contracts
16 or for the portions of any policies or contracts for which
17 coverage is not provided under section 431:16-D(b), except that
18 assessable premium shall not be reduced on accounts under
19 section 431:16-D(b)(2)(C), relating to interest limitations, and
20 section 431:16-D(c)(2), relating to limitations with respect to
21 any one life and any one contract holder.



1 "Receivership court" means the court in the insolvent or
2 impaired insurer's state having jurisdiction over the
3 conservation, rehabilitation, or liquidation of the insurer.

4 "Resident" means a person to whom a contractual obligation
5 is owed and who resides in this State on the date of entry of a
6 court order that determines a member insurer to be an impaired
7 or insolvent insurer. A person may be a resident of only one
8 state, which in the case of a person other than a natural person
9 shall be its principal place of business. Citizens of the
10 United States who are:

- 11 (1) Residents of foreign countries; or
12 (2) Residents of United States possessions, territories,
13 or protectorates that do not have an association
14 similar to the association created by this part,
15 shall be deemed residents of the state of domicile of the
16 insurer that issued the policies or contracts.

17 "State" means a state, the District of Columbia, Puerto
18 Rico, or a United States possession, territory, or protectorate.

19 "Supplemental contract" means a written agreement entered
20 into for the distribution of proceeds under an accident and



1 health or sickness contract, except for limited benefit health
2 insurance as defined in section 431:10A-102.5.

3 **§431:16-G Creation of the association.** (a) There is
4 created a nonprofit legal entity to be known as the Hawaii
5 health insurance guaranty association. All member insurers
6 shall be and remain members of the association as a condition of
7 their authority to transact insurance in this State. The
8 association shall perform its functions under the plan of
9 operation established and approved under section 431:16-K and
10 shall exercise its powers through a board of directors
11 established under section 431:16-H.

12 (b) For administration purposes, the administrator of the
13 Hawaii life and disability insurance guaranty association shall
14 also be the administrator of the association. The association
15 shall pay reasonable costs and fees commensurate with the
16 administrator's work for the association to the Hawaii life and
17 disability insurance guaranty association.

18 (c) The association shall come under the immediate
19 supervision of the commissioner and shall be subject to the
20 applicable provisions of the insurance laws of this State.
21 Meetings or records of the association may be opened to the



1 public upon majority vote of the board of directors of the
2 association.

3 **§431:16-H Board of directors.** (a) The board of directors
4 of the association shall consist of not less than five nor more
5 than nine member insurers serving terms as established in the
6 plan of operation. The members of the board shall be selected
7 by member insurers subject to the approval of the commissioner.
8 Vacancies on the board shall be filled for the remaining period
9 of the term by a majority vote of the remaining board members,
10 subject to the approval of the commissioner. To select the
11 initial board of directors, and initially organize the
12 association, the commissioner shall give notice to all member
13 insurers of the time and place of the organizational meeting.
14 In determining voting rights at the organizational meeting, each
15 member insurer shall be entitled to one vote in person or by
16 proxy. If the board of directors is not selected within sixty
17 days after notice of the organizational meeting, the
18 commissioner may appoint the initial members.

19 (b) In approving selections or in appointing members to
20 the board, the commissioner shall consider, among other things,
21 whether all member insurers are fairly represented.



(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors, but members of the board shall not otherwise be compensated by the association for their services.

§431:16-I Powers and duties of the association. (a) If a member insurer is an impaired insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer; are approved by the commissioner; and are, except in cases of court ordered conservation or rehabilitation, also approved by the impaired insurer:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer;

(2) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subsection (a) (1) and assure payment of the contractual obligations of the impaired insurer pending action under subsection (a) (1); or

(3) Loan money to the impaired insurer.



1 (b) If a member insurer is an insolvent insurer, the
2 association shall, in its discretion:

3 (1) (A) Guarantee, assume, or reinsure, or cause to be
4 guaranteed, assumed, or reinsured, the policies
5 or contracts of the insolvent insurer; or

6 (B) Assure payment of the contractual obligations of
7 the insolvent insurer; and

8 (C) Provide moneys, pledges, guarantees, or other
9 means reasonably necessary to discharge such
10 duties; or

11 (2) Provide benefits and coverages in accordance with the
12 following provisions:

13 (A) With respect to non-group insurance policies
14 issued by licensees under part 1 of chapter 432
15 and chapter 432D, and dental insurance policies
16 issued by licensees under chapter 432G, make
17 available to each known insured substitute
18 coverage on an individual basis in accordance
19 with subparagraph (B).

20 (B) (i) In providing the substitute coverage
21 required under subparagraph (C), the



1 association may offer to reissue the
2 terminated coverage or issue an alternative
3 policy.

4 (ii) Alternative or reissued policies shall be
5 offered without requiring evidence of
6 insurability and shall not provide for any
7 waiting period or exclusion that would not
8 have applied under the terminated policy.

9 (iii) The association may reinsure any alternative
10 or reissued policy.

11 (C) (i) Alternative policies adopted by the
12 association shall be subject to the approval
13 of the commissioner or the receivership
14 court. The association may adopt
15 alternative policies of various types for
16 future issuance without regard to any
17 particular impairment or insolvency.

18 (ii) Alternative policies shall contain at least
19 the minimum statutory provisions required in
20 this State and provide benefits that shall
21 not be unreasonable in relation to the



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 (D) 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.



1 (E) 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 (c) Nonpayment of premiums within thirty-one days after
9 the date required under the terms of any guaranteed, assumed,
10 alternative, or reissued policy or contract or substitute
11 coverage shall terminate the association's obligations under the
12 policy or coverage under this part with respect to the policy or
13 coverage, except with respect to any claims incurred or any net
14 cash surrender value which may be due in accordance with the
15 provisions of this part.

16 (d) Premiums due for coverage after entry of an order of
17 liquidation of an insolvent insurer shall belong to and be
18 payable at the direction of the association, and the association
19 shall be liable for unearned premiums due to policy or contract
20 owners arising after the entry of such order.



1 (e) The protection provided by this part shall not apply
2 where any guaranty protection is provided to residents of this
3 State by the laws of the domiciliary state or jurisdiction of
4 the impaired or insolvent insurer other than this State.

5 (f) In carrying out its duties under subsection (b), the
6 association may, subject to approval by a court in this State,
7 impose permanent policy or contract liens in connection with any
8 guarantee, assumption, or reinsurance agreement, if the
9 association finds that the amounts which can be assessed under
10 this part are less than the amounts needed to assure full and
11 prompt performance of the association's duties under this part,
12 or that the economic or financial conditions as they affect
13 member insurers are sufficiently adverse to render the
14 imposition of such permanent policy or contract liens, to be in
15 the public interest.

16 (g) If the association fails to act within a reasonable
17 period of time as provided in subsection (b), the commissioner
18 shall have the powers and duties of the association under this
19 part with respect to the insolvent insurer.

20 (h) The association may render assistance and advice to
21 the commissioner, upon the commissioner's request, concerning



1 rehabilitation, payment of claims, continuance of coverage, or
2 the performance of other contractual obligations of any impaired
3 or insolvent insurer.

4 (i) The association shall have standing to appear or
5 intervene before any court or agency in this State with
6 jurisdiction over an impaired or insolvent insurer concerning
7 which the association is or may become obligated under this part
8 or with jurisdiction over any person or property against which
9 the association may have rights through subrogation or
10 otherwise. Such standing shall extend to all matters germane to
11 the powers and duties of the association, including but not
12 limited to proposals for reinsuring, modifying, or guaranteeing
13 the policies or contracts of the impaired or insolvent insurer
14 and the determination of the policies or contracts and
15 contractual obligations. The association shall also have the
16 right to appear or intervene before any court or agency in
17 another state with jurisdiction over an impaired or insolvent
18 insurer for which the association is or may become obligated or
19 with jurisdiction over any person or property against whom the
20 association may have rights through subrogation or otherwise.



1 (j) (1) Any person receiving benefits under this part shall be
2 deemed to have assigned the rights under, and any
3 causes of action against, any person for losses
4 arising under, resulting from, or otherwise relating
5 to, the covered policy or contract to the association
6 to the extent of the benefits received because of this
7 part, whether the benefits are payments of or on
8 account of contractual obligations, continuation of
9 coverage, or provision of substitute or alternative
10 coverages. The association may require an assignment
11 to it of such rights and causes of action by any
12 payee, policy or contract owner, beneficiary, or
13 insured as a condition precedent to the receipt of any
14 right or benefits conferred by this part upon such
15 person.

16 (2) The subrogation rights of the association under this
17 section shall have the same priority against the
18 assets of the impaired or insolvent insurer as that
19 possessed by the person entitled to receive benefits
20 under this part.



1 (3) In addition to paragraphs (1) and (2), the association
2 shall have all common law rights of subrogation and
3 any other equitable or legal remedy that would have
4 been available to the impaired or insolvent insurer,
5 owner, beneficiary, or payee of a policy or contract
6 with respect to the policy or contracts.

7 (4) If paragraphs (1) through (3) are held invalid or
8 ineffective with respect to any person or claim for
9 any reason, the amount payable by the association with
10 respect to the related covered obligations shall be
11 reduced by the amount realized by any other person
12 with respect to the person or claim that is
13 attributable to the policies, or portion thereof,
14 covered by the association.

15 (5) If the association has provided benefits with respect
16 to a covered obligation and a person recovers amounts
17 to which the association has rights as described in
18 the preceding paragraphs of this subsection, the
19 person shall pay to the association the portion of the
20 recovery attributable to the policies, or portion
21 thereof, covered by the association.



1 (k) The association may:

2 (1) Enter into contracts necessary or proper to carry out
3 the provisions and purposes of this part;

4 (2) Sue or be sued, including taking any legal actions
5 necessary or proper to recover any unpaid assessments
6 under section 431:16-J, and to settle claims or
7 potential claims against the association;

8 (3) Borrow money to effect the purposes of this part;
9 provided that any notes or other evidence of
10 indebtedness of the association not in default shall
11 be legal investments for domestic insurers and may be
12 carried as admitted assets;

13 (4) Employ or retain persons necessary to handle the
14 financial transactions of the association and to
15 perform such other functions as become necessary or
16 proper under this part;

17 (5) Take legal action necessary to avoid payment of
18 improper claims or to recover payment of improper
19 claims;

20 (6) Exercise, for the purposes of this part and to the
21 extent approved by the commissioner, the powers of a



1 domestic accident and health or sickness insurer, but
2 in no case may the association issue insurance
3 policies other than those issued to perform its
4 obligations under this part;

5 (7) Organize itself as a corporation or in other legal
6 form permitted by the laws of the State;

7 (8) Request information from a person seeking coverage
8 from the association in order to aid the association
9 in determining its obligations under this part with
10 respect to the person, and the person shall promptly
11 comply with the request; and

12 (9) Take other necessary or appropriate action to
13 discharge its duties and obligations under this part
14 or to exercise its powers under this part.

15 (10) The association may join an organization of one or
16 more other state associations of similar purposes to
17 further the purposes and administer the powers and
18 duties of the association.

19 (1) With respect to covered policies for which the
20 association becomes obligated after an entry of an order of
21 liquidation or rehabilitation, the association may elect to



1 succeed to the rights of the insolvent insurer, arising after
2 the date of the order of liquidation or rehabilitation under any
3 contract of reinsurance to which the insolvent insurer was a
4 party, to the extent that the contract provides coverage for
5 losses occurring after the date of the order of liquidation or
6 rehabilitation. As a condition to making this election, the
7 association shall pay all unpaid premiums due under the contract
8 for coverage relating to periods before and after the date of
9 the order of liquidation or rehabilitation.

10 (m) The board of directors of the association shall have
11 discretion and shall exercise reasonable business judgment to
12 determine the means by which the association is to provide the
13 benefits of this part in an economical and efficient manner.

14 (n) Where the association has arranged or offered to
15 provide the benefits of this part to a covered person under a
16 plan or arrangement that fulfills the association's obligations
17 under this part, the person shall not be entitled to benefits
18 from the association in addition to or other than those provided
19 under the plan or arrangement.

20 (o) Venue in a suit against the association arising under
21 this part shall be in the circuit court of the first circuit.



1 The association shall not be required to give an appeal bond in
2 an appeal that relates to a cause of action arising under this
3 part.

4 (p) In carrying out its duties in connection with
5 guaranteeing, assuming, or reinsuring policies or contracts
6 under subsection (a) or (b), the association may, subject to
7 approval of the receivership court, issue substitute coverage
8 for a policy or contract by issuing an alternative policy or
9 contract in accordance with the following provisions:

10 (1) There is no requirement for evidence of insurability,
11 waiting period, or other exclusion that would not have
12 applied under the replaced policy or contract; and

13 (2) The alternative policy or contract is substantially
14 similar to the replaced policy or contract in all
15 other material terms.

16 **§431:16-J Assessments.** (a) For the purpose of providing
17 the funds necessary to carry out the powers and duties of the
18 association, the board of directors shall assess the member
19 insurers, separately for each account, at a time and for amounts
20 that the board finds necessary. Assessments shall be due not
21 less than thirty days after prior written notice to the member



1 insurers and shall accrue interest at eighteen per cent per
2 annum on and after the due date.

3 (b) There shall be two assessments, as follows:

4 (1) Class A assessments shall be authorized and called for
5 the purpose of meeting administrative and legal costs,
6 other expenses, and examinations conducted under the
7 authority of section 431:16-M(e). Class A assessments
8 may be authorized and called whether or not related to
9 a particular impaired or insolvent insurer.

10 (2) Class B assessments shall be authorized and called to
11 the extent necessary to carry out the powers and
12 duties of the association under section 431:16-I with
13 regard to an impaired or an insolvent insurer.

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



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

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

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



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 of its anticipated pro rata share of an
7 authorized assessment not yet called within one
8 hundred eighty days after the assessment is
9 authorized.

10 (d) The association may abate or defer, in whole or in
11 part, the assessment of a member insurer if, in the opinion of
12 the board of directors, payment of the assessment would endanger
13 the ability of the member insurer to fulfill its contractual
14 obligations. In the event an assessment against a member
15 insurer is abated or deferred in whole or part, the amount by
16 which the assessment is abated or deferred may be assessed
17 against the other member insurers in a manner consistent with
18 the basis for assessments set forth in this section. Once the
19 conditions that caused the deferral have been removed or
20 rectified, the member shall pay all assessments that were



1 deferred pursuant to a repayment plan approved by the
2 association.

3 (e) (1) Subject to the provisions of paragraph (2), the total
4 of all assessments authorized by the association with
5 respect to a member insurer shall not in any one
6 calendar year exceed two per cent of the insurer's
7 average premiums received in this State on the
8 policies and contracts covered by the account during
9 the three calendar years preceding the year in which
10 the insurer became an impaired or insolvent insurer.

11 (2) If two or more assessments are authorized in one
12 calendar year with respect to insurers that become
13 impaired or insolvent in different calendar years, the
14 average annual premiums for purposes of the aggregate
15 assessment percentage limitation referenced in this
16 section shall be equal and limited to the higher of
17 the three-year average annual premiums for the
18 applicable account as calculated pursuant to this
19 section.

20 (3) If the maximum assessment, together with the other
21 assets of the association in any account, does not



1 provide in any one year in either account an amount
2 sufficient to carry out the responsibilities of the
3 association, the necessary additional funds shall be
4 assessed as soon thereafter as permitted by this part.

5 The board of directors may provide in the plan of operation
6 a method of allocating funds among claims, whether relating to
7 one or more impaired or insolvent insurers, when the maximum
8 assessment will be insufficient to cover anticipated claims.

9 (f) The board may, by an equitable method as established
10 in the plan of operation, refund to member insurers, in
11 proportion to the contribution of each insurer to that account,
12 the amount by which the assets of the account exceed the amount
13 the board finds is necessary to carry out during the coming year
14 the obligations of the association with regard to that account,
15 including assets accruing from assignment, subrogation, net
16 realized gains, and income from investments. A reasonable
17 amount may be retained in any account to provide funds for the
18 continuing expenses of the association and for future losses and
19 claims.

20 (g) It shall be proper for any member insurer, in
21 determining its premium rates within the scope of this part, to



1 consider the amount reasonably necessary to meet its assessment
2 obligations under this part.

3 (h) The association shall issue to each insurer paying an
4 assessment under this part, other than a class A assessment, a
5 certificate of contribution, in a form prescribed by the
6 commissioner, for the amount of the assessment paid. All
7 outstanding certificates shall be of equal dignity and priority
8 without reference to amounts or dates of issue. A certificate
9 of contribution may be shown by the insurer in its financial
10 statement as an asset in a form and for an amount, if any, and
11 period of time that the commissioner may approve.

12 (i) (1) A member insurer that wishes to protest all or part of
13 an assessment shall pay when due the full amount of
14 the assessment, as set forth in the notice provided by
15 the association. The payment shall be available to
16 meet association obligations during the pendency of
17 the protest or any subsequent appeal. Payment shall
18 be accompanied by a statement in writing that the
19 payment is made under protest and that sets forth a
20 brief statement of the grounds for the protest.



1 (2) Within sixty days following the payment of an
2 assessment under protest by a member insurer, the
3 association shall notify the member insurer in writing
4 of its determination with respect to the protest,
5 unless the association notifies the member insurer
6 that additional time is required to resolve the issues
7 raised by the protest.

8 (3) Within thirty days after a final decision has been
9 made, the association shall notify the protesting
10 member insurer in writing of the final decision.
11 Within sixty days of receipt of notice of the final
12 decision, the protesting member insurer may appeal the
13 final decision to the commissioner.

14 (4) In the alternative to rendering a final decision with
15 respect to a protest based on a question regarding the
16 assessment base, the association may refer protests to
17 the commissioner for a final decision with or without
18 a recommendation from the association.

19 (5) If the protest or appeal on the assessment is upheld,
20 the amount paid in error or excess shall be returned
21 to the member company. Interest on a refund due a



1 protesting member shall be paid at the rate actually
2 earned by the association.

3 (j) The association may request information of member
4 insurers to aid in the exercise of its powers under this
5 section, and member insurers shall promptly comply with any
6 request.

7 **§431:16-K Plan of operation.**

8 (a) (1) The association shall submit to the commissioner a
9 plan of operation and any amendments to the plan
10 necessary or suitable to assure the fair, reasonable,
11 and equitable administration of the association. The
12 plan of operation and any amendments to the plan shall
13 become effective upon the commissioner's written
14 approval, or, if the commissioner has not disapproved
15 it, within thirty days.

16 (2) If the association fails to submit a suitable plan of
17 operation within one hundred twenty days following
18 January 1, 2019, or if at any time thereafter the
19 association fails to submit suitable amendments to the
20 plan, the commissioner shall, after notice and
21 hearing, adopt reasonable rules as necessary or



1 advisable to effectuate the provisions of this part.

2 Such rules shall continue in force until modified by
3 the commissioner or superseded by a plan submitted by
4 the association and approved by the commissioner.

5 (b) All member insurers shall comply with the plan of
6 operation.

7 (c) The plan of operation shall, in addition to
8 requirements specified elsewhere in this part:

9 (1) Establish procedures for handling the assets of the
10 association;

11 (2) Establish the amount and method of reimbursing members
12 of the board of directors under section 431:16-H(c);

13 (3) Establish regular places and times for meetings,
14 including telephone conference calls of the board of
15 directors;

16 (4) Establish procedures for records to be kept of all
17 financial transactions of the association, its agents,
18 and the board of directors;

19 (5) Establish the procedures whereby selections for the
20 board of directors will be made and submitted to the
21 commissioner;



(6) Establish any additional procedures for assessments under section 431:16-J;

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association;

(8) Establish procedures to remove a director for cause, including the case in which a director is affiliated with a member insurer that becomes an impaired or insolvent insurer; and

(9) Require the board of directors to establish a policy and procedure for addressing conflicts of interests.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under sections 431:16-208(k)(3) and 431:16-J, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. The corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the



1 approval of both the board of directors and the commissioner,
2 and may be made only to a corporation, association, or
3 organization which extends protection not substantially less
4 favorable and effective than that provided by this part.

5 **§431:16-L Duties and powers of the commissioner.** (a) In
6 addition to any other duties and powers authorized under this
7 part, the commissioner shall:

8 (1) Upon request of the board of directors, provide the
9 association with a statement of the premiums in this
10 and any other appropriate states for each member
11 insurer;

12 (2) When an impairment is declared and the amount of the
13 impairment is determined, serve a demand upon the
14 impaired insurer to make good the impairment within a
15 reasonable time. Notice to the impaired insurer shall
16 constitute notice to its shareholders, if any. The
17 failure of the insurer to promptly comply with a
18 demand shall not excuse the association from the
19 performance of its powers and duties under this part;
20 and



1 (3) In any liquidation or rehabilitation proceeding
2 involving a domestic insurer, be appointed as the
3 liquidator or rehabilitator.

4 (b) The commissioner may suspend or revoke, after notice
5 and hearing, the certificate of authority to transact insurance
6 in this State of any member insurer which fails to pay an
7 assessment when due or fails to comply with the plan of
8 operation. As an alternative, the commissioner may levy a
9 forfeiture on any member insurer which fails to pay an
10 assessment when due. Such forfeiture shall not exceed five per
11 cent of the unpaid assessment per month, but no forfeiture shall
12 be less than \$100 per month.

13 (c) Any action of the board of directors or the
14 association may be appealed to the commissioner by any member
15 insurer if the appeal is taken within sixty days of the final
16 action being appealed. If a member insurer is appealing an
17 assessment, the amount assessed shall be paid to the association
18 and available to meet association obligations during the
19 pendency of an appeal. If the appeal on the assessment is
20 upheld, the amount paid in error or excess shall be returned to
21 the member insurer. Any final action or order of the



1 commissioner shall be subject to judicial review in the circuit
2 court of the first judicial circuit.

3 (d) The liquidator, rehabilitator, or conservator of any
4 impaired insurer may notify all interested persons of the effect
5 of this part.

6 **§431:16-M Prevention of insolvencies.** (a) To aid in the
7 detection and prevention of insurer insolvencies or impairments,
8 it shall be the duty of the commissioner to:

9 (1) Notify the commissioners of all the other states,
10 territories of the United States, and the District of
11 Columbia when the commissioner takes any of the
12 following actions against a member insurer:

13 (A) Revokes a license;

14 (B) Suspends a license; or

15 (C) Makes any formal order that the company restrict
16 its premium writing, obtain additional
17 contributions to surplus, withdraw from the
18 State, reinsure all or any part of its business,
19 or increase capital, surplus, or any other
20 account for the security of policyholders or
21 creditors.



1 The notice shall be mailed to all commissioners within
2 thirty days following the action taken or the date on
3 which the action occurs;

4 (2) Report to the board of directors when the commissioner
5 has taken any of the actions set forth in paragraph
6 (1) or has received a report from any other
7 commissioner indicating that any such action has been
8 taken in another state. The report to the board of
9 directors shall contain all significant details of the
10 action taken or the report received from another
11 commissioner;

12 (3) Report to the board of directors when the commissioner
13 has reasonable cause to believe from any examination
14 of any member company, whether completed or in
15 process, that the company may be an impaired or
16 insolvent insurer; and

17 (4) Furnish to the board of directors the National
18 Association of Insurance Commissioners Insurance
19 Regulatory Information System ratios and listings of
20 companies not included in the ratios developed by the
21 National Association of Insurance Commissioners, and



1 the board may use the information contained therein in
2 carrying out its duties and responsibilities under
3 this section. The report and the information
4 contained therein shall be kept confidential by the
5 board of directors until such time as made public by
6 the commissioner or other lawful authority.

7 (b) The commissioner may seek the advice and
8 recommendations of the board of directors concerning any matter
9 affecting the commissioner's duties and responsibilities
10 regarding the financial condition of member companies and
11 companies seeking admission to transact insurance business in
12 this State.

13 (c) The board of directors may, upon majority vote, make
14 reports and recommendations to the commissioner upon any matter
15 germane to the solvency, liquidation, rehabilitation, or
16 conservation of any member insurer or germane to the solvency of
17 any company seeking to do an insurance business in this State.
18 The reports and recommendations shall not be considered public
19 documents.

20 (d) It shall be the duty of the board of directors, upon
21 majority vote, to notify the commissioner of any information



1 indicating any member insurer may be an impaired insurer or
2 insolvent insurer.

3 (e) The board of directors may, upon majority vote,
4 request that the commissioner order an examination of any member
5 insurer which the board in good faith believes may be an
6 impaired or insolvent insurer. Within thirty days of the
7 receipt of such request, the commissioner shall begin the
8 examination. The examination may be conducted as a National
9 Association of Insurance Commissioners' examination or may be
10 conducted by such persons as the commissioner designates. The
11 cost of the examination shall be paid by the association, and
12 the examination report shall be treated the same as other
13 examination reports. In no event shall the examination report
14 be released to the board of directors prior to its release to
15 the public, but this shall not excuse the commissioner from
16 complying with subsection (a). The commissioner shall notify
17 the board of directors when the examination is completed. The
18 request for an examination shall be kept on file by the
19 commissioner, but it shall not be open to public inspection
20 prior to the release of the examination report to the public.



1 (f) The board of directors may, upon majority vote, make
2 recommendations to the commissioner for the detection and
3 prevention of insurer insolvencies.

4 (g) The board of directors shall, at the conclusion of any
5 insurer insolvency in which the association was obligated to pay
6 covered claims, prepare a report to the commissioner containing
7 such information as it may have in its possession bearing on the
8 history and causes of such insolvency. The board shall
9 cooperate with the board of directors of guaranty associations
10 in other states in preparing a report on the history and causes
11 for insolvency of a particular insurer and may adopt by
12 reference any report prepared by such other associations.

13 **§431:16-N Recoupment of assessment.** (a) Each member
14 insurer shall annually recoup the assessments paid in the
15 preceding years by the insurer under this part. The recoupment
16 shall be recovered by means of a surcharge on premiums charged
17 for accident and health or sickness policies. Prior to
18 recoupment, each member insurer shall submit its plan for
19 recoupment to the commissioner for approval. The surcharge
20 shall be at a uniform percentage rate reasonably calculated to
21 recoup the assessment paid by the member insurer. Any excess



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

9 (b) Each insurer shall provide to the association an
10 accounting of its recoupments. The association shall compile
11 the insurers' accountings and submit it as part of its annual
12 report to the commissioner.

13 (c) The amount of and reason for any surcharge shall be
14 separately stated on any billing sent to an insured. The
15 surcharge shall not be considered premiums for any other
16 purpose, including the computation of gross premium tax or the
17 determination of producer commissions.

18 **§431:16-O Miscellaneous provisions.** (a) Nothing in this
19 part shall be construed to reduce the liability for unpaid
20 assessments of the insureds of an impaired or insolvent insurer
21 operating under a plan with assessment liability.



(b) Records shall be kept of all meetings of the board of directors to discuss the activities of the association in carrying out its powers and duties under section 431:16-I. The records of the association, with respect to an impaired or insolvent insurer, shall not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, except:

(1) Upon the termination of the impairment or insolvency of the insurer; or

(2) Upon the order of a court of competent jurisdiction.

Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 431:2-304(b).

(c) For the purpose of carrying out its obligations under this part, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section 431:16-I(j). Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the



1 impaired or insolvent insurer as required by this part. As used
2 in this subsection, assets attributable to covered policies are
3 that proportion of the assets which the reserves that should
4 have been established for such policies bear to the reserves
5 that should have been established for all policies of insurance
6 written by the impaired or insolvent insurer.

7 (d) As a creditor of the impaired or insolvent insurer, as
8 established in subsection (c) and consistent with section
9 431:15-324, the association and other similar associations shall
10 be entitled to receive a disbursement of assets out of the
11 marshaled assets, from time to time as the assets become
12 available to reimburse the association or other similar
13 association, as a credit against contractual obligations under
14 this part. If the liquidator has not, within one hundred twenty
15 days of a final determination of insolvency of an insurer by the
16 receivership court, made an application to the court for the
17 approval of a proposal to disburse assets out of the marshaled
18 assets to guaranty associations having obligations because of
19 the insolvency, the association shall be entitled to make
20 application to the receivership court for approval of its own
21 proposal to disburse these assets.



1 (e) (1) Prior to the termination of any liquidation,
2 rehabilitation, or conservation proceeding, the court
3 may take into consideration the contributions of the
4 respective parties, including the association, the
5 shareholders, and policy owners of the insolvent
6 insurer, and any other party with a bona fide
7 interest, in making an equitable distribution of the
8 ownership rights of such insolvent insurer. In such a
9 determination, consideration shall be given to the
10 welfare of the policyholders of the continuing or
11 successor insurer.

12 (2) No distribution to stockholders, if any, of an
13 impaired or insolvent insurer shall be made until and
14 unless the total amount of valid claims of the
15 association with interest thereon for funds expended
16 in carrying out its powers and duties under section
17 431:16-I with respect to such insurer have been fully
18 recovered by the association.

19 (f) (1) If an order for liquidation or rehabilitation of an
20 insurer domiciled in this State has been entered, the
21 receiver appointed under the order shall have a right



1 to recover, on behalf of the insurer from any
2 affiliate that controlled it, the amount of
3 distributions, other than stock dividends paid by the
4 insurer on its capital stock, made at any time during
5 the five years preceding the petition for liquidation
6 or rehabilitation subject to the limitations of
7 paragraphs (2) to (4).

8 (2) No distribution shall be recoverable if the insurer
9 shows that the distribution was lawful and reasonable
10 when paid and that the insurer did not know, and could
11 not reasonably have known, that the distribution might
12 adversely affect the ability of the insurer to fulfill
13 its contractual obligations.

14 (3) Any person who was an affiliate that controlled the
15 insurer at the time the distributions were paid shall
16 be liable up to the amount of distributions the person
17 received. Any person who was an affiliate that
18 controlled the insurer at the time the distributions
19 were declared shall be liable up to the amount of
20 distributions the person would have received if they
21 had been paid immediately. If two or more persons are



1 liable with respect to the same distributions, they
2 shall be jointly and severally liable.

3 (4) The maximum amount recoverable under this subsection
4 shall be the amount needed in excess of all other
5 available assets of the insolvent insurer to pay the
6 contractual obligations of the insolvent insurer.

7 (5) If any person liable under paragraph (3) is insolvent,
8 all its affiliates that controlled it at the time the
9 distribution was paid, shall be jointly and severally
10 liable for any resulting deficiency in the amount
11 recovered from the insolvent affiliate.

12 **§431:16-P Tax exemptions.** The association shall be exempt
13 from payment of all fees and all taxes levied by this State or
14 any of its subdivisions, except taxes levied on real property.

15 **§431:16-Q Immunity.** There shall be no liability on the
16 part of, and no cause of action of any nature shall arise
17 against, any member insurer or its agents or employees, the
18 association or its agents or employees, members of the board of
19 directors, or the commissioner or the commissioner's
20 representatives, for any action or omission by them in the
21 performance of their powers and duties under this part. Such



1 immunity shall extend to the participation in any organization
2 of one or more other state associations of similar purposes and
3 to any such organization and its agents or employees.

4 **§431:16-R Stay of proceedings; reopening default**

5 judgments. All proceedings in which the insolvent insurer is a
6 party in any court in this State shall be stayed one hundred
7 eighty days from the date an order of liquidation,
8 rehabilitation, or conservation is final to permit proper legal
9 action by the association on any matters germane to its powers
10 or duties. As to judgment under any decision, order, verdict,
11 or finding based on default, the association may apply to have
12 such judgment set aside by the same court that issued the
13 judgment and shall be permitted to defend against the suit on
14 the merits.

15 **§431:16-S Prohibited advertisement of association act in**
16 **insurance sales; notice to policyholders.** (a) No person,
17 including an insurer and a producer or an affiliate of an
18 insurer, shall make, publish, disseminate, circulate, or place
19 before the public, or cause directly or indirectly, to be made,
20 published, disseminated, circulated, or placed before the
21 public, in any newspaper, magazine, or other publication, or in



1 the form of a notice, circular, pamphlet, letter, or poster, or
2 over any radio station or television station, or in any other
3 way, any advertisement, announcement, or statement, written or
4 oral, which uses the existence of the Hawaii health insurance
5 guaranty association of this State for the purpose of sales,
6 solicitation, or inducement to purchase any form of insurance
7 covered by the Hawaii Health Insurance Guaranty Association Act.
8 This section shall not apply to the association or any other
9 entity that does not sell or solicit insurance.

10 (b) Within one hundred eighty days of January 1, 2019, the
11 association shall prepare a summary document describing the
12 general purposes and current limitations of this part and
13 complying with subsection (c). This document shall be submitted
14 to the commissioner for approval. Sixty days after receiving
15 approval, no insurer may deliver a policy or contract described
16 in section 431:16-D to a policyholder or contract holder unless
17 the document is delivered to the policyholder or contract holder
18 at the time of delivery of the policy or contract, except if
19 subsection (d) applies. The document shall also be available
20 upon request by a policyholder. The distribution, delivery,
21 contents, or interpretation of this document shall not mean that



1 either the policy or the contract or the holder thereof would be
2 covered in the event of the impairment or insolvency of a member
3 insurer. The description document shall be revised by the
4 association as amendments to this part may require. Failure to
5 receive this document does not give the policyholder, contract
6 holder, certificate holder, or insured any greater rights than
7 those stated in this part.

8 (c) The document prepared under subsection (b) shall
9 contain a clear and conspicuous disclaimer on its face. The
10 commissioner shall adopt a rule establishing the form and
11 content of the disclaimer. The disclaimer shall:

12 (1) State the name and address of the association and the
13 insurance division;

14 (2) Prominently warn the policy or contract holder that
15 the association may not cover the policy or, if
16 coverage is available, it will be subject to
17 substantial limitations and exclusions and be
18 conditioned on continued residence in this State;

19 (3) State that the insurer and its producers are
20 prohibited by law from using the existence of the



1 association for the purpose of sales, solicitation, or
2 inducement to purchase any form of insurance;

3 (4) Emphasize that the policy or contract holder should
4 not rely on coverage under the association when
5 selecting an insurer; and

6 (5) Provide other information as directed by the
7 commissioner.

8 (d) No insurer or producer may deliver a policy or
9 contract described in section 431:16-D(b) (1) and excluded under
10 section 431:16-D(b) (2) (A) from coverage under this part unless
11 the insurer or producer, prior to or at the time of delivery,
12 gives the policy or contract holder a separate written notice
13 which clearly and conspicuously discloses that the policy or
14 contract is not covered by the association. The commissioner
15 shall by rule specify the form and content of the notice."

16 SECTION 3. In codifying the new sections added by section
17 2 of this Act, the revisor of statutes shall substitute
18 appropriate section numbers for the letters used in designating
19 the new sections in this Act.

20 SECTION 4. This Act shall take effect upon its approval.



Report Title:

Health Insurance; Guaranty Fund; Hawaii Health Insurance
Guaranty Association; Hawaii Life and Disability Insurance
Guaranty Association; Insolvency; Medical Service Organization;
Mutual Benefit Society; Health Maintenance Organization

Description:

Establishes the Hawaii health insurance guaranty association, an
insurance guaranty fund for Hawaii domestic medical service
organizations and health maintenance organizations. (SD1)

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

