ACT 104 S.B. NO. 1713

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding nine new sections to be appropriately designated and to read as follows:

"**§431- Definitions.** As used in sections 431- to 431- :

(1) "Applicant" means:
   (A) In the case of an individual Medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits; and
   (B) In the case of a group Medicare supplement policy or subscriber contract, the proposed certificate holder;
(2) "Certificate" means any certificate issued under a group Medicare supplement policy, which policy is delivered or issued for delivery in this State;
(3) "Medicare supplement policy" means a group or individual policy of disability insurance or a group contract or individual subscriber contract of a nonprofit medical indemnity or hospital service association which is

advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare by reason of age. The term does not include:

(A) A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization; or

(B) A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if such association:

(i) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;

(ii) Has been maintained in good faith for purposes other than obtaining insurance; and

(iii) Has been in existence for at least two years prior to the date of its initial offering of such policy or plan to its members;

(C) An individual policy or contract issued either pursuant to a conversion privilege under a policy or contract of a group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of sections 431- to 431- or rule adopted thereunder, or issued to employees or members as additions to franchise plans in existence on the effective date of the applicable rule;

(4) "Medicare" means Title XVIII of the federal Social Security Act, as amended.

§431- Standards for policy provisions. (a) The insurance commissioner shall issue reasonable rules to establish specific standards for policy provisions. Such standards shall be in addition to and in accordance with applicable laws of this State, including sections 431-463 to 431-498, and may cover, but shall not be limited to:

(1) Terms of renewability;
(2) Initial and subsequent conditions of eligibility;
(3) Nonduplication of coverage;
(4) Probationary periods;
(5) Benefit limitations, exceptions, and reductions;
(6) Elimination periods;
(7) Requirements for replacement;
(8) Recurrent conditions; and
(9) Definition of terms.

(b) The insurance commissioner may issue reasonable rules that specify prohibited policy provisions not otherwise specifically authorized by law, which, in the opinion of the insurance commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under any Medicare supplement policy.

(c) Notwithstanding any other provision of law, a Medicare supplement policy shall not deny a claim for losses incurred more than six months after the effective date of coverage for a preexisting condition. The policy shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

§431- **Minimum standards for benefits.** The insurance commissioner shall issue reasonable rules to establish minimum standards for benefits under Medicare supplement policies.

§431- **Loss ratio standards.** Medicare supplement policies shall be expected to return to policyholders benefits which are reasonable in relation to the premium charged. The insurance commissioner shall issue reasonable rules to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For the purposes of rules issued under this section, Medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be regarded as individual policies.

§431- **Disclosure standards.** (a) In order to provide for full and fair disclosure in the sale of Medicare supplement policies, no Medicare supplement policy shall be delivered or issued for delivery in this State and no certificate shall be delivered pursuant to a group medical supplement policy delivered or issued for delivery in this State unless an outline of coverage is delivered to the applicant at or prior to the time application is made.

(b) The insurance commissioner shall prescribe the format and content of the outline of coverage required by subsection (a). For the purposes of this section, "format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;
(2) A statement of the exceptions, reductions, and limitations contained in the policy;
(3) A statement of the renewal provisions including any reservation by the insurer of a right to change premiums; and
(4) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

(c) The insurance commissioner shall prescribe, by rule, a standard form and contents of an informational brochure for persons eligible for Medicare by reason of age which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the insurance commissioner may require, by rule, that the informational brochure be provided to any prospective insureds eligible for Medicare by reason of age concurrently with delivery of the outline of coverage.

With respect to direct response insurance policies, the insurance commissioner may require, by rule, that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare by reason of age, but in no event later than the time of policy delivery.

(d) The insurance commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all disability insurance policies and subscriber contracts sold to persons eligible for Medicare by reason of age, other than:

(1) Medicare supplement policies or subscriber contracts;
(2) Disability income policies;
(3) Basic, catastrophic, or major medical expense policies or subscriber contracts;
(4) Single premium, nonrenewable policies or subscriber contracts; or
(5) Other policies or subscriber contracts defined in section 431- .

(e) The insurance commissioner may further adopt reasonable rules to govern the full and fair disclosure of information in connection with the replacement of disability insurance policies, subscriber contracts, or certificates by persons eligible for Medicare by reason of age.

§431- Notice of free examination. Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, shall have a notice prominently printed on the first page of the policy or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within ten days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for Medicare by reason of age shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination, the applicant is not satisfied for any reason.

§431- Approval of forms. (a) No Medicare supplement policy or certificate under a group Medicare supplement policy, that is subject to sections 431- to 431- shall be delivered or issued for delivery in this State, after the date specified in rules adopted by the insurance commissioner pursuant to such sections, unless the minimum standards of such rules are met or exceeded with regard to it, or unless the form of such policy is an approved form in accordance with this section.

(b) The insurer shall submit each such policy form and group certificate form, including the form of any riders or endorsements of applications which may be attached to or made a part of such form, and the schedule of premium rates therefor to the insurance commissioner. The insurance commissioner may require a certification from the insurer that, to the best of the certifier's knowledge and belief, such form meets the requirements of such rules and of all applicable Hawaii laws and rules. The insurance commissioner may also require the insurer to submit a certification by a qualified actuary that the premium rates, to the best of the actuary's knowledge and belief, are in accordance with the loss ratio standards adopted by rule

under section 431- .

(c) The insurance commissioner may disapprove any such form or withdraw approval of a previously approved form if the insurance commissioner finds that:

(1) It is not in accordance with applicable laws and rules in any respect;

(2) It is or it contains provisions which are misleading, deceptive, inconsistent, or ambiguous; or

(3) The benefits are unreasonable in relation to the premium charge.

(d) A policy form shall be deemed approved if it is in accordance with all applicable laws and rules, it has not been disapproved earlier than sixty-one days after the date of submission, it fully meets all submission requirements, and it is received by the insurance commissioner.

(e) The insurance commissioner shall promptly give written notice to the insurer of the insurance commissioner's approval of a policy form or, if a form is disapproved or approval is withdrawn, of such disapproval or withdrawal together with the reasons for it and of the procedure by which the insurer may request and be granted a hearing on the merits of such action.

(f) The insurance commissioner, by rule, may establish requirements and procedures for Medicare supplement policy form submission.

§431- **Applicability.** Sections 431- to 431- shall apply to disability insurance policies and group contracts and individual subscriber contracts of a nonprofit medical indemnity or hospital service association, which are delivered or issued for delivery in this State on or after the date specified in rules adopted by the insurance commissioner in accordance with those sections.

§431- **Rules.** All rules which the insurance commissioner adopts to implement sections 431- to 431- shall be adopted under chapter 91 and before July 1, 1982."

SECTION 2. Chapter 433, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§433- **Health care coverage for senior citizens.** Sections 431- to 431- shall apply to nonprofit medical indemnity or hospital service associations. Such associations shall be exempt from the provisions of sections 431-463 to 431-498; provided that such exemption is in compliance with applicable federal statutes and regulations."

SECTION 3. New statutory material is underscored.*

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

(Approved June 8, 1981.)

*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.