

ACT 84

S.B. NO. 3239

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:10A-301, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-301 Definitions. For the purposes of this part:

[(1) Applicant] **“Applicant”** means:

[(A)] (1) In the case of an individual medicare supplement policy or subscriber contract, the person who seeks to contract for insurance benefits, and

[(B)] (2) In the case of a group medicare supplement policy or subscriber contract, the proposed certificate holder.

[(2) Certificate] **“Certificate”** means[, for the purposes of this part,] any certificate issued under a group medicare supplement policy, which [policy] **certificate** has been delivered or issued for delivery in this State.

[(3) Medicare] **“Medicare supplement [policy] policy”** means a group or individual policy of [disability] **accident and sickness insurance** or a subscriber contract of a nonprofit medical indemnity or hospital service association or health maintenance organization 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 organizations;
- (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; or
- (C) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this part 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] “Medicare” means the Health Insurance for the Aged Act, Title XVIII of the Social Security [Act, as amended.] Amendments of 1965, as then constituted or later amended.”

SECTION 2. Section 431:10A-302, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-302 Applicability[.] and scope.** (a) Notwithstanding anything to the contrary contained in this part, this part shall apply to:

- (1) A medicare supplement policy issued and delivered to a person domiciled in this State;
- (2) A medicare supplement policy issued and delivered to a person not domiciled in this State but pursuant to which a certificate is issued and delivered to a person domiciled in this State; and
- (3) Any certificate delivered to a person domiciled in this State which is issued pursuant to a medicare supplement policy.

(b) This part shall not apply to:

- (1) 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 organizations;
- (2) 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:
 - (A) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;
 - (B) Has been maintained in good faith for purposes other than obtaining insurance; and
 - (C) 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; or
- (3) Individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance

when the group or individual policy or contract includes provisions which are inconsistent with the requirements of this part or rules adopted thereunder, or issued to employees or members as additions to franchise plans in existence on the effective date of the applicable rules.

(c) The commissioner shall have all rights and powers with respect to the group or master policy and certificate issued pursuant to the medicare supplement policy as if the group or master policy was issued and delivered to a person domiciled in this State.

(d) This part shall not apply to insurance policies or health care plans issued to medicare eligible persons that are not marketed or held to be medicare supplement policies or benefit plans."

SECTION 3. Section 431:10A-304, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-304 Standards for policy provisions. (a)¹ No medicare supplement insurance policy, contract, or certificate in force in the State shall contain benefits which duplicate benefits provided by medicare.

[(a)] (b) The commissioner shall issue reasonable rules to establish specific standards for the provisions of medicare supplement policies[. Such] and certificates. The standards shall be in addition to and in accordance with applicable laws of this State, including the provisions of part I of this article[, and may cover, but shall not be limited to:]. No requirement of this chapter relating to minimum required policy benefits, other than the minimum standards contained in this part, shall apply to medicare supplement policies. The standards 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)] (c) The commissioner may issue reasonable rules that specify prohibited policy provisions not otherwise specifically authorized by law, which, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under any medicare supplement policy.

[(c)] (d) 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."

SECTION 4. Section 431:10A-305, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-305 [Minimum standards for benefits and claims payment.] Rules. The commissioner shall issue reasonable rules to establish minimum standards for benefits and claims payment under medicare supplement policies.

The commissioner may also issue rules to establish standards for marketing practices, compensation arrangements, and reporting practices for medicare supplement policies.”

SECTION 5. Section 431:10A-306, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-306 Loss ratio standards.** [(a)] Medicare supplement policies shall [be expected to] return to policyholders benefits which are reasonable in relation to the premium charged. The commissioner shall issue reasonable rules to establish minimum standards for loss ratios of medicare supplement policies on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, 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.

[(b) No entity shall provide compensation to its agents or other producers which is greater than the renewal compensation which would have been paid on an existing medicare supplement policy if the existing policy is replaced by another medicare supplement policy with the same company where the new policy benefits are substantially similar to the benefits under the old medicare supplement policy and the old policy was issued by the same insurer or insurer group.]”

SECTION 6. Section 431:10A-307, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-307 Disclosure standards.** (a) In order to provide for full and fair disclosure in the sale of medicare supplement policies, no medicare supplement policy or certificate 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 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, prominence of type, and the arrangement of text and captions. [Such] The 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 commissioner [shall] may 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.

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Except in the case of direct response insurance policies, the 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 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 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] accident and sickness 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]; or
- (4) Single premium, nonrenewable policies [or subscriber contracts]; or
- (5) Other policies or subscriber contracts defined in section 431:10A-301].

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

SECTION 7. Section 431:10A-308, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-308 Notice of free examination.** Medicare supplement policies or certificates shall have a notice prominently printed on the first page of the policy or certificate 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 of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the insurer in a timely manner.”

SECTION 8. Section 431:10A-309, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-309 [Approval] Filings; approval of forms.** (a) No medicare supplement policy or certificate [under a group medicare supplement policy that is subject to this part] shall be delivered or issued for delivery in this State[,] after the date specified in rules adopted by the commissioner[, 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] Every insurer providing medicare supplement insurance benefits to a resident of this State shall [submit each such] file with the commissioner a copy of the policy [form] and [group certificate form,] any certificate used in this State, including [the form] copies 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 to the commissioner.] the policy. The 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] the filing complies with

the minimum standards established in the rules and [of] all applicable Hawaii laws and rules.

(c) Every entity providing medicare supplement policies or certificates in this State shall file annually its rates, rating schedule, and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this State. The 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 431:10A-306.

[(c)] (d) The commissioner may disapprove any [such form] policy or certificate or withdraw approval of a previously approved [form] policy or certificate if the 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)] (e) A policy [form] or certificate shall be deemed approved if:

- (1) It is in accordance with all applicable laws and rules;
- (2) It has not been disapproved earlier than sixty-one days after the date of [submission;] filings;
- (3) It fully meets all [submission] filing requirements; and
- (4) It is received by the commissioner.

[(e)] (f) The commissioner shall promptly give written notice to the insurer of the commissioner's approval of a policy [form] or certificate or, if a [form] policy or certificate 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)] (g) The commissioner[,] by rule[,] may establish requirements and procedures for medicare supplement [policy form submission.] filings."

SECTION 9. Section 431:10A-310, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every insurer, nonprofit medical indemnity or hospital service association, health maintenance organization, or other entity providing medicare supplement insurance or benefits in this State [upon reasonable request from the commissioner] shall [provide] file a copy of any medicare supplement advertisement intended for use in this State whether through written, radio, or television medium to the commissioner for review. The commissioner may require a certification from the entity that to the best of the certifier's knowledge and belief the advertisement complies with the provisions of this chapter and all applicable rules."

SECTION 10. Section 431:10A-303, Hawaii Revised Statutes, is repealed.

SECTION 11. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 12. This Act shall take effect upon its approval.

(Approved May 23, 1990.)

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Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.