

ACT 331

H.B. NO. 1121

A Bill for an Act Relating to the Public Employees Health Fund.

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

SECTION 1. Chapter 87, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§87- Determination of long-term care benefits plan; contract with carrier or third-party administrator.** (a) The board of trustees shall determine the benefits of a long-term care benefits plan for employee-beneficiaries, their spouses, and qualified-beneficiaries. The plan shall comply with the provisions of article 10A, part V, of chapter 431, upon initial plan implementation only.

(b) Notwithstanding any other law to the contrary, such benefits shall be available only to employee-beneficiaries, their spouses, and qualified-beneficiaries who enroll between the ages of twenty and eighty-five. Eligible persons must

comply with the plan's age, enrollment, medical underwriting, and contribution requirements.

(c) The board may contract with a carrier to provide fully-insured benefits or a third-party administrator to administer self-insured benefits.

**§87- Contributions by an employee-beneficiary or qualified-beneficiary for long-term care benefits plan.** (a) During the period the long-term care benefits plan is in effect, the employee-beneficiary shall authorize, if otherwise allowed by law, the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If, however, an employee-beneficiary's monthly contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution directly to the board's designated carrier or third-party administrator by the first day of each month.

(b) Qualified-beneficiaries shall pay monthly contributions directly to the board's designated carrier or third-party administrator by the first day of each month."

SECTION 2. Section 87-1, Hawaii Revised Statutes, is amended to read as follows:

**"§87-1 Definitions.** As used in this chapter:

- (1) "Board" means the board of trustees as described in section 87-11;
- (2) "Carrier" means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of health or long-term care services under group insurance [contract] contracts or medical, hospital, or dental services agreements;
- (3) "Contributions" means money payments made to the fund by the State or the several counties or an employee-beneficiary[:] or qualified-beneficiary;
- (4) "Dependent-beneficiary" means an employee-beneficiary's spouse and any unmarried child, including an adopted child, stepchild, foster child, or recognized natural child who lives with the employee-beneficiary, deemed eligible by the board to receive health or dental services of a health benefits plan;
- (5) "Employee" means an employee or officer of the state or county government or the legislature,
  - (A) Including:
    - (i) An elective officer or a person who has served as a member of the legislature for at least [a total of] ten years;
    - (ii) A per diem employee;
    - (iii) An officer or employee under an authorized leave of absence;
    - (iv) An employee of the Hawaii national guard although paid from federal funds;
    - (v) A retired member of the [employees] employees' retirement system, the county pension system, or the police, firefighters, or bandsmen pension system of the State or county;
    - (vi) A salaried and full-time member of a board, commission, or agency appointed by the governor [of the State] or the

- mayor of a county; and
- (vii) A person employed by contract for a period not exceeding one year, where the director of either personnel services or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures[.],
- (B) But excluding:
- (i) A designated beneficiary of a retired member of the [employees] employees' retirement system, the county pension system, or the police, firefighters, or bandsmen pension [system] systems of the State or county;
  - (ii) Except as allowed under (5)(A)(vii) [above], a person employed temporarily on a fee or contract basis; and
  - (iii) A person employed for [fewer] less than three months and whose employment is less than one-half of a full-time equivalent position.
- (6) "Employee-beneficiary" means an employee, the beneficiary of an employee who is killed in the performance of the employee's duty, an employee who retired prior to the establishment of the fund, or the beneficiary of a retired member of the [employees] employees' retirement system, a county pension system, or a police, firefighters, [and] or bandsmen pension system of the State or county, upon the death of the retired member and, which beneficiary, if a child, does not marry, or if a surviving spouse, does not remarry; provided that for the purposes of this paragraph, "family member" means the deceased retired member's or employee's spouse and unmarried child under the age of nineteen years (including a legally adopted child and a stepchild or recognized natural child who lives with the deceased retired member or employee in a regular parent-child relationship), or unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity which existed prior to the unmarried child's reaching the age of nineteen years; and provided further that the employee, the employee's beneficiary, or the beneficiary of the deceased retired member is deemed eligible by the board to receive health or dental services of a health benefits plan[.]; or a long-term care benefits plan;
- (7) "Fund" means the trust fund [as] described in section 87-2;
- (8) "Health benefits plan" means (A) a group insurance contract or medical, hospital, surgical, prescribed drugs, vision, or dental service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of medical, hospital, surgical, prescribed drugs, vision, or dental services[, or long-term care services] as determined by the board; or (B) a similar schedule of benefits established by the board and provided through the fund on a [noninsured] self-insured basis;
- (9) "Long-term care benefits plan" means (A) a group insurance contract or service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of long-term care benefits as determined by the board, or (B) a similar schedule of benefits established by the board and provided through the fund on a self-insured basis;

- (9) (10) "Periodic charge" means the periodic payment by the board to a carrier for any health benefits, or long-term care benefits plan; [and]
- (11) "Qualified-beneficiary" means, for purposes of the long-term care benefits plan, a former employee or an employee who is not eligible for benefits due to a reduction in work hours including the employee's spouse or a divorced spouse of an employee or retiree provided the person was enrolled in the plan prior to loss of benefits; and
- (10) (12) "Trustee" means a trustee of the board of trustees as described in section 87-11."

SECTION 3. Section 87-3, Hawaii Revised Statutes is amended to read as follows:

**"§87-3 Purpose of the fund.** (a) The fund shall be used for the purpose of providing employee-beneficiaries and dependent-beneficiaries with a health benefits plan[,] and a long-term care benefits plan; provided that the fund may be used for other expenses necessary to effectuate [the purpose] these purposes; and provided further that any rate credit or reimbursement from any carrier or self-insured plan or any earning or interest derived therefrom shall be used in addition to such purposes to:

- (1) Finance the employee's and state and county contributions for [the dental benefits] the respective benefit plan [for children under the age of nineteen, as described in section 87-4;] from which such moneys are derived; and
- (2) Finance the employee's portion of the monthly contribution of a health benefits plan for a retired employee, as described in section 87-1(5)(A)(v), or upon the retired employee's death, the retired employee's beneficiary as described in section 87-1(6).]
- (2) Improve the benefits of the respective plan from which such moneys are derived.

(b) To the extent that contributions are provided for group life insurance benefits in [section] sections 87-4 and 87-4.5, the fund shall also be used for the purpose of providing group life insurance benefits to employees.

(c) To the extent that contributions are received from employee-beneficiaries and qualified-beneficiaries for long-term care insurance benefits under section [87-22,] 87-, the fund shall also be used for the purpose of providing long-term care insurance benefits to eligible participants.

(d) The fund may assist the State and the counties to implement and administer cafeteria plans authorized under section 125 of the Internal Revenue Code of 1986, as amended, and under part II of chapter 78."

SECTION 4. Section 87-6, Hawaii Revised Statutes, is amended to read as follows:

**"§87-6 Contributions by an employee-beneficiary[.] for health benefits plans.** (a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the State's and county's contribution to the fund [and including the monthly charge of the long-term care insurance plan if selected by the employee-beneficiary].

Nothing in this section shall prohibit any employee-beneficiary from participating in a cafeteria plan authorized under section 125 of the Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(b) During the period the health benefits plan [and, if applicable, the long-term care plan] selected by an employee-beneficiary [are] is in effect, the employee-beneficiary shall authorize, if otherwise allowed [under present laws,] by law, [that] the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If, however, an employee-beneficiary's contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution (1) directly to the fund by the [tenth] first day of each month, in the case of an employee-beneficiary who normally receives the employee-beneficiary's compensation from the comptroller of the State, or (2) in the case of all other employee-beneficiaries, to the respective finance officer from whom the employee-beneficiary normally receives compensation for transmittal to the fund by the [tenth] first day of each month.

(c) Notwithstanding any other law to the contrary, the beneficiary of an employee who is killed in the performance of duty, an employee-beneficiary who retired after June 30, 1984[,] due to a disability as defined in sections 88-77, 88-79, and 88-285, an employee-beneficiary who retired before July 1, 1984, an employee-beneficiary who retired after June 30, 1984[,] and who had ten years or more of credited service, excluding sick leave, or upon death their beneficiary, including employees who retired prior to the establishing of the fund and their beneficiaries, or the beneficiary of any employee-beneficiary, as described in section 87-1(6) shall not be required to make any contribution to the fund. The monthly contribution of the persons identified in this subsection shall be financed by the State through the department of budget and finance and the several counties through their respective departments of finance for each of their respective employee-beneficiaries.

(d) Subsection (a) notwithstanding, an employee-beneficiary's monthly contribution to the fund, amounting to the difference between the monthly cost of the health benefits plan selected by the employee-beneficiary and the State's or appropriate county's contribution to the fund, shall be deemed to include the amount which would have been the employee-beneficiary's contribution if the employee-beneficiary had not elected to participate in the cafeteria plan."

SECTION 5. Section 87-22, Hawaii Revised Statutes, is amended to read as follows:

**"§87-22 Determine health benefits plan; contract with carriers. (a)**

The board of trustees shall determine the health benefits plan, which shall be excepted from the minimum group requirements of chapter 431. The health benefits plan shall provide, pay for, arrange for, or reimburse the cost of hospitalization, surgery, medical, dental treatment, and care, and may include prescribed drugs, medicines, prosthetic appliances, hospital in-patient and out-patient service benefits, vision treatment and care, medical, and dental indemnity benefits[, and long-term care benefits].

(b) The board may contract for the following health benefits plans; provided that benefits provided under any respective plan shall be equally available to all employee-beneficiaries and dependent-beneficiaries selecting the plan regardless of age, as provided for below:

- (1) A statewide indemnity benefit plan under which a carrier agrees to pay certain sums of money not in excess of the actual expenses incurred for health services.

- (2) A statewide service benefit plan under which payment is made by a carrier under contracts with physicians, hospitals, or other providers of health services, or, under certain conditions, payment is made by a carrier to an employee-beneficiary.
- (3) Health maintenance organization plans, which provide or arrange health services for members on a prepaid basis, with professional services provided by physicians practicing individually or as a group in a common center or centers.
- (4) Plans to offer dental benefits through a statewide indemnity plan, a statewide service benefit plan, dental maintenance organization plans, or combinations thereof.
- (5) Plans to offer prescription drug benefits through a statewide indemnity plan, a statewide service benefit plan, [dental] health maintenance organization plans, or combinations thereof.
- (6) Plans to offer vision care benefits through a statewide indemnity plan, a statewide service benefit plan, health maintenance organization plans, or combinations thereof.
- (7) A not for profit plan to offer reasonably priced long-term care benefits at affordable premium rates through either a group long-term care plan, a franchise long-term care plan, individual long-term care plan, including home care services or a combination thereof. Salient features of the plan shall include:
  - (A) The plan shall be a self-funded, not for profit plan developed or contracted by the board;
  - (B) The plan shall meet the minimum requirements established by the insurance commissioner for long-term care insurance;
  - (C) The plan shall be voluntary and shall be funded by the contributions made by enrollees;
  - (D) The spouses of employee-beneficiaries shall be allowed to enroll in the long-term care insurance plan during the enrollment period open to employee-beneficiaries;
  - (E) During the first three months of the initial enrollment period for the plan, all retirees who are receiving benefits under chapter 88 as of July 1, 1989, shall be automatically eligible to enroll in the plan for a flat annual premium rate to be developed by the board, which shall be uniformly applicable to all such retirees regardless of age;
  - (F) The plan shall provide that eligibility to receive benefits under it shall require prior certification of need by the board or its designated representative;
  - (G) The plan shall provide for an annual review of its operations and adequacy of the premium structure. Since the plan is established as a not-for-profit plan, excess revenues over operating costs shall be returned to enrollees for the covered period by either a premium adjustment or improvement of benefits. Likewise, a deficit that cannot be covered by a reserve to be established by the board may require an adjustment in the premium for the following fiscal period; and
  - (H) The plan shall provide that pending actual operating expenditure requirements, the board shall invest the funds available in safe, liquid investments to provide continuing growth of the funds for the operation.
- (8) (7) A noninsured schedule of benefits similar to any of the schedule

of benefits set forth in the health [benefit] benefits plans authorized in paragraphs (1) to [(7)] (6).

[For purposes of this section, “long-term care insurance” means any insurance policy or rider advertised, marketed, offered, or specialty designed to provide coverage for not less than twelve consecutive months for each covered person on a expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plan, health maintenance organizations or any similar organization. Long-term care insurance shall not include any insurance policy, which is offered primarily to provide basic Medicare supplemental coverage, basic hospital expense coverage, basic medical surgical expense coverage, hospital confinement indemnify coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.]”

SECTION 6. Section 87-24, Hawaii Revised Statutes, is amended to read as follows:

**“§87-24 Selection of a carrier [of indemnity plan.] or third-party administrator for a health benefits, group life insurance, or long-term care benefits plan.** Before selecting a carrier [of an indemnity type health benefits] or third-party administrator for any benefit plan, the board of trustees shall:

- (1) Prepare specifications [of a health benefits plan];
- (2) Submit specifications for sealed [bids] proposals by interested [carriers;] applicants;
- (3) Evaluate [bids of respective carriers;] proposals; and
- (4) Give prime consideration to the [carrier] applicant offering the lowest net cost and high quality of services.”

SECTION 7. Section 87-25, Hawaii Revised Statutes, is amended to read as follows:

**“§87-25 Determine eligibility of employee [or], dependent[.], or person.** The board of trustees shall establish and adopt eligibility requirements to determine which employee [and], dependent, or person may qualify as an employee-beneficiary [or], dependent-beneficiary, or qualified-beneficiary, respectively, provided that a retired member of the employees’ retirement system, a county pension system, or a police, firefighters, and bandsmen pension system of the State or county, or the retired member’s dependent shall be eligible to qualify as an employee-beneficiary or dependent-beneficiary, whether or not the retired member was actively employed by the State or county at the time of the retired member’s retirement and whether or not the employee retired before or after the establishing of the public employees health fund. Employees who retired prior to the establishing of the health fund shall be treated as if they were members of the system during their period of employment with the State or county and receive the same benefits as other members. Only an employee-beneficiary or dependent or person satisfying the eligibility requirements may qualify as an employee-beneficiary [or], dependent-beneficiary[.], or qualified-beneficiary.”

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SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ \_\_\_\_\_, or so much thereof as may be necessary for fiscal year 1991-1992, and the sum of \$ \_\_\_\_\_, or so much thereof as may be necessary for fiscal year 1992-1993, to carry out the purposes of this Act. The sums appropriated shall be expended by the Hawaii public employees health fund for the purposes of this Act.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 10. This Act shall take effect on July 1, 1991.

(Approved July 8, 1991.)

### Note

1. Edited pursuant to HRS §23G-16.5.