

ACT 195

S.B. NO. 2675

A Bill for an Act Relating to Medicare Supplement 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:

“Applicant” means:

- (1) In the case of an individual medicare supplement policy [or subscriber contract], the person who seeks to contract for insurance benefits, and
- (2) In the case of a group medicare supplement policy [or subscriber contract], the proposed certificate holder.

“Certificate” means any certificate delivered or issued for delivery in this State under a group medicare supplement policy[, which certificate has been delivered or issued for delivery in this State].

“Certificate form” means the form on which the certificate is delivered or issued for delivery by the issuer.

“Issuer” includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this State medicare supplement policies or certificates.

“Medicare” means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

“Medicare supplement policy” means a group or individual policy of accident and sickness insurance or a subscriber contract of [a nonprofit medical indemnity or hospital service association] hospital and medical service associations or health maintenance [organization] organizations, other than a policy issued pursuant to a contract under section 1876 or section 1833 of the federal Social Security Act (42 U.S.C. section 1395 et. seq.), or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, 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].

“Policy form” means the form on which the policy is delivered or issued for delivery by the issuer.”

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;] All medicare supplement policies delivered or issued for delivery in this State on or after the effective date hereof; and
- [(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.]
- (2) All certificates issued under group medicare supplement policies, which certificates have been delivered or issued for delivery in this State.

(b) This part shall not apply to[:

- (1) 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[¹
- (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;¹
 - (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 including group conversion policies, issued to medicare eligible persons that are not marketed or held to be medicare supplement policies or benefit plans.”

SECTION 3. Chapter¹ 431:10A-304, Hawaii Revised Statutes is amended to read as follows:

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

(b) The commissioner shall [issue] adopt reasonable rules to establish specific standards for the provisions of medicare supplement policies 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. 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[.] and certificates. 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.

(c) The commissioner may [issue] adopt 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] to be insured under any medicare supplement policy[.] or certificate.

(d) A medicare supplement policy or certificate shall not [deny a claim] exclude or limit benefits for losses incurred more than six months after the effective date of coverage [for] because it involved a preexisting condition. The policy or certificate 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 Rules. (a) The commissioner shall [issue] adopt 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[.] and certificates.

(b) The commissioner may adopt from time to time, reasonable rules as are necessary to conform medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder, including but not limited to:

- (1) Requiring refunds or credits if the policies or certificates do not meet loss ratio requirements;
- (2) Establishing a uniform methodology for calculating and reporting loss ratios;
- (3) Assuring public access to policies, premiums and loss ratio information of issuers of Medicare supplement insurance;
- (4) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases;
- (5) Establishing a policy for holding public hearings prior to approval of premium increases; and
- (6) Establishing standards for medicare select policies and certificates."

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

"§431:10A-306 Loss ratio standards. Medicare supplement policies shall return to policyholders benefits which are reasonable in relation to the premium charged. The commissioner shall [issue] adopt 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 in accordance with accepted actuarial principles and practices. For the purposes of rules [issued] adopted under this section, medicare supplement policies and certificates 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] group policies."

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 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. 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)]¹ (2) A statement of the renewal provisions including any reservation by the [insurer] issuer of a right to change premiums; and disclosure of the existence of any automatic renewal premium increases based on the policyholders' age; and
- [(4)] (3) 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 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. 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 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 accident and sickness insurance policies [and subscriber contracts] sold to persons eligible for medicare by reason of age, other than:

- (1) Medicare supplement policies;
- (2) Disability income policies;
- (3) Basic, catastrophic, or major medical expense policies; or
- (4) Single premium, nonrenewable policies.

(e) The commissioner may [further] adopt reasonable rules to govern the full and fair disclosure of information in connection with the replacement of 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] and 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] issuer in a timely manner.”

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

“§431:10A-309 Filings; approval of forms. (a) No medicare supplement policy or certificate shall be delivered or issued for delivery in this State after the date specified in rules adopted by the commissioner unless the form of such policy is approved in accordance with this section.

(b) Every [insurer] issuer providing medicare supplement insurance benefits to a resident of this State shall file with the commissioner a copy of the policy and any certificate used in this State, including copies of any riders or endorsements of applications which may be attached to or made a part of the policy. The commissioner may require a certification from the [insurer] issuer that, to the best of the certifier’s knowledge and belief, the filing complies with the minimum standards established in the rules and all applicable Hawaii laws and rules.

(c) Every [entity] issuer 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 require the [insurer] issuer 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].

(d) The commissioner may disapprove any policy or certificate or withdraw approval of a previously approved 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.

- (e) A policy 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 filings;
 - (3) It fully meets all filing requirements; and
 - (4) It is received by the commissioner.

(f) The commissioner shall promptly give written notice to the [insurer] issuer of the commissioner's approval of a policy or certificate or, if a 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] issuer may request and be granted a hearing on the merits of such action.

(g) The commissioner by rule may establish requirements and procedures for medicare supplement filings."

SECTION 9. Section 431:10A-310, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-310 Filing requirements for advertising. (a) Every [insurer, nonprofit medical indemnity or hospital service association, health maintenance organization, or other entity providing] issuer of medicare supplement insurance [or benefits] policies or certificates in this State shall 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.

(b) If the commissioner finds the advertisement to be in violation of any provision of [the insurance code] this chapter or any rule, the commissioner shall order the [insurer, nonprofit medical indemnity or hospital service association, or health maintenance organization] issuer to cease and desist use of the advertisement pursuant to section 431:2-201 and section 431:2-202.

(c) In conjunction with a cease and desist order issued pursuant to subsection (b), the commissioner may order the [insurer, nonprofit medical indemnity or hospital service association, or health maintenance organization] issuer to refund to the insured the premium paid for the medicare supplement policy. Any refund of an amount paid by the insured for the medicare supplement insurance shall be paid within fifteen days to the person entitled thereto; provided that by rule the commissioner may prescribe an amount below which no refund need be made."

SECTION 10. Section 431:10A-311, Hawaii Revised Statutes, is amended to read as follows:

"§431:10A-311 Penalties. In addition to any other applicable penalties for violations of [the insurance code] this chapter, pursuant to section 431:2-203, the commissioner may require [insurers] issuers violating any provision of this part or rules adopted pursuant to this part to cease marketing or selling any medicare supplement policy in this State which is related directly or indirectly to a violation or may require [such insurer] the issuer to take [such] actions [as are] necessary to comply with the provisions of this part, or both."

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

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

(Approved June 12, 1992.)